Federal Court		Cour fédérale

Date: 20130702

Docket: T-1299-11

Citation: 2013 FC 728

Vancouver, British Columbia, July 2, 2013

PRESENT: Roger R. Lafrenière, Esquire
Case Management Judge

BETWEEN:

THE ESTATE AND SURVIVORS
OF MORDRED HARDY, VETERAN

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] A motion has been brought on behalf of the Applicants seeking an order that I recuse myself as the case management judge of this and a related proceeding based on alleged "obstruction and discriminatory bias" and "considerable apprehension of bias". A cursory review of the moving parties' motion material leaves one with the impression that I not only failed to act fairly and impartially, but also that my conduct was unethical, dishonest and reprehensible.

[2] In light of the serious allegations of impropriety levelled against me, I have painstakingly reviewed the procedural history of the two proceedings. I have also carefully considered the numerous allegations of misconduct giving rise to the Applicants' motion for recusal and the applicable test on such motions.

[3] For the reasons below, I find nothing in the material submitted by the Applicants that would cause a reasonably informed person to believe that I have acted improperly in any way towards the Applicants. Further, the Applicants have not established that I did not entertain the issues raised in the proceedings with an open mind. Finally, there is simply no evidence that I colluded with the Respondent or afforded the Respondent preferential treatment. The motion for recusal will accordingly be dismissed.

Introduction

[4] On August 10, 2011, two proceedings were commenced on behalf of the Estate and Family of the late Mordred Hardy, who died in 1999.

[5] One of the proceedings is an action for damages in the amount of $38,000,000 on behalf of "The Estate, Widow and Children of Mordred Hardy" against the Attorney General of Canada (hereinafter "the Crown") in Court File No. T-1300-11. The Plaintiffs allege that Mordred Hardy was seriously injured during a depth charge drill while serving in the Royal Canadian Navy on board of the HMCS Kamloops in 1943. Soon after his discharge, Mordred Hardy applied for a disability pension because of his physical injury, and again applied in 1975. However, it was only in 1997 that he was finally awarded a disability pension based on a degenerative disk disease caused

by the depth charge blast. The Plaintiffs claim that Mordred Hardy was "repeatedly, deliberately and fraudulently" denied a pension from 1943 to 1997, as well as medical treatment for over 5 decades. At paragraph 11 of the Statement of Claim, the Plaintiffs allege that they have evidence of "manipulation, collusion, falsified reports, callous indifference, breach of trust, obstruction of justice and fraud" on the part of Veterans Affairs.

[6] The other proceeding is an application for judicial review of a decision of the Veterans Review and Appeal Board dated July 20, 2011 upholding a decision of the Entitlement Review Panel relating to the pension disability claim of the deceased.

[7] The Applicants in T-1299-11 and the Plaintiffs in T-1300-11 are represented by Mr. Karl Hardy, son of Mordred Hardy. For ease of reference, in addition to "the Applicants" and "the Plaintiffs", the said parties will be referred to collectively as the "Hardys" in these reasons.

[8] As the Hardys filed a joint motion for recusal in the two proceedings and rely on the same evidence and submissions, these reasons apply to both files.

Procedural History

[9] As noted above, the Hardys filed the Notice of Application in T-1299-11 and the Statement of Claim in T-1300-11 on August 10, 2011. The Crown was served with the two pleadings on August 12, 2011.

[10] On August 25, 2011, Crown counsel sent a letter to the Hardys to request their consent to an extension of time to November 10, 2011 to serve and file a statement of defence in T-1300-11 and to serve the Crown's affidavit in T-1299-11. Counsel indicated that the Crown would be bringing a motion pursuant to Rule 8 of the *Federal Courts Rules* to suspend the running of time for the defence and to extend the time for service of its affidavit.

[11] On August 28, 2011, Karl Hardy responded to the letter by e-mail and indicated, "On behalf of the Plaintiffs, his *(sic)* will confirm our consent to a delay in the running of time of service, to November 10, 2011, as you requested." Karl Hardy also advised that the Hardys would be bringing a motion for consolidation and a motion for alternate written examination under Rule 237(3).

[12] Since the Hardys only consented to extend the time for "service", as opposed to "service and filing", Crown counsel sought clarification on August 30, 2011 as to whether the consent to extension of time applied only to service of the Crown's affidavit evidence in T-1299-11, and not to service and filing of the statement of defence in T-1300-11. That same day, Karl Hardy replied as follows:

> Our reply assumes that it would be in the Court's interest that the two files be consolidated as the evidence overlaps. ... As we've been arguing this case for years, we have no objection if either a consolidated file or separate files require more time.... If Justice agrees with the motion of consolidation perhaps you could revise your date accordingly or if Justice intends to oppose, perhaps you could reconfirm the time required under T-1300-11 to complete your Statement of Defence. In either case, we don't object to the delay under T-1299-11.

[13] On August 31, 2011, Crown counsel e-mailed Karl Hardy to advise that a motion for consolidation would be premature in light of the Crown's anticipated motion to strike the action in T-1300-11.

[14] On September 8, 2011, the Hardys filed a joint motion record in both proceedings containing two notices of motion. The Registry accepted the motion record for filing notwithstanding the irregularities. The first notice of motion sought an order that the two proceedings be consolidated. The second notice of motion requested leave to "obtain alternate written examination".

[15] On September 13, 2011, the Crown filed mirror motion records in the two proceedings seeking an order:

> (a) staying the two proceedings pending the appointment of a solicitor pursuant to Rules 112 and 121 of the *Federal Courts Rules*;
>
> (b) pursuant to Rule 3 and 8 suspending the time for Canada to serve and file a statement of defence in T-1300-11;
>
> (c) pursuant to Rule 3 and 8 suspending the time for Canada to serve and file respondent affidavits in T-1299-11.

[16] The Hardys filed a motion record in response to the Crown's motion on September 15, 2011. The same day, they filed another motion record seeking summary judgment in T-1300-11 on the grounds that the Crown had not served and filed a statement of defence or requested additional time.

[17] On September 16 and 20, 2011, the Hardys submitted further information via letters to the Registry. They presented an additional motion record on September 23, 2011 with a further affidavit and argument in response to the Crown's motion to stay the proceedings and for extension of time. The Hardys also asked that their motions for consolidation, written examination and for summary judgment be expedited.

[18] On October 4, 2011, the Crown filed a motion seeking an order: (a) providing directions to the parties regarding the Hardys' motion for consolidation; (b) providing an interim direction regarding the Crown's response to the Hardys' motion for consolidation, and (c) appointing a case management judge in the two proceedings, to be case managed concurrently.

[19] My first involvement in the proceedings was on October 20, 2011, when the Calgary Registry sought directions with respect to the following matters:

(a) Motion on behalf of the representative of the Plaintiff (Motion Doc #10) for an order consolidating files T-1299-11 and T-1300-11. A second notice of Motion is contained in the same motion record and requests leave to obtain alternative written examinations.

(b) Motion on behalf of the Defendant (Motion Doc #3) for an order staying T-1299-11 and T-1300-11 pending the appointment of a solicitor and various reliefs.

(c) Motion on behalf of the Defendant (Motion Doc#23) seeking directions with respect to the Plaintiff's consolidation motion, summary judgment motion, Defendant's response to Plaintiff's consolidation motion, Defendants response to Plaintiff's summary judgment motion, and appointment of a CMJ.

[20] As Karl Hardy's standing to bring the proceedings on behalf of the Hardys had to be determined first before the other motions could be considered by the Court, the Calgary Registry was instructed to forward the Crown's motion to stay the proceedings for disposition in writing.

[21] On October 25, 2011, I issued an Order staying the two proceedings pending the appointment of a solicitor to act for the Hardys. There was no evidence in the motion material before me establishing that a grant of probate or letters of administration had been issued in relation to the Estate of Mordred Hardy. There was also no evidence that Karl Hardy had been authorized by the Estate, the widow, children or survivors of Mordred Hardy, to act on their behalf. Further, there was no indication that Karl Hardy had ever sought or was granted leave to represent the Hardys. The Order provided as follows:

> 1. The proceedings in Court file Nos. T-1299-11 and T-1300-11 are hereby stayed pending the appointment of a solicitor by the Applicants and the Plaintiffs respectively.
>
> 2. The application in Court File No. T-1299-11 and the action in Court File No. T1300-11 shall continue as specially managed proceedings.
>
> 3. No further steps shall be taken by the parties in Court File Nos.T-1299-11 and T-1300-11, except for an appeal of this Order, pending further order or directions of the case management judge.

[22] On November 3, 2011, the Hardys appealed the Order dated October 25, 2011. The notice of motion on appeal also sought an order to "expedite the Plaintiffs filed Motion of Consolidation...that has been unreasonably delayed", "expedite the filed Motion for Alternate Written Examination for both Application and Action" and "expedite the filed Motion for Summary Judgment under T-1300-11..." The affidavit of Karl Hardy filed in support

of the Hardys' appeal included a copy of the Power of Attorney of Audrey Jackson Hardy and an affidavit sworn by Helena Audrey Hardy which stated, in part:

> (a) That I am the sole executor and sole beneficiary of the estate of my late husband, Mordred Hardy, pursuant to, and consistent with, my late husband's last will and testament.
>
> (b) That, further to the assignment of Power of Attorney filed with Federal Court on September 7, 2011, that my son, Karl S. Hardy is fully capable and authorized, by me, to represent the interests of the plaintiffs named as the estate, widow and….

[23] In its motion record in response to the appeal, the Crown sought ancillary relief as to timing. The Crown suggested that the action in T-1300-11 be stayed until the outcome of the judicial review in T-1299-11. The Crown also signaled its intention to seek particulars and to move to have the action struck.

[24] On November 8, 2011, I was appointed case management judge of the two proceedings by Order of Acting Chief Justice Simon Noel.

[25] The Hardys attempted to file a motion for my recusal in December 2011. Since the proceedings were stayed by Order dated October 25, 2011, I issued directions on January 6, 2012 that the motion be rejected for filing, without prejudice to the Hardys' right to re-apply following disposition of the appeal scheduled to be heard on February 7, 2012.

[26] The Hardys protested the Directions on the basis that the motion to recuse and the appeal of the Order staying proceedings were related and should be heard together on

February 7, 2012. In response to the Hardys' objections, Mr. Justice Yves de Montigny issued Directions as follows on January 27, 2012:

> I agree with the Prothonotary's Direction rejecting the motion for filing. The October 25, 2011 Order is clear that the proceedings are stayed pending the appointment of a solicitor by the Applicants/Plaintiffs. If the Order is quashed on appeal, or alternatively, when a solicitor is appointed, the motion for recusal may be re-introduced by the Applicants/Plaintiffs.

[27] Karl Hardy sent a letter addressed to the Chief Justice on February 11, 2012 to complain about irregularities, interference and preferential treatment towards the Crown. Mr. Hardy asserted that I had no authority to issue any order as the claims in the proceedings were beyond a prothonotary's jurisdiction. He also alluded to the fact that I was a former employee of the Crown. Mr. Hardy further claimed that the Crown "practiced deception, hid evidence, violated Court rule (sic) and presented misleading argument" and that the inaction by the Crown and the Court's accommodation "appears to be one of collusion, bias, manipulation and deliberate prejudicial obstruction." Mr. Hardy concluded his letter with a request that the Chief Justice personally intervene "to restore balance and to preserve the integrity of the Court" and refer the proceedings to "a higher and untainted court authority". The complaint was ultimately dismissed by the Chief Justice.

[28] On February 16, 2012, Mr. Justice Sean Harrington issued Reasons for Order and Order granting the appeal brought by the Hardys: *Hardy Estate v Canada (Attorney General),* 2012 FC 220 (CanLII). Justice Harrington concluded that, notwithstanding that no power of attorney had been filed by the Hardys in response to the Crown's motion, a power of attorney was filed elsewhere in the overall record. He therefore invoked Rule 351 of the *Federal Courts*

Rules, which permits new evidence in appeal, and accepted a copy of the Will of Mordred Hardy and another power of attorney for filing at the hearing.

[29] Although he expressed fear that Karl Hardy would not adequately represent his mother, that he would use the courtroom as a bully pulpit, and that he could prove aggravating, Justice Harrington proceeded to authorize Karl Hardy to represent the Hardys. As for the timing issues raised by the Crown, Justice Harrington concluded that scheduling of these issues should be worked out with the case management judge. In the interim, he specifically dispensed the Crown from the requirement to file its motion record in T-1299-11 and its statement of defence in T-1300-11. Justice Harrington also added that, in the circumstances, "Mr. Hardy does not deserve costs."

[30] Karl Hardy submitted a letter dated March 27, 2012 requesting that I immediately deal with the Hardys' motions. The letter concludes with the following words of caution:

> As you know, a Motion for Recusal due to bias and the selective application of Court Rule is pending. The outcome of the two remaining Plaintiff Motions will determine if it will be necessary that this Motion be re-filed or if it will be necessary to take other action to advance T-1299-11/T-1300-11 justly to trial. An un-filed Motion of Recusal is not a reason to delay disposition of other Motions filed.

[31] Karl Hardy submitted another letter on April 3, 2012 repeating his request that I deal with the Hardys' outstanding motions. Paragraphs 3 and 7 of his letter read as follows:

> 3. The Crown has repeatedly pleaded for more time and, as early as August 25, 2011, has threatened to serve and file a Motion to Strike T-1300-11. There have been no evidentiary exhibits served and filed, to date, in support of this intention regarding a Motion to

> Strike or any other issue. Initially, a time extension to November 10, 2011 regarding T-1299-11 was requested by the Crown and this date has come and gone with no apparent justification other than obstruction. The Plaintiffs suggest that past treatment of T-1299-11/ T-1300-11 by this Court have embraced a Crown strategy to unduly delay both files compounded by a biased application of Court Rule that unfairly has benefited the Crown.
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> …
>
> 7. With all respect, the Plaintiffs reserve the right to serve and file a Motion to [Recluse] Mr. Lafreniere if either of the Plaintiffs' outstanding Motions does not go forward. The Plaintiffs also request specific reference to Federal Court Rule in the event that a forced appeal and/or Motion of Recusal become necessary in order to justly advance T-1299-11/ T-1300-11 to trial

[32] On April 3, 2012, I issued the following directions to the parties.

> Please inform Mr. Hardy that it is not proper protocol to write to the Case Management Judge directly. Any correspondence should instead be addressed to the registry. The parties are directed to submit a letter, either jointly or separately and no later than April 10, 2012, setting out the following information: (a) a list of the motions that remain outstanding in Court File Nos. T-1299-11 and T-1300-11; (b) and a proposed timetable for service and filing of responding motion records.

[33] In response to the Court's directions, Karl Hardy submitted a further letter on April 5, 2012 indicating that the Hardys reserved their right to bring a motion for my recusal. Paragraph 6 of his letter read as follows:

> 6. Ms. Koch also seems to be depending on an unfiled Motion to Recluse (sic). I would remind Ms. Koch that the Motion was rejected for filing and, at this point in time, does not exist as part of the Court Record. It's entirely at the discretion of the Plaintiffs if this Motion will be re-filed. Ms. Koch has no business using an unfiled Motion to delay matters further. If the Plaintiffs decide to re-file, it will be after Mr. Lafreniere decides on disposition of outstanding Motions so any other irregularities in the dispositions be included in any potential Motion to Recluse.

[34] In my capacity as case management judge, I issued an order on April 10, 2012 admonishing Karl Hardy for addressing the Court in a disrespectful manner and for using language that could be interpreted as an attempt to pressure and intimidate the Court. Relevant paragraphs of my reasons are reproduced below:

> [6] As was stated by Mr. Justice James Russell in *Sawridge Band v. Canada*, 2005 FC 607, at par. 630: "The message in the materials is loud and clear". Mr. Hardy not only sees these proceedings as a personal battle with opposing counsel, he has also placed himself in personal confrontation with the Court.
>
> [7] Mr. Hardy apparently believes that he can review the reasonableness and convenience of terms ordered by the Court, and obey the terms if they meet his satisfaction. He also believes that he can keep the threat of a recusal motion in his pocket in order to keep the Court in line. Mr. Hardy should be disabused from his opinion that such behaviour is somehow appropriate.
>
> [8] The Court is required to enforce its process and maintain its dignity and respect. This includes reigning in improper and disrespectful conduct directed to the Court as well as to the opposing party. Moreover, the Court should be at liberty to exercise its functions with independence, and make rulings as it sees fit.
>
> [9] The Plaintiffs have alleged that there is a reasonable apprehension that I have demonstrated bias toward them and that there is a "collusionary relationship" between the Crown and the Court. Where a party persists in alleging that a judicial officer designated by the Chief Justice to case manage a proceeding has demonstrated a reasonable apprehension of bias, that party should be required to move promptly for recusal or otherwise be deemed that have abandoned its allegations.

[35] The Hardys were therefore directed to serve and file their motion for recusal, if so advised, no later than April 20, 2012.

[36] In the absence of any motion for recusal being brought by April 20, 2012, I directed that an in-person case management conference be held in Calgary on May 1, 2012. Up to this point, all of my dealings with the parties had been in writing.

[37] During the case management conference, the matter of my recusal was not raised by the Hardys. Karl Hardy was afforded full opportunity to make submissions regarding what he perceived to be the Crown's "blatant and repeated violation" of the *Federal Courts Rules*. Crown counsel conceded at the hearing that the proceedings had gotten off on the wrong foot. She also acknowledged that the Hardys' motions had not been responded to in a timely manner.

[38] After hearing the parties' submissions, I encouraged Mr. Hardy and Crown counsel to meet to discuss how best to proceed with the two matters. When the case management conference reconvened a short time later, Karl Hardy reported that the parties had reached an impasse. The parties agreed that the case management conference should be adjourned in order to allow Karl Hardy to obtain instructions from his family members as to whether they would consent to a stay of the action pending disposition of the application for judicial review. Karl Hardy agreed to propose a course of action to move the two proceedings forward by May 8, 2012 in the event there was no consent.

[39] The next day, Karl Hardy submitted a letter simply repeating the same complaints raised in previous correspondence and during the case management conference. He also gave notice that up to a dozen new motions could be filed depending on the outcome of the existing motions.

[40] In another letter dated May 4, 2012, Mr. Hardy wrote that "after further thought", it seemed obvious to the Hardys that the Crown could not mount a defence to either proceeding. He suggested that there were only two appropriate actions that the Court should consider. With respect to the application in T-1299-11, he requested that the matter be referred to a judge for immediate judgment. As for the action in T-1300-11, Mr. Hardy submitted that the proceeding should be ordered to immediate settlement negotiations and, if the negotiations were unsuccessful, the matter should proceed to summary judgment or summary trial.

[41] In light of the Hardys' stated intention to bring another round of motions, and in order to prevent the proceedings from descending into complete chaos, I immediately intervened by issuing a case management Order dated May 4, 2012 in *Hardy Estate v Canada (Attorney General),* 2012 FC 548 (CanLII), and ordered as follows:

> 1. No further motions, except for an appeal of this Order, shall be received or filed by the Registry unless the Plaintiffs first obtain leave of the Court.
>
> 2. The Defendant is granted an extension of time to May 25, 2012 to serve and file a motion record in response to the Plaintiffs' motions dated September 7, 2011. [the Consolidation/Alternate Written Examination motions]
>
> 3. Unless the Court orders or directs otherwise, the Plaintiffs' motions shall be disposed of in writing.

[42] What followed was what I would describe as a two-pronged attack by the Hardys. First, the Hardys tendered a motion record on May 9, 2012 to appeal the Order dated May 4, 2012. Second, the Hardys filed the present motion in writing seeking an order that I "recluse" myself as the case management judge of the two proceedings forthwith.

[43] In light of the fact that the Hardys were raising similar allegations in the recusal motion and the appeal, and in the exercise of this Court's inherent power to manage and regulate its own proceedings, I directed that all outstanding motions, including the recusal motion, would be dealt with following disposition of the Hardys' appeal.

[44] On July 17, 2012, Mr. Justice Russel Zinn dismissed the Hardys' appeal, concluding that the motion was unnecessary. Justice Zinn also awarded costs to the Crown in any event of the cause. It is useful to reproduce paragraphs 4 to 13 of Justice Zinn's Reasons as he deals with many of the complaints raised against me by the Hardys in the present motion.

> [4] Mr. Hardy submits that the Orders under appeal are made contrary to Rules 59, 153, 202, 204, 206, 210, 215, 220, 223, 228, 238, 257, 300(a), 369(2), and 380 of the Federal Courts Rules. Most of these Rules have no application or relevance to the Orders under appeal.
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> [5] Mr. Hardy further submits, and this in my view is the real reason for the appeal, that Case Management Judge Lafrenière and this Court have "bent over backwards to favour the Crown" and that is unfair. The applicants have an outstanding motion asking that Case Management Judge Lafrenière recuse himself from these matters. It has been held in abeyance pending the disposition of this appeal. Virtually all of the allegations made by Mr. Hardy during oral submissions on this appeal were matters or submissions more properly advanced in his recusal motion.
>
> [6] At the hearing of this appeal, Mr. Hardy filed a document entitled "Statement and Questions for the Court in the Appeal of Prothonotary Order Hearing of July 5, 2012." It contains factual errors, misapprehensions, misunderstandings, and 52 separate questions that are posed to the Court. Mr. Hardy fails to understand that it is not the role of this Court on an appeal of a decision made by a Case Management Judge to answer questions posed by parties; it is to determine whether or not the Court should interfere with and overturn the decision of the Case Management Judge.

[7] Case Management Judges are given wide latitude to manage the cases they have been assigned. Rule 385 spells out the breadth of that discretion and includes the power to "give any directions that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits," and to fix the time for taking steps, notwithstanding any time period provided in the Rules.

[8] The Court of Appeal has stated that the Federal Court should only interfere with an order of a Case Management Judge "in the clearest case of misuse of judicial discretion:" *Sawridge Indian Band et al v Canada*, 2001 FCA 338, para 11.

[9] A cursory review of the recorded entries in these matters provides sufficient evidence of the need to place some supervision on the applicants' conduct. As at the date of hearing this appeal, the recorded entries of the Court show that more than 66 documents have been filed in T-1299-11, and more than 73 in T-1300-11 – most by the applicants. Furthermore, in his letter to the Registry of May 3, 2012, Mr. Hardy stated that it is his intention to file up to a dozen new motions depending on the outcome of the existing motions.

[10] Accordingly, I find that the Order of Case Management Judge Lafrenière directing that motions filed by the applicants shall not be accepted for filing unless they first obtain leave of the Court was made in the proper exercise of his judicial discretion. It was a reasonable response to what appears to be a barrage of motions which will delay the ultimate disposition of these matters, increase the costs of the respondent, and unnecessarily consume scarce judicial resources.

[11] The second Order granted the respondent additional time to respond to the applicants' motion dated September 7, 2011. That is a motion to consolidate Court files T-1299-11 and T-1300-11. In order to appreciate why the respondent has not yet responded to those motions, one needs to appreciate that there was a substantial period of time when these matters were stayed.

[12] Both matters were commenced on September 10, 2011, and the respondent was served the following day. Within 30 days, the respondent brought a motion for an Order pursuant to Rules 112 and 121 staying these matters pending the appointment of a solicitor for the applicants. That relief was granted by Prothonotary Lafrenière on October 25, 2011. On appeal, that Order was reversed by Justice Harrington on February 16, 2012. In

> the interim, Prothonotary Lafrenière was appointed to case manage these matters. He directed that a case management conference be held on May 1, 2012, and ultimately the Orders under appeal were made arising out of that case management meeting.
>
> [13] Given that history and the time that had passed since the consolidation motion was filed, it was reasonable to extend the time for the respondent to respond to that motion. They were clearly engaged in the litigation, they had filed the motion to stay pending appointment of a solicitor, and there had been a stay until the Order was reversed on appeal. The consolidation motion remained to be dealt with and it was a reasonable exercise of discretion, in my view, for the Case Management Judge to extend the time for filing a response. If Mr. Hardy were a barrister, he would understand that this is usual and customary in the circumstances at hand. The Court was informed at the hearing of this appeal that the response was filed within the time provided by Case Management Judge Lafrenière.

[45] The Hardys subsequently appealed the Orders of Mr. Justice Zinn to the Federal Court of Appeal (Court File Nos. A-340-12 and A-341-12). No further action was taken in the proceedings while the appeals were outstanding.

[46] On April 15, 2013, Crown counsel submitted a letter informing the Court that the Hardys' appeals to the Federal Court of Appeal had been discontinued. At my request, the Registry inquired whether the parties had any additional submissions to make beyond the motion material already filed. What followed was a barrage of letters from Karl Hardy, none of which were responsive to my request.

[47] For the sake of completeness, I should add that there are also numerous letters from Karl Hardy interspersed throughout the two files complaining about the conduct of the Chief Justice, Justices Harrington and Zinn, and Crown counsel. Although this motion is not the

forum to address the merits of the Hardys' complaints against other individuals, the motives of the Hardys in bringing the present motion have been put in issue by the Crown and must be addressed to the extent that it relates to the reasonableness or validity or the Hardys' complaints against me, and to the extent that it impacts upon the integrity of these proceedings.

[48] It is against this backdrop that the Hardys' motion for recusal has being considered.

Complaints Giving Rise to Motion for Recusal

[49] The Hardys rely on the affidavit of Karl Hardy affirmed May 22, 2012 in support of their motion. The affidavit is improper in several respects. The "facts" are incomplete, inaccurate, and even misleading. Moreover, the affidavit is tendentious and argumentative in the extreme. The written representations filed in support of the motion suffer from the same deficiencies.

[50] The Crown has prepared a useful summary at paragraph 9 of its written representations disentangling the evidence and argument so as to come to a principled understanding of the basis on which the Hardys have brought the present motion. The complaints are broken down below into 7 categories extracted from Karl Hardy's affidavit and written representations. As pointed out by the Crown, the examples provided under each category heading are not exhaustive, but are representative examples of the complaints and allegations the Hardys have made in respect of the associated category.

A. Complaints that Prothonotary Lafreniere has obstructed the hearing of valid motions. Complaints that Prothonotary Lafreniere has improperly accommodated the Attorney General and has colluded with the Attorney General to delay T-1299-11 and T-1300-11

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
...L) Acted as a Crown accomplice to repeatedly delay and obstruct T-1299-11 and T-1300-11, without just cause..." [Exhibit 3a to 3d is the October 25, 2011 Order]

Paragraph P of the Hardys' written representations - "With so many oddities and evidence of discriminatory treatment, the Plaintiffs have to suspect collusion and/or that a tainted and discriminatory bias has been exercised by Prothonotary Lafrenière to judicially disadvantage and/or delay T-1299-11 and T-1300-11 exclusively to the benefit of a negligent, unprepared, devious and dishonest Crown Council *(sic)* who showed bad faith and a cavalier attitude to Court Rule from the beginning. Mr. Lafrenière accommodated this attitude beyond Court Rule, beyond fair play, beyond any interpretation of Court neutrality and beyond the limits of his authority."

Paragraph 8 of the affidavit of Karl Hardy - "No Crown Responding Motion Records were filed within the deadlines specified by Federal Court Rules to ANY of the Plaintiffs' Motions and the rules were not enforced by Mr. Lafrenière. There have also been no directions made by Mr. Lafrenière in the absence of Defendant Responding Motion Records, from September, 2011 to May, 2012. It's as if Mr. Lafreniere was waiting on a negligent Crown to *provide* direction. The Plaintiffs view this as obstruction of Motions, *de facto.*"[10]

Paragraph D of the Hardys' written representations - "Mr. Lafrenière's Order of October 25, 2011 and the stay contained therein, was applied, to a valid Motion of Alternate Written Examination, *retroactively.* Lawful Discovery was, and continues to be, obstructed, without cause."

Paragraph U of the Hardys' written representations - "Time lost in the Application and the Action is now in excess of six (6) and eight (8) months, respectively due largely to manufactured delays. Motions that have a right to proceed have been stayed or ignored. The delay and the open bias in permitting the Crown such

excessive extensions of time are prejudicial, biased and contrary to Court Rules and obscene."

Paragraph T of the Hardys' written representations "…To date, legitimate Plaintiff Motions have been impeded or obstructed through repeated breach of Court Rule and aided by the blind eye of Mr. Lafreniere to Defendant rule transgressions and Plaintiffs concerns formally submitted..."

B. Collateral Attacks on Prothonotary Lafrenière's Orders of May 4, 2012 and October 25, 2011:

Paragraph O of the Hardys' written representations - "Mr. Lafrenière did not react to any evidence or reference that there were, in fact, *no grounds* for the stay he ordered on October 25, 2011, i.e.:
...8. In his Order of May 4, 2012, Mr. Lafrenière is extending Court deadlines and attempting to roll back the clock by a preposterous 6-9 Months, contrary to Court Rules, contrary to the fact that pleadings, by rule, are closed and to the biased and unbalanced benefit of the Crown."

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
...B) Granted a stay despite no grounds for such a stay and with evidence that there were no grounds to warrant such a stay. Mr. Lafrenière followed faulty, dubious and contrived claims made by the Crown without question;
…D) Accepted the Crown's bogus argument contrary to the incontrovertible evidence available and submitted with the Plaintiffs' Motions establishing that the Defendant's motions, and the stay on which they were based, were in fact, contrived and groundless;
…E) Ignored all Plaintiff evidence in relation to the bogus claims of the Crown and, as such, supported a wrongful and discriminatory delay in judicial due process and contrary to several statutes (including the Federal Courts Act) specifying that the representative is entirely at the discretion of the claimant;
...J) Rejected a Responding Motion Record, with further evidence that there were no grounds to stay under FCR 212 as referenced in the Order of October 25, 2011;"

Paragraph I of the Hardys' written representations – "Mr. Lafrenière ignored evidentiary exhibit of power of attorney contained in Plaintiff Motion Records and submitted to the Court independently. Why?"

Paragraph J of the Hardys' written representations – "Mr. Lafrenière rejected a further power of attorney submitted with a copy of the Veterans will and death certificate authenticating the Plaintiff's claims. Why?"

Paragraph K of the Hardys' written representations – "Mr. Lafrenière rejected proof that a substantial number of Federal Court cases are pleaded self-represented and that this fact is a matter of public record that a Federal Court Prothonotary would know or could easily verify. Why?"

C. Complaints that Prothonotary Lafrenière is preferentially applying the *Federal Courts Rules* to the benefit of the Attorney General. Allegations that Prothonotary Lafrenière, as a former employee of the Department of Justice, is favouring the Attorney General:

Paragraph H of the Hardys' written representations - "Mr. Lafrenière has exercised an obvious double standard in the application of Court Rules. Why?"

Paragraph Q of the Hardys' written representations - "As the Plaintiffs respected Court Rules from the outset, the Plaintiffs will resist any attempt by the Crown and Mr. Lafrenière to continue the bias in violating them. When the Crown fumbles the ball, Mr. Lafrenière gives it back to them."

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
0) Mr. Lafrenière is a past employee of the Defendant. Given the Court- accommodated Crown rule breaches, the repeated judicial obstruction, the lack of action on valid Plaintiff Motions and the resultant bias shown, the Plaintiffs believe Prothonotary Lafrenière has no business being a case management judge for T-1299-11 T- 1300-11."

D. Allegations that Prothonotary Lafrenière is a rubber-stamping "functionaire" *(sic)* of the Attorney General, that he can be influenced and that he is unduly subject to the Attorney General's influence.

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
0) Additionally, if a Crown Council *(sic)* feels entitled to write Mr. Lafrenière 's Orders for him (EXHIBIT 7), it would

appear that Prothonotary Lafrenière is a rubber-stamping "functionaire" *(sic)* of the Defendant, that he can be influenced and that he is unduly subject to the Crown's influence.

The Court should also note that the Crown Council *(sic)* wrote this (EXHIBIT 7) after the pending Appeal was served. The Plaintiffs believe this, too, shows deviousness, arrogance, influence-peddling and a Defendant view that the Court is subservient to the Crown ..."

E. Complaints that Prothonotary Lafrenière has ignored issues that Justice Harrington referred to him. Complaints that Prothonotary Lafrenière "ignored a viable alternative to merge T-1299-11 and T-1300-11 under FCR 300(a)..."

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
N) Ignored several questions referred to him by Justice Harrington in the Appeal (Exhibit 5) that quashed virtually all of the Crown's improper Motions. Justice Harrington referred many questions raised in the Plaintiffs *(sic)* Appeal Motion back to Prothonotary Lafrenière for direction and resolution. These points were repeated in correspondence to the Court which Mr. Lafrenière, at the Case Management Conference of May 1, 2012, ignored..."
P) Although the Plaintiff's received a favourable appeal decision to the first Mr. Lafrenière stay (Harrington Feb 16, 2012), the Plaintiffs, feel that Mr. Lafrenière had, never the less, no grounds to stay T-I 299-11 and T-1300-11, that questions referred to him in the Harrington Appeal Order were ignored and he has repeatedly acted contrary to the deciding statutes and in a manner totally inconsistent and contrary with Federal Court Rules…"

Paragraph L of the Hardys' written representations – "Mr Lafrenière did not act on a reasonable Plaintiff request that the Defendant be compelled to substantiate its claim that the Plaintiffs' representative was "disabled. Why?"

Paragraph 6 of the affidavit of Karl Hardy - "On September 7, 2011, the Plaintiffs filed a Motion of Consolidation and a Motion of Alternate Written Examination. The former was not given the alternative of Consolidation under FCR 300(a) in a Case Management Conference of May I, 2012. This alternative was skirted. The later Motion wasn't directed at all…"

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
M) Ignored a viable alternative to merge T-1299-11 and T-1300-11 under FCR 300(a) as a Consolidated Action. As this was not discussed and the Plaintiffs registered a question to the Court on this option before the Order (under appeal) was issued, the Plaintiffs have to suspect collusion between the Crown and Mr. Lafrenière. Prothonotary Lafrenière mislead the Plaintiffs in the Case management Conference of May I, 2012. The Plaintiffs were misinformed and pressured to accept separate processing of Application and Action when the means existed to consolidate them pursuant to the Plaintiffs' Motion of Consolidation filed on September 7, 2011 (Exhibit 5) with consideration of FCR 300(a).

The Plaintiffs believe that Consolidation of Application and Action, as a merged Action better serves the rational presentation of evidence in cases the Crown admits are *"intertwined and inter-related."* The Crown and Mr. Lafreniêre did not respond to the logic expressed in the Plaintiffs' Motion of Consolidation. Mr. Lafreniere ignored this Motion until May 1, 2012 when the Motion was dismissed without explanation of the option of FCR 300(a)."

F. Allegations that Prothonotary Lafrenière engaged in wrongful conduct during the May 1, 2012 in-person case management conference:

Paragraph 14 of the affidavit of Karl Hardy - "The Order of Prothonotary Lafrenière (Exhibit 3):
G) Did not act on or direct a valid Motion of Consolidation until trying to force an agreement on May 1, 2012 that excluded the option of FCR 300(a). The Plaintiffs view this as deception intended to aid the Crown;
K) ...The Case management Meeting was contrived with agenda items excluded and the outcome predetermined.
M) Ignored a viable alternative to merge T-1299-1 **I** and T-1300-11 under FCR 300(a) as a Consolidated Action. As this was not discussed and the Plaintiffs registered a question to the Court on this option before the Order (under appeal) was issued, the Plaintiffs have to suspect collusion between the Crown and Mr. Lafrenière. Prothonotary Lafrenière mislead the Plaintiffs in the Case management Conference of May 1, 2012. The Plaintiffs were misinformed and pressured to accept separate processing of Application and Action when the means existed to consolidate

> them pursuant to the Plaintiffs' Motion of Consolidation filed on September 7, 2011 (Exhibit 5) with consideration of FCR 300(a);"

G. **Allegations that the Prothonotary Lafrenière and Federal Court are not neutral:**

> Paragraph T of the Hardys' written representations – "The Plaintiffs feel that T-1299-1 1 and T-1300-11 should progress to a full, unbiased and expedient conclusion in a *neutral* court of law. To date, legitimate Plaintiff Motions have been impeded or obstructed through repeated breach of Court Rule and aided by the blind eye of Mr. Lafreniere to Defendant rule transgressions and Plaintiffs concerns formally submitted. This is hardly the actions of a rule-governed or neutral Court". [Emphasis in original]

Governing Legal Principles

[51] The legal principles applicable on a motion for recusal are well known: see *Wewaykum Indian Band v Canada*, 2003 SCC 45 (CanLII), 2003 SCC 45, [2003] 2 SCR 259. In short, the test for disabling bias is reasonable apprehension of bias.

[52] The genesis for the modern formulation of the test is contained in the dissenting judgment of Mr. Justice de Grandpré in *Committee for Justice and Liberty et al v National Energy Board et al,* 1976 CanLII 2 (SCC), [1978] 1 SCR 369, at 394:

> ...the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[53] There are a number of key legal principles that apply on motions for recusal or disqualification of a judicial officer.

[54] First, the onus of demonstrating bias lies with the person who is alleging its existence. "Mere suspicion" is not enough, and a real likelihood or probability of bias must be demonstrated: see *R v S (RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484, [1997] SCJ No 84 (QL).

[55] Second, the reasonable person referred to in the governing test must be "informed". A reasonable person must be informed not only of the relevant circumstances of the particular case, but also of the tradition of integrity and impartiality that are the backdrop for our judicial system and which are reflected in and reinforced by the judicial oath. In *R v S (RD),* above, Cory J. stated at para 116:

> Often the most significant occasion in the career of a judge is the swearing of the oath of office. It is a moment of pride and joy coupled with a realization of the onerous responsibility that goes with the office. The taking of the oath is solemn and a defining moment etched forever in the memory of the judge. The oath requires a judge to render justice impartially. To take that oath is the fulfilment of a life's dreams. It is never taken lightly. Throughout their careers, Canadian judges strive to overcome the personal biases that are common to all humanity in order to provide and clearly appear to provide a fair trial for all who come before them. Their rate of success in this difficult endeavour is high.

[56] Third, on an application which alleges bias by a case management judge, the applicant must establish that a reasonable, right-minded and properly informed person, viewing the matter realistically and practically, would view the case management judge's continued involvement as

consciously or unconsciously biased as a result of his or her prior participation in other matters involving the moving party. Bias in such circumstances means a predisposition to decide the issues in a way which would suggest that the case management judge's mind was not completely open.

[57] Fourth, as there is a strong presumption in favour of judicial impartiality, the alleged grounds advanced to support recusal must be serious and convincing.

[58] Fifth, a decision to recuse oneself should only be exercised sparingly and in the most clear and exceptional circumstances.

Analysis

[59] There are no "textbook" cases of bias. In each case, the inquiry is highly fact-specific.

[60] The Hardys believe that my recusal is required as a means to remedy perceived injustices. However, their subjective opinion about the wisdom of my decisions or the propriety of my conduct is not relevant to the purely objective test that applies on motions for recusal. The threshold for a finding of real or apprehended bias is high because it calls into question not simply the personal integrity of the case management judge, but the integrity of the entire administration of justice. What was required is objective, reliable and cogent evidence.

[61] The facts affirmed by Karl Hardy in his affidavit are a confused and jumbled hodgepodge of argument, innuendo, mistaken understandings, and incorrect interpretations of *Federal*

Courts Rules. The affidavit is woefully short on objective, specific facts in respect of any of the bias allegations.

[62] More concerning, the facts asserted by Mr. Hardy are highly selective, self-serving and misleading. By way of example, references to important facts, such as the Hardys' initial agreement to consent to the Crown's request for an extension of time, and Mr. Justice Harrington's explicit dispensation of the requirement that the Crown serve and file a defence in T-1300-11 pending further order of the Court, are missing. Moreover, the Hardys have not reproduced the transcript of the case management conference held on May 1, 2012, during which I am alleged to have somehow "misinformed and pressured" them. The Court is left to surmise about the facts underlying the Hardys' complaint.

[63] It is not uncommon for a litigant, when a decision does not go its way, to attribute the decision to bias or an appearance of bias on the part of a judge: see *Sawridge Band v Canada*, 1997 CanLII 5294 (FCA), [1997] 3 FC 580 at paras 11 and 12. A litigant should not be allowed to avoid a case management judge by simply casting aspersions on his or her character, integrity and motives. As explained by Mr. Justice Mason in *Re JR.* (1986), 161 CLR 342 (HC), at paragraph 5:

> Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking disqualification of a judge, they will have their case tried by someone thought to be more likely to decide in their favour.

[64] For the reasons stated by Mr. Justice Veit in *Broda v Broda*, 2000 ABQB 948 (CanLII) at para. 23, it is vitally important that the judge who faces an allegation of reasonable apprehension of bias or actual bias not yield to temptation and "take the easy way out". The Court must be careful to ensure that important rights are not sacrificed merely to satisfy the anxiety of those who seek to have their own way at any cost or price: *GWL Properties Ltd v WR Grace & Co of Canada Ltd* 1992 CanLII 934 (BCCA) at para. 13.

[65] It is also important that the Court take to task a party that advances unfounded or specious allegations of bias or impropriety. As stated by Justice Russell in *Sawridge Band*, above, at para. 156:

> …I believe our legal system depends upon the assumption that judges must be presumed to be impartial. This does not mean that counsel should be intimidated or chary of challenging decisions or judicial conduct where the circumstances warrant it. Our system presumes judges to be impartial, but it also depends upon forthright and intrepid counsel to raise the alarm when they think an apprehension of unfairness has entered the process. Much depends upon the sound judgment and good faith of counsel. There are checks and balances that should ensure applications are only brought in appropriate circumstances. However, if the Court feels the allegations are not appropriate, it must be equally forthright in identifying what it sees as any abuse, bad faith, or irresponsibility on the part of counsel. The respective duties of judge and counsel demand plain speaking on what can be somewhat delicate issues. But, in my view, the fairness and integrity of our judicial system demands that appearance of bias applications not be handled with coyness. They strike at the heart of the administration of justice and undermine public confidence in the impartiality and integrity of the judiciary. Allegations are easy to make and difficult to repel. They must be dealt with openly and firmly.

[66] The Crown submits that a reasonable and right-minded person, fully apprised of all of the facts, would conclude that I have been impartial, reasonable and fair vis-à-vis the Hardys. I adopt and make mine the Crown's comprehensive written representations.

[67] I find that many of the Hardys' complaints and allegations have, at their root, their subjective interpretations of *Federal Courts Rules,* and misunderstandings about Federal Court procedure, the law, and the litigation process. Having little understanding of the Rules, the Hardys prefer to point to my case management of the proceedings as the cause of their difficulties.

[68] I also find that the Hardys' allegations of obstruction, delay and favouritism constitute a collateral attack on decisions of this Court that are *res judicata* - in particular those of Justice Harrington dated February 16, 2012 and Justice Zinn dated July 17, 2012. Having failed to appeal Justice Harrington's decision and having abandoned their appeal from Justice Zinn's decision, it is no longer open to the Hardys to revisit their findings.

[69] I further find that the Hardys' allegations against me are seriously undermined by the delay in bringing the present motion. It is important to remember that the Hardys attempted to file a motion for my recusal back in December 2011. At that time, the only substantive decision that I had rendered was in relation to the Crown's motion to stay the proceedings pending the appointment of a solicitor. The Hardys submit that I erred in granting the Crown's motion and that they were vindicated on appeal; however, that is simply not the case. Justice Harrington essentially conducted a hearing *de novo* based on additional evidence that was not before me.

The Hardys decided not to proceed with their motion for recusal after Justice Harrington's decision. Rather, like the sword of Damocles hanging figuratively over me, the Hardys repeatedly threatened to reactivate their motion in an attempt to keep me in line. Such intimidation tactics are highly offensive and cannot be condoned.

[70] The Hardys baldly state that I favoured the Crown because I was a former employee of the Department of Justice. A judge's impartiality is presumed and a party arguing for disqualification must establish that the circumstances justify a finding that the judge must be disqualified: see *Wewaykum*, above. No such circumstances have been established by the Hardys. A reasonable person, viewing the matter realistically, would not conclude that my ability to remain impartial was affected by my previous employment with the Department of Justice dating back over 14 years.

[71] Establishing that a judge has certain beliefs or opinions is not enough to require recusal. It must be shown that those beliefs or opinions prevent the judge from setting aside preconceptions and coming to a decision on the basis of the evidence. In the case of a case management judge, it has been held that the fact that the judge may have heard prior motions and may be influenced by what was heard and decided in such motions is not a basis for recusal.

[72] In *Control & Metering Ltd v Karpowicz*, 1994 CanLII 7233 (ON SC), the applicant sought an order that the case management judge assigned to the action be replaced, alleging a reasonable apprehension of bias. Mr. Justice MacDonald noted that fairness does not require that each interlocutory motion in an action be considered in a judicial vacuum and that "as long as the degree of prejudgment does not go beyond the powers and duties imposed by the statute, that

prejudgment cannot give rise to a reasonable apprehension of bias." Justice MacDonald concluded at para. 44 of his reasons that such aspects of prejudgment are quite different from a closed mind.

> In the case at bar, given the purpose of the case management rules, the public interests they address and the discretionary powers they give to the case management judge, I am of the opinion that the applicant must establish an apprehension, reasonable in the circumstances, that the case management judge's views are such that she is no longer capable of being persuaded by evidence to be filed (if any) and legal arguments to be raised in subsequent motions, in order for her to be disqualified. The apprehension that she may well take into account in subsequent motions the views of the facts and legal issues which she formed in prior motions is well founded. That is what the case management rules mandate. That cannot, however, give rise to an apprehension of bias sufficient to disqualify the judge because that is precisely what the rules mandate.

[73] When the Hardys' complaints and allegations are assessed objectively on the basis of the entire record, it becomes abundantly clear that the allegations do not meet the high threshold required.

Conclusion

[74] At the center of this entire application is the answer to a single question: "What would a reasonable and right-minded person have discovered if he had taken the time and trouble of informing himself of the true situation?"

[75] I am satisfied that a reasonable and right-minded person, fully apprised of all of the facts, would conclude that my involvement in the two proceedings has been impartial, reasonable, fair and justifiable. Accordingly, the Hardys' motion shall be dismissed.

Costs

[76] The Crown submits that the scurrilous manner in which the Hardys have approached this motion, and the fact that this motion is, essentially, the Hardys' second "kick at the can" warrants the imposition of costs on an increased scale. The Crown has requested an opportunity to make written submissions on the issue of costs following disposition of the motion.

[77] In a Notice of the Parties and Profession dated April 30, 2010 entitled "Costs in the Federal Court", the former Chief Justice Allan Lutfy directed that parties be prepared to address the issues of disposition and/or quantum of costs before the end of the hearing. This practice direction was intended to reduce any unnecessary delay and expense that may result from the taxation of costs. The same should apply to motions in writing.

[78] In the case at bar, I see no reason to deviate from the general rule that costs should follow the event. In terms of quantum, I agree with the Crown that costs on an increased scale should be awarded. The Hardys have made baseless and unnecessarily inflammatory and derogatory allegations against the Court and presented lengthy, unfocused, and irrelevant materials. I am satisfied that special costs, fixed in a lump sum and payable forthwith, ought to be awarded against the Hardys for having brought a wholly improper and vexatious motion, deserving of reproof.

ORDER

THIS COURT ORDERS that:

1. The motion is dismissed.

2. Costs of the motion, hereby fixed in the amount of $2,500.00, inclusive of disbursements and taxes, shall be paid by the Applicants forthwith and in any event of the cause.

3. The Registry is directed to place a copy of this Order in Court File No. T-1300-11.

"Roger R. Lafrenière"

Case Management Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1299-11
STYLE OF CAUSE:	**THE ESTATE AND SURVIVORS OF MORDRED HARDY, VETERAN** v **THE ATTORNEY GENERAL OF CANADA**

MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA, PURSUANT TO RULE 369

REASONS FOR ORDER AND ORDER:	**LAFRENIÈRE P.**
DATED:	July 2, 2013

APPEARANCES:

Karl Hardy	FOR THE APPLICANTS (ON HIS OWN AND THEIR BEHALF)
Deborah Babiuk-Gibson	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Karl Hardy	FOR THE APPLICANTS (ON HIS OWN AND THEIR BEHALF)
William F. Pentney Deputy Attorney General of Canada	FOR THE RESPONDENT