Federal Court  Cour fédérale

Date: 20100203

Citation: 2010 FC 114

Docket: T-183-09

BETWEEN:

TERESA PANACCI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

Docket: T-184-09

BETWEEN:

TERESA PANACCI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

PHELAN J.

I. OVERVIEW

[1] These are two judicial reviews involving the Canadian Human Rights Commission (Commission) emanating from the same set of facts alleging discrimination on the basis of disability and failure to accommodate. There is a third matter not before the Court which is relevant in part to these two matters. T-183-09 relates to a complaint against Health Canada by Ms. Panacci whereas T-184-09 relates to her complaint against the Treasury Board. For ease of reference, there will be one set of Reasons. These are the Reasons applicable for each of the Court files.

[2] Panacci also made a third complaint regarding failure to accommodate her disability against the Canada Border Services Agency (CBSA), the agency at which she works. This complaint has not yet been investigated by the Commission because it is the subject of a grievance process. The Commission's process is in abeyance pursuant to s. 41(1)*(a)* of the *Canadian Human Rights Act* (Act) pending the result of the grievance process.

[3] With respect to the complaint against Health Canada, the Commission found that there was insufficient evidence to justify an inquiry because the evidence did not show that the practices and policies of Health Canada in respect of Fitness to Work Evaluations (FTWE) were discriminatory on the basis of disability either as to the Applicant or systemically. The Commission's investigation was based on its jurisdiction under s. 5 of the Act.

[4] Regarding the complaint against the Treasury Board, that complaint was dismissed because the Treasury Board was not the party responsible for the alleged discriminatory acts and the evidence did not support a conclusion that its policies discriminated against people with disabilities.

II. BACKGROUND

A. *General*

[5] The Treasury Board instituted a policy on the "Duty to Accommodate Persons with Disabilities in the Federal Public Service" (Accommodations Policy) which applies to all portions of the public service for which the Treasury Board is the employer, including departments and agencies.

[6] Pursuant to that policy, the Treasury Board has the responsibility to inform those entities for which it is the employer of the Accommodations Policy and to provide interpretation and guidance thereon. Deputy heads in departments are responsible for the implementation of this Policy including elimination of "barriers" generally and addressing individual accommodation requests specifically.

[7] The Accommodations Policy outlines actions to be taken in respect of individual accommodation including consultation with the employee, consulting appropriate medical and rehabilitation advisers as to appropriate accommodation and implementing the accommodation of the employee. The Accommodations Policy also provides that where the type of accommodation

required is not clear, experts may be consulted including not only the employee's physician but also centres of expertise within the Public Service Commission or within other departments. There is no requirement to consult Health Canada.

[8] The Treasury Board had another related policy, the Occupational Health Evaluation Standard (Standard), which sets out policy associated with health evaluations. The Standard, through delegation from the Treasury Board, makes Health Canada responsible for carrying out FTWE as the "occupational health service provider". These FTWEs may be conducted for a number of reasons including the determining conditions under which employees with disabilities are able to continue working.

[9] A FTWE is a non-mandatory type of evaluation contemplated by the Standard and is aimed at confirming health capability in regard to the position and what limitations might be considered. A FTWE was conducted with respect to the Applicant and the process and conclusions thereof were a primary source of the complaint of discrimination against Health Canada.

[10] Within Health Canada are Occupational Health and Medical Officers (OHMOs) who, in accordance with the Occupational Health Assessment Guide, conduct the FTWEs with input from the departmental manager and the employee's personal physician or specialist. The results of a FTWE are a written report to the employer and employee outlining the capacity to carry out duties and the specific limitations or physical restriction appropriate to the circumstances. It is the

department's responsibility to accommodate the employee in accordance with the Accommodations Policy.

[11] Health Canada also has a process for a review of any OHMO opinion on the FTWE. The review is conducted by the Program Medical Advisory Committee (MAC), a group of doctors including OHMOs, an external specialist and the Public Service Health Program National Medical Advisory Committee. MAC provides advice to the OHMO but neither the opinions of the OHMO or MAC are binding on the employer.

B. *Specific Facts*

[12] The Applicant is employed by CBSA as a Customs Inspector where her "substantive position" was the inspection of mail from a customs perspective. Since 1996 she has suffered from a number of medical conditions, including Chronic Fatigue Syndrome. Between 2000 and 2004 she consented to undergo four FTWEs at the request of CBSA. This judicial review concerns the last of these FTWEs conducted in 2004.

[13] From 2000 to 2004 the Applicant did not work in her substantive position but was deployed in various assignments considered less strenuous than her substantive position in the postal services.

[14] On April 5, 2004, the Applicant returned to her substantive position. Her chiropractor had provided a note to CBSA outlining certain restrictions to be placed on the Applicant's work

requirements. CBSA accommodated the Applicant by providing her with a steady weekday shift (as opposed to the usual rolling shifts) and advised her that she did not have to deal with heavy parcels.

[15] Less than two weeks after the Applicant's return to work, she reported that she felt progressively worse. Her new physician, Dr. Malam, advised the Applicant's director that the Applicant could not continue in the duties assigned and suggested that she be placed elsewhere.

[16] The CBSA director requested that an up-to-date assessment be conducted of the Applicant's condition and limitations as well as a prognosis be given as to when she could return to her full range of duties if at all. Dr. Jeffries, an OHMO in Health Canada, was contacted to complete the latest FTWE.

[17] In the interim, on May 18, 2004, the Applicant left work feeling ill. Dr. Malam provided the Applicant with a note which concluded that she should not return to work until July 14, 2004.

[18] As part of the FTWE, Dr. Jeffries engaged an expert, Dr. Goldsand, to provide his assessment of the Applicant's condition. The report of Dr. Goldsand and its follow-up conclusions by Dr. Jeffries appears to have provided the spark to this dispute between the Applicant and CBSA.

[19] Dr. Goldsand provided his "impressions and recommendations" which included the following comments:

- The Applicant had been managing well in her previous, temporary position but immediately on returning to the postal department, her symptoms returned.
- The Applicant was experiencing certain types of pain although it had changed.
- Her symptoms, so long as laboratory tests were normal, were consistent with Chronic Fatigue and regular shift work might help her manage her symptoms.

He also made the following statement:

> It is interesting to note that her chronic fatigue symptoms seem to be more pronounced in the Mail Department and not in other locations … She reports feeling much healthier outside the Postal Office and might benefit from a transfer to another department in order to find more job satisfaction and less pain …

[20] Dr. Jeffries reported to CBSA management that while there was some discomfort, it was not significant. He concluded that the findings did not support the chiropractor's recommendation for a fixed shift nor was there any reason that the Applicant could not perform light to medium work.

[21] Dr. Jeffries referred to Dr. Goldsand's comments set out above and interpreted Dr. Goldsand's report to mean that the Applicant's issues were more a matter of motivation and job satisfaction than a medical condition. Dr. Jeffries then suggested that the Applicant might be able to deploy to a job with non-shift work and thus end her tendency to medicalize her issues.

[22] The CBSA director then requested that the Applicant return to work taking shifts as assigned. He noted that she could do the light to medium work available at the postal plant. He noted Dr. Jeffries' comments about motivation and job satisfaction and suggested that the Applicant

seek alternative positions through the competitive process or seek assistance from the Employee Assistance Program.

[23] In response to Dr. Jeffries' report, Dr. Malam expressed his strong disagreement with his conclusions. At the request of the Applicant, Dr. Jeffries referred her file to the MAC (discussed earlier) for its review.

[24] On October 15, 2004, the MAC advised that it believed the Applicant should be considered unfit for the duties of her substantive position but was fit for a less physically demanding position with regular hours and no shift work. The MAC suggested that CBSA find her a suitable position. In this regard, the Applicant secured exactly what she had sought from Health Canada.

C. *Complaints/Decision*

(1) Health Canada

[25] The issue raised in the complaint against Health Canada was whether its evaluative practices (paper reviews, absence of rationale for dismissing other medical reports, precedence of Health Canada's own assessment over others) constituted discrimination on the basis of disability, both in the Applicant's case and systemically.

[26] The Commission, after a considerable delay, amended the complaint to specify that the applicable section of the Act was s. 5 and not ss. 7 and 10 as pleaded by the Applicant. The Applicant before this Court stressed the error of this legal conclusion.

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public	**5.** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, pour le fournisseur de biens, de services, d'installations ou de moyens d'hébergement destinés au public :
(*a*) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or	*a*) d'en priver un individu;
(*b*) to differentiate adversely in relation to any individual,	*b*) de le défavoriser à l'occasion de leur fourniture.
on a prohibited ground of discrimination.	

7. It is a discriminatory practice, directly or indirectly,	**7.** Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite, le fait, par des moyens directs ou indirects :
(*a*) to refuse to employ or continue to employ any individual, or	*a*) de refuser d'employer ou de continuer d'employer un individu;
(*b*) in the course of employment, to differentiate adversely in relation to an employee,	*b*) de le défavoriser en cours d'emploi.

on a prohibited ground of discrimination.

10. It is a discriminatory practice for an employer, employee organization or employer organization

(*a*) to establish or pursue a policy or practice, or

(*b*) to enter into an agreement affecting recruitment, referral, hiring, promotion, training, apprenticeship, transfer or any other matter relating to employment or prospective employment,

that deprives or tends to deprive an individual or class of individuals of any employment opportunities on a prohibited ground of discrimination.

10. Constitue un acte discriminatoire, s'il est fondé sur un motif de distinction illicite et s'il est susceptible d'annihiler les chances d'emploi ou d'avancement d'un individu ou d'une catégorie d'individus, le fait, pour l'employeur, l'association patronale ou l'organisation syndicale :

a) de fixer ou d'appliquer des lignes de conduite;

b) de conclure des ententes touchant le recrutement, les mises en rapport, l'engagement, les promotions, la formation, l'apprentissage, les mutations ou tout autre aspect d'un emploi présent ou éventuel.

[27] The Applicant commenced a judicial review in this Court on the issue of the applicable section of the Act but that judicial review was withdrawn when the Commission agreed to include consideration of ss. 7 and 10 in the complaint investigation.

[28] The Investigator's Report, which was adopted by the Commission and constitutes the Reasons of the Commission, concluded that ss. 7 and 10 are only applicable to an employer or an employee or employee organization. The Commission further concluded that the Health Canada medical assessments were a service customarily available to the public and therefore determined that the investigation would continue under s. 5. However, the Commission did hold that the individual experiences and the broader allegations of discrimination in respect to Health Canada's assessment practices would be investigated.

[29] The Investigation Report gave a thorough summary of the facts and the parties' submissions. The Investigator examined the six Commission files related to other complaints which had been tendered as evidence of systemic discrimination. The Investigator noted that the six files were findings in relation to the employer (the entity exercising day-to-day direction) and not Health Canada.

[30] With respect to the complaint in relation to the Applicant herself, the Investigator found that the Applicant had been individually assessed, had a face-to-face assessment by Dr. Goldstein and that Dr. Jeffries' opinion did not contradict the other medical evidence.

[31] It was specifically noted that the different medical interpretations, particularly those of Dr. Malan and Dr. Jeffries, did not amount to discrimination. While Dr. Jeffries did not concur with Dr. Malan, he was prepared to send the file on for review by MAC, which review was favourable to the Applicant.

[32] On the issue of systemic discrimination, particularly as regards Health Canada's policy embodied in the Occupational Health Guide, that policy provided for face-to-face assessments and for regular review of the Guide itself. OHMOs are trained in occupational medicine and the Guide contemplates consultations with other medical professionals. Finally, an appeal mechanism is available, if not particularly highlighted in information given explaining the Health Canada process. The Investigator noted that while the six files raise the same concern, there "does not appear to be enough evidence to support a finding of systemic discrimination". The Applicant has argued that this is too high a test for the issue of whether an inquiry before the Tribunal into the complaint is warranted.

[33] In response to the Investigator's Report, the Applicant reiterated the facts of the case and that ss. 7 and 10 were not addressed. The Applicant also contended that all three complaints should be dealt with together and that the Investigator had failed to conduct a thorough investigation – an issue repeated before this Court.

[34] As indicated, the Commission accepted the Report, referred only to consideration under s. 5 of the Act and dismissed the complaint.

(2) Treasury Board

[35] The Investigator framed the complaint against the Treasury Board as to whether the Treasury Board had any responsibility for the alleged failure of CBSA to properly accommodate her

and for Health Canada's allegedly discriminatory evaluative practices. The Investigator had concluded that as the "ultimate employer" in the federal public service, the Treasury Board shared responsibility for both departments.

[36] Initially, the Commission received a recommendation that it not deal with this complaint against the Treasury Board because the Treasury Board was not a party to the discriminatory conduct. The Treasury Board had delegated responsibility for the implementation of the Accommodations Policy to deputy heads of departments (or their delegates).

[37] Having received further submissions, the Commission reversed itself. It concluded that whether responsibility could be attributed to the Treasury Board was an issue best determined by an investigation of the complaints against all three named respondents, the Treasury Board, Health Canada and CBSA. Again, the focus was on whether the Treasury Board was responsible for the discriminatory acts itself.

[38] The Applicant, in subsequent submissions, complained that it was the entire process of accommodation to return to work which was in issue and particularly whether the Treasury Board effectively monitored its accommodation policies and their implementation by departments.

[39] The Investigator reported that the Treasury Board had no direct role in the complainant's case – any alleged discrimination being that of CBSA and Health Canada. The Treasury Board's ultimate responsibility for implementation of employment equity was dealt with through a

framework of delegated responsibility. The Investigator concluded that the Treasury Board's "monitoring" and oversight roles do not appear to suggest that it should be liable for the alleged acts of its employing departments. The Investigator recommended that the complaint be dismissed without further investigation.

[40] In response, the Applicant reiterated her concern that the three complaints were not dealt with together and the investigation was not complete. She further complained that there had been no investigation of Treasury Board's oversight roles regarding policies and whether such policies were applied in a discriminatory fashion. Finally, there was no analysis of systemic discrimination in the accommodation process.

[41] The Commission accepted the Investigator's findings and dismissed the complaint. In addition to the usual letter outlining the main findings in the Report, the Commission explained its change of position and its latest conclusions.

> The Commission's previous decision on this file was that the issue of whether any responsibility can be attributed to the Treasury Board may best be determined through investigating the complaints against all three respondents. However, having reviewed all of the evidence gathered during the investigation of this complaint, the Commission is of the view that Treasury Board is not the party responsible for the alleged discriminatory acts as it had no direct role in how the complainant's case was dealt with by her Department. Treasury Board has delegated responsibility for the implementation of its policies to Departments, who in functional terms, have direct responsibility for these policies.
>
> The evidence gathered also supports that the Treasury Board's policies at issue do not discriminate against persons with disabilities.

III. LAW

A. *Issues*

[42] The issues regarding the Health Canada complaint are:

(a) Whether the Commission erred in refusing to consider ss. 7 and 10 of the Act;

(b) Whether the Commission erred in concluding that there was insufficient evidence to justify referring the complaint to the Tribunal;

(c) Was there a proper and thorough investigation of the complaint?

[43] With respect to the complaint against the Treasury Board, the issues are:

(a) Did the Commission err in its interpretation of s. 7 of the Act?

(b) Did it misapply the law in determining that the Treasury Board was not responsible for the discriminatory acts nor were its policies and practices discriminatory?

(c) Was there a proper and thorough investigation of the complaint?

B. *Standard of Review*

[44] As outlined by Justice Lemieux in *Brine v. Canada (Attorney General)* (1999), 175 F.T.R. 1 (FCTD), the Commission's role is primarily to screen complaints to assess whether the evidence merits referring the complaint to a merits based adjudication before a Tribunal panel. While the Commission's decision does not necessarily determine rights and responsibilities, particularly when the Commission refers the matter to the Tribunal; where, however, the Commission dismisses a complaint, that dismissal has profound significance to the complainant's rights.

[45] While *Dunsmuir v. New Brunswick*, 2008 SCC 9 has narrowed the standard of review choices, there remains divergent choices which vary depending on the issue raised and the context in which it arises. The determination of the standard depends on the question at issue (*Sketchley v. Canada (Attorney General)*, 2005 FCA 404).

[46] With respect to questions of law and jurisdiction, it is again important to focus on the nature of the legal question. An issue of whether the Commission has true jurisdiction to deal with a matter or a question of general law attracts a standard of correctness (*Canada (Attorney General) v. Watkin*, 2008 FCA 170).

[47] In respect to the Health Canada complaint, both parties accept that the determination not to consider ss. 7 and 10 should be subject to a correctness standard of review. I agree that the question of whether ss. 7 and 10 are applicable to an employer is a question of law to which correctness generally applies; the issue was not whether Health Canada is an employer which might lead to greater leeway in the Commission's interpretation. However, the real issue is not whether the Commission had true jurisdiction over the entity or subject matter. The real debate revolved around which provision of the Act conferred that jurisdiction – s. 5, s. 7 or s. 10. The consequences or lack thereof from this determination are an important element of this case.

[48] Procedural fairness questions are generally simpler to resolve in terms of the standard of review - it is correctness. This Court has consistently held that the issue of whether there has been a

thorough and neutral investigation of a complaint to be a question of fairness. See *Coupal v. Canada (Attorney General)*, 2006 FC 255; *Egan v. Canada (Attorney General)*, 2008 FC 649. The issue of the investigation may also be considered from the perspective of a failure of jurisdiction or failure to exercise that jurisdiction. The result of the standard of review analysis remains the same – correctness.

[49] On the issue of the sufficiency of evidence to justify dismissal of a complaint, the jurisprudence establishes that a decision under s. 44(3) to dismiss is usually one of fact or mixed law and fact for which the standard of review is reasonableness (*Sketchley*, above; *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, [1999] 1 F.C. 113 (C.A.)).

C. *Analysis*

(1) Health Canada

[50] This issue of whether s. 7 and/or s. 10 of the Act is applicable must be examined in the context of this case. Considerable effort was spent trying to determine which department of the Government of Canada is the "employer" for purposes of the Act. It is an unhelpful search because in the end the government employees (and certainly in this case) are employees of Her Majesty in right of Canada.

[51] The real search is which department committed the discriminatory acts and which should be a "party" in order that remedial action can be ordered and be effective. It must be remembered that

because the Act is directed at remedial action, the focus of the inquiry is what happened "in the course of the complainant's employment". (See *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84.) There was no question raised as to the Commission's true jurisdiction to deal with the Applicant's complaint. The question was which of at least three provisions form the basis for the grant of jurisdiction.

[52] Section 5 is directed at discriminatory acts in respect of goods, services, facilities or accommodation customarily available to the general public. Discriminatory matters in respect of pension or disability benefits fall within the scope of this provision. While public servants with disabilities may fall within a sector of the general public, it stretches the normal meaning of "general public" to include persons such as the Applicant, a public servant who is subject to a Health Canada review in relation to her employment needs – a service not available to most other members of the Canadian public.

[53] While s. 10 raises the very issue of who is the "employee", the section could be read to encompass situations beyond the "direct" employer-employee relationship, e.g. *Canadian Pacific Ltd. v. Canada (Human Rights Commission)*, [1991] 1 F.C. 571 (C.A.), [1990] F.C.J. No. 1028. This is particularly the case where the Court is required to take a "large and liberal" approach in respect of a remedial statute.

[54] Therefore, it is not "plain and obvious" (as that test is described in *Canada Post Corp. v. Canada (Canadian Human Rights Commission) (re Canadian Postmasters and Assistants Assn.)*

[1997] F.C.J. No. 578 (T.D.), aff'd [1999] F.C.J. No. 705 (C.A.)) that ss. 7 and 10 could not apply to the Applicant's complaint. This would be a matter which should have been left to the Tribunal to determine assuming there had been some factual basis upon which to ground the operation of these sections.

[55] Sections 5, 7 and 10 in this case are the grounds which give the Commission jurisdiction to investigate and to refer on to the Tribunal if appropriate. There has never been any serious challenge to the Commission's jurisdiction to deal with the case.

[56] In any event, it is immaterial which section of the Act was used to ground the Commission's jurisdiction. The Commission correctly concluded that it had jurisdiction and proceeded to investigate the existence of discriminatory acts.

[57] Both s. 5 and s. 7 use the same terms for the offending conduct – to "differentiate adversely" – and s. 10, while slightly different in wording, targets the same type of offending conduct.

[58] The Applicant was unable to point to the potential for any different result or remedy or procedure if the Commission had investigated the complaint under s. 7 or s. 10 or both. The Act does not preclude giving the Commission jurisdiction on the basis of more than one provision. The Appellant has shown no prejudice to her rights for an investigation or a potential remedy by virtue of the Commission proceeding to investigate grounded in jurisdiction under s. 5.

[59] Most fundamentally, the Commission carried out a full, fair and thorough investigation. Each aspect of discrimination, both individual and systemic, was addressed by the Investigator. In the end, the Applicant received that which she had sought by means of the review process outlined in Health Canada's policies.

[60] Whatever the frailties of the Commission's legal analysis may be, the Commission did carry out its duty to properly investigate and reached a reasonable conclusion well within its area of expertise. To some extent, this is a case of – to use the vernacular – "no harm, no foul".

[61] For those reasons, I would dismiss the judicial review in respect of the Health Canada matter.

(2) Treasury Board

[62] The initial complaint regarding the Treasury Board was not clear as to how the Treasury Board might be responsible for the discriminatory acts alleged.

[63] While there was some concern that the Treasury Board was an "employer" directly or indirectly by virtue of the *Financial Administration Act* and that there may be issues as to the legal ability of the Treasury Board to delegate its responsibilities to deputy-heads, the various submissions during the investigation clarified that the potential basis of Treasury Board's responsibility for discriminatory acts was systemic in nature.

[64] It became clear that the gravamen of the complaint against the Treasury Board was its failure to monitor the implementation of its employment and accommodation policies and not that such policies were in themselves discriminatory. In this regard, the case is significantly different from *Sketchley*, above.

[65] A fair reading of the Investigator's Report indicates it was directed at the issue of delegation and whether the policies themselves were discriminatory particularly in their application to individual situations.

[66] The Investigator, and through her the Commission, examined the wrong question. The Applicant complained that the Treasury Board failed to provide adequate enforcement mechanisms and that it did not fulfill its duty to monitor the implementation and application of Treasury Board employment discrimination policies.

[67] The Investigator failed to consider the policy monitoring obligations of the Treasury Board. As such, the Commission in adopting the Investigator's Report made an unreasonable decision by failing to address the subject matter of the complaint. Therefore, the Commission committed both a legal error and reached an unreasonable conclusion on the facts in issue.

[68] Further, the failure to address the substance of the complaint means that the Commission did not have a fair and adequate basis upon which to evaluate whether there was sufficient evidence to warrant a referral to the Tribunal.

[69] The Investigator failed to meet the criteria of a thorough and neutral investigation. The Court will not lightly interfere with the results of an investigation but will do so "where unreasonable omissions are made, for example, where an investigator failed to investigate obviously crucial evidence …" (*Sketchley*, above, para. 44).

[70] The failure to properly investigate the core issues of the complaint appears to be due in part to separating the complaint against the Treasury Board from the complaint against CBSA. The Investigator went off investigating indirect discrimination by the Treasury Board in respect of acts by CBSA which had not been proven to be discriminatory. At that point the investigation became muddled, and proceeded without context and without determination of the core facts and the relationship and roles of CBSA and Treasury Board.

[71] A critical weakness of the investigation is that it was divorced from any actual findings of discrimination. It is difficult, if not impossible, to investigate not only the nature of any delegation to deputy heads but importantly whether policies were properly implemented by the applicable departments and monitored subject to ongoing oversight by Treasury Board without a factual basis.

[72] Therefore, this judicial review will be granted, the Commission's decision quashed and a new investigation is ordered to be conducted after the grievance decision. If the grievance is upheld and the complaint against CBSA proceeds before the Commission, the Court directs the

Commission to consider whether the complaints against the Treasury Board and CBSA should be investigated and reported on together.

"Michael L. Phelan"
Judge

Ottawa, Ontario
February 3, 2010

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-183-09
STYLE OF CAUSE:	TERESA PANACCI
	and
	ATTORNEY GENERAL OF CANADA
AND	
DOCKET:	T-184-09
STYLE OF CAUSE:	TERESA PANACCI
	and
	ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	January 11, 2010
REASONS FOR JUDGMENT:	Phelan J.
DATED:	February 3, 2010

APPEARANCES:

Mr. Andrew Raven	FOR THE APPLICANT
Ms. Zoe Oxaal	FOR THE RESPONDENT

SOLICITORS OF RECORD:

RAVEN, CAMERON, BALLANTYNE & YAZBECK LLP Barristers & Solicitors Ottawa, Ontario	FOR THE APPLICANT
MR. JOHN H. SIMS, Q.C. Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT