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Court No: 26005

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR NEW BRUNSWICK)

BETWEEN:

JEANNINE GODIN,

APPELLANT

AND:

MINISTER OF HEALTH AND COMMUNITY SERVICES, LAW SOCIETY OF NEW BRUNSWICK, LEGAL AID NEW BRUNSWICK, ATTORNEY GENERAL OF NEW BRUNSWICK and THE MINISTER OF JUSTICE,

RESPONDENTS

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PART I

FACTS

1. On April 29, 1994, Mr. Justice Logan made an order granting the Respondent Minister of Health and Community Services custody of the Appellant's children (Robin Wegg born March 22, 1987, Jasmine Vezina Born May 8, 1989, and Clayton Vezina born April 26, 1991) for a period of up to six months. At that hearing the present Appellant was not represented by counsel but did have the assistance of a friend who did not have any legal training.
(p. 86 *All page references are to the pages as set out in the Case on Appeal)

2. By Notice of Application served on the Appellant on October 24, 1994 and returnable on October 27, 1994 the present Respondent Minister of Health sought an extension of the order for a further period of up to six months.
(pp. 1, 12)

3. On October 27, 1994, at the initial appearance of the Appellant, Duty Counsel for the Appellant raised with the Court the Appellant's concern that, since she did not wish to consent to the custody application and would therefore require a full hearing, given the nature of the proceedings against her, counsel ought to be provided. The Court granted counsel's request for an opportunity to advance such a claim.
(pp.24-25)

4. The Appellant applied to Legal Aid New Brunswick, for legal aid on November 1, 1994 and was advised on November 2, 1994 that her application was denied on the grounds that the proceeding involved a custody application as opposed a guardianship application by the Minister of Health and Community Services for which limited legal aid was available.
(p. 23)

5. On November 2, 1994, Appellant's counsel filed with the Court a Notice of Motion with attached affidavit in support wherein the following relief was sought:

(i) The Minister be ordered to provide to the Appellant costs sufficient to cover reasonable fees and disbursements of a solicitor in order that she may retain and instruct counsel for the purposes of preparing for and representing her interests in these proceedings;

(ii) In the alternative, that Legal Aid New Brunswick provide to the Appellant services of a lawyer for the purposes of preparing for and representing her interests in these proceedings;

(iii) Further and in the alternative, that the Court advise the Attorney General for New Brunswick that counsel or a responsible person be made available to represent the interests of the Appellant;

(iv) A declaration that the rules or policies governing the distribution of Domestic Legal Aid, as it differentiates between legal aid provided for Applications for Guardianship Orders by the Minister for which legal aid is provided, and Applications by the Minister for Custody Orders or extensions of existing Orders for which legal aid is not provided are contrary to subsection 15(1) of the Canadian Charter of Rights and Freedoms. **[Subsequently the Motion was amended to include relief claimed for a violation of s. 7. of the Charter]**

(v) Such further and equitable relief as this Honourable Court deems just.

(pp. 7-8)

6. November 3, 1994 was set aside to here the Appellant's argument on that issue. It became apparent at that time that the issues emerging were complex and as a

result, the Minister of Justice-Attorney General sought, and was granted, an adjournment. Further, it was requested by Athey, J. that the parties present argument by way of written brief.
(p.119)

7. The week commencing December 12, 1994 was set by the Court for a hearing of the application for the extension of the custody order. It was expected that the Court would have had by then the opportunity to rule on the motion prior to the commencement of the custody hearing. However, during the week preceding the date set to commence the custody hearing, Madame Justice Athey advised all counsel that she would be unable to determine the issue of the Appellant's right to counsel prior to the date set for hearing the application.
(p. 119)

8. It was agreed by counsel then present that the best interests of the children would be served by proceeding with the custody hearing. Mr. Christie who had been appointed as Duty Counsel for the Appellant, and relieved of such a roll on November 8, 1994 by the same Department of Justice official responsible for the initial appointment, agreed to remain on the record as counsel for the Appellant on the understanding that since the Appellant would as a result be represented by counsel at the custody hearing, the parties would not argue that the issues raised in the motion had become moot.
(p. 25 and p. 86)

9. The custody hearing was held on December 19, 20, 21, 1994 and the decision granting the extension of the order was released on January 3, 1995. The Minister of Justice provided to the Minister of Health and Community Services the services of Crown Prosecutor Mr. Kevin Connell to conduct the hearing. Moreover, the Minister of Justice, at the request of the Court, provided the services of counsel,

Mr. Gerald Pugh to act on behalf of the children. A second respondent, Mr. Danny Vezina, was represented by counsel of his own choosing, Ms. Shannon Doran. Neither Mr. Pugh nor Ms. Doran participated in the issues raised by the within motion.

10. At the hearing of the custody application, the Respondent called testimony and presented affidavit evidence from fifteen persons, including expert witnesses with reports and assessments. The hearing was adversarial by its nature. The Appellant was not familiar with the Evidence Acts.

(p. 151)

11. In June of 1995, the children were returned to the care of the Appellant who is financially destitute and a recipient of welfare.
(p. 82.2 and p. 153)

12. In New Brunswick, domestic legal aid is provided within a program under the direction of the Minister of Justice. Until 1993 both criminal and domestic legal aid were administered jointly. However, a major restructuring of the legal aid programs occurred in the spring of 1993 and the administration of criminal legal aid and domestic legal aid fell under different branches. Criminal legal aid came under the control of Legal Aid New Brunswick, an entity established pursuant to the Legal Aid Act and administered by the Law Society of New Brunswick, and domestic legal aid came under the direction of an enhanced support program offered by the Minister of Justice.
(pp.26-82)

13. On behalf of the Minister of Justice, the administration of domestic legal aid program falls within the responsibilities of the Executive Director of Court Services. The Province is divided into six regions each of which is staffed by a Regional Manager of Court Services who report to the Executive Director of Court Services. (Pp.26-82)

14. The program has as its basic tenants the following principles: (1) Everyone who needs a lawyer for the purposes of support orders is provided with the services of the Family Court Solicitor who is paid by the Minister of Justice to provide the legal services offered by the program. (2) If there are allegations of abuse, then a party will be able to utilize the services of the Family Court Solicitor for all legal matters that may arise between the two parties, including custody, support, and divorce proceedings.
(pp. 26-82)

15. However, to avoid any apprehension of bias in the Family Court Solicitor, who is paid by the Minister of Justice, where the issue is the application by the Minister of Health and Community Services for a permanent guardianship order, the provision of legal services is shifted to Legal Aid New Brunswick, an entity whose funding comes from the Minister of Justice, the Law Foundation of New Brunswick and the Law Society of New Brunswick. Upon application to Legal Aid New Brunswick, a respondent will be provided with a legal aid certificate which the respondent can then take to a solicitor of their choice and have the costs of representation covered up to a limit of $1,000.00

16. In an attempt to remain concise in this factum, the Appellant accepts the facts as it concerns the statutory framework and practice of the domestic legal aid plan operative within New Brunswick as set out by the trial judge and as accepted by the Court of Appeal of New Brunswick.
(pp. 86-92 and pp. 118-120)

17. It is further acknowledged that all Justices who have heard the matter to date have concluded that s. 7 of the *Canadian Charter of Rights and Freedoms* does not provide for a general right to state funded counsel, but rather such a right is based on the protection of fundamental fairness of procedure to be determined in the circumstances of each case.
(pp. 109, 116-117, 145)

18. Three justices of the five panel members of the Court of Appeal of New Brunswick held that the rights of a parent to raise her children are not subsumed within the interest protected by the *Charter*.
(p. 109)

19. Mr. Justice Bastarache, on behalf of himself and Mr. Justice Ryan, ruled that the rights of parents are included among the interests protected by s. 7 and that the failure to provide the relief sought by the Appellant in the present matter was contrary to the principles of fundamental justice within the meaning of s. 7 of the *Charter*.
10 (pp. 145, 154)

PART II. ISSUE

20. The following constitutional questions arising from this case were stated by the Chief Justice of Canada on the 9th day of April, 1998:

Question 1

In the circumstances of this case, did the failure of the Legal Aid Act, R.S.N.B. 1973, c. L-2, or the government of New Brunswick under its Domestic Legal Aid Program, to provide legal aid to respondents in custody applications by the Minister of Health and Community Services under Part IV of the Family Services Act, R.S.N.B. 1973, c. F-2.2, constitute an infringement of s. 7 of the *Canadian Charter of Rights and Freedoms*?

Question 2

If the answer to question 1 is yes, is the infringement demonstrably justified in a free and democratic society pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms*?

21. In the event this Honourable Court finds that the answer to Question 2 is No, then some determination of the appropriate remedy must be made.

PART III STATEMENT OF ARGUMENT

22. It is important to note in the present case that, unlike many disputes of a civil nature before the Court of Queen's Bench of New Brunswick, Family Division, the proceedings in this matter were initiated by the state through the Minister of Health and Community Services. Taking children from their lawful parents is, on its face, a most significant form of government intrusion. Albeit, many cases illustrate that the preservation of the best interests of the children require such action. However, one is forced to query whether the action of the state in a proceeding such as this ought to be held up to the overriding scrutiny of the *Charter*, in particular s. 7.

23. Throughout this process, it has been the central aim of the Appellant to make it clear to this Honourable Court and the Courts below that the arguments advanced are not intended to focus exclusively on the aims and wishes of the Appellant or her rights under the *Charter* as mother of the children at issue. Rather, the arguments are advanced for the primary purpose of ensuring that, through a process such as this, what truly is in the 'best interests of the children' will be determined, particularly where there are competing positions on what will achieve that common goal and one of those competing positions is being advanced by a parent.

24. It is submitted that a parents' right to have, nurture and raise children is at the core of our way of life. With parental rights to have children comes the corresponding duties to care for one's children in a manner that will foster the emerging dignity, self-respect and self-worth of both the children and parents. In order to do so, our system has evolved upon the premise that these duties as best encouraged by limiting the interference of the state and fostering privacy within the family unit. In fact, the intrusion of the state into the family circle has been aimed at developing programs and support mechanisms to bring about security of the family unit in an attempt to lift the society as a whole.

25. As set out in the Preamble to the *Family Services Act*, S.N.B. 1980, c. F-2.2 the basic and fundamental freedoms of children and families are intertwined and given the protection from the invasion of privacy and interference by the state.

> **WHEREAS it is recognized that the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and those of their families and of society; and**
>
> **...**
>
> **WHEREAS it is recognized that the rights of children, families and individuals must be guaranteed by the rule of law and that the Province's intervention into the affairs of individuals and families so as to protect and affirm these rights must be governed by the rule of law; ...**

26. However, when well founded concerns arise as to whether the child is being adequately cared for or treated, government is empowered by the *Family Services Act* to intervene in the hopes of doing what is best for the child. This intervention can include removing the children from the care of the parent remembering at all times that such action must conform to what is determined to be in the best interest of the children.

27. This appeal focuses two parts: i) Does a parent's right to raise their children fall within the security and liberty interests as set out in s. 7 and; ii) Does the denial of the relief sought by the Appellant in the circumstances of this case amount to a process which does not conform with the
principles of fundamental justice?

28. Section 7 of the *Charter* provides as follows:

> **7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.**

29. It appears that the rights guaranteed by s. 7 comprises two components:

1. **The right to life, liberty and security of the person;**

2. **The right not to be deprived thereof except in accordance with the principles of fundamental justice.**

30. The Appellant's analysis will begin by establishing that the right to raise one's children is a protected right within s. 7.

10

31. It has been accepted by this Court that in order to preserve human dignity, foster self-worth and self-determination, we must be accorded a level of personal autonomy from the state sufficient to allow for individual decisions of a fundamental nature in our own lives.

R.(B.) v. C.A.S. of Metropolitan Toronto, [1995] 1 S.C.R. 315 and R. v. Morgentaler, [1988] 1 S.C.R. 30

32. To that end, a woman has a basic right to give birth to a child. It must therefore arise as a corollary to said right, that raising one's child, caring for and making fundamental
20 decisions affecting the child, is also accorded the same level of deference. To not recognize this logical extension of the right to bear a child is to leave a basic and fundamental tenet of our social system void. By definition, custody of one's child must also be seen as an essential tenet of our social system.

33. While we no longer hold to the view that children rank lower in a hierarchy to their parents, Blackstone in his Commentaries wrote that after the relationship between a wife and husband, the fundamentally profound relationship between parent and child must be recognized.

> **The next and the most universal relationship in nature, is**
> 30 **immediately derived from the preceding, being that between parent and child.**
>
> Blackstone, Commentaries on the Laws of England, (Garland Publishing,

New York, 1978) at para. 446

34. For centuries the common law has recognized the nature of the parent-child relationship and that the appropriate place for the nurturing of that relationship is within the home. Thus, Mr. Justice Rand in Hepton v. Matt [1957] S.C.R. 606 writes at p. 607:

> **It is, I think, of utmost importance that questions involving custody of infants be approached with a clear view of the governing considerations. That view cannot be less than this: *prima facie* the natural parents are entitled to custody unless by reason of some act, condition or circumstance affecting them it is evident that the welfare of the child requires that that fundamental natural relationship be severed.**
>
> **-and-**
>
> **The view of the child's welfare conceives it to lie, first, within the warmth and security of the home provided by his parents; when through a failure, with or without parental fault, to furnish that protection, that welfare is threatened, the community, represented by the Sovereign, is, on the broadest social and national grounds, justified in displacing the parents and assuming their duties.**
>
> **This, in substance, is the rule of law established for centuries and in the light of which the common law Courts and the Court of Chancery, following their differing rules, dealt with custody. [emphasis added]**

35. The Appellant does not want to leave the impression that rights are asserted in a vacuum, but rather acknowledges the duties that arise in relation to those rights. Moreover, the Appellant does not challenge the duty and right of the state to intervene in the parent-child relationship when warranted in an attempt to protect the overriding interest being the protection of the interests of the child.

36. In R. v. Jones [1986] 2 S.C.R. 284, the Supreme Court had occasion to consider the issue of the scope of a s. 7 right as it related the right of a person to raise and educate their own children. Mr. Justice La Forest saw it unnecessary to speak directly to the issue since the Appellant in that case was dealing with a legislative provision that did not, in his view, violate the principles of fundamental justice. However, he did cite a passage from Meyer v. State of Nebraska, 262 U.S. 390 (1923) at page 301 where the following statement is set out:

> **While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without a doubt, it denotes not merely the freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the pursuit of happiness of freemen.**

37. Madame Justice Wilson writing a dissenting judgement in R. v. Jones *supra* did not agree that the legislative provisions at issue were in accord with the principles of fundamental justice. She does however, give consideration to the scope of the liberty interest involved where at p. 319 she writes:

> **I should perhaps make clear at this point that while I accept the appellant's submission that the liberty interest under s. 7 includes the right as a parent to bring up and educate one's children, I do not agree with him that it is a right to bring up and educate one's children "as one sees fit". I believe that is too extravagant a claim. He has the right, I believe, to raise his children in accordance with his conscientious beliefs. The relations of affection between an individual and his family and his assumption of duties and responsibilities toward them are central to the individual's sense of self and his place in the world. [emphasis added]**

38. Put simply, the Appellant herein asserts a right to bring up her children and this right is within the scope of the right to liberty set out in s. 7 of the *Charter*. The Appellant acknowledges that this right is not absolute and is subject to the type of considerations set out by Mr. Justice Rand. However, the Appellant submits her right cannot be usurped unless in accordance with the principles of fundamental justice. As Mr. Justice La Forest notes in R. v. Jones, the provinces are entitled to develop the administrative policies to advance its legitimate aims, but that structure, so far as it may conflict with the interests of an individual, must be in accordance with the principles if fundamental justice.

39. A recent affirmation of the principle that a parent's right raise their children is part of the protected liberty interest is s.7 was cited by Madame Justice Athey in the Court below where at p.98 of the Case on Appeal, she cites the following portions of the decision of LaForest, J. in B.(R.) v. Children's Aid Society of Metropolitan Toronto (1995) 1 S.C.R. 315 at pp. 370 and 372 respectively,

> **...the right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent...**
>
> **This is not to say that the state cannot intervene when it considers it necessary to safeguard the child's autonomy or health. But such intervention must be justified. In other words, parental decision-making must receive the protection of the Charter in order for state interference to be properly monitored by the courts, and be permitted only when it conforms to the values underlying the Charter.**

40. In the present case, the Respondent Minister of Health and Community Services, in an attempt to secure the best interests of the children at issue, sought to interfere with the Appellant's liberty right in a severe fashion. Recognizing that the liberty interest of the Appellant was at stake Madame Justice Athey at p. 98 of the Case on Appeal asks;

> **The question then arises whether the deprivation is made in accordance with the principles of fundamental justice when such a parent who does not have the means to retain a lawyer wishes to do so.**

41. The Appellant submits that the right to security as contemplated by s. 7 plays an overlapping role with the notion of liberty. This Court has held that the right to security of the person is intimately linked to the concepts of dignity, autonomy and self-respect. Moreover, this Court has accepted that, in the criminal context, psychological stresses resulting from state action constitute a breach of the security of the person. A rupture of the parent-child relationship resulting from state apprehension of the children will invariably result in the psychological stresses akin to those observed in the criminal context. Not only will such stress impact on the parent, but undoubtedly in some manner impact upon the psychological stability of the child.

R. v. Morgentaler, *supra* at pp. 56-57
(per Dickson, C.J.C.)

42. Mr. Justice Bastarache, writing in dissent in the Court below, notes the role played by the various international treaties and declarations as aid to interpreting the scope of s. 7. This is because the norms found in these documents illustrate what is best about a society founded upon the freedom, democracy and the overall rule of law. In Slaight Communications v. Davidson [1989] 1 S.C.R. 1038 at pp. 1056 Dickson, C.J.C. notes,

> **The content of Canada's international human rights obligations is in my view an important indicia of the meaning of the "full benefit of the Charter's protection." I believe that the Charter should generally be presumed to provide protection, at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.**

43. Illustrative of this commitment is the Universal Declaration of Human Rights, signed December 10, 1948, G.A. Des. 217A (III), U.N. Doc. A/810 (1948), which notes in article 12,

> **No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.**

10 44. See also the citation by Mr. Justice Bastarache to the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 at p. 129 of the Case on Appeal. It is also worth noting the importance placed upon the family in the preamble to the Canadian Bill of Rights, R.S.C. 1985, Appendix III.

Fundamental Justice

45. What constitutes the full scope of **fundamental justice** cannot, with finality, be determined. In our system of justice, such determinations are made within the adversarial system. This system of adjudicating disputes connotes two adversaries
20 waging battle on a playing field presided over by an impartial judge who determines the outcome. Courts are empowered with an inherent discretion to ensure that the resolution is arrived at within the bounds of procedural fairness. While debate exists as to whether such a system is appropriate for determining issues of custody and the like, it is the one we have and the Appellant submits that due to the serious nature of the issues decided, it is imperative that the procedure be fair and just.

46. At page 101 of the Case on Appeal, Madame Justice Athey notes that the hearing was estimated to last three days, and in fact did. She further describes the extent of
30 the evidence that was presented by the Minister of Health and Community Services (Minister of Health). Included were reports and viva voce evidence given by

experts retained by the Respondent Minister. The Minister of Health and Community Services was provided by the Minister of Justice with a Crown Prosecutor to present the case on behalf of his behalf. At the Court's request, the Minister of Justice retained the services of Mr. Gerald Pugh, Esq. to represent the children. The father of two of the children was able to retain his own counsel. The Appellant was left to fend for herself.

47. At page 101 of the Case on Appeal, Madame Justice Athey makes the following conclusion:

> **There has been no suggestion that Ms. Godin lacks the capacity to understand the allegations made by the Minister or that she is unable to communicate her position to the Court. In these circumstances I am not convinced that she is not able to adequately state her case or that provision of counsel to represent her is essential to a fair trial. I conclude therefore that her parental liberty interest will not be violated by the lack of state funded legal representation.**

48. With respect to the Court below, such a conclusion does not accord with the evidence of the Appellant cited by the learned judge of first instance at page 87 of the Case on Appeal. The Appellant's evidence, which was unchallenged, noted her concern that she could not adequately place her case before the Court. Moreover, Mr. Justice Bastarache at pp. 151-153 of the Case on Appeal recites portions of the original decision on custody pertaining to the evidence of psychologist Ms. Gibson which calls into question the ability of the Appellant to represent herself in the present matter. The evidence was accepted by Madame Justice Athey to justify removing the children from the home, but apparently not to establish the Appellant's inability to adequately present the case she wished to present or challenge that of the Minister of Health.

49. In effect, the learned judge is saying that in a hearing such as this, the Appellant could adequately present her case against the resources, legal and otherwise, of the Minister of Health. Moreover, it begs the question, 'Why have legal aid programs at all?'. Surely, legal aid programs are intended to provide an essential service to those caught in the legal system who lack the resources to retain there own counsel.

50. The question also arises, based on Madame Justice Athey's conclusion, as to why the Minister of Health need counsel if a welfare mother, such as the Appellant, does not?

10

51. As noted at the outset of this argument, the child's perspective, the vindication of his/her rights relies profoundly upon the proceedings being fundamentally just. This is so because if the Appellant's abilities and skills to raise the children are to be fully and properly assessed in an adversarial setting, the parent's position must be meaningfully and effectively presented. Indeed without a full opportunity by the Appellant to be a meaningful participant, the children may in fact be deprived of a fair hearing into the best interests at stake.

52. The request of the Appellant for counsel must be kept in perspective. She did not
20 ask for funds to retain experts who may provide a different point of view than those retained by the Minister of Health. Nor was she asking for the resources to provide other professionals in the field of child care to present evidence as to why this family ought to have remained together. All she wanted was a lawyer to assist her in challenging witnesses and presenting before the Court law and argument as to why the best interest of the children would be served by remaining within the household.

53. One can scarcely imagine the emotional turmoil of a parent facing a second consecutive custody application knowing her children may be gone for a further six months. How

could she under the circumstances question the evidence offered by state funded experts? How could she properly examine and cross examine witnesses? How could she make reasonable and timely objections? How could she argue the relevant legislative provisions? How could she give an objective assessment of the arguments made by opposite counsel? How could she assist the judge?

54. To argue that fairness would prevail, in the circumstances of this case, where the Appellant faced a three day hearing over such an emotional issue as the custody of her children, and facing three barristers of experience with the resources of the Minister of Health and the Minister of Justice, is with respect, untenable.

55. Justice in our tradition, is dispensed by a court system which is founded upon the adversarial model. Our laws over the centuries have become so complex that the role of advocate developed to fulfil a representative function on behalf of litigants by people trained in the art of law and advocacy. As Sir Geoffery Cross and G. D. G. Hall write in their text The English Legal System (4th) (Butterworths, 1964), "Some care was taken to ensure that unqualified persons should not practice. Thus a statute in 1402, after lamenting that many attorneys were `ignorant and not learned in the law,' required all candidates for inclusion on the roll be examined by the judges." The Appellant, being unable to retain legal counsel to represent her interests in keeping the family together, and the failure of the state to ensure that a basic level of legal representation is provided for her, would have been unable to be a meaningful participant in our justice system. If she could not be a meaningful participant in the legal system, why make her a party to the action or give her notice of the proceeding at all?

56. Put simply, the denial of legal aid to a parent such as the Appellant living in poverty renders illusory their participation in the process. Where the *Charter* creates rights to effective participation, they must be real in substance. In the absence of genuine

participatory rights, the law in general, and the "custody" application process in particular are brought into disrepute and tend to become meaningless. Not only is confidence lost in the legitimacy of the legal system, but the balanced determination of the child's best interests becomes doubtful. From both the parent and child's point of view, the process loses meaning.

57. As indicated earlier, it is not simply a question of fairness for the Appellant. Rather, the provision of counsel for the parent in this case is a prerequisite to ensuring that the best interests of the children are properly ascertained. Stated differently, in the absence of counsel for the Appellant, the process may take on the appearance of a one-sided proceeding wherein the state decides the best interest of the children.

58. Moreover, and perhaps most significantly, the Appellant's lack of legal representation would mean that the best interests of the children will be more difficult to discern, particulary when an adversarial model is the field on which these proceedings are played out. As we are all taught in law school, only through a system of competent adversaries, presenting to the Court a variety of points of view, challenging the evidence, and providing the Court with a thoughtful assessment of the myriad of legal precedents, will the finder of fact be able to assess fairly what may be opposing interests and make a determination as to what may be truly best for the children. Absent legal representation by the litigants in the present case, the Court would have been left to assess the evidence as presented in a manner which, by its nature perhaps more than by design, is biased in favour of the Minister of Health. The best interests of the children required that the Appellant be provided with legal services as an aid to providing a balanced picture of the evidence upon which the Court can adjudicate. The unspoken assumption of the Minister's that, `If the Minister thinks it is best, then it is', must be held up to scrutiny and in the end, that presumption may or may not be correct.

59. The words of Lord Denning can be used to supplement the importance of the role of counsel asserted by the Appellant. In Pett v. Greyhound Racing Association Ltd., [1968] 2 All E.R. 545 (C.A.) at 549 Lord Denning writes:

> **It is not every man who has the ability to defend himself on his own. He cannot bring out points in his own favour or weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting intelligence. He cannot examine or cross examine witnesses. ...I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor.**

60. In Ref. Re s. 94(2) of Motor Vehicle Act (B.C.) [1985] 2 S.C.R. 486, Mr. Justice Lamer, as he then was, considers the content of `fundamental justice'. He writes at p. 503,

> **It is this common thread which, in my view, must guide us in determining the scope and content of "principles of fundamental justice". In other words, the principles of fundamental justice are to be found in the basic tenets of our legal system. They do not lie in the realm of general public policy but in the inherent domain of the judiciary as guardian of the justice system. Such an approach to the interpretation of "principles of fundamental justice" is consistent with the wording and structure of s. 7, the context of the section, *i.e.*, ss. 8 to 14, and the character and larger objects of the *Charter* itself. It provides meaningful content for the s. 7 guarantee all the while avoiding adjudication of policy matters.**

61. And further, the learned Justice writes at p. 512,

> **Consequently, my conclusion may be summarized as follows:**
>
> **The term "principles of fundamental justice" is not a right, but a qualifier of the right not to be deprived of life, liberty and security of the person; its function is to set the parameters of that right.**

> **Sections 8 to 14 address specific deprivations of the "right" to life, liberty and security of the person in breach of the principles of fundamental justice, and as such, violations of s. 7. They are therefore illustrative of the meaning, in criminal or penal law, of "principles of fundamental justice"; they represent principles which have been recognized by common law, the international conventions and by the very fact of entrenchment in the *Charter*, as essential elements of a system for the administration of justice which is founded upon the belief in the dignity and worth of the human person and the rule of law.**
>
> **Consequently, the principles of fundamental justice are to be found in the basic tenets and principles, not only of our judicial process, but also in the other components of our legal system.**

62. In essence, the Appellant submits, Chief Justice Lamer is directing our attention to sections 8 to 14 of the *Charter* noting the fundamental principles that have been enshrined relating to the criminal justice system as means to see what types of fundamental principles might be at play in non-criminal proceedings. The basic tenets of our legal system as set out in ss. 8 to 14 are to be used as guideposts in determining what rights are contained within the phrase `principles of fundamental justice'. It is s. 10(b) which sets out in the criminal realm the right to retain and instruct counsel.

63. What is perhaps easily forgotten is that such a fundamental part of our judicial process, reliance on counsel, is something that the Minister of Justice was willing to provide to the Minister of Health in this case through his staff solicitors, but not willing to afford the same privilege to the Appellant who, had no means of providing counsel, even through the system of domestic legal aid. The Minister of Health, one may assume, has the resources to provide his own counsel, but relies instead on the counsel provided by the Minister of Justice to put forward his case. Surely, the very existence of legal aid programs at all confirms counsel's essential and fundamental role in an adversarial system.

64. In a document entitled Legal Aid and the Poor: A Report by the National Council of Welfare, Winter 1995, Minister of Supply and Services Canada, the authors set out the following observations at page 3:

> **For people who have no money to pay court fees or hire a legal expert to advise and represent them, the right to subsidized legal services is the most fundamental of all rights. What use is a Charter of Rights and Freedoms guaranteeing your right to life and liberty, freedom of speech or equality before the law, if you cannot defend yourself against unjust accusations or discriminatory treatment?**

65. Put simply, the denial of legal aid to a parent living in poverty renders illusory their participation in the process.

66. Perhaps most important on this point is the contents of the document marked as Exhibit "K" to the Affidavit of Mr. Carrier, Executive Director of the Law Society of New Brunswick. Exhibit "K" contains a report entitled A Proposed Model for "Domestic Legal Aid" prepared by the New Brunswick Department of Justice, Research and Planning November 9, 1994. The 4th page of text of that report found at page 67 of the Case on Appeal contains the following:

> **The selection of an appropriate domestic legal aid model depends on the choice of guiding principles for legal aid services in New Brunswick. The search for principles underlying the proposed model requires an identification of gaps or unmet needs.**
>
> **The equality rights in the Charter provide for equality "before and under the law" as well as "equal protection and equal benefit of the law", without "discrimination". This province is committed to the principle of access to justice. All individuals, regardless of economic means, must have the right to fair and equal access to the justice system.**

> **<u>While legal assistance is a right</u>, different clients may need different types and levels of services. Some legal services may be competently provided by persons who are not lawyers at all.**
>
> **<u>A fundamental principle of the common law system is the right to retain, instruct and have the assistance of legal counsel. The adversarial common law legal system works best when both sides have a lawyer.</u> [emphasis added]**

67. The Appellant could not state her case with any greater clarity than is stated in above quote which seems to track the very language of the *Charter*. As the exhibit note, the adversarial system works best when both sides have a lawyer. Can there be any type of proceeding wherein the system must be at its best than in proceedings such as this?

68. In the present case, the Appellant relies on social assistance to meet the economic needs of herself and family. The Minister of Health sought for a second time to remove her children from her home for a period of up to six months. If they had attempted at that stage to remove the children permanently through a guardianship order aid would have been provided.

69. It must be remembered that the Minister of Health had been successful earlier in obtaining a custody order. This was the Minister's second consecutive order totaling up to one year. In such situations, the reality of practice is that by the time the Minister of Health has been granted successive custody orders there is decreasing expectation of the children being reunited with the family. With each successful order, the next one becomes easier to get. This is recognized in a document prepared by the New Brunswick Department of Justice, Research and Planning section contained in the affidavit of Michel Carrier found at pp. 34-35 of the Case on Appeal:

> **A major concern raised repeatedly by lawyers was the lack of coverage for parents of children who are the subject of custody**

applications by the Province. The current coverage is limited only to guardianship applications, which is the final stage in the removal of children from the care of their parents. This was widely considered to be "too little, too late" and a waste of limited funds at that point. Without legal representation at the earlier custody hearings prior to the guardianship application, little effective assistance can be provided to the parties. At that point, the child may have been out of the home for up to eighteen (18) months.

...

CONCLUSION:

- **The present family violence criteria for eligibility for legal aid as used at present is difficult to apply and confusing to both clients and the bar. It may result in inconsistent provision of legal aid services.**

- **Limiting legal aid to Guardianship Applications by the Province while excluding the initial custody applications is ineffective aid to the parents involved.**

70. The Appellant is treated differently from others who are entitled to state funded counsel even in proceedings where the state is not a party. The Appellant is also treated differently by the Minister of Justice in comparison to the Minister of Health for whom counsel was provided.

71. The Minister of Justice in conjunction with the Law Society of New Brunswick and Legal Aid New Brunswick has fashioned a mechanism for providing domestic legal aid to certain persons who request it. If a separating spouse comes to the Family Court Services seeking the aid of a lawyer for the purposes of support then that person is provided with the services of the Family Court Solicitor. If the separating spouse is the victim of abuse, the Family Court Solicitor again is available to provide legal representation for all phases of the legal proceedings including custody. If a parent is named a respondent in a Minister's application for

the permanent guardianship of their child, such a respondent is entitled to be granted a legal aid certificate issued by Legal Aid New Brunswick. If however, as in the present case, the Minister is seeking a six month custody order then there is no meaningful legal help available other than Duty Counsel provided under the domestic legal aid program supplied by the Minister of Justice.

72. What limited help is available in situations such as the present is the provision of duty counsel for the purposes of advising a respondent on the initial appearance where either the respondent consents to the application or a date for the hearing is set. Therein lies an irony in the provision of even that limited form of duty counsel assistance: the respondent parent is entitled to duty counsel for the initial appearance where she may at that stage consent to the application, but if she wishes to challenge the Minister's application and put the Minister's case to the test, she is left to fend for herself. In other words, in the Appellant's view, it is as if the Minister of Justice says 'We will provide you with duty counsel if you intend to consent to the application, but if you challenge the application, you get nothing'.

73. That the system contains a gap cannot be disputed. The government may well argue that if they had the money they would have provided a solicitor to the Appellant in the present case. The reality is however, that the government has undertaken to offer a program of domestic legal aid, and they are in the position to provide the funding to offer that program in a manner which does not violate the Appellant's *Charter* rights.

74. But most important, the Appellant submits, is the fact that she is called upon to answer in a proceeding initiated by a Minister of the Crown and this places an onus upon the Crown to provide her with some means to have counsel represent her in response to the application. Quite simply justice requires it and so do the children at issue.

75. The parent in a proceeding such as this has an argument that, on its face, must be adequately placed before the court. The determination of the best interests of the children require it. This means more than a parent standing before a judge and asserting that they are competent as a parent. There ought to be, and in fact by implication is, a presumption that the best place for children to be in the home. To say to a welfare mother, who is dependent on the state for many of the necessities of life, that her children are to be taken from her and she can come to court on her own to challenge the Minister's claim calls into question the integrity of the justice system. The Appellant, in this case, and in others of like circumstance, must be able to be meaningful participants in the process.

10

76. The aim of the domestic legal aid program is the protection of legal rights, as it is also in criminal legal aid. The Appellant, because of an administrative decision denying coverage on Ministerial applications for custody while granting legal aid services to others, is not being given the opportunity to have her rights, and that of her family's, protected in a fashion consistent with the intents of the *Charter*.

77. The Nova Scotia Supreme Court Appeal Division in R. v. Rockwood (1989) 91 N.S.R. (2d) 305 (N.S.S.C.A.D.) discusses some of the *Charter* issues involved in the provision of criminal legal aid. The purposes behind criminal legal aid are
20 analogous to those involving the custody of children in that they both deal with basic notions of our society; integrity of the family and preservation of one's liberty and security. At page 308 Chipman, J.A., writing for the court, begins a discussion of legal aid in the context of whether a person is entitled to have the lawyer of their choice or be provided with competent counsel. The learned judge writes,

> **[13] It has been said that Legal Aid, in its broadest sense, has existed as long as the law itself. There is a long-standing tradition in the Bar of service given either without charge or for less than it is worth to those unable to pay or pay**
> 30 **adequately for a criminal defense. In particular, members of the Bar have responded, when called on by the court in the**

> **exercise of its inherent jurisdiction to do so, to defend indigents appearing without counsel. Such people have, over the years, been defended and defended well, often by inexperienced counsel. As the volume and complexity of the criminal litigation increased, this system was inadequate to deal with the need...**
>
> **[14] In response to this inadequacy, Legal Aid programs were established throughout Canada.**

78. Chipman, J.A. continues at paragraph 17 and quotes in part the following passage from R. v. Rowbotham, (1988) 25 O.A.C. 321 (C.A.); 41 C.C.C. (3d) 1 (C.A.) at p. 65,

> **In our opinion, those who framed the Charter did not expressly constitutionalize the right of an indigent accused to be provided with counsel, because they considered that, generally speaking, the provincial legal aid systems were adequate to provide counsel for persons charged with serious crimes who lacked the means to employ counsel. However, in cases not falling within provincial legal aid plans, ss. 7 and 11(d) of the Charter, which guarantees an accused a fair trial in accordance with the principles of fundamental justice, require funded counsel to be provided if the accused wishes counsel, but cannot pay a lawyer, and representation of the accused by counsel is essential to a fair trial. [original emphasis]**

79. The Appellant submits that even though she is not facing a criminal charge the principle of fairness and representation by counsel are recognized as essential qualities of our legal system, and that the *Charter* can be the basis of the Appellant's prayer for relief. Removing children from a home is as much an affront to social dignity as being tried on a criminal charge filed by the state.

80. Unlike Rockwood, the Appellant in this matter was not looking to hire the lawyer of her choice and have the government cover the bill. All she prayed of the Court is that she be given a lawyer, or funds necessary to retain one, in order that the

government's intrusion into her family does not go unchallenged in furtherance of the best interests of her children and her own.

81. While the provision of legal aid in New Brunswick is covered in some degree by the Legal Aid Act it is not the Act which dictates who gets legal aid and who does not. That decision rests in the hands of the Department of Justice, Legal Aid New Brunswick and the Law Society of New Brunswick. It is not this Act that is being challenged, just the unfairness and the discriminatory nature of the administrative decision to provide legal aid services of some kind in most other domestic cases, but not the present.

82. The Appellant submits that in the circumstances of this case, the answer to the stated question 1 is in the affirmative.

If a *Charter* Violation Has Occurred, is it Justified Under s.1 of the *Charter*?

83. Section 1 of the *Charter* provides as follows:

> **1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.**

84. The Appellant submits that three points arise for consideration in a s. 1 inquiry:

i. Are the limits prescribed by law?

ii. Are the limits reasonable?

iii. Can the limits imposed be justified in a free and democratic society?

85. An affirmative answer on all three points must be attained before a s. 1 argument succeeds. If a negative answer is given to one or more of the three points, s. 1 fails to provide the effect desired by the Respondent.

PRESCRIBED BY LAW

86. The Appellant submits that the limitation restricting the provision of legal aid to the Appellant is not a limit prescribed by law.

87. The determination of the scope of the provision of legal aid appear to be a matter more akin to an administrative decision than a limit prescribed by law. Reference to s. 12 of the Legal Aid Act makes clear the administrative power of the Provincial Director to determine what may or may not be covered. The Legal Aid Act authorizes the provision of such services, but does not expressly exclude the granting of legal aid to matters of Ministerial custody applications.

88. R. v. Therens, [1985] 1 S.C.R. 613 states, among other things, that the limit will be prescribed by law if it is *expressly* provided for in the statute or regulations, or as a consequence of the operational necessity of the statue the limit must be inferred.

89. It must first be noted that the limit, being the exclusion of aid in Ministerial custody applications, does not arise expressly. Does it arise by implication in the sense that such a limit is essential for the operational requirements of the system? The answer could be in the Respondents' favour if the conclusion was that to provide legal aid to the Appellant in this case would render the operation of the domestic legal aid regime impossible. Such a conclusion is, the Appellant submits, untenable.

90. The decision to deny legal aid or to provide some other form of legal representation was an administrative decision. Administrative decisions are not protected under s.1. Professor Joseph Magnet in his text Constitutional Law of

Canada: Charter of Rights and Freedoms (3d) Vol.2 at page 186 makes the following comments on this point. He writes,

> **Attention may profitably be concentrated on the words "prescribed by law". Taken as their widest to include texts of law (statutes, regulations, orders, etc.) and rules of the common law, still, the words have discernible boundaries. They do not include administrative acts. Section 1 guarantees Charter-protected freedoms subject *only* to limits "prescribed by law". It is difficult to resist the suggestion that administrative acts - for example, the failure of police to give a section 10(b) warning - can never limit Charter rights. On this argument, as against administrative action, Charter-protected freedom is absolute (see *R. v. Therens*, [1985] 1 S.C.R. 613). [underlined emphasis added]**

91. On the s. 1 argument as it relates specifically to the s. 7 guarantee, Lamer, J. as he then was, notes the following in Ref. Re s. 94(2) of the Motor Vehicle Act (B.C.) [1985] 2 S.C.R. 486 at 518,

> **But when administrative law chooses to call in aid imprisonment through penal law, indeed sometimes criminal law and the added stigma attached to a conviction, exceptional, in my view, will be the case where the liberty or even the security of the person guaranteed under s. 7 should be sacrificed to administrative expediency. S. 1 may, for reasons of administrative expediency, successfully come to the rescue of an otherwise violation of s. 7, but only in cases arising out of exceptional conditions, such as natural disasters, the outbreak of war, epidemics, and the like. [emphasis added]**

92. The Appellant submits that the stigma attached to a criminal conviction or imprisonment is equally matched by the stigma of being declared an unfit parent as noted by Mr. Justice Bastarache at p. 153 of the Case on Appeal.

REASONABLE LIMITS

93. As a justification for denying the Appellant her relief, the Respondents argued below that with limited financial resources, some sacrifices must be made. The Appellant submits that her *Charter* rights are an example of those sacrifices. In Singh v. Canada (Min. of Employment and Immigration) [1985] 1 S.C.R. 177, Wilson, J., considers the issues of the procedures under the Immigration Act as those procedures relate to s. 7 rights. The Court concluded that the procedures under the Act were violative of s. 7 and then went on to consider s. 1. Concerning the cost of providing compliance with the principles of fundamental justice, Wilson, J. writes at p. 220,

> **Even if the cost of compliance with fundamental justice is a factor to which courts would give considerable weight, I am not satisfied that the Minister has demonstrated that this cost would be so prohibitive as to constitute a justification within the meaning of s. 1.**

94. Generally on the issue of cost as a justification for denying a *Charter* right, Wilson, J. in Singh *supra* makes the following comments of note at pp. 218-219,

> **It seems to me that it is important to bear in mind that the rights and freedoms set out in the *Charter* are fundamental to the political structure of Canada and are guaranteed by the *Charter* as part of the supreme law of our nation. I think that in determining whether a particular limitation is a reasonable limit prescribed by law which can be "demonstrably justified in a free and democratic society" it is important to remember that courts are conducting this inquiry in light of a commitment to uphold the rights and freedoms set out in the other sections of the *Charter*. The issue in the present case is not simply whether the procedures set out in the *Immigration Act, 1976* for the adjudication of refugee claims are reasonable to deprive the appellants of the right to life, liberty and security of the person by adopting a system for the adjudication of refugee status claims which does not accord with the principles of fundamental justice.**

> **Seen in this light I have considerable doubt that the type of utilitarian consideration brought forward by Mr. Bowie can constitute a justification for a limitation on the rights set out in the *Charter*. Certainly the guarantees of the *Charter* would be illusory if they could be ignored because it was administratively convenient to do so. No doubt considerable time and money can be saved by adopting administrative procedures which ignore the principles of fundamental justice but such an argument, in my view, misses the point of the exercise under s. 1. The principles of natural justice and procedural fairness which have long been espoused by our courts, and the constitutional entrenchment of the principles of fundamental justice in s. 7, implicitly recognize that a balance of administrative convenience does not override the need to adhere to these principles. Whatever standard of review eventually emerges under s.1, it seems to me that the basis of the justification for limitation of rights under s.7 must be more compelling than any advanced in these appeals. [emphasis added]**

95. Unconstitutional behaviour by the state should not be treated or subject to a lesser level of s. 1 scrutiny because of the potential implications for government spending. As Chief Justice Lamer states in Schacter v. Canada (Min. of Employment and Immigration), [1992] 2 S.C.R. 679 at p. 709,

> **This Court has held, and rightly so, that budgetary considerations cannot be used to justify a violation under s. 1**

96. The fact of the matter is that for the poor in particular, the onus on the state to give meaning to one's *Charter* rights comes with implications for increased government spending.

97. It is submitted that in reviewing the policy and administrative decisions of the government, Courts ought to be cautious of deferring *per se* to decisions of a social policy nature. Rather, it is incumbent upon this Court to assess those decisions to determine whether policies to which Constitutional values attach have been given priority over ones that do

not. To fail to apply this type of analysis will be to effectively downgrade the enjoyment of *Charter* rights by persons such as the Appellant who are already disadvantaged and marginalized.

98. As stated by Madame Justice McLachlin in RJR-MacDonald v. Canada [1995] 3 S.C.R. 199 at para. 138,

> **Deference must not be carried to the point of relieving the government of the burden which the Charter places upon it of demonstrating that the limits it has imposed on guaranteed rights are reasonable and justifiable. Parliament has its role: to choose the appropriate response to social problems within the limiting framework of the Constitution. But the courts also have a role: to determine, objectively and impartially, whether Parliament's choice falls within the limiting framework of the Constitution. The courts are no more permitted to abdicate their responsibility than is Parliament. To carry judicial deference to the point of accepting Parliament's view simply on the basis that the problem is serious and the solution difficult, would be to diminish the role of the courts in the constitutional process and to weaken the structure of rights upon which our constitution and our nation is founded.**

99. The real question ought not focus on the cost of compliance with *Charter* rights, but with the cost of noncompliance. In the present case the administration of justice is called into disrepute when the Minister of Health commences a legal proceeding against a person who is heavily dependent upon the government for many services provided to persons of the Appellant's financial means, but refuses to provide legal representation. The Minister of Justice leaves the Appellant legally helpless in the present case while providing legal services in this proceeding to other parties and in fact on a wider scale to parties involved in private disputes.

100. The second, and equally important cost of noncompliance, is that the Court is left to determine the best interests of the child in the absence of an assertive argument as to why the family ought to stay together.

101. The Ministers denial of the relief sought is not reasonable in a free and democratic society and cannot be justified.

102. Should the court come to the conclusion that the Appellant's rights as guaranteed by s. 7 of the Charter have been violated, then this court is obligated under ss. 24(1) of the *Charter* to fashion a remedy which addresses that violation. Subsection 24(1) provides as follows:

> **24(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such a remedy as the court considers appropriate and just in the circumstances.**

103. The above remedial section of the *Charter* gives this Court a wide range of options which may be required in the Court's opinion to correct any infringed or denied right of the Appellant. Most significantly, it places a responsibility upon the court and it gives the court the jurisdiction and power to do what it sees as just in the present.

104. This factum has purposely not attempted to analyzed the reasons of Mr. Justice Bastarache in any detailed fashion. The reasons of the learned justice speak with clarity as to his position on behalf of the Court below. Furthermore, this factum has not attempted to dissect the reasons of the majority below as it is apparent they believed they were following the law at it stood at the time. The reality of this case is that at the end of the day, when all the facts and jurisprudence have been considered, the proposition advanced by the Appellant will stand for itself. If the *Charter* does not protect a parent from the

state taking his or her child without a process of fundamental fairness, what good are the sentiments set out in the *Charter*?

105. As to costs, the Appellant wishes to make reference to the disposition put forward by Mr. Justice Bastarache at p. 159 of the Case on Appeal. The Appellant also prays this Court consider the issues of costs taking into account the nature of the issue raised and the evidence set out in the affidavit found at pp.24-25 of the Case on Appeal.

106. The Appellant wishes to bring the Court's attention to the words of Chief Justice Lamer in Schacter *supra* at p.726,

> **Despite the fact that the respondent has lost in this Court, I do not feel it appropriate that he should bear the costs. He did win with respect to the s. 15 issue at trial and the subsequent litigation has, upon the concession of the appellants, centered only on choice of remedy. According to this concession, the respondent by his claim has brought a deficiency to the attention of Parliament which has since been remedied by the repeal and replacement of the impugned provision. He should not be penalized now because of a dispute solely with respect to remedy. I therefore award the respondent his solicitor-client costs.**

PART IV. ORDER SOUGHT

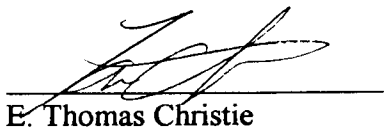
107. The Appellants seeks an order as follow:

i. A declaration that the refusal of the Respondents to provide legal representation to the Appellant was violative of her rights as guaranteed by the *Canadian Charter of Rights and Freedoms*; and

ii. That this Honourable Court, pursuant to s. 24(1) of the *Charter*, make such an order of payment costs to the Appellant by such of the Respondents as the Court deems just, sufficient to cover reasonable fees and disbursements of the Appellant before this Honourable Court and in the Courts below; and

iii. Such further order as this Honourable Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at Fredericton, N.B. this 1st of May, 1998.



E. Thomas Christie
Christie and Associates
Solicitors for the Appellant
Jeannine Godin

NOTICE TO THE RESPONDENT: Pursuant to subsection 44(1) of the *Rules of the Supreme Court of Canada*, this appeal will be inscribed by the Registrar for hearing after the respondent's factum has been filed or on the expiration of the time period set out in paragraph 38(3)(b) of the said Rules, as the case may be.

PART V - TABLE OF AUTHORITIES