

GROUNDS OF APPEAL

1. That the Decision was erroneous in law. The Appeal related to a claim under Section 2(a) of the Canadian Charter of Rights and Freedoms, for which there exists a legal framework and procedure for adjudicating such claims. The formula is set forth in the case authority of *Syndicat Northcrest v. Amselem* [2004] and other cases, and consists of a step by step process whereby the Court must first determine whether the claimant holds a sincere belief, having a nexus with religion. Once this question is determined in the claimant's favour, the particular belief or practice is classified as a protected right under the Charter, and is, at that point, triggered. Thereafter, in order to determine whether the belief or practice may be exercised, two further steps must be considered favourably for the claimant. These are whether the interference with the exercise of the right is non trivial, and if the claimant successfully demonstrates non trivial interference, the final step is to ascertain whether the religious conduct or practice, which the claimant seeks to exercise, would potentially cause harm to or interfere with the rights of others. The trial Judge decided that the Appellant held a sincere belief, which had a nexus with his Roman Catholic religion, but erroneously found that the claim had not been triggered. On Appeal, the Honourable Justice McLellan failed to address the issue in any way, which, having regard to the law and the findings of fact, should have resulted in an acknowledgment that the claim to freedom of religion under Section 2 (a) of the Charter had been triggered, and that the Appellants beliefs and practices were implicated rights under the Charter and thereby protected. The Decision *ex facie* failed to deal with the law or the legal framework and procedure for determining such claims, failed to deal with the findings of the trial judge, and was erroneous in law.

2. That the Decision is in breach of the obligation of the Court to act according to the demands of natural justice, in that that the Decision failed, without justification, to give adequate reasons, or any reasons, concerning the matters in issue, the cases cited and the facts, and failed to provide adequate, or any, information as to the basis on which the decision was reached, and by reason thereof the Decision was materially deficient and against the principles of natural justice. The obligation to give reasons imports a requirement to do more than state a conclusion or to say no more than that the court is not satisfied that the conditions are met. Whilst it is not obligatory to deal with every piece of evidence, or to over elaborate, an Appellant, who has made detailed submissions on law and fact, can reasonably expect a Decision to be made that will enable him to discern on the face of it the reasons why the evidence presented, cases cited, the formulas laid down by binding precedent, or the main planks of his Appeal, have failed to satisfy the legal criterion upon which the Appeal was made.

3. That the failure to give reasons has prejudiced the Appellants ability to formulate any effective grounds of appeal against the adverse decision.

4. That had the issues been adequately addressed and proper reasons given so as to define the legal matters in question, the Appeal is likely to have been granted in favour of the Appellant.

5. That in his Decision, the judge failed to discover and explain the correct meaning

of the law contained, mentioned or referred to in the cases cited and law referred to, as it related to the facts, and he ignored relevant legal considerations, gave weight to irrelevant considerations and made statements of law which were erroneous and conspicuously in conflict with the facts.

6. The facts presented to the Court and the cases cited, were such that no person acting judicially and properly instructing himself as to the relevant law could have (i) made the Decision in the short manner exhibited in the Decision, or (ii) come to the determination or Decision now in question.

7. That the Decision failed to take into account relevant considerations both of law and fact, failed to respect the requirements of judicial precedent, and thereby rendered it impossible to sensibly discern from the Decision which issues had been considered and which had not.

8. The Appeal to this court, therefore, stands a genuine prospect of success.

(Submitted to New Brunswick's highest court, the Court of Appeal, November 7, 2008)