May 14, 2009

IN THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: JOHN WILLIAM DUNCAN NICHOLSON, NATIONAL BANK FINANCIAL LTD. and EDWARD GORDON ALEXANDER PERCIVAL

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair:	Mr. J.W. Hedley
Panel Members:	Mr. D.G. Murray
	Mr. G.J. Lillies

Appearances:

Ms. K.G.R. Laycock	)	Counsel for the Commission
Mr. J. B. Kroft	)	
Mr. D.M Wright	)	Counsel for the Respondents
E. Szach	)	On behalf of Attorney General
	)	of the Province of Manitoba

INTRODUCTION

1. On April 22, 2008, staff of The Manitoba Securities Commission (the "Commission") directed a Statement of Allegations against John William Duncan Nicholson, National Bank Financial Ltd., and Edward Gordon Alexander Percival (collectively, the "Respondents"). The allegations arose out of transactions involving a "Ms. S". The Statement alleged a number of unsuitable transactions recommended by one or more of the Respondents - transactions in which all the Respondents were involved either directly or as imputed by the provisions of securities legislation.

2. The matter had been set down for a hearing on the merits but the Respondents have made an interlocutory motion for:

1. an order directing that the Commission apply to the Court of Queen's Bench for a determination as to whether certain sections of *The Securities Act* of Manitoba (the "Act") are constitutionally valid.
2. alternatively,
a) a declaration that the said constitutional question of law be heard and determined by the Commission prior to the hearing, that is the aforementioned hearing on the merits; and
b) a declaration that the subsections of *The Securities Act* are unconstitutional as *ultra vires* the Legislature of the Province of Manitoba and invalid, inapplicable or inoperable.
3. in the further alternative, a declaration as to whether the general/common law applies to issues of liability and damages in respect of claims for compensation under section 148.2.

3. The Statement of Allegations contains a Director's "request", as prescribed in the legislation, that this panel order financial loss compensation (sometimes referred to as a compensation order, or a financial loss claim, or "FLC"), to Ms. S pursuant to subsections 148.2(1), (3) and (4) of the Act.

4. Subsections 148.2(1), (3) and (4) of the Act are as follows:

148.2(1) On the application of a claimant, the Director may, when the commission holds a hearing about a person or company, request it to make an order that the person or company pay the claimant compensation for financial loss.

148.2(3) When so requested by the director, the commission may order the person or company to pay the claimant compensation of not more than $100,000 for the claimant's financial loss, if after the hearing the commission

(a) determines that the person or company has contravened or failed to comply with

(i) a provision of this Act or the regulations,
(ii) a direction, decision, order or ruling of the commission, or a rule made under subsection 149.1(1),
(iii) a written undertaking made by the person or company to the commission or the Director, or
(iv) a term or condition of the person or company's registration;

(b) is able to determine the amount of the financial loss on the evidence; and
(c) finds that the person or company's contravention or failure caused the financial loss in whole or in part.

> 148.2(4) If the contravention or failure occurs in the course of the person or company's employment by another person or company, or while the person or company is acting on behalf of the other in any other capacity, the commission may order the other person or company to jointly and severally pay the claimant the financial compensation ordered under subsection (3).

5. There are other motions pending but the issues now to be dealt with are those raised in the constitutional motion, leaving for a later date disclosure and procedural issues raised by counsel for both staff and the Respondents.

6.The Respondents question the constitutional validity of Section 148.2 of *Act*. They state that it creates a regime for consideration and adjudication of claims for financial loss. This, as the argument goes, would confer on the Commission powers reserved by Section 96 of *The Constitution Act* for Superior Courts. The Respondents say that, if their position is correct, they should be relieved of having to submit to the FLC aspects of the hearing on the merits.

7. To the Respondents, a hearing without a compensation claim would be fundamentally different from a hearing with a compensation claim in substantive areas such as discovery, disclosure and fact-finding on the part of the Commission.

PORTFOLIO

8. The issues raised in the Respondent's constitutional motion resemble, in many respects, those raised before the Manitoba Securities Commission in the matter of *Portfolio Strategies Corporation, John David Griffiths and Randy Kenneth Reynolds,* M.S.C.Decision Document 2007-11-27 ("*Portfolio*"). In *Portfolio*, the Commission panel answered the following questions.

> 1. Does the Manitoba Securities Commission (the "Commission") have jurisdiction to decide the constitutional issue being raised?
>
> 2. If the Commission does have jurisdiction to decide the constitutional issue, at what stage of the hearing should the Commission exercise it?
>
> 3. Should the Commission refer the constitutional issue to a Judge of the Court of Queen's Bench pursuant to Section 31 of *The Securities Act*?

9. The Portfolio panel decided to hear the *Constitution Act* challenge and not to refer it to the Court of Queen's Bench. It further decided to deal with the constitutional challenge after the hearing on the merits, not before.

10. We will be referring to and quoting from *Portfolio* in these Reasons. However, the Respondents have raised their own arguments in their effort to convince the Commission to refer the Section 96 *Constitution Act* issue to the Court of Queen's Bench and to do so now. Moreover, no tribunal is bound by its own decisions.

11. The Respondent's have strenuously argued that the Section 96 constitutional question ought to be decided once and for all. The non-binding nature of *Portfolio* is raised as an example of why the Courts should be asked to step in and deal with the issue rather than run the risk of having it surface every time a Section 148.2 FLC is brought to the Commission.

THE RESPONDENTS: COURT or TRIBUNAL

12. The "Section 96 argument" is that Section 96 of the *Constitution Act, 1982*, provides that the determination of civil claims and the awarding of financial compensation is within the purview only of federally appointed Superior Court Judges.

13. At the heart of the Respondents' argument is the proposition that the provincial legislature of Manitoba, in incorporating S. 148.2 into its securities statute has gone too far in bestowing a "civil" jurisdiction upon a provincial entity ill-equipped to deal with it. It is conceded that the Securities Commission is equipped to regulate and adjudicate on matters relating to the fitness of participants in financial markets. However, the Respondents argue that to add a civil component, in the form of compensation claims, to determinations of fitness of character and competence of market intermediaries is inappropriate. They argue it should not be done (not, we note, that it cannot).

14. They also have argued that it would take a Superior Court Justice to make such a determination without interference or conflict of interest, perceived or real.

15. The Respondents have cautioned that the civil jurisdiction inherent in the Section 148.2 claim creates a "new substantive jurisdiction" and is not simply an add-on or adjunct to the fitness determinations which Securities Commissions have made time and time again. Respondent's counsel raised many examples in argument of elements of the compensation hearing which would not otherwise take place if fitness were the only criterion at issue. The examples given are issues of causation, tax issues, quantification of compensable loss or opportunity cost. They have raised concerns over counsel being disadvantaged in their ability to fully defend their clients due to the lack of civil discovery procedures otherwise available in the Court of Queen's Bench.

16. So the "new substantive jurisdiction", to the Respondents, goes beyond the commonplace subject matter of a fitness hearing and should not be dealt with by an administrative tribunal such as this panel.

17. Counsel for the Respondents noted one of the cases cited by the counsel for the Attorney General of Manitoba, *R. v Zelensky*, [1978] 2 S.C.R. 940. *Zelensky* is noteworthy because it was cited by both sides of the jurisdiction argument as exemplary either of a Court's approving or disapproving of the compensation provision of a punitive statute (in *Zelensky* the *Criminal Code of Canada*). The Court examined Section 653 of the Criminal Code, a compensation section not dissimilar to Section 148.2 of *The Securities Act*. The Supreme Court of Canada stated that:

> "Section 653 does not spell out any procedure for resolving a dispute as to quantum: its process is, *ex facie*, summary but I do not think that it precludes an enquiry by the trial judge to establish the amount of compensation so long as this

> can be done expeditiously and without turning the sentencing proceedings into the equivalent of a civil trial or into a reference in a civil proceeding."
>
> "It must be obvious, therefore, that Section 653 is not the platform upon which to unravel involved commercial transactions in order to provide monetary redress to those entitled thereto as against an accused. The latter, too, may have a proper interest in insisting that civil proceedings be taken against him so he may avail himself of the procedures for discovery and production of documents, as well as of a proper trial of issues which go to the merit of monetary claims against him." (emphasis added)

18. The issue of compensation in *R. v. Zelensky*, and cases like it, was summarily determined on the facts of the case before a provincial judge. However, the Respondents say *R. v. Zelensky* also contains cautionary language, as highlighted in the preceding paragraphs, that the fact-finding process in some compensation hearings can blossom into a "serious contests on legal or factual issues". In such cases – complex cases such as the one envisioned in the matter before us by Respondent's counsel – the Supreme Court's observations should, according to the Respondents, serve as warnings of restraint and caution toward adjudicators in criminal or fitness cases alike.

THE RESPONDENTS: TIMING

19 . The argument that a Civil Court is the appropriate place for adjudicating compensation claims, because such claims require procedural and evidentiary mechanisms, is also used as an argument that the decision on the validity of Section 148.2 needs to be made now, not later. So it is argued that the cases supporting Court intervention also support immediate determination on the constitutional validity of the impugned section.

20. The Respondents have to deal with allegations regarding their fitness and conduct in the context of the facts alleged. Should they also have to address evidence, of a potentially complex nature, relating to compensation if the Commission does not have the jurisdiction to order compensation in the first place?

21. In the case of *Ermineskin Cree Nation v. Canada (Canadian Human Rights Tribunal)* [2002] 297 A.R. 226, the Ermineskin First Nation applied to the Alberta Court of Queen's Bench for a declaration regarding the Canadian Human Rights Act and its applicability to the First Nation. The Court decided that a declaration of invalidity should be made by the Court, not the tribunal:

> "The tribunal may provisionally decide the constitutional issue, but it is not competent to give a declaration of invalidity……. (I)t would be in the interest of judicial economy to have it litigated with some finality."

The Court further stated that leaving the issue of constitutionality to a tribunal would disregard the important assertion that the tribunal does not have jurisdiction at all to deal with the matter before it (in *Ermineskin*, a human rights claim against a First Nation and, in the present case, a claim for compensation). That, according to the Respondents, is analogous to the present case and states that it makes no sense to embark into a hearing on substantive issues which

subsequently could be held to have been dealt with in the wrong forum. Quoting from the Respondent's Brief: "It is submitted that the Commission should not apply Section 148.2 if it is invalid."

22. Both the Attorney General and Commission staff have cited cases in support of their contention that the courts prefer to address constitutional issues after the merits of a case have been dealt with. One of the reasons cited is that constitutional cases should not be heard in a "factual vacuum", a concept to which we will refer later in this Decision. The cases of *R. v. Mills* [1999] 3 S.C.R. 944 and *R. v. DeSousa,* [1992] 2 S.C.R. 668, both Supreme Court of Canada cases, are cited by the Respondents as supporting the proposition that a determination of constitutionality can be made without first dealing with the merits where no further facts were required to resolve the constitutional issues raised. Although, in both cases, the Court refers to the "general rule that constitutional challenges should be disposed of at the end of a case", exceptions to the rule were permitted on the ground that such determination was not dependent on facts to be elicited during the trial.

23. The Respondents further cited the case of *Re: A et. al.,* 30 O.S.C.B. 6921as an example of a "common sense" approach, highlighting the principles of fairness and efficiency which the Respondents say should be applied in determining when the constitutional issue ought to be dealt with. The respondent in *Portfolio,* relying in part on *Re: A,* argued that it would be unfair to go through a hearing which could stand to be partially nullified after thefact. *Re: A* is a case decided by the Ontario Securities Commission (the "OSC") and is a charter case. The main issue was "whether the constitutional motions brought by the Respondents ought to be heard at the hearing, to be dealt with at the discretion of the hearing panel, rather than in advance of the hearing." The OSC, in reaching its conclusions set forth various tests, reproduced as follows:

> 1. Can the issues raised in the motion be fairly, properly or completely resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits? In other words will the evidence relied on in the motions likely be distinct from, and unique of, the evidence to be tendered at the hearing on the merits?
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> 2. Is it necessary for a fair hearing that the relief sought in the motions be granted prior to the proceeding on its merits?
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> 3. Will the resolution of the issues raised in the motions materially advance resolution of the matter, or materially narrow the issues to be resolved at the hearing on the merits such that it will be efficient and effective to have them resolved in advance of the commencement of the hearing on the merits?

The OSC went on to say: "if the answer to any of those questions is "yes", in our view the Commission should hear the constitutional motions as pre-hearing motions, in advance of the hearing, absent strong reasons to the contrary."

24. The Respondents argued that all of those questions can be answered "yes" in the present case.

25. The argument for the first question advanced by the OSC panel is that, to be realistic, no facts could be adduced to the hearing on the merits which would have any bearing on the validity of Section 148.2. That is: "It's either valid or its not".

26. As to question 2, going to the fairness principle, the rights of the Respondents and indeed the claimant could be affected, post-hearing, if the impugned Section were to be declared invalid. In this regard, the Respondents' argument dealt with the admission of evidence harmful to the Respondents which could later be deemed irrelevant. A further possibility, as cited by the Respondents, could be that the claimant might lose her rights if the Section were to be struck down after the hearing on merits. This latter possibility stems from subsection 148.2 (9) of the Act which precludes a civil action in circumstances where a matter in which a compensation claim is included has opened before a panel of the Commission.

27. The Respondents deal with question 3 in *Re: A* by proposing that dealing one way or another with Section 148.2 might serve to narrow the issues and might materially advance resolution of the matter. Certainly the tribunal's hearing would be much different, one way or another, depending on the determination as to whether Section 148.2 is valid or invalid.

28. The Respondents have submitted that the "Adjudicative Restraint" argument, applied in *Portfolio*, should not be used to justify a hearing which an administrative panel does not have the right in the first place to hold.

29. As indicated the motion argued in *Portfolio* bears many resemblances to the instant case. There are some differences however and they arise partly from the dynamics of this case, compared to *Portfolio*.

30. In *Portfolio*, the moving party was not going to be involved in the fitness hearing. There was no actual wrongdoing alleged against the Respondent Portfolio Strategies Corporation; however, it was exposed to a Section 148.2 Financial Loss Claim arising out of its relationship with the other Respondents. It therefore argued that, by having to "sit through" a hearing on the merits in advance of a constitutional determination, it would be inconvenienced and put to costs out of proportion with its role in the hearing.

31. The Respondents in this case have made it plain that they will all be engaging themselves in the hearing and, by the same token, wish to engage the complainant. They compare the process, as it involves the issue of compensation, to a civil trial.

32. So, the Respondents submit that S. 148.2 is not only outside the Commissions' jurisdiction to adjudicate but also outside its area of competence; it is only fair that these facts be determined before a hearing on the merits.

STAFF and the ATTORNEY GENERAL: COURTS or TRIBUNAL

33. We now turn to the submissions of the Attorney General and of staff.

34. The Respondents' essential submission, on the question of who should hear the constitutional issue is framed more as a question of which entity is better equipped to hear civil claims, an administrative tribunal or a Superior Court. As a result, counsel for Staff and the Attorney General had to argue in reply, not only the same case made in *Portfolio,* but also the issue of the tribunal's competency relative to that of the Courts.

35. Regarding the matter of constitutional determinations, the panel in the *Portfolio* case considered leading Supreme Court cases on the subject of whether it has the jurisdiction to consider constitutional matters.

36. As stated in the submission on behalf of the Attorney General:

> "The leading case on the jurisdiction of an administrative tribunal to decide a constitutional challenge to a provision of its constituent statute is the decision of the Supreme Court of Canada in *Martin/Laseur. (Martin v. Nova Scotia (Workers' Compensation Board)* 2003 CarswellNS 360 (S.C.C.) The Court conducted a lengthy review of the prior jurisprudence on this question and set down a comprehensive test for determining whether a particular tribunal has the necessary jurisdiction."

37. In the staff's submission, specific reference is made to the *Portfolio* case and, therein its examination of the *Martin/Laseur* case, the latter cited as the leading authority on the issue of the Commission's jurisdiction. The following *Martin/Laseur* tests were submitted as determinative of the method by which the jurisdictional question must be answered:

> 1. "The current, restated approach to the jurisdiction of administrative tribunals to subject legislative provisions to charter scrutiny can be summarized as follows:
>
> > 1. The first question is whether the administrative tribunal has jurisdiction, explicit or implied, to decide questions of law arising under the challenged provision.
> >
> > 2. a) explicit jurisdiction must be found in the terms of the statutory grants of authority;
> > b) implied jurisdiction must discerned by looking at the statute as a whole. Relevant factors will include the statutory mandate of the tribunal in issue and whether deciding questions of law is necessary to fulfilling this mandate effectively; the interaction of the tribunal in question with other elements of the administrative system; whether the tribunal is adjudicative in nature; and practical considerations, including the tribunal's capacity to consider questions of law. Practical consideration, however, cannot override a clear implication from a statute itself.
> >
> > 3. If the tribunal is found to have jurisdiction to decide questions of law arising under a legislative provision, this power will be

> presumed to include jurisdiction to determine the constitutional validity of that provision under the charter.
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> 4. The party alleging that the tribunal lacks jurisdiction to apply the charter may rebut the presumption by:
>
> > a) pointing to an explicit withdrawal of authority to consider the charter; or
> > b) convincing the Court that the examination of the statutory scheme clearly leads to the conclusion that the legislature intended to exclude the charter (or a category of questions that would include the charter, such as constitutional questions generally) from the scope of the questions of law to be addressed by the tribunal. Such an implication should generally arise from the statute itself, rather than from external considerations.

38. Staff counsel argued, with the support of relevant cases and legislation, that the implied jurisdiction on the part of the Commission to decide questions of law has been established.

39. A similar analysis took place in *Portfolio*:

> "The authority of the tribunal flows from the existence of the statutory authority to decide questions of law. Although there is no such explicit authority, a referral to Section 31(1) of *The Manitoba Securities Act* appears to imply authority to determine questions of law because the Commission has, under that section, the authority to refer questions of law to the Court of Queen's Bench."
>
> "The section does not state that the Commission is required to refer questions of law to the Court but rather states that it <u>may</u> do so. The argument goes that this language implies that the Commission itself may determine questions of law or refer such matters to the Court of Queen's Bench at its own discretion. So, the Attorney General argues that the tests set forth in the *Martin/Laseur* case do not impede the ability of the Commission to make decisions on constitutional challenges."

40. As we have mentioned, the *Portfolio* panel ultimately determined that, even in view of the cautionary approach recognized by counsel for the Attorney General and the Respondents in this case, the Commission has the <u>duty</u> to make the constitutional determination on its own unless, as a matter of discretion, it resorts to Section 31 of *The Securities Act* by referring the question to the Court of Queen's Bench of Manitoba.

41. The notion that the Commission has a duty to determine constitutional challenges to its constituent legislation, as opposed to the right to do so, is addressed by the Attorney General in this way: The Commission <u>may</u> not have the jurisdiction; there are no known cases which

establish, with any truly binding quality, the ability of an administrative tribunal to construe its own legislation. That, it is argued, does not mean that the Commission does not have jurisdiction. So the best solution is simply to do what the legislation directs the Commission to do, that is to conduct a hearing and make a decision in keeping with the provisions, and indeed the spirit, of the *Act*.

42. As to the argument mounted by the Respondents regarding the competency, or "new substantive jurisdiction" issue, counsel for staff and the Attorney General argue that it is permissible to hold a hearing on compensation as an adjunct to a hearing as to fitness - that the notion of compensation for victims flows naturally from a finding that a wrongful act occurred resulting in a victim's loss. Staff counsel argues that the adjudicative process set up by *Act* is a product of the Commission's comprehensive jurisdiction to regulate securities legislation in this province. The Commission is suited to examine issues of loss resulting from improprieties on the part of market participants. Why should that be perceived as complicated in its application when seen in the context of the Commission's expertise in the area?

43. Counsel for staff takes the position that the Commission is adequately equipped to deal with compensation claims - it has actual experience in doing so, procedural policy is in place and practices have been developed around previous compensation claims.

STAFF and the ATTORNEY GENERAL: TIMING

44. Whether or not this panel opts to take on the constitutional jurisdiction or make a Section 31 referral to the Court of Queen's Bench, the question remains as to when this should be done.

45. In Portfolio, the panel rested its decision as to "when" on what is being called the adjudicative restraint or ripeness test. The *Portfolio* panel stated that "the argument to be preferred is……that a constitutional challenge should not be heard on an interlocutory basis until it is unavoidable to do so in the circumstance of the case……the reluctance of the courts to decide on a constitutional challenge at the interlocutory stage is well established, well documented and practical in its application."

46. The panel in Portfolio observed that the case against the moving party had not been proved; it was merely a set of allegations and that is the "factual vacuum" from which the decision to deal with the constitutional challenge later should flow. Their view was that a hearing of this nature should take place after the fitness hearing as the findings of the fitness hearing may result in a decision that there was no wrong-doing. In that case there would of course be no hearing about financial compensation and, as the result, no need to deal with the constitutional question.

47. That is the point of view taken by the *Portfolio* panel and we have to decide whether or not to follow the same course.

CONCLUSION

48. The Respondents argue that the case for compensation belongs in court, whether it is the court itself or this Commission which makes that determination. This is because the financial

loss claim is a civil claim and a complex one. How can an administrative tribunal deal with it efficiently and fairly? The Respondents say that the regime established by the Manitoba Securities Act does not meet the standards set by a federally constituted Civil Court. They argue that the legislation went too far in encroaching onto federal court territory but it is the legislation under which this Commission operates and operates on a daily basis.

49. Some of the concerns raised in this context by the Respondents are systemic in nature and the lack of discovery procedures is cited as an example of how defending counsel can be placed at a disadvantage as a result. In Commission proceedings, for example, the aggrieved investor is not a "party" to the process. While Commission counsel will provide all relevant documents on file and issue subpoenas on behalf of a respondent to compel production of documents from third parties, there is no facility for examination for discovery.

50. Administrative tribunals were set up, Securities Commissions included, as means of providing timely decisions in areas of regulated activities by people with expertise in a particular area. They were developed, in order to allow for their proper operation, without the need to follow the established rules of evidence for civil proceedings. The Securities Commission, like other administrative tribunals, determines its own procedures. The Commission does not offer all of the processes of discovery available in a civil proceeding in the Court of Queen's Bench. It has always been this way. The Commission does not purport to be a Court. It is an administrative tribunal.

51. No doubt, over the years, some who have appeared at Commission hearings must have felt that they could have more fully defended their positions concerning the nuances of their advice to clients and the suitability thereof if they had access to full discovery procedures. This however, in our view, is not how the tribunal was intended to be structured. We believe this is also why the Courts have final oversight of Commission decisions. If, despite the best efforts of a panel of the Commission, it is perceived that an injustice has been worked, the Courts can be asked to review a decision and set the matter right in a number of ways.

52. Moreover, the Courts are entitled to accord varying degrees of deference to decisions taken by administrative tribunals. If the Respondents are right in their characterization of the expertise, or lack thereof, on the part of tribunals to determine matters of compensation, logic would suggest that the argument could later be made to Court that less deference should attach to that element of the tribunal's decision, as compared to a decision as to fitness and conduct alone.

53. Having so stated, this panel does not see a material difference between determining the appropriateness of conduct or suitability of advice and determining compensable losses that may flow from these activities within the scope of securities transactions. In fact, due to developed familiarity with appropriate conduct expected in securities transactions and knowledge of the rules of the relationship between adviser and investor, we believe that the panel members have an insight into the areas from which losses may flow that make the Commission the right body to hear matters like the one before us in the first instance. While making a fair and just decision is always a concern, the absence of pre-trial procedures and similar evidentiary processes employed by the Courts is not sufficient reason, in our view, not to proceed with fulfilling the Commission's statutory mandate.

54. In our opinion, the only reasons a panel of the Commission must decline to hear a matter is if it clearly does not have jurisdiction under The Securities Act or otherwise at law. We find here, as the panel did in *Portfolio*, that this panel has jurisdiction under the Act to proceed with the fitness hearing and compensation claim. As set out above, we believe that the state of the law not only supports, but in essence obligates, the Commission panel to hear the case placed before it.

55. The last question is when the constitutional challenge should be heard. As in *Portfolio*, the panel accepts the argument that it should be heard only when it has become clear that the case presents an actual fact situation that is challengeable. That can only occur after a hearing on the merits.

56. We therefore deny the first of the three parts of the Respondents' motion and will not refer the constitutional issues raised by the Respondents to the Court of Queen's Bench.

57. In response to the second paragraph of the Respondents' Motion, we will proceed with the fitness hearing. At the conclusion of the fitness hearing, we will adjourn and, if called upon to do so as a result of the findings made in the fitness hearing, the Respondents may then proceed with their arguments on the constitutionality of Section 148.2.

58. We have also dealt with the third paragraph of the Motion before us by stating that this tribunal will, consistent with long-standing precedent, establish its own rules of procedure and conduct itself according to its constituent legislation. There will be no declaration that "the general/common law applies to issues of liability and damages in respect of claims for compensation" as requested.

"J.W. Hedley"
J.W. Hedley

"D.G. Murray"
D.G. Murray

"G.J. Lillies"
G.J. Lillies