Federal Court  Cour fédérale

Date: 20150105

Docket: T-1459-13

Citation: 2015 FC 4

Ottawa, Ontario, January 5, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

RAED JASER

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter and Background

[1] Pursuant to paragraph 7(b) of the *Criminal Records Act*, RSC 1985, c C-47 [the *Act*], the Parole Board of Canada [the Board] revoked the applicant's pardon after it learned that he had been charged with several terrorism-related offences. The applicant now seeks judicial review of the Board's decision under subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7,

requesting an order that sets aside the Board's decision, declares that paragraph 7(b) of the *Act* is unconstitutional, and awards him his costs.

[2] The applicant was convicted of several crimes between 1997 and 2001, including fraud over $5,000.00 and uttering threats, but was later pardoned for his crimes on April 24, 2009.

[3] Four years later, on April 22, 2013, the applicant was charged with several terrorism-related offences that he allegedly committed between April 1, 2012, and September 25, 2012. The Board learned about these charges through open media sources shortly thereafter and asked the Royal Canadian Mounted Police [the RCMP] about them. The RCMP sent the Board a letter dated May 24, 2013, in which it confirmed the charges and also enclosed a copy of the information laid against the applicant. The information alleges that the applicant: (1) conspired to interfere with transportation facilities for a terrorist group (*Criminal Code*, RSC 1985, c C-46, ss 83.2, 248); (2) conspired to murder persons unknown for a terrorist group (*Criminal Code*, ss 83.2, 235(1)); and (3) knowingly participated in or contributed to any activity of a terrorist group for the purpose of enhancing any terrorist group's ability to facilitate or carry out a terrorist activity (*Criminal Code*, s 83.18).

[4] The Board then sent a letter to the applicant dated June 6, 2013, wherein it proposed to revoke his pardon (which is now called a "record suspension" as a result of amendments to the *Act* in 2012). The Board stated that it had received information that the applicant was no longer of good conduct following his being charged with conspiring to carry out a terrorist attack against a Via Rail passenger train; this letter also invited the applicant to make written

submissions within 60 days of the date of the letter before a final decision to revoke the applicant's pardon was made.

[5] The applicant's lawyer responded to the Board in a letter dated July 23, 2013, stating that "to proceed with a revocation of the pardon at this stage is grossly unfair to Mr. Jaser and an abuse of process". He advanced four reasons that the status quo should be maintained until the criminal charges against the applicant are finally resolved: (1) the Board had nothing but allegations before it; (2) to expect a response now would be inconsistent with the presumption of innocence and his client's right to silence before trial; (3) the Board appeared to be animated by political bias; and (4) there was no reason to deal with the proposed revocation while the charges were pending since the applicant's pardon would be automatically revoked if he was convicted of the charges, and the Board could always revisit the matter later if he was not convicted.

II. The Decision under review

[6] In a letter dated July 30, 2013, the Board determined that the submissions by the applicant's lawyer did not provide sufficient justification for altering the initial recommendation to revoke the pardon. Accordingly, the Board revoked the applicant's pardon pursuant to section 7 of the *Act*, which provides in part as follows:

7. A record suspension [pardon] may be revoked by the Board	**7.** La Commission peut révoquer la suspension du casier [réhabilitation] dans l'un ou l'autre des cas suivants :
[…]	[…]
(b) on evidence establishing to the satisfaction of the Board that the person to whom it	*b)* il existe des preuves convaincantes, selon elle, du fait que l'intéressé a cessé de

relates is no longer of good conduct; …	bien se conduire;

[7] The Board found that the applicant was no longer of good conduct because he was facing extremely serious criminal charges that represented a direct and grave threat to public safety and he did not provide any information about the conduct that caused him to incur such charges. As to the allegation of abuse of process raised by the applicant's lawyer, the Board stated that it did not rely on media reports about the applicant's alleged conduct but, rather, relied on the official information received from the RCMP. The Board found this information to be reliable and persuasive in determining that the applicant no longer met the good conduct criterion.

III. Issues

[8] The parties agree that this case raises two main issues:

1. Is paragraph 7(b) of the *Act* unconstitutional?
2. Did the Board err in fact or law in revoking the applicant's pardon?

[9] However, some elements of the second issue stated above attract different standards of review by this Court, so it is useful to separate and restate the issues as follows:

1. What is the standard of review?
2. Is paragraph 7(b) of the *Act* unconstitutional?
3. Was the process unfair?
4. Did the Board err by relying on unproven charges to revoke the pardon?

IV. The Parties' Arguments

A. *The Applicant's Arguments*

[10] The applicant notes that what constitutes "good conduct" is a factual assessment based on guidelines set out in Chapter 14.1 of the Board's Policy Manual [the *Manual*]. Although paragraphs 12 to 17 of these guidelines offer some guidance as to what good conduct is, the applicant notes that they do not explicitly state what it is not. They also do not refer to outstanding criminal charges as being something to consider when assessing good conduct. Nonetheless, the applicant states that these guidelines in the *Manual* should apply to assessments of when a pardon is being revoked.

[11] The applicant submits that since the Board exercises statutory authority its scope of action is constrained by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 32 [the *Charter*].

[12] Section 7 of the *Charter* states:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	**7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[13] In the applicant's view, revoking his pardon while he is facing criminal charges engages his section 7 *Charter* rights because it makes his prior convictions available as evidence against him. The applicant says that this violates the principles of fundamental justice for two reasons:

(1) it infringes his rights to silence and against self-incrimination; and (2) it is arbitrary and overbroad.

[14] Although the *Act* does not compel a person to speak or say anything incriminating, the applicant submits that it still undermines his right to silence by creating a procedure through which he cannot participate except by waiving that right. The applicant says he is in a catch-22; either he answers the charges before the Board and potentially creates evidence for the Crown at his pending trial, or he maintains his silence and thereby ensures an adverse result by his pardon being revoked. The latter occurred here since the Board premised the revocation of the applicant's pardon on the fact that he did "not provide any information concerning the circumstances surrounding [his] conduct which caused [him] to incur the above-noted charges".

[15] The applicant further argues that paragraph 7(b) of the *Act* is overbroad to the extent that it could be used when criminal charges are still pending. In the applicant's view, the Board employed paragraph 7(b) of the *Act* in a manner inconsistent with the objectives of the *Act*. Pardons, the applicant says, are intended to provide individuals who have been acting well despite a criminal history with a measurable benefit, to sustain their efforts to rehabilitate themselves, and to preserve the repute of the administration of justice. The applicant claims that revoking pardons on the basis of untried charges is unnecessary and has no rational connection to those objectives.

[16] Furthermore, the applicant points out that, by virtue of paragraph 7.2(a) of the *Act*, the pardon will cease to have effect automatically if the applicant is convicted on the outstanding

charges. If the applicant is acquitted or the outstanding charges stayed, then he submits that the *Charter* would no longer be engaged and the Board could assess a revocation under paragraph 7(b) at that time.

[17] For the same reasons, the applicant argues that these violations cannot be saved by section 1 of the *Charter* since overbroad legislation "would appear to be incapable of passing the minimal impairment branch of the s. 1 analysis" (citing *R v Heywood*, [1994] 3 SCR 761 at 802-803, 120 DLR (4th) 348 [*Heywood*]; and *Canada (AG) v Bedford*, 2013 SCC 72 at paras 73 to 76, [2013] 3 SCR 1101 [*Bedford*]). Consequently, the applicant says that paragraph 7(b) of the *Act* should either be declared invalid to the extent of any inconsistency with section 7 of the *Charter*, or read down under section 24(1) of the *Charter* so that a pardon cannot be revoked because of outstanding criminal charges.

[18] With respect to the substance of the Board's decision, the applicant submits that the standard upon which this should be reviewed by this Court is one of correctness since it involves constitutional issues and questions of procedural fairness.

[19] In addition, the applicant says that it was perverse and capricious for the Board to find that he was no longer of good conduct solely because of unproven allegations in the information laid with respect to the outstanding charges. Those allegations alone are not proof of any facts, according to the applicant, and since the Board had access to none of the evidence that might support the charges, it acted unreasonably.

[20] The applicant also accuses the Board of abuse of process for revoking his pardon when it did and without proper evidence. The applicant contends that requiring him to explain the circumstances surrounding the charges while facing the jeopardy of a criminal trial affects his right to remain silent and implicates other basic principles of fairness and, moreover, brings the administration of justice into disrepute too. According to the applicant, the Board did not properly balance the *Charter* interests at stake with the statutory objectives of the *Act*, contrary to *Doré v Barreau du Quebec*, 2012 SCC 12 at paras 3, 5-6, [2012] 1 SCR 395, at paras 3, 5-6 [*Doré*].

[21] That disregard for the applicant's interests is further compounded, the applicant submits, by comments made by the Minister of Public Safety and Emergency Preparedness and by the Minister of Citizenship and Immigration about the earlier offences of which he was pardoned on the very same day that the Board recommended revoking the applicant's pardon. Since he was entitled to the protections of the *Act* until his pardon was revoked, the applicant argues that the fact that the Ministers disclosed the previous offences on that day suggests a link, or at least "an interesting coincidence", between the Ministers' comments and the Board's course of action.

[22] The applicant therefore argues that the Board's decision should be set aside even if paragraph 7(b) of the *Act* is constitutionally valid. Also, the applicant requests that, if the matter is remitted back to the Board, the Court should direct that revocation of the pardon not be considered until the outstanding criminal charges against the applicant are finally resolved.

B. *The Respondent's Arguments*

[23] The respondent contends that the standard of review in respect of the Board's decision is reasonableness. The respondent emphasizes that a pardon is a discretionary privilege, not a right. A pardon does not erase convictions and, even once one is granted, an offender will not keep it unless he or she remains of good conduct.

[24] The respondent also submits that the test as to whether the Board's decision is unconstitutional is set out in *Bedford* at para 76. Thus, the applicant needs to show a real, as opposed to a speculative, link and adduce sufficient evidence of a causal connection. The respondent points out that the Board's decision was made only after it became aware of the charges being laid, that the applicant was not compelled to answer the Board in response to its letter dated June 6, 2013, and that the Board did not convey any information to the RCMP or Crown prosecutors.

[25] Seen in this light, the respondent submits that revocation of a pardon does not engage section 7 of the *Charter*. Although the prosecutor at the applicant's criminal trial could seek to use the applicant's criminal record against him in some circumstances, the respondent says that the trial judge would be able to assess whatever implications that might have on the applicant's *Charter* rights when deciding whether to admit the record as evidence. As such, the respondent states that the revocation proceedings before the Board are unrelated to the criminal proceedings.

[26] Even if the applicant's section 7 *Charter* rights may have been impugned, the respondent argues that the process before the Board was consistent with the principles of fundamental justice. A Board proceeding is not a criminal trial, and the respondent submits that any requirements of fairness must be assessed in an administrative context (citing *Lepage v Canada (AG)*, 2007 QCCA 567 at para 14 (available on CanLII); and *Doré* at para 36). Indeed, the respondent argues that neither the presumption of innocence nor the right against testimonial compulsion apply (citing e.g. *Giroux v Canada (National Parole Board)* (1994), 89 FTR 307 at para 20 (TD) (available on QL) [*Giroux*]; *Fernandez v Canada (AG)*, 2011 FC 275 at paras 54-55, [2012] 4 FCR 411 [*Fernandez*]). In the respondent's view, the Board is fully entitled to consider on-going police investigations and pending criminal charges (citing e.g. *Prasad v Canada (National Parole Board)*, 51 FTR 300, 5 Admin LR (2d) 251 [*Prasad*]; *R v Davis*, [1996] BCJ No 2119 (QL) at paras 22-26 [*Davis*]).

[27] The respondent disagrees with the applicant that paragraph 7(b) of the *Act* is overbroad. On the contrary, the respondent says that the legislative history of the *Act* is such that the purpose of a record suspension is to relieve a rehabilitated offender of some of the stigma associated with a criminal record. In the interests of public safety, paragraph 7(b) of the *Act* permits revocation of a pardon when the offender who received it has broken his or her covenant with society. The respondent argues that the effects of paragraph 7(b) of the *Act* conform to that purpose, and the phrase "no longer of good conduct" is flexible enough that the provision cannot be overbroad.

[28] The respondent further submits that the process before the Board was fair because the applicant was afforded both notice and an opportunity to make submissions. The applicant had

the chance to fully participate in the decision-making process, the respondent notes, but he simply declined to make submissions.

[29] The respondent also submits that the Board's conclusions and its decision were reasonable and that this Court has confirmed that the Board can consider information pertaining to pending or stayed charges. In the respondent's view, the Board is not required to look behind any information provided by reliable sources such as the police.

[30] The respondent states that there was no abuse of process, and argues that the applicant's assertion of an "inescapable link" between the two Ministers' comments and the Board's conduct is not enough to prove such an allegation.

[31] Finally, the respondent submits that, if the application is allowed, it would be inappropriate to prohibit the Board from considering the matter until the pending charges are resolved (citing *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2010 NSCA 8 at paras 20-22, 287 NSR (2d) 329). At most, the respondent says, if the Board's decision is not reasonable, the Court should only set aside the decision and return the matter to the Board for reconsideration.

V. Analysis

A. *What is the standard of review?*

[32] If past cases have satisfactorily determined the degree of deference to be applied for each issue, then that analysis need not be repeated (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62, [2008] 1 SCR 190 [*Dunsmuir*]).

[33] When a party challenges the constitutionality of a law, the Court owes no deference to the tribunal (*Dunsmuir* at para 58; *Doré* at para 43). However, when a party challenges the constitutionality of a specific administrative decision, the heavily fact-based nature of that decision may still attract a deferential approach (*Doré* at paras 36, 45-48, 53-58). In this case, the applicant has challenged paragraph 7(b) of the *Act* directly, so correctness is the standard of review.

[34] That is also the nominal standard of review for the procedural fairness issue (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 43, [2009] 1 SCR 339 [*Khosa*]; *Saini v Canada (Citizenship and Immigration)*, 2014 FC 375 at para 25 (available on CanLII) [*Saini*]). Persons affected by a decision must receive every procedural protection to which they are entitled, but relief may be withheld if any error "is purely technical and occasions no substantial wrong or miscarriage of justice" (*Khosa* at para 43; *Federal Courts Act*, s 18.1(5)).

[35] I disagree with the applicant's contention that the substance of the Board's decision should be reviewed on a correctness standard. To the extent that there is a question of what "good conduct" means, it is about interpreting the *Act*, which is a statute closely connected to the Board's function. Reasonableness is ordinarily presumed for such issues (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 30, 34, [2011] 3 SCR 654). I see no reason that this presumption should be rebutted, especially since section 2.1 of the *Act* gives to the Board the "exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension".

[36] The applicant's allegations of errors are purely about the facts and the Board's application of the law to those facts when exercising its discretion to revoke the applicant's pardon. All of those questions attract the reasonableness standard of review (*Dunsmuir* at para 53; *Fernandez* at para 20; *Saini* at paras 26-27; *Foster v Canada (AG)*, 2013 FC 306 at para 18 (available on CanLII)). To the extent that such questions may involve residual constitutional issues separate from whether paragraph 7(b) of the *Act* runs afoul of section 7 of the *Charter*, they are of an individualized type described in *Doré* at para 36.

B. *Is paragraph 7(b) of the* Criminal Records Act *unconstitutional?*

[37] The applicant claims that his rights under section 7 of the *Charter* are engaged by the Board's decision to revoke his pardon because the Crown could potentially use past convictions against him in the pending trial.

[38] In my view, however, the applicant's section 7 rights under the *Charter* are not yet engaged and have not been violated. In *Bedford* at para 75, the Supreme Court of Canada confirmed that section 7 rights are only engaged where there is a "sufficient causal connection between the state-caused [effect] and the prejudice suffered by the [claimant]". The standard is a flexible one which is "sensitive to the context of the particular case and insists on a real, as opposed to a speculative, link" (*Bedford* at para 76).

[39] In this case, the applicant has not yet suffered any prejudice in defending the charges against him and may never suffer any. It is possible that the pending charges against him may be withdrawn or stayed. Even if the trial goes forward, the Crown could only use the applicant's criminal record against him if the trial judge admits that record into evidence. That judge will be in a better position than this Court to assess the *Charter* implications of allowing the applicant's criminal record to be admitted.

[40] The applicant has not established, therefore, that he has suffered any prejudice and it was incumbent upon him to satisfy the burden of proof (*Bedford* at para 78; *Canadian Foundation for Children, Youth and the Law v Canada (AG)*, 2004 SCC 4 at para 3, [2004] 1 SCR 76).

[41] Even if section 7 of the *Charter* was engaged, this would not make paragraph 7(b) of the *Act* in and of itself unconstitutional. The applicant does not challenge the idea that pardons should be revoked from people who are "no longer of good conduct". Rather, the applicant challenges only the timing of the revocation, something which is not in any way mandated by paragraph 7(b) of the *Act*. Consequently, there is nothing to strike down or sever, and the

applicant is really asking the Court to read in a requirement that no untried charges should be considered by the Board in assessing whether a person is no longer of good conduct (see: *Charter*, s 24(1); and *Schacter v Canada*, [1992] 2 SCR 679 at 695-696, 698-700, 93 DLR (4th) 1).

[42] The problem with the applicant's arguments on this front is that it amounts to nothing more than a challenge of the specific decision made against him. The timing of the inquiry by the Board into whether to revoke a pardon is a choice the Board has the discretion to make under section 2.1 of the *Act*, and the evidence that it considers satisfactory is a purely factual question. Treating these as challenges to the law itself would circumvent the appropriate standard of review for these questions as set out in *Doré* at paras 34-58. Therefore, the applicant's invitation to read things into the statute should be refused.

C. *Was the process unfair?*

[43] The applicant complains about the fairness of the decision, since: (1) he had no opportunity to present his case without waiving his right to silence in the pending criminal case; and (2) there was an abuse of process by the Board acting when it did.

[44] As to the first of these complaints, this is answered by subsection 7.1(1) of the *Act* which clearly recognizes that a person whose pardon may be revoked is "entitled to make, or have made on his or her behalf, any representations to the Board that he or she believes relevant". In this case, the Board sent the applicant its proposal to revoke his pardon and invited him to make representations within 60 days. Surely, that is a reasonable amount of time within which to

prepare and deliver a response, and in my view that is all that subsection 7.1(1) of the *Act* requires. The applicant was given an opportunity to make substantive submissions, and the mere fact that he chose to maintain his silence in order to avoid jeopardizing his defence to the outstanding criminal charges does not make the process unfair.

[45] As to the second complaint, the burden lies on the applicant to establish any bias or abuse of process since it is presumed "that a member of a Tribunal will act fairly and impartially, in the absence of evidence to the contrary" (*Zündel v Citron*, [2000] 4 FCR 225 at para 36, 189 DLR (4th) 131 (CA)). At best, the applicant's argument in this regard is based only on the fact that the sheet recommending that his pardon be revoked was signed on the same day that some Ministers made comments about him. I agree with the respondent that an "interesting coincidence" like that is not sufficient evidence to rebut the presumption of fairness and impartiality.

[46] Furthermore, the record is devoid of any evidence of any political interference with the Board in making the decision when it did. On the contrary, it discloses a logical progression of events by which the Board became aware of the charges laid against the applicant and proceeded to assess them. The Board learned about the charges through the media. By letter dated May 2, 2013, about ten days after the charges had been laid, the Board asked the RCMP to confirm the charges, which the RCMP did by letter dated May 24, 2013. Some nine days later, a member of the Board reviewed the information from the RCMP and recommended that the pardon be revoked, and that recommendation was followed on July 30, 2013. A person reasonably informed of this sequence of events would not apprehend any abuse of process on the part of the Board.

[47] In short, the process adopted and followed by the Board in making its decision was fair.

D. *Did the Board err by relying on unproven charges to revoke the pardon?*

[48] The Board decided that the applicant was no longer of good conduct based only on the information supplied by the RCMP that he had been charged with some serious crimes. The applicant claims that this finding of fact was made perversely and capriciously, since a charge is merely an allegation and the Board had no knowledge of any facts that might support the charges. In my view, the applicant's arguments in this regard miss the mark, since it was not the veracity of the allegations underlying the charges which the Board found reliable and credible but, rather, the very fact of the information itself setting out the charges. Even if these allegations may subsequently be proven to be unfounded, it was reasonable for the Board to determine that the applicant was no longer of good conduct in the face of the charges as alleged.

[49] In the *Manual*, paragraph 17 provides the following guidance for the Board when assessing good conduct:

> 17. The Board is responsible for validating and confirming the information that is presented by the applicant and criminal justice entities. All applications will be vetted to ensure that they meet the required minimum standard for verifiable and reliable information before they are submitted to Board members for decision. Moreover, Board decisions must be based on factual information. The type of documents and information that may be considered includes:
>
> > a. information from the police about a non-law abiding behaviour that did not result in a charge;
> >
> > b. information about an incident that resulted in a charge that was subsequently withdrawn, stayed, or dismissed, or that resulted in a peace bond, in the

> use of alternative measures or in the acquittal of the applicant;
>
> c. the relevance of the information increases where the charge or charges are of a serious nature, […][Emphasis added]

[50] Clearly, subparagraphs (a) and (b) above both suggest that the Board can and should consider police information about the applicant's conduct even if it did not result in a charge or a guilty verdict.

[51] The applicant argues that the Board requires more than just an unproven allegation. The applicant contrasts the present situation with that in *Yussuf v Canada (AG)*, 2004 FC 907 (available on CanLII) [*Yussuf*], where the Board denied a pardon in a case where an applicant had been charged but not convicted of an offence. The Board's denial of the pardon in *Yussuf* was upheld not just because the person had been charged, but also because the Board had considered the evidence of a witness to the crime.

[52] However, the decision in *Yussuf* does not fully support the applicant's foregoing argument. There have been several cases where the Board's conclusion that someone was no longer of good conduct has been upheld on less information than was available to the Board in this case. For example, in *Conille v Canada (AG)*, 2003 FCT 613 (available on CanLII) [*Conille*], the Board decided to deny a pardon on the basis of nothing more than confirmation from the RCMP that the applicant was a suspect in a murder case (at para 10), and on judicial review Mr Justice Edmond Blanchard held that the Board did not err by relying on such confirmation (at para 24). Justice Blanchard further commented in *Conille* that it was "not the

Board's job to conduct police investigations in place of the RCMP" (at para 26), and that the presumption of innocence does not apply to applications for a pardon (at para 30; see also *Giroux* at para 20). Similarly, in *Davis* at para 26, the British Columbia Supreme Court decided that:

> [T]he process by which the Governor General in Council reaches a decision to revoke a pardon is one in which the Governor General in Council may consider the existence of outstanding, but as yet unproven criminal charges…[I]n determining whether the conditions of the pardon had been breached, the Governor General in Council may … consider such matters as the fact of the applicant being charged.

[53] In my view, it was reasonable for the Board to infer that the applicant was no longer of good conduct from the mere fact that he was charged with the alleged offences. Although the Board did not look behind the information it received from the RCMP, it is difficult to see what more it needed to do since the mere fact of the information being laid speaks for itself irrespective of whether the allegations contained in the information are true or not. In these circumstances, I do not think the Board erred by relying on the information.

[54] In the end, I find that the Board's decision was reasonable and within the range of acceptable possible outcomes.

VI. Conclusion

[55] For the reasons set forth above, the applicant's application for judicial review shall be and is hereby dismissed.

[56] At the hearing of this matter, the parties requested leave to make submissions as to costs. I see no reason to depart from the usual principle that costs should follow the event and the respondent shall have its costs. If the parties cannot agree on the amount of costs within 10 calendar days of the date of this decision, they may each make brief written submissions to the Court, not to exceed five pages in length. The respondent shall serve and file its bill of costs and its submissions within 20 days of the date of this decision, and the applicant shall serve and file its submissions within 10 days after receiving the respondent's submissions.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. the application for judicial review is dismissed;
2. the respondent shall have its costs,
3. if the parties cannot agree on the amount of costs within 10 calendar days of the date of this decision, they may each make written submissions to the Court, not to exceed five pages in length;
4. the respondent shall serve and file its bill of costs and its submissions within 20 days of the date of this decision; and
5. the applicant shall serve and file its submissions within 10 days after receiving the respondent's submissions.

"Keith M. Boswell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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