Tan v. *Minister of Health and Social Services,* 2010 NWTSC 12

Date: 2010 02 12
Docket: S-1-CV-2009000119

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

SALLY TAN, MA RCC

Applicant

- and -

MINISTER OF HEALTH AND SOCIAL SERVICES,
GOVERNMENT OF THE NORTHWEST TERRITORIES

Respondent

Application for judicial review of Minister's decision to deny an application for registration on the Psychologists Register under s. 5 of the *Psychologists Act*, R.S.N.W.T. 1988, c. P-11

Heard at Yellowknife, NT, on December 7, 2009.

Reasons filed: February 12, 2010.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE D.M. COOPER

Counsel for the Applicant: Malinda Kellett

Counsel for the Respondent: Sheldon Toner

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REASONS FOR JUDGMENT

[1] The Applicant, Tan, is a resident of British Columbia and is currently working with Corrections Canada after having obtained a Masters in Psychology in 2008. She applied pursuant to the *Psychologists Act*, R.S.N.W.T. 1988, c. P-11 ("the Act") to be registered in the Northwest Territories as a fully qualified psychologist and in July of 2009, she was advised by the Registrar of Professional Licensing that her application had been denied by the Psychology Registration Committee ("PRC") on July 14, 2009, a group consisting of 3 members of the Association of Psychologists of the Northwest Territories and the Registrar.

Procedural History

[2] On August 14, 2009, the Applicant, self-represented at the time, applied for judicial review of this decision naming Jeanette Hall, the Registrar, and the PRC as Respondents. There ensued a number of adjournments until this matter was finally brought on for argument before me on December 7, 2009. In the interim, the

Respondents consulted legal counsel, and as disclosed in the Registrar's affidavit, were advised that they had acted in error by having rendered the decision to deny the application themselves instead of having made a recommendation to the Minister who had the decision making power under the *Act*. The Respondents purported to "clean up" this process by having the Registrar advise the Minister of Health by letter on October 5, 2009, that the PRC had reconvened and recommended against entering the Applicant's name on the Register of Psychologists. The Minister, The Honourable Sandy Lee, denied the application in writing on the 8th of October.

[3] On October 26, 2009, newly appointed counsel for the Applicant applied to amend the style of cause by, inter alia, removing the Registrar and the PRC and substituting the Minister and Government of the Northwest Territories as Respondents. The Respondents consented and the Order to amend was granted. The Applicant takes no issue with the procedural error above-described and asks that the Minister's decision of October 8th be set aside and that the Minister be directed to approve the application.

[4] A person denied registration has a statutory right of appeal pursuant to s. 15 of the *Act* which gives a reviewing court the power to quash, alter, or confirm the decision. From the outset, the Applicant has styled her action as being one of judicial review of the Minister's decision without reference to s.15 where, as noted above, the remedies prescribed are similar to those available on judicial review. The Respondents have not argued or seen fit to bring this issue to the Court's attention. It is of little consequence as to how the action is framed in the circumstances of this case where the Applicant seeks a remedy available on appeal. Accordingly, I will refer to it as an application for judicial review.

Issues

1. What is the standard of review applicable to the Minster's decision?
2. Did the Minister have the jurisdiction to make the decision?
3. Did the Minister's decision meet the standard of review?
4. Was the Minister's decision procedurally fair?

Background

[5] The Applicant completed a Masters programme in psychology in April of 2008 and commenced working under the supervision of a registered psychologist with Corrections Canada in British Columbia in May, 2008. While Ms. Tan was employed as a psychologist with Corrections Canada and under the supervision of a registered psychologist, she was not herself registered as an intern. I note, having read the uncontradicted affidavit evidence of the Registrar, that all jurisdictions in Canada (with the possible exceptions of Nunavut and Yukon) require a period of registered supervised practice and that in some jurisdictions the status is that of an "associate" or "intern" or is referred to as being "provisional".

[6] There is no evidence as to why the Applicant did not take the seemingly logical step of registering in her home jurisdiction. In order to use the designation of "psychologist" in British Columbia, given her employment with the Federal Government, she was not required to be registered. (See *Health Professions Act, Psychologists Regulation*, B.C. Reg. 289/2008). However, only a "registered psychologist" is permitted to practice psychology in the province. See *College of Psychologists of British Columbia, Bylaws* (Revised November 7, 2008, clause 43.) As well, it is of note that before the College would accept an applicant for registration from a reciprocating province or territory, he or she must have "first been registered or licensed as a Psychologist or Psychological Associate in the jurisdiction from which the application is made. (emphasis mine) See *Bylaws*, clause 45.

[7] As of May of 2009, then, Ms. Tan was not registered as an associate in British Columbia and was not in a position to apply to be registered there as a psychologist.

[8] In the fall of 2007, Ms. Tan had contacted the Registrar for Professional Licencing in the Northwest Territories expressing interest in applying to register as a psychologist. The Registrar forwarded to the Applicant the registration package which included an application form and a 3 page document entitled "Requirements To Apply For a Psychologist License In The Northwest Territories" (hereinafter "the Requirements").

[9] One section of the Requirements provided that "all applicants who do not hold current, unrestricted registration in a Canadian province must provide proof of one year of supervised practical experience. This supervised experience must have taken place after the granting/awarding of a master's degree in psychology."

[10] The Applicant began gathering documentation to support her application in late 2008 and began submitting some of it in early May of 2009. On May 25th, the Registrar amended the Requirements document by adding the words "while on an intern registry in a province or the NWT" after the words "degree in psychology."

[11] Jeanette Hall stated in her affidavit that the issue of whether certain practical experience qualifies for registration is not one which arises frequently in this jurisdiction; and that the Requirements had not been amended for several years. She explains that Ms. Tan's application brought to her attention the need to clarify the supervision requirement but was not directed at Ms. Tan personally.

[12] It is this change or clarification, as the Respondents put it, that the Applicant objects to.

[13] The Respondents argue that the *Act* must be read in conjunction with the Mutual Recognition Agreement ("MRA") entered into by associations and colleges of psychologists across Canada in 2001 as a component of the Agreement on Internal Trade. The only Canadian jurisdictions which were not signatories were Yukon and Nunavut. The purpose of the MRA is to establish the conditions and standards by which a psychologist who is licensed to practice psychology in one Canadian jurisdiction without supervision will have his or her qualifications recognized in another jurisdiction. Since Ms. Tan was not licensed to practice psychology in British Columbia, the MRA does not come into play directly in this fact situation. That being the case, an unlicensed psychologist applying for admission in the Northwest Territories would be required to comply with the requirements as reasonably established in this jurisdiction.

[14] The MRA does highlight, however, that any person who is a registered psychologist in one jurisdiction will have that status recognized in a reciprocating jurisdiction and there is therefore an obligation on each signatory to the Agreement to ensure that no one is accredited in their jurisdictions as a registered psychologist unless he or she meets common professional standards - one being the requirement to intern.

[15] One of the Requirements called for "all applicants who do not hold current, unrestricted registration in a Canadian province [to] have their 'academics' evaluated by the College of Alberta Psychologists...and then submit a letter from the College... stating their academics have been reviewed and approved for registration."

Presumably, the Association in the Northwest Territories lacks the expertise to undertake these evaluations and utilizes the good offices of the Alberta College for this purpose. As someone who did not hold unrestricted registration in a Canadian province, Ms. Tan complied with this Requirement and filed with the Registrar a letter dated April 7, 2009, from the Alberta College which stated in part:

> The panel has determined you now meet the minimum academic requirements for registration as a psychologist in the province of Alberta.
>
> You may now proceed to apply for registration as a provisional psychologist in the province of Alberta. (emphasis mine)

[16] It is interesting to note that, at the time she received this letter, the Applicant was perfectly aware that her credentials were not sufficient to allow her to be registered as a psychologist in Alberta but only as a provisional psychologist.

[17] On June 23, 2009, in an email exchange, the Registrar, perhaps suspecting the applicant had not been on a register while being supervised, brought her attention to this requirement. The applicant indicated she was not aware that she had been required to be registered as an intern.

[18] The Registrar forwarded her recommendation and that of 2 members representing the Association of Psychologists in the NWT to the Minister on October 5, 2009; which was that registration be denied. The rationale for the recommendation was that the applicant had not been on an intern registry or had not been accorded provisional or conditional status by the governing body in British Columbia. It is clear from the affidavit of the Registrar and from the rationale provided to the Minster for denying the application, that the evaluators suspected the Applicant was attempting to take advantage of a perceived loophole in the legislation by noting that she had not indicated an intention of considering employment in the NWT.

[19] Although it may appear to be obvious, the evidence discloses that unless a candidate for registration is registered in his or her home jurisdiction, there is no governing body to oversee the individual's practicum or, for example, to receive complaints from the public. Internship is the mechanism by which the governing body can ensure that the practical experience gained will be of an acceptable standard and which, when successfully completed, will qualify applicants for full admission to the practice of psychology.

[20] Provisions in the *Psychologists Act* relevant to this application are:

> 5. (1) An application for registration in a register must be made in writing to the Registrar.
>
> (2) After receiving an application for registration, the Registrar shall meet with representatives of the Association and review the application and supporting documentation.
>
> (3) After completing a review of an application, the Registrar and the representatives of the Association shall each make a recommendation to the Minister as to the eligibility of the applicant for registration.
>
> (4) Subject to this Act, the Minister shall decide whether an applicant is to be registered and shall consider the recommendations of the Registrar and the representatives of the Association in arriving at this decision.
>
> 6. (1) Subject to this section, an applicant
>
> (a) who has
>
> (i) received from a Canadian university a masters degree in psychology,
> (ii) received from a university a degree equal in content to a masters degree in psychology from a Canadian university, or
> (iii) received a degree from a university and subsequently undertaken graduate work that together are equal in content to a masters degree in psychology from a Canadian university,
>
> (b) who satisfies the Minister that he or she is of good character,
>
> (c) whose name has not been struck from the Psychologists or Intern Psychologists Register of any other jurisdiction, without a subsequent reinstatement, and
>
> (d) who is not under suspension in respect of the practice of psychology in any other jurisdiction,
>
> is entitled to be registered in the Interns Register on payment of the prescribed fee.
>
> 7. (1) Subject to this section, an applicant who
>
> (a) satisfies the requirements of section 6, and

> (b) has gained a year of practical psychology experience after completion of the degree requirements of section 6,
>
> is entitled to be registered in the Psychologists Register on payment of the prescribed fee.

Standard of Review

[21] The applicant submits that in determining the appropriate standard of review, the court is to take a pragmatic and functional approach which takes into account the following factors:

> 1. The existence of a privative clause;
>
> 2. The relative expertise of the decision-maker in question;
>
> 3. The purpose of the act as a whole, and the section under review in particular; and
>
> 4. The nature of the problem- whether it is a question of law or fact. *Pushpanathan* v. *Canada,* 1998 CanLii 778 (S.C.C.)

[22] In *Dunsmuir* v. *New Brunswick* [2008] S.C.J. 9, the Supreme Court of Canada reconsidered the standards of judicial review and concluded there should be two – namely, correctness and reasonableness. With the former, the courts accord the administrative body or tribunal little deference. Conversely, there is less judicial inclination to interfere where the standard is reasonableness. The Court stated, "...reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. [It] is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. "(*Dunsmuir*, supra, at paragraph 47).

[23] The applicant says the proper standard is correctness and the Minister should be given little deference. The reasons cited are that:

> (a) There is no privative clause and there is, in fact, a right of appeal in the statute [s. 15 (1)];

> (b) The Court has more expertise than the Minister in reviewing, interpreting and applying the relevant legislation;
>
> (c) The purpose of the statute is to govern the acceptance and practice of registered psychologists in the Northwest Territories. This is a matter where legislative entitlement to registration is at issue and where a low level of discretion should be accorded to the Minister;
>
> (d) The nature of the problem is a legal one; whether the Minister exceeded her jurisdiction in imposing the Intern Register requirement and whether her actions constituted a breach of the duty of procedural fairness and natural justice. Accordingly, the applicant says a low level of discretion ought be given to the Minister here.

[24] In reply, the Respondents submit that in all respects, save the legal interpretation of the *Act*, the proper standard is reasonableness. In support, they cite *Dunsmuir*, supra, *Gallant v. Prince Edward Island Psychologists Registration Board*, [2006] P.E.I.J. No. 11, *Burge v. Newfoundland Board of Examiners in Psychology*, [2005] N.J. No. 225; *and Bargen v. Northwest Territories (Medical Board of Inquiry)*, [2009] N.W.T.J. No.8. The screening committee here is composed of psychologists, with the exception of the Registrar, and the court will accord the Minister considerable deference in the areas of setting of standards and evaluation of credentials. In *Dunsmuir*, the Court stated at paragraph 27:

> Courts, while exercising their constitutional functions of judicial review, must be sensitive not only to the need to uphold the rule of law, but also to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures.

[25] The Respondent says that the Association of Psychologists is a quasi-independent self-governing body which, among other things, has expertise in setting standards and entrance requirements and in understanding governance of the profession from a territorial and national perspective.

[26] In *Bargen*, this Court held that a medical Board of Enquiry composed of licenced physicians was best positioned with its expertise to make decisions respecting the ethical conduct of a member in determining appropriate disciplinary measures. The Court there imposed a standard of reasonableness. The case at bar is very similar.

[27] I find that the applicable standard of review here is one of reasonableness except for statutory interpretation where it is correctness.

Jurisdiction of the Minister

[28] The Applicant argues that the *Psychologists Act* does not explicitly state that being on an intern registry while completing one's practicum is a necessary requirement for admission to the Psychologists Register. She reasons that because the *Act* does not stipulate that enrolment on an intern registry is a requirement, the Minister does not have the discretion to deny her application on this ground. Her argument is not one that is unmeritorious.

[29] Section 6 of the *Act* sets out the requirements that an applicant must meet in order to be entitled to be registered on the Interns Registry. It is not prescribed there or elsewhere in the *Act* that having been on an interns register is an obligatory requirement for registration as a psychologist. Can or should this requirement be read in or inferred from an examination of the relevant sections and the statute as a whole?

[30] There are two instruments of statutory interpretation that are useful in reading and applying the *Psychologists Act* to the facts of this case. The first is to read section 6 in conjunction with section 7– a contextual analysis. The second is to look at the purpose of the *Act* – a purposive approach.

Contextual Analysis

[31] The contextual approach to statutory interpretation allows a court to use a provision or series of provisions to shed light on the interpretive problem before it. In *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] S.C.J. No.43 at para. 27, the Honourable Justice Iacobucci stated that when courts are interpreting potentially ambiguous provisions, a contextual and purposive approach to interpretation ought to be employed:

> The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 Can. Bar Rev. 1, at p. 6, "words, like people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive…."

[32] The contextual approach was also engaged in *A.G. v. Prince Ernest Augustus of Hanover*, [1957] A.C. 436 (H.L.) where the court stated at page 463:

> "….the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear and unambiguous."

[33] Read alone, section 6 does not appear to require applicants to be on the Interns Register, however, when sections 6 and 7 are read in conjunction, it is apparent that being on the Register is not only an entitlement but rather an obligatory requirement. As mentioned, section 6 of the *Act* sets out the requirements that one must fulfill in order to be listed on the Interns Register. Section 7 then goes on to state that applicants seeking admission to the Psychologists Register must satisfy the requirements of section 6 and gain a year of practical psychology experience in order to be entitled to be registered on the Psychologists Register.

[34] When read in context, section 6 sets out the conditions that applicants must meet in order to fulfill the first step of the application process – enrolling on the Interns Registry. The provisions of section 7 then build on those requirements by setting out the final conditions that must be fulfilled in order to be registered on the Psychologists Registry (the second and last step in the certification process).

[35] Admittedly, the wording in the statute is not entirely precise, however, a contextual approach to a reading of sections 6 and 7 points to the conclusion that one must first enlist on an interns registry prior to completing the practical psychology component and qualifying for enrollment on the Psychologists Registry.

Purposive Approach

[36] It is a well-established principle or canon of construction and statutory interpretation that the intention of the law makers or their purpose in enacting legislation is to be discerned and used to interpret the wording of a particular provision of the statute under review. There is no dearth of time honoured judicial pronouncements on the topic.

[37] In Cross: Statutory Interpretation, Butterworths, 2nd ed., 1987, p.38, the authors cite the statement of Baron Alderson in *A-G v. Lockwood,* where he said:

> The rule of law I take it upon the construction of all statutes is...to construe them according to the plain and grammatical meaning of the words, in which they are expressed unless that construction leads to a plain and clear contradiction of the apparent purpose of the Act...

[38] At page 48, they cite the following passage from *Sussex Peerage*, a decision of the House of Lords in 1844:

> "...if the words of the statute are in themselves precise and unambiguous, then no more can be necessary that to expound those words in the natural and ordinary sense...But if any doubt arises from the terms employed by the Legislature, it has always been held that a safe means of collecting that intention to call in aid the ground of cause of making of the statute...."

[39] Further, in *McBratney v. McBratney*, [1919] 3 W.W.R. 1000, at page 47 Duff D.J. wrote:

> Of course where you have rival constructions of which language of the statute is capable you must resort to the object or principle of the statute…; and if ones finds there some governing intention or governing principle expressed or plainly implied then the construction which best gives effect to the governing intention or principle ought to prevail against a construction which, though agreeing better with the literal effect of the words of the enactment runs counter to the principle and spirit of it."

[40] It is therefore appropriate to inquire into the purpose of the *Psychologists Act* to assist in interpreting sections 6 and 7.

[41] The *Act* was created to govern the profession of Psychology in the Northwest Territories. It attempts to ensure that psychologists practising in the jurisdiction are sufficiently qualified to be licenced by establishing and preserving standards of character, competence and skill. This is done not to protect the economic welfare of the profession but for protection of the health and safety of those members of the public who access the services of psychologists. The *Act* governs both the certification process as well as disciplinary procedures. With the overriding objective of public health and safety in mind, it is reasonable to conclude that legislators would have intended that an applicant would be required to complete a period of formal apprenticeship and demonstrate that he or she had been entered on an interns registry or equivalent while completing his or her practicum. The registers (both the Interns

Registry and the Psychologists Registry) provide an avenue through which the Registrar can monitor those practising Psychology in the Northwest Territories. Without the registers, the Government would have no way of receiving and investigating complaints about psychologists.

[42] As maintaining the quality of services and protecting public health and safety appears to be the primary purpose of the *Psychologists Act*, the court must read sections 6 and 7 so as to give effect to this intent. In doing so, the only reasonable conclusion is to find that legislators would have intended that the Interns Registry be a requirement of the certification process.

[43] In summary, both contextual and purposive statutory interpretations of sections 6 and 7 of the *Psychologists Act* point to the conclusion that one must first be or have been on an interns registry in order to be entitled to apply for admittance to the Psychologists Register. It follows and I find that, applying a standard of correctness to the issue of legislative interpretation, the Minister had jurisdiction to deny the application.

Procedural Fairness

[44] The Applicant says that from the time she first received the application package from the Registrar in 2007, she was entitled to expect that she could register as a psychologist in the Northwest Territories without having to have been on an interns register. She argues that by changing (or clarifying) the requirement to include this qualification in May of 2009 (which formed the basis for the decision to deny entrance) her legitimate expectations have been defeated and that the Minister was in breach of the duty of fairness owed to her.

[45] In *Baker v. Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 817, the Court set out the factors relevant to determining the content of the duty of fairness in a particular case. They include the nature of the decision being made and the procedure involved in making it, the nature of the statutory scheme under review, the importance of the decision to an affected individual, and the legitimate expectations of the person challenging the decision.

[46] In my view, the factor upon which the court must focus in this case is that of legitimate expectations. What were or should have been the Applicant's legitimate expectations here?

[47] Given her impressive academic credentials and the attention to detail she displayed in applying in the Territories, I have little doubt that the Applicant was familiar with the requirements in her home province for becoming accredited as a registered psychologist. I find it difficult to comprehend that someone about to embark on a career as a psychologist would not be acquainted with the regime of professional governance in her home province and at the national level.

[48] The Applicant stated in her affidavit in support of her application for judicial review that:

> "There is no intern register with the College of Psychologists in British Columbia".

[49] I can only surmise that this bald statement is meant to infer that a year of practical supervised experience monitored by the College as a result of formal registration is not required in her province in order to become a registered psychologist. This, as noted earlier, is not the case. As well, it is inferred that the requirement of the Respondent Minister that the supervised period of practical experience must occur while on an interns register is uncalled for and out-of-step with the regime in her home province, and presumably the rest of Canada, and has defeated her reasonable expectations. As I have found, above, the Applicant knew better and her statement is disingenuous and lacking in candour. I would add that in her affidavit, the Applicant stood silent on the question of her professional status in British Columbia.

[50] The affidavits of two registered psychologists in British Columbia filed by the Applicant are of little or no relevance. They are meant to infer that they applied for entrance to the Psychologists Register in the same manner as Ms. Tan and that in rejecting Ms. Tan's application, the Minister has acted in an inconsistent manner as their applications were approved. I say the relevance of these affidavits is minimal because they are mute on whether the applicants were already registered psychologists in British Columbia at the time of their applications. As well, one application preceded the signing of the MRA while the second was processed a few years after the Agreement was entered into and when the effect of it may not have been totally understood. It is also possible both applications were approved in error. Regardless, I accord this evidence little weight.

[51] In any event, I agree with the Respondents' position that the Applicant read and interpreted relevant provisions of the *Psychologists Act* and decided to take a "back

door" approach to becoming a registered psychologist in British Columbia; and that she intended to capitalize on what she perceived to be a loop hole in the *Act* and to use this jurisdiction, as what was characterized as a "flag of convenience", to bypass provincial registration requirements.

[52] The Applicant had left blank the portions of her Application For Registration where she was asked to identify the location of her intended practice in the NWT and the jurisdictions in which she was "currently and previously licenced as a psychologist." The latter request for information should have indicated to her that it would be necessary for an applicant to be licenced in some capacity – associate, intern, or fully accredited psychologist- in order to be entitled to be registered as a psychologist. In large measure as a result of her strict interpretation of the wording of the statute, the Applicant assumed that she was not required to have prior intern status. She chose not to ask the Registrar to verify that this was the case. In taking this approach, the Applicant was wilfully blind and assumed a voluntary and unnecessary risk.

[53] The Minister here owed the Applicant a duty of fairness; to process her application for entrance into a quasi-independent professional governing body in good faith, without arbitrariness, discrimination, or bias; to do so on a timely basis, and to provide cogent reasons for her denial of the application. This she did.

[54] In terms of the nature of the decision, the effect of it would not and does not cause undue hardship to the Applicant. She was and still is working. Since she did not intend to practice in the Northwest Territories, the only effect the decision has on her is that it prevents her from using a license obtained here to become accredited in other jurisdictions. This is not a case involving deportation or one where an applicant was called upon to renounce religious convictions or one where an applicant challenges a decision to extradite to a foreign jurisdiction to face criminal prosecution which could result in the imposition of a penalty inconsistent with Canadian values. These are but a few examples of cases which, by their very nature, call for a more stringent application of the duty of fairness.

[55] The decision was important to the Applicant but that will inevitably be the case in any such matter before the courts. The significance of the decision for the applicant must be balanced against the importance of maintaining the integrity of the system of professional licencing in this jurisdiction and across Canada. Given my assessment of what the Applicant's expectations were or should have been and her motivations in

making her application, I am unable to find that there has been a breach of duty of fairness in this case.

[56] To sum up, I find that applying a standard of correctness to the issue of legislative interpretation, the Minister had jurisdiction to deny the application. In applying a standard of reasonableness to her decision, I ask if it falls within a range of possible, acceptable outcomes and find that it does. Having also found that there has not been a breach of procedural fairness in this case, I dismiss the application.

[57] With respect to costs, given the facts in this case, the legislation under review and the relative importance to the public of the issues raised, I will exercise my discretion and order that each party shall bear their own costs.

D.M. Cooper
J.S.C.

Dated this 12th day of February, 2010.

Counsel for the Applicant: Malinda Kellett

Counsel for the Respondent: Sheldon Toner

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