

COURT FILE
NUMBER

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS CRYSTAL O'DONNELL AND BRIAN PEL

RESPONDENT THE MINISTER OF JUSTICE AND SOLICITOR
GENERAL, ON BEHALF OF HER MAJESTY QUEEN
in the right of ALBERTA

DOCUMENT **ORIGINATING APPLICATION**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT

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NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: May 11, 2022
Time: 10 a.m.
Where: Regular Chambers, Calgary
Before: Judge in Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. Crystal O'Donnell ("**O'Donnell**") is a lawyer licenced to practice law in both Ontario and Alberta.
2. Brian Pel ("**Pel**") is a lawyer licenced to practice law in both Ontario and Alberta.
3. O'Donnell and Pel are partners in Heuristica Discovery Counsel LLP ("**HDC LLP**"). It is a limited partnership formed under the laws of Ontario. It is currently registered to carry on the practice of law in Ontario and Alberta.
4. HDC LLP carries on a practice focused entirely on electronic evidence discovery and management ("**HDC Practice**").
5. Heuristica Discovery Counsel Professional Corporation ("**HDC PC**") is a corporation formed under *Business Corporations Act*, RSO 1990, c B.16 ("**OBCA**")
6. HDC PC initially carried on the HDC Practice in Ontario, starting in 2015. S. 61.0.1 of the *Law Society Act*, RSO 1990, c L.8 ("**LSA (Ont)**") permits lawyers to practice through corporations. The Law Society of Ontario ("**LSO**") issued a certificate of authorization to HDC PC on May 22, 2015.
7. Pel and O'Donnell initially chose a professional corporation form of business organization because it provides benefits to individuals intending to grow their business. Funds retained in the business are taxed at lower corporate rates. They are not taxed at the higher personal tax rate as would be the case if the HDC Practice had been operated initially through a partnership and all its profits were allocated to them annually.
8. Accordingly, the professional corporation form of organization would leave additional funds in HDC PC that could be reinvested in the Applicant's business, the HDC Practice. Pel and O'Donnell would thus benefit from this tax treatment because they would have more capital immediately available to grow the HDC Practice, resulting in long term personal benefits such as enhanced income earning potential. They would not immediately pay personal tax on funds meant for business use (collectively the "**Incorporation Tax Benefits**").
9. Pel and O'Donnell had a particular need for the Incorporation Tax Benefits because the HDC Practice is capital intensive compared to other practices and was only started in 2015. The Incorporation Tax Benefits were thus

important to Pel's and O'Donnell's efforts at the gaining of a livelihood via the HDC Practice.

10. Pel and O'Donnell also intended to gain a livelihood by operating the HDC Practice in multiple Canadian provinces.
11. In an effort to pursue the gaining of a livelihood in Alberta, Pel and O'Donnell became members of the Law Society of Alberta ("**LSA**") and caused HDC PC to be extra-provincially registered in Alberta. They later opened an office in Alberta.
12. On or around April, 2018, Pel and O'Donnell asked the LSA to issue a permit allowing HDC PC to carry on the practice of a barrister and solicitor in Alberta under s. 131 of the *Legal Profession Act*, RSA 2000, c L-8 ("**LPA (AB)**")
13. Through an exchange of correspondence, lasting from the Spring of 2018 to October 2021, the LSA maintained a position that it could not issue a permit to a professional corporation unless it was formed or continued under the *Business Corporations Act*, RSA 2000, c B-9 ("**ABCA**") pursuant to a requirement in section 131(3)(c) of the *LPA (AB)*.
14. Pel and O'Donnell then made inquiries with the LSO about the possibility of forming a corporation under the ABCA, extra-provincially registering it in Ontario and then having it receive a certificate of authorization from the LSO. The LSO responded that only a corporation formed under the *OBCA* could receive a certificate of authorization to practice law in Ontario.
15. As a result, Pel and O'Donnell transferred the HDC Practice to HDC LLP so that they could operate the HDC Practice without running into the opposition of either the LSA or LSO or violating the *LPA (AB)* or the *LSA (Ont)*. They continued to engage with the LSA on the possibility of using HDC PC in Alberta.
16. As a result of the transfer of the the HDC Practice to HDC LLP, Pel and O'Donnell lost the Incorporation Tax Benefits. Their ability to pursue the gaining of a livelihood in any province has been substantially impaired by section 131(3)(c) of the *LPA (AB)* in so much as this provision bars them from using the most tax effective business organization through which to practise law in Alberta and substantially reduces their ability to invest in their business.
17. Section 131(3)(c) of the *LPA (AB)* therefore violates s. 6(2)(b) of the *Canadian Charter of Rights and Freedoms*, s 15, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (the

“Charter”).

18. The most effective remedy for this breach would be for the Court to read into section 131(3)(c) a provision directing the *LSA* to permit the extra-provincial registration of professional corporations that otherwise meet the conditions of section 131.
19. Such a clause would mirror legislation in other jurisdictions that permits extra-provincially registered professional corporations to carry on the practice of law.

Remedy sought:

20. The Applicants seek:
 - a. A declaration that the current wording of section 131(3)(c) is contrary to s. 6(2)(b) of the *Charter*;
 - b. An order that the words “or that is an extra-provincial corporation as defined in that Act” be read into section 131(3)(c);
 - c. Alternatively, an order that the declaration of invalidity will apply in 6 months to section 131(3)(c) such that Alberta may revise the *LPA (AB)* to make to it consistent with the *Charter*;
 - d. Such other or further relief as the Applicants may propose or the Court may determine is proper in the circumstances.
 - e. An award of costs to the Applicants.

Affidavit or other evidence to be used in support of this application:

21. The Affidavit of Crystal O’Donnell sworn April 13, 2022.

Applicable Acts and regulations:

22. Relevant Acts Include:
 - (i) *Legal Profession Act*, RSA 2000, c L-8
 - (ii) *Business Corporations Act*, RSA 2000, c B-9

- (iii) *Canadian Charter of Rights and Freedoms*, s 15, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).