Federal Court Cour fédérale

Date: 20150501

Docket: T-1785-13

Citation: 2015 FC 571

Ottawa, Ontario, May 1, 2015

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

DHEERAJ KUMAR MITAL

Applicant

and

THE MINISTER OF HEALTH

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] For many years now, Health Canada, through its First Nations and Inuit Health Branch, has been running the Non-Insured Health Benefits Program (the Program) which provides eligible First Nations and Inuit across Canada with a limited range of necessary health related goods and services that would not be provided through private insurance plans,

provincial/territorial health and social programs or other publicly funded programs. Dental care is one of those services.

[2] The dental care component of the Program allows eligible beneficiaries to receive some dental services free of charge, so long as the services are performed by dentists enrolled as "dental providers" under the terms and conditions of the Program. Upon being enrolled, each dental provider is issued a service provider Identification Number which enables him or her to bill directly – and receive direct payment from - the Program for services which meet the Program's requirements. The newly enrolled dental provider is also provided with the *NIHB Dental Claims Submission Kit* and *NHIB Dental Benefits Guide* which set out the terms and conditions of the Program and contains information about the dental providers' roles and responsibilities, claims' submissions and processing, termination of enrolment, audits and dental policies.

[3] The billing and payment process is administered by a private firm on behalf of Health Canada. Up until November 30, 2009, those duties were performed by the First Canadian Health Management Corporation. Express Scripts Canada took over theses duties from the First Canadian Health Management Corporation on December 1, 2009 (the Program Billing and Payment Processors). In addition to being responsible of processing billing and payment claims, Express Scripts Canada's duties also extend to verification, recovery and administrative audits as well as to the processing of providers' enrolment applications once they are approved by the appropriate authorities from Health Canada's First Nations and Inuit Health Branch.

[4] The Applicant is a dentist practising in the vicinity of the city of Winnipeg. Up until December 2008, he was enrolled as a dental provider. At some point in 2006, Health Canada's First Nations and Inuit Health Branch for the Manitoba Region (the FNIH Manitoba Branch) began suspecting that the Applicant was unnecessarily performing teeth restorations and was billing the Program for work that had not been performed. Pursuant to the Program's terms and conditions, an on-site audit of the Applicant's Program claims for the period of November 13, 2004 to November 12, 2006, was performed by the First Canadian Health Management Corporation. The final audit report, dated July 30, 2007, identified unsupported claims totalling $30,768.15.

[5] On March 27, 2008, in the wake of the on-site audit, the FNIH Manitoba Branch filed a complaint with the Manitoba Dental Association (MDA), seeking an investigation on the Applicant's billing practices.

[6] On December 2, 2008, the Applicant's dental provider status was terminated, effective December 19, 2008, on the basis of ongoing concerns resulting from an examination of the Applicant's billing practices since the on-site audit. The Applicant voiced his concerns regarding this decision but he did not seek to have it judicially reviewed.

[7] The termination of his dental provider status resulted in the Applicant's name being placed on a "Do Not Register" list.

[8] On or about March 12, 2011, the Applicant pleaded guilty before a three-member Inquiry Panel set up under Manitoba's *Dental Association Act,* to two of the three counts he was facing as a result of the complaint filed with the MDA by the FNIH Manitoba Branch. These two counts both covered the period of April 1, 2005 to December 31, 2007. The Inquiry Panel was satisfied that the Applicant's professional misconduct "was serious and represented a significant departure from the standard of practice of the profession, both with respect to billing practices relating to surface restorations, and with respect to creating and maintaining appropriate and detailed records in patient charts to properly support billings to the FNIHB for dental services provided to a particular patient population".

[9] As a result, the Inquiry Panel ordered that the Applicant:

a. Be suspended from practising dentistry for a period of two weeks;
b. Pay Health Canada the sum of $4,287.00 forthwith;
c. Be subjected to a minimum of two audits per year for the following two years; and
d. Pay the MDA the sum of $34,000.00 as a contribution to its costs associated with the investigation, prosecution and hearing of the matter.

[10] A few days later, the Applicant, through his counsel at the time, sought to be re-enrolled as a dental provider under the Program. His application was denied by the FNIH Manitoba Branch on March 30, 2011, with reasons provided to the Applicant on May 18, 2011. Those reasons were that the Applicant's billing history created financial risk to the Program and that in any event, no further dental providers were required at the time in the geographic area where the Applicant practices dentistry.

[11] There is evidence that the Applicant made two further unsuccessful attempts to be re-enrolled as a Program dental provider in early 2012 and 2013.

[12] On April 23, 2013, the Applicant, through his current counsel, re-applied for re-enrolment. This request was again denied. On October 10, 2013, the Applicant was informed in writing that his latest request for re-enrolment had been reassessed by Health Canada and that the dismissal of his application had been confirmed. This decision reads as follows:

> Please note that Health Canada had re-assessed your application for provider status on September 9, 2013 based on both the administrative and operational requirements of the Program. In the case of your re-application, the records indicate that you have a billing history that created financial risk to the NIHB Program. As it stands, we can confirm that your recent application for dental status with the NIHB Program has been denied.

[13] It is this latest decision – of October 10, 2013 – that the Applicant is challenging by way of the present judicial review application (the Impugned Decision).

II. Issues

[14] The Applicant raises two issues.

[15] The first – and main - issue is whether the Respondent breached the rules of procedural fairness. The Applicant claims in this regard that the Impugned Decision has been made "in flagrant violation of the most basic principles of procedural fairness". He contends that the initial decision to remove his name from the Program's dental providers list and put it on the so-called "Do-Not-Register List" has tainted his subsequent applications to be re-enrolled in the

Program with the result that he was "permanently blacklisted" without even having been informed of the case he had to meet and given an opportunity to make meaningful representations in response.

[16] The Applicant further submits in this regard that there is a reasonable apprehension of bias on the part of the Regional Dental Officer of the FNIH Manitoba Branch, Mr. Terry Hupman. He claims that Mr. Hupman, who was involved in each and every decision regarding his status under the Program, from the decision to launched the on-site audit in 2006 to the Impugned Decision, has demonstrated a "closed mind" throughout the entire process.

[17] As an alternative issue, the Applicant claims that the Impugned Decision is unreasonable as it fails to address the issues raised in the letter that accompanied his April 2013 request for re-instatement and to provide an analysis as to why, five years after having been deprived of his Provider status based on information dating back to 2005, he was still representing a financial risk to the Program in the absence of evidence of further incidents. The Applicant says that these failures affected both the transparency and intelligibility of the decision and its defensibility in respect of the facts and the law.

[18] It is not disputed by the parties that procedural fairness issues are reviewable on a standard of correctness (*Mission Institution v Khela*, 2014 SCC 24, [2014] 1 SCR 502 at para 79; *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190; *Greenpeace Canada v Canada (Attorney General)*, 2014 FC 463, at para 21; *Sketchley v Canada (Attorney General)*, 2005 FCA 404, [2006] 3 FCR 392 at para 53). Neither is it disputed that the decision itself is to be

reviewed on a standard of reasonableness which requires the existence of justification, transparency and intelligibility within the decision-making process and which requires also that the decision fall within a range of possible, acceptable outcomes defensible in respect of the facts and law (*Dunsmuir*, above, at para 47).

[19] The Respondent claims, as a preliminary objection, that the proper Respondent in these proceedings is the Attorney General of Canada, not the Minister of Health as the Minister, pursuant to Rule 303 of the *Federal Courts Rules*, is neither directly affected by the relief sought in the proceedings nor required to be named as a party under an Act of Parliament under which the proceedings are brought.

[20] While it is correct to say that the Minister of Health is not required to be named as a party to these proceedings by virtue of an Act of Parliament, including the *Department of Health Act*, SC 1996 c 8, from which the Minister derives most of her authority, I am not satisfied that the Minister is not a person directly affected by the relief sought by the Applicant. On this point, I agree with Madam Justice Johanne Gauthier's approach (as she was then) in *1018025 Alberta Ltd. v Canada (Minister of Health)*, 2004 FC 1107, 262 FTR 314 (*Alberta Ltd*), a case also involving the Program, which is to say that to the extent the Applicant seeks an order mandating that his re-enrolment application be reviewed on the merits, the modification to the style of cause sought by the Respondent is not warranted. As the authors Saunders, Rennie and Garton correctly point out in *Federal Courts Practice*, Carswell, 2015, at page 732, it is common ground to name the responsible Minister in judicial review applications taken against decisions of Ministers in matters where there is but one party. This is the case here.

III. Analysis

A. *The Procedural Fairness Issue*

[21] Both parties claim that the issue at stake is not so much whether a duty of fairness was owed to the Applicant, but rather what is the content of that duty. As the Respondent correctly points out, the duty of procedural fairness is a flexible and variable concept and its precise configuration will depend on the circumstances of each case (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at para 21 (*Baker*)).

[22] *Baker*, above, sets out a non-exhaustive list of factors that are relevant in the determination of the precise content of the duty of procedural fairness in a given set of circumstances. These factors are:

a. The nature of the decision being made and the process followed in making it;
b. The nature of the statutory scheme;
c. The importance of the decision for the person affected by it;
d. The legitimate expectations of the parties; and
e. The procedure chosen by the decision-maker.

[23] The Respondent submits, based on the *Baker* factors, that the present case falls towards the lower end of the procedural fairness spectrum, meaning that the Applicant was owed no more than minimal procedural fairness. The Respondent says that a minimum, the Applicant was informed of the case he had to meet and that there was no bias on her part and that, accordingly, her duty of fairness was met. The Applicant claims that he was owed a slightly higher – that is a "moderate-to-low" - degree of procedural fairness, which means at a minimum being informed

of the case to meet, being given the opportunity to make meaningful representations and having his case decided by an unbiased tribunal. What separates the parties on this point is quite subtle.

[24] In *Alberta Ltd*, above, the Court ruled that the duty of fairness on the decision-maker in that case – the Director of Health Canada's Non-Insured Benefits Branch for the Alberta region – was "quite limited" but did not defined what this implies. The Applicant points out that *Alberta Ltd* can be distinguished on the facts and, therefore, the duty of fairness owed in this case differs from that of *Alberta Ltd*. Indeed, in *Alberta Ltd*., the Court was mostly concerned with the validity of an underlying policy decision on the basis of which the decision to dismiss the enrolment application had been made. That policy decision was to impose a moratorium on the issuance of new service providers' numbers in Alberta for medical supplies and equipment.

[25] However, despite the lack of definition of "quite limited" in *Alberta Ltd* and the fact that it can be distinguished on the facts, I am satisfied that the duty of procedural fairness owed in the circumstances of the present case was minimal, in the sense that the Applicant had the right to know the case to meet before the Impugned Decision was made and have this decision made by an impartial decision-maker. This conclusion is the result of the application of the *Baker*'s factors, as detailed below.

(1) The Baker Analysis

[26] As conceded by the Applicant, the "nature of the decision" factor does not point to a high degree of procedural fairness. Nothing in decision-making process leading to the acceptance or rejection of an application for dental provider status resembles the judicial process. This process

is rather within the managerial responsibility of a specialized unit of a government department running a program set up, as per Cabinet policy, under general ministerial powers (*Alberta Ltd*, at para ii). This is a purely administrative process and, as such, it is at the very low-end of the spectrum of administrative decision-making processes.

[27] The Applicant also concedes that there is no specific statutory scheme relating to the Program. This normally suggests a very low level of procedural fairness. He claims however that since he does not benefit from a statutory appeal, a higher degree of procedural protections is required. This argument cannot stand. There is no statutory appeal because there is no statutory scheme in the first place. In any event, as a matter of law, in the absence of statutory restrictions, non-adjudicative decisions may be reconsidered and varied (See: Brown & Evans, Judicial Review of Administrative Action in Canada, 1998, loose leaf, Canvasback Publishing, Toronto, at 12:6100). Here, the evidence on record shows that requests for dental provider status can be submitted and re-submitted and even re-assessed. This points also to a very low level of procedural fairness (*Baker*, above at para 24).

[28] The Applicant contends that the impact of the Respondent' decisions to terminate his dental provider status and to deny his applications for re-enrolment on his income and ability to practice his profession attracts a high degree of procedural fairness. However, it is important to put the relationship between the parties in its proper perspective. There is no right in the first place to become a Program service provider. The dental provider status is more akin to a privilege. It is often referred to in the record as a "billing privilege" and it represents exactly what the status is. Indeed, as I have said, the status of dental provider entitles their holders to bill

directly – and be paid by – Health Canada for services provided to a clientele which, in large part, is financially vulnerable. For dental providers, the Program is more of a business opportunity. The Applicant's right to practice dentistry in the province of Manitoba and ability to gain a livelihood are unaffected by the Impugned Decision or by the decisions that preceded it.

[29] The Applicant's reliance on this Court's judgment in *Koulatchenko v Financial Transactions and Reports Analysis Center of Canada*, 2014 FC 206, is not helpful in this respect. In that case, an employee of the Financial Transactions and Reports Analysis Center of Canada, a creature of statue, was challenging a decision of the agency's Director not to issue her a Top Secret clearance and to revoke her appointment as a result. The Court found that decision to be of "significant importance to the applicant", as it was not only ending her employment with the agency but likely making her unemployable across the federal government (*Koulatchenko*, at para 84). Yet, the Court ruled that the duty of procedural fairness owed to Ms. Koulatchenko was "minimal" (*Koulatchenko*, at para 84). I believe it is fair to say that the impact of that decision on Ms. Koulatchenko was of greater magnitude than that of the Impugned Decision on the Applicant and that no more than an equal "minimal" duty of procedural fairness was required in the present case.

[30] As for the legitimate expectations factor, it does not, in my view, influence the content of the duty of fairness in this case either. As is well established, the doctrine of legitimate expectations is based on the principle "that the circumstances affecting procedural fairness take into account the promises or regular practices of administrative decision-makers, and that it will generally be unfair for them to act in contravention of representation as to procedure, or to

backtrack on substantive promises without according significant procedural rights" (*Baker*, at para 26). Here, the Applicant admits that there is no evidence before the Court that he had legitimate expectations with respect to the Respondent's decision-making process.

[31] However, he claims that he had a reasonable expectation that the decisions on his applications for re-enrolment would not be based on the so-called "Do not Register List", considering that the existence of that list was kept from him and that his applications should be considered on their own merits. The Applicant puts a lot of emphasis on being placed on that list. He claims, as I understand it, that this resulted in automatic rejections of his re-enrolment applications, without any consideration of the factors that might militate in favour of his re-instatement in the Program.

[32] According to the evidence, that list is an "internal management tool" kept and used by the Program Billing and Payment Processors to facilitate the enrolment process. I agree with the Respondent that having one's dental provider status terminated goes hand-in-hand with being placed on that list, especially when termination results from billing practices that put the Program financially at risk. It is a means, I would imagine, of flagging names of people formerly with the Program who were dismissed from the Program for noncompliance with its terms and conditions. After all, the Program is run with public funds and those running it have a duty to protect the public interest by ensuring that these funds are spent properly (*Alberta Ltd*, above at para xxiv).

[33] In such context, the Applicant could only expect that re-instating the Program would be an up-hill battle because of his billing history which, according to the judgment of his peers on the Inquiry Panel, amounted to serious professional misconduct – a judgment that fell only a few days prior to the filing of his first re-enrolment application. There is no evidence on record that the Applicant was promised that his billing history would not be a factor in the decisions to be made on his re-enrolment applications. There is no evidence either that this factor was not the main reason for not re-instating the Applicant in the Program. In these circumstances, I can only think of the "Do not Register List" argument as a red herring.

[34] Finally, the factor relating to the decision-maker's choice of procedure is also not helpful to the Applicant. This factor calls for some deference on the part of the reviewing court for the choices of procedure made by the decision-maker. Here, the Program provides for a clear and well-established procedure for the consideration of applications for provider status. This procedure is set out in the *NIHB Dental Claims Submission Kit*. The Applicant submits that the Program's choice of procedure was blurred by the fact his name was put on the "Do Not Register List". Again, for the reasons I have just given, this argument carries no weight.

[35] Therefore, the issue here is whether the Applicant, when he applied for re-enrolment in April 2013, knew the case he had to meet and whether the ensuing decision – the Impugned Decision - was made by an unbiased decision-maker.

(2) Right to Know the Case to Meet

[36] The fundamental difficulty with the Applicant's position is his invitation to the Court to look back at the process that led to the decision to terminate his dental provider status in December 2008. As I indicated earlier, he claims that this decision was rendered in complete disregard of the most basic principles of procedural fairness and that it has tainted all of his subsequent applications for re-enrolment.

[37] The problem is that this decision was never judicially challenged. The 30-day delay for doing so had long expired and no motion to extend the time to file a notice of application was ever submitted. The decision being challenged in this case is the Impugned Decision. I fail to see on what basis the Court could also rule on the validity of a decision that was rendered more than six years ago and of which the Applicant was fully aware as evidenced by the letter his counsel at the time wrote to the Program in order to voice his concerns about the decision.

[38] This, in my view, would defeat the principle of finality and certainty of decisions. As the Federal Court of Appeal stated in *Larkman v Canada*, 2012 FCA 204, at para 87:

> The need for finality and certainty certainly underlies the thirty day deadline. When the thirty day deadline expires and no judicial review has been launched against a decision or order, parties ought to be able to proceed on the basis that the decision or order will stand. Finality and certainty must form part of our assessment of the interests of justice.

[39] The December 2008 decision has to be taken as a background fact to this case. It establishes that the Applicant's dental provider status was terminated for the reasons outlined in

the decision. It is too late now to decide whether that decision should be disregarded because it is allegedly unreasonable or has been made in breach of the duty of procedural fairness.

[40] In any event, when one looks at that decision as part of a continuum that led to the Impugned Decision, as the Applicant urges the Court to do, then one wonders what would be achieved, for the purposes of determining the validity of the Impugned Decision, in ruling that somehow the status revocation decision was procedurally flawed or unreasonable, when a little more than two years after it was rendered, the Applicant pleaded guilty to two charges of professional misconduct between the period of April 2005 to December 2007, in relation to his billing practices as a Program dental provider and the MDA's Inquiry Panel that received that plea, qualified that misconduct as "serious" and as "a significant departure from the standards of practice of the profession".

[41] I am therefore satisfied that when he applied for re-enrolment in April 2013, the Applicant knew fully well the case he had to meet in order to be re-instated in the Program: his status of dental provider had been terminated on the basis of ongoing concerns regarding his billing practices; he had subsequently pleaded guilty to charges of professional misconduct in relation to these practices; and he had already been refused re-instatement on the basis of his billing history with the Program.

[42] As a matter of fact, he must have known the case he had to meet as the main pitch of his April 2013 re-enrolment application, as appears from his counsel's letter, was that he acknowledged having made errors in his billing practices, that these errors were however

unintentional and dating back to 2005 and that he had now "more than served his sentence" for these errors.

(3) Right to an Impartial Decision-Maker

[43] The Applicant claims that Mr. Hupman, the Regional Dental Officer of the FNIH Manitoba Branch, have demonstrated a closed mind with respect to his status in the Program, starting with finding him "dismissive and arrogant", then by presenting a case to have his dental provider status terminated, by refusing to have a meeting following that decision on the ground that there was nothing to be gained at that point, by testifying that he had given up on him, and by being involved in all subsequent decisions denying his re-enrolment applications.

[44] Based on this, he submits that "a reasonably informed bystander could reasonably perceive bias" on the part of Mr. Hupman (*Newfoundland Telephone Co. v Newfoundland Public Utilities (Public Utilities Board)*, [1992] 1 SCR 623, at para 22).

[45] I agree with the Respondent that this falls short of establishing that the Impugned Decision was rendered by a biased decision-maker. First, deciding whether or not to re-enrol a dentist in the Program is not a decision of a judicial or adjudicative nature, which calls for a less demanding standard of impartiality (*Anderson v Canada (Customs and Revenue Agency)*, 2003 FCT 667, 234 FTR 227, at para 48). Second, Mr. Hupman, although he was involved in the decision-making process that led to the Impugned Decision, was not the ultimate decision-maker as the Applicant's re-enrolment application was re-assessed by Program's officials in Ottawa who confirmed Mr. Hupman's recommendation to dismiss the application.

[46] It is clear from the evidence that the Applicant and Mr. Hupman did not share the same view as to how the Program worked and how it was to be billed by dental providers. In retrospect, Mr. Hupman may have had a point. One could very well say that he was just doing his job in protecting the public interest by ensuring proper spending of public funds.

[47] For all these reasons, I see no merit to the Applicant's argument that the Impugned Decision was made in violation of the principle of procedural fairness.

B. ***Reasonableness of the Decision***

[48] The Applicant claims, in the alternative, that the Impugned Decision does not provide the requisite degree of justification, transparency and intelligibility and is not defensible in respect of the facts and law as it fails to address any of the concerns raised and the comments made in the letter that accompanied the April 2013 re-enrolment application.

[49] In that letter, the Applicant, as I have indicated earlier, acknowledged having made errors in his billing practices in 2005 and indicated having fully complied with the decision of the MDA's Inquiry Panel. He also claimed that there had been no further incidents or complaints to the MDA regarding his practice since the Program's complaint, and stated that he was being inappropriately targeted by the Program.

[50] In other words, the Applicant's plea is that he has paid his due for incidents that occurred some years ago and that time has come to re-instate him in the Program. The Respondent did not allow that to happen on the basis of a billing history that created financial risk for the Program.

[51] There is no right to a dental provider status under the Program and no right to re-enrolment once that status has been terminated. The Program is a publicly funded program which has been established under general ministerial powers and which is run by a specialized unit of a government department. As for any other government programs, the protection of the public interest in ensuring proper spending of public funds is – and must be - a paramount consideration in the administration of the Program. All these considerations are factors showing that decisions taken under the Program are discretionary in nature and are owed significant deference (*Dunsmuir v New Brunswick,* 2008 SCC 9, [2008] 1 SCR 190). As long as they are not based on irrelevant considerations or on a perverse or capricious finding of fact, they must be allowed to stand.

[52] Here, I find the Impugned Decision is both defensible on the facts and the law and is transparent and intelligible. Re-enrolment in the Program was refused to the Applicant based on his billing history and the financial risk it created for the Program. This is supported by the evidence on record. The Applicant now admits having made errors in this regard. Those who run the Program have opted to take what appears to be a zero risk approach with respect to the Applicant. When it comes to the management of public funds, I cannot say, given the facts of this case, that this approach was based on irrelevant considerations or on a perverse or capricious finding of fact.

[53] It is true that the Impugned Decision could have been more explicit with respect to the content of the letter that accompanied the April 2013 re-enrolment application. However, as stated by the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v*

Newfoundland and Labrador (Treasury Board), 2011 SCC 62, [2011] 3 SCR 708, reasons for decisions need not to be perfect or comprehensive and as long as they allow the reviewing court to understand why the decision-maker made its decision, the decision is allowed to stand:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391). In other words, if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met.

[54] This means that although the Court is not allowed to substitute its own reasons, it may, if it finds it necessary, "look to the record for the purpose of assessing the reasonableness of the outcome" (*Newfoundland Nurses*, above at para 15).

[55] I am satisfied that the Impugned Decision meets that threshold. Looking at the record, I have no difficulty understanding why the Impugned Decision was made.

[56] The Applicant's judicial review application is dismissed. Costs are awarded to the successful party.

JUDGMENT

THIS COURT'S JUDGMENT is that the judicial review application is dismissed, with costs.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1785-13
STYLE OF CAUSE:	DHEERAJ KUMAR MITAL v THE MINISTER OF HEALTH
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	OCTOBER 31, 2014
JUDGMENT AND REASONS	LEBLANC J.
DATED:	MAY 1, 2015

APPEARANCES:

Mr J.A. Kagan	FOR THE APPLICANT
Ms Dhara Drew	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Thompson Dorfman Sweatman LLP	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT