# SUPREME COURT OF YUKON

Citation: *Boles v Yukon Residential Tenancies Office*, 2024 YKSC 33

Date: 20240705
S.C. No. 23-AP009
Registry: Whitehorse

BETWEEN:

CARRIE BOLES

APPLICANT

AND

YUKON RESIDENTIAL TENANCIES OFFICE AND GERRY KUHN

RESPONDENTS

Before Justice K. Wenckebach

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| Appearing on her own behalf | Carrie Boles |
| Counsel for the Respondent Yukon Residential Tenancies Office | Lenore Morris |
| Counsel for the Respondent Gerry Kuhn | Gary W. Whittle |

**REASONS FOR DECISION**

**OVERVIEW**

[1] The petitioner, Carrie Boles, has brought a judicial review application against the respondent, Gerry Kuhn, and the Residential Tenancies Office. She essentially seeks that the court quash the RTO's decision upholding the notice of eviction for cause Mr. Kuhn gave to Ms. Boles and asks the court to remit the matter to the RTO.

[2] Ms. Boles rented a cabin from Mr. Kuhn. On about April 2, 2023, Mr. Kuhn sent Ms. Boles an eviction notice for cause. The grounds he cited for evicting Ms. Boles included interfering with plowing and maintenance of the road on the property;

harassing neighbours and passersby; challenging visitors to the property; obstructing trails; and failing to comply with his requests to stop these behaviours.

[3] On about April 14, 2023, Ms. Boles applied to the RTO disputing that Mr. Kuhn had cause to provide her notice.

[4] The RTO proceeded by way of a written hearing. It requested that both parties provide evidence and written arguments by email, which the parties did. The RTO provided both parties with the majority of each other's submissions and provided them a chance to respond. It is, however, uncontroverted that the RTO received three statements in support of Mr. Kuhn, from Mr. Kuhn's wife, Sharron Chatterton, and two tenants, which were not shared with Ms. Boles until after the deputy director of the RTO, who was the decision-maker, delivered his decision.

[5] In his decision, dated June 15, 2023, the deputy director found that Mr. Kuhn had sufficient grounds for evicting Ms. Boles for cause. Because he found that there were some deficiencies in the notice, the deputy director ended the tenancy as of June 30, 2023. At that point the RTO also provided Ms. Boles the statements it had received from Ms. Chatterton and the two tenants.

[6] Ms. Boles applied for a review to the director of the deputy director's decision. She claimed she should have been given the statements and an opportunity to reply before the decision was made.

[7] The director refused Ms. Boles' application, concluding that the deputy director had not relied on the statements when making his decision.

[8] The rental agreement thus terminated on June 30, 2023. Ms. Boles did not leave the cabin voluntarily. Rather, the Sheriff attended and removed her. After, Mr. Kuhn also removed the items that were left in the cabin.

[9] Ms. Boles applied for a judicial review of the decisions of the deputy director and the director. She submits that the decisions were both procedurally unfair and unreasonable.

[10] Mr. Kuhn and the RTO took part in the judicial review. Mr. Kuhn opposes Ms. Boles' application. In addition, he raised preliminary issues. He sought that the Court review only the director's decision, rather than both the director's and the deputy director's decisions. He also submitted that I should decline to exercise my discretion to decide the judicial review. Alternatively, he argued that the judicial review application is moot.

[11] The RTO agrees with Mr. Kuhn's submissions. It also provided arguments on procedural fairness.

[12] For the reasons provided below, I conclude that the judicial review is moot; however, I will exercise my discretion to decide the judicial review. I conclude that the RTO breached procedural fairness by not providing Ms. Boles with evidence it received, and which the deputy director went on to consider, before coming to his decision. Because of my conclusions on procedural fairness, it is unnecessary to decide whether the decision is reasonable.

**ISSUES**

1. Should the judicial review concern the director's decision, or both the director's and the deputy director's decisions?

2. Should the Court decide the judicial review?
3. What level of procedural fairness is required in disputes of eviction for cause?
4. Did the RTO breach procedural fairness in the way it established timelines for providing submissions?
5. Did the RTO breach procedural fairness by not disclosing evidence to Ms. Boles?
6. Did the RTO breach procedural fairness by accepting unsworn statements as evidence?

[13] In her submissions, Ms. Boles sought a review not only of RTO's decisions, but also of the way in which she and her possessions were removed from the property and that the *Residential Landlord and Tenant Act*, RSY 2002, c 20 (the "*Act*"), be reviewed and revised. My authority is confined to reviewing the RTO's decision. I cannot examine the circumstances in which Ms. Boles and her possessions were removed from the property, nor can I review the *Act*. I will not consider these issues.

**ANALYSIS**

1. Should the judicial review concern the director's decision, or both the director's and the deputy director's decisions?

[14] Pursuant to Rule 54(4) of the *Rules of Court* of the Supreme Court of Yukon, applications for judicial review are limited to one decision, unless the court orders otherwise. In this case, Ms. Boles implicitly seeks that both the decision of the deputy director and the director be reviewed. Mr. Kuhn, on the other hand, submits that the Court should review only the last decision, which was the director's decision.

[15] In my opinion, the two decisions are intertwined. Because the director's decision is a review of the deputy director's decision, a determination about whether the director erred affects the validity of the deputy director's decision. I therefore order that the application for judicial review be of both the decision of the deputy director, and of the director.

2. Should the Court decide the judicial review?

[16] Mr. Kuhn submits that the Court should refuse to consider the application for judicial review. Alternatively, he argues that the judicial review is moot.

[17] I conclude that the judicial review is moot but will exercise my discretion to decide the judicial review. In resolving this question, I will first consider the legal principles, and will then apply the principles to the facts.

*Legal Principles*

[18] In the case at bar, there are two legal concepts to consider: the concept that the court has discretion about whether to entertain a judicial review; and the concept of mootness.

[19] Beginning with the court's discretion to hear the judicial review, there are circumstances in which a court may decline to consider a judicial review. Those circumstances include where the party seeking judicial review has caused undue delay, been guilty of misconduct, or has an adequate alternative remedy (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para. 135).

[20] The concept of mootness arises when there is no longer a live issue between the parties. The court will generally come to a decision on a matter only when the decision will "… have the effect of resolving some controversy which affects or may affect the

rights of the parties." (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 ("*Borowski*") at 353). As a rule, the court should only consider cases in which there is a tangible and concrete dispute. Proceedings in which the dispute is hypothetical are considered moot.

[21] There are circumstances, however, in which a court will decide a matter that is moot. The factors used to determine whether to hear a moot case include: whether the adversarial context will continue to exist, even though the issue has resolved (at 359); the impact hearing the case will have on the use of judicial resources (at 360); and the extent to which the court will stray away from its adjudicative role into the role of the legislative branch if it decides the matter (at 362).

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[22] Counsel to Mr. Kuhn submitted in his written argument that the Court should decline to decide the application for judicial review because of Ms. Boles' behaviour but did not press the issue in oral argument. Ms. Boles did make unwarranted allegations about Mr. Kuhn, other tenants, and even Mr. Kuhn's counsel. This was not appropriate. However, it was not so egregious that I would decline to hear the application on the merits.

[23] Mr. Kuhn also submitted that the Court should not exercise its discretion to decide the judicial review because there is no longer a live argument between the parties. In my opinion, this is the real issue here. It also seems to me better addressed under the question of mootness.

[24] Mr. Kuhn argues that Ms. Boles is essentially seeking that she be allowed to live at the cabin she rented from Mr. Kuhn. The RTO's jurisdiction is about whether

Ms. Boles should vacate the rented cabin in which she was then living after 14 days. Neither it, nor the Court, has the authority to order Mr. Kuhn to permit her to live in the cabin after she was evicted.

[25] Ms. Boles, I believe, concedes that her application for judicial review is moot. She submits, however, that there was something "very wrong" about the RTO's decision, and the procedure used to reach it.

[26] I first considered whether the judicial review application was moot when Ms. Boles brought an interim injunction application. At the time, I came to the preliminary conclusion that the judicial review became moot once Ms. Boles was evicted from the rental cabin because neither the Court nor the RTO has the authority to order that Mr. Kuhn provide Ms. Boles with housing.

[27] I continue to consider that the application is moot, although not for the reasons I articulated on the injunction application. It seems to me that it is moot because the RTO's order has been carried out. As the order is spent, there is no practical utility in reviewing the RTO's decision. However, there has not yet been full argument about whether a judicial review application is moot once a tenant has been evicted from their rental accommodations. With fulsome consideration, another court may decide otherwise.

[28] The next question is whether I should decide the application even though it is moot. In my opinion, the answer to that question turns on the issue of judicial economy. Because judicial resources are finite, the court generally hears only those cases in which the order will have a real impact on the parties. The court will, however, hear cases "… which although moot are of a recurring nature but brief duration." (*Borowski*

at 360). These are cases which can become moot before they are heard, thus rendering it difficult for the court to review. In those circumstances, the mootness doctrine is not strictly applied.

[29] This is the situation here. When the RTO upholds a landlord's 14-day eviction notice, the tenant has very little time to organize their lives, find somewhere new to live, and move out. It would be rare that the tenant would also have the time and wherewithal to apply for a judicial review and an interim application for a stay of the RTO's order. It seems to me that, if the court hears these matters at all, they will be moot by the time they are heard on the merits. Thus, although moot, I will exercise my discretion to decide the application for judicial review.

3. What level of procedural fairness is required in disputes of eviction for cause?

[30] I conclude that a high level of procedural fairness is required in disputes of eviction for cause.

[31] Ms. Boles submits that the RTO breached procedural fairness in several ways. Before addressing whether Ms. Boles' rights of procedural fairness were violated, however, it is necessary to determine what level of procedural fairness the RTO owes parties in disputes about for-cause eviction notices. This is because the level of procedural fairness owed to parties is not always the same. The administrative bodies that make decisions, the type of issue they decide, and the legislative schemes under which they operate vary widely, thus requiring different levels of procedural fairness (*Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 ("*Baker*") at para. 21).

[32] This Court has not had occasion to consider the level of procedural fairness owed by the RTO to parties appearing before it in disputes about 14-day eviction notices. I will therefore review the legal principles and then apply them to the facts to determine the level of procedural fairness owed.

*Legal Principles*

[33] The court applies five factors to determine the level of procedural fairness an administrative decision-maker owes to parties. These are:

- the nature of the decision and the process used in making it;
- the nature of the statutory scheme;
- the importance of the decision to the individual affected;
- the applicant's legitimate expectations; and
- the agency's choice of procedure (at paras. 23-27).

[34] On the first factor, the court will consider the extent to which the parties are in an adversarial or non-adversarial context; the issues the decision-making body resolves, for instance, whether they must make findings of fact, or if their decisions are based on other considerations; and the nature of the procedures the legislation provides. Oftentimes, greater procedural protections will be required where the decision-maker, nature of decision and processes used resemble the judicial model (at para. 23).

[35] The second factor is the nature of the statutory scheme. It concerns the extent of appeal rights and whether the decision is determinative of the issue (at para. 24).

[36] Under the third factor, the more important the decision to the parties, the more stringent the procedural protections will need to be. The importance of the decision is a

significant factor in determining the level of duty of fairness owed to the parties (at para. 25).

[37] Legitimate expectations may arise where an administrative body, by word or conduct, gives a party reason to believe that the body will conduct the matter in a particular way. A party may, for example, have a legitimate expectation that a hearing will be held if the body has published a policy stating it will hold a hearing if requested (*Campbell v Workers' Compensation Board*, 2012 SKCA 56 at para. 56). However, the principle of legitimate expectations is limited: it does not create substantive rights (*Baker* at para. 26).

[38] Finally, the last factor is focused on the choices the decision-making body has made about the processes it follows, especially where the statute provides the body with discretion in choosing its procedures.

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[39] The first factor suggests that the RTO owes a high level of procedural fairness to the parties appearing before it. Disputes over eviction and termination of rental leases for cause are adversarial. The RTO's determinations will also most often turn on the facts.

[40] The *Act*, as well, provides for procedures that are closer to the judicial end of the spectrum than the administrative end. It contemplates that disputes may proceed to hearings (s. 68); the director receives evidence, although the rules of evidence do not apply (s. 81); and the director is permitted to issue summons requiring people to attend to give evidence and produce documents (s. 95).

[41] The second factor also militates towards a high level of procedural fairness. The decision of the person hearing the dispute is final, subject to a right of review on a narrow basis to the director (s. 84). The only other form of review open to parties is judicial review.

[42] The importance of the decision to the parties also indicates that the procedural fairness owed is high. Whether a landlord can evict a tenant upon providing 14-days' notice is an important issue to both the landlord and tenant. The circumstances in which a landlord can evict a tenant with cause includes, but is not limited to, where the tenant has seriously jeopardized the health or safety of another tenant or the landlord; put the landlord's property at significant risk or has caused damage to the property; or has engaged in offensive or illegal activity (s. 52). The potential interest at stake, for the landlord, is to ensure the safety and security of their tenants, their property, and themselves. For the tenant, an eviction for cause may result in re-location to a new residence or homelessness, all within two weeks. The stakes, for both parties, are high.

[43] With regard to legitimate expectations, Ms. Boles has not alleged that she had any legitimate expectations about the process the RTO would follow.

[44] The last factor- the decision-making body's choices of procedure- suggests a more middling level of procedural fairness. Aside from establishing that hearings may be conducted by paper or in person, and setting out some of the notice requirements, the *Act* provides that the decision-maker may "deal with any procedural issues that arise" (s. 78(3)). The intention of the legislation then, is that the RTO is to have considerable discretion in setting procedures for the disputes that come before it.

[45] Balancing out the factors, I the level of procedural fairness owed to parties in a hearing about a termination of a tenancy for cause is high.

4. Did the RTO breach procedural fairness in the way it established timelines for providing submissions?

[46] Ms. Boles submits that she was not aware of timelines, particularly Mr. Kuhn's timelines, rendering the RTO's procedures for providing evidence and submissions confusing.

[47] I conclude that the RTO provided clear timelines to each of the parties along the way. Ms. Boles knew when she was required to provide her submissions. There was no breach of procedural fairness.

5. Did the RTO breach procedural fairness by not disclosing evidence to Ms. Boles?

[48] Ms. Boles submits that the RTO breached procedural fairness because it did not provide her with a statement given to it by Ms. Chatterton, or two statements given to it by tenants, before the deputy director made his decision.

[49] I conclude that the RTO breached procedural fairness because the deputy director considered, at the very least, Ms. Chatterton's statement, but did not give it to Ms. Boles and provide her an opportunity to reply.

[50] This issue arises because the RTO received the statements before the deputy director made his decision but did not disclose them to Ms. Boles until after. The deputy director did not make specific mention of these statements in his decision. The statements were simply provided to Ms. Boles, without comment, at the same time as the decision was delivered to her.

[51] Ms. Boles then applied for a review of the deputy director's decision, as permitted under the *Act* (s. 84). She submitted that she should be given a chance to reply to the statements. The director denied Ms. Boles' application for a review, reasoning that the deputy director did not rely on the evidence in coming to his decision.

*Positions of the Parties*

[52] On judicial review, Ms. Boles maintains that the RTO should have provided her with the statements and the opportunity to respond. The RTO submits, in line with the decision of the director, that the deputy director did not rely upon the evidence when coming to his decision. Alternatively, counsel submits that even if the deputy director did use the evidence in his decision, it did not have an impact on the outcome. There was, therefore, no breach of procedural fairness.

[53] The parties' submissions are about the deputy director's decision. However, my analysis must address both the director's decision as well as the deputy director's decision. Thus, I must examine whether the director erred when she concluded that the deputy director did not consider the statements in rendering his decision. In reviewing the director's decision my analysis is not about the procedural fairness owed to Ms. Boles, but of the director's interpretation of the deputy director's decision. The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*") at para. 69).

[54] I conclude that the director's decision was not reasonable: it is inconsistent with the record, and inconsistent with legal principles of decision-making in an administrative law context.

*Director's Decision and the Record*

[55] In her decision, the director stated that the RTO has an informal practice of accepting evidence only from parties to a dispute. She then reasoned that the deputy director followed that practice in Ms. Boles' matter. Thus, she concluded that the deputy director had not considered Ms. Chatterton's or the tenants' statements in his decision.

[56] The communications between Mr. Kuhn and the RTO suggest, however, that the deputy director's understanding of this practice is different than the director's. It also suggests that he did, at the very least, consider Ms. Chatterton's statement when making his decision.

[57] After Ms. Chatterton sent her statement to the RTO, the RTO emailed Mr. Kuhn. The email stated:

> The policy of this office is only to accept submissions directly from the parties or from a third party only with the clear consent of one of the parties.
>
> As such, we require that you confirm that this submission is being put forward with your consent. (emphasis added)

[58] Mr. Kuhn responded by confirming that his wife was his "authorized spokesperson".

[59] Thus, the director states that the RTO's practice is to not accept third party statements. The message to Mr. Kuhn, however, is that the RTO will accept third party statements if the landlord or tenant on whose behalf it is sent confirms that it is provided with their consent.

[60] Here, the RTO stated that it would accept Ms. Chatterton's statement if Mr. Kuhn confirmed she sent it to them with his consent; and Mr. Kuhn responded by providing his consent. The logical conclusion is that the deputy director accepted the statement

and had it before him when he made his decision. Thus, the director's decision that the deputy director did not consider the evidence is untenable.

*Director's Decision and Legal Principles of Decision-Making*

[61] In addition, the director's decision also reflects a misunderstanding of the legal principles about how an administrative decision-maker may apply policy or guidelines in their decisions. This, too, renders the decision unreasonable.

[62] Administrative decision-makers are permitted to create policies and guidelines to help inform their decision-making. However, when the decision-maker has discretion in deciding an issue, they cannot simply apply the guideline without further consideration. Instead, they must address all the factors that are relevant in the circumstances before them. The policy or guideline, therefore, may be one of the criteria applied in a decision-maker's decision, but it cannot be the only criterion applied. A decision-maker who relies solely on a policy or guideline to make a decision commits the error of fettering their discretion (*Homburg Canada Inc v Nova Scotia (Utility and Review Board)*, 2010 NSCA 24 at paras. 35-36).

[63] Here, the *Act* provides that, in a hearing, the director or deputy director may admit as evidence "any oral or written testimony or any record or thing the director [or, here, the deputy director] considers to be … necessary and appropriate … and relevant to the proceeding" (s. 81). The legislation thus gives the director or deputy director wide discretion in the admission of evidence.

[64] When the director or deputy director is presented with a third party statement, therefore, they may take into account the RTO's practice about the use of non-party evidence but cannot reject the evidence solely on that basis.

[65] Applying the facts to the case at bar, the deputy would have fallen into error if he had accepted, without further consideration, the policy about when statements from non-parties are to be admitted. The director, however, concluded that was exactly what the deputy director did. In making this conclusion, the director erred.

[66] I therefore conclude the director's decision is unreasonable; and the deputy director considered at least Ms. Chatterton's statement when making his decision. This is sufficient to dispose of this issue.

[67] I would, however, like to provide some additional observations, as I hope this decision can assist in preventing similar issues from arising in the future.

[68] It seems to me that issues arose largely because there is a lack clarity about how the deputy director treated Ms. Chatterton's and the two tenants' statements. This lack of clarity sprang from the way the RTO communicates its policies with parties; its correspondence with Mr. Kuhn; and the deputy director's decision.

[69] First, it appears that the RTO does not inform the parties appearing before it that it does not generally accept statements from third parties. Instead, it informs them of the policy in a piecemeal fashion, when it receives evidence to which the policy may apply. Moreover, at that point, it does not inform both parties about the policy, but only the party on whose behalf the evidence was filed. Proceeding in this fashion provides only partial and belated information of a policy that can have an impact on the parties' evidence.

[70] As well, the emails between Mr. Kuhn and the RTO could lead to confusion. It was the deputy director, as the decision-maker, who had the responsibility to determine whether Ms. Chatterton's statement should be accepted. However, there is no indication

in the emails on this issue that the deputy director had received the evidence or directed that the email be sent: the email to Mr. Kuhn makes no reference to the deputy director and is signed by the "Residential Tenancies Office".

[71] This is not a legal error. The presumption is that a decision-maker knows and applies the law correctly. Based on that presumption, the conclusion that must be drawn is that the deputy director received the statement and directed that Mr. Kuhn's confirmation be sought before accepting the evidence. Best practice would be, however, that correspondence that deals with such issues not simply state it is from the "Residential Tenancies Office" but identify it is being sent on behalf of the actual decision-maker.

[72] The deputy director should also have addressed the statements in his decision. Decisions must demonstrate the decision-maker's reasoning on critical points (*Vavilov* at para. 103). In the case at bar, whether, why, and to what extent the deputy would treat the statements was a critical point. It was critical because of the content: the statements provide a great deal of evidence directly related to the central issue before the deputy director. It was also critical because there was uncertainty about whether the evidence was admitted: the deputy director had stated that he would accept Ms. Chatterton's statement; he had not indicated whether he would accept the other two statements; and none of the statements had been given to Ms. Boles. It was incumbent on the deputy director to explain what use he was making of the evidence and why. His failure to do so exacerbated the RTO's previous missteps.

[73] Lack of communication and transparency created issues in this process. If the RTO is clearer in its communications and decisions, then it is likely that some of the issues that arose here will not recur.

[74] Returning to the main issue, I have found that, at the very least, the deputy director considered Ms. Chatterton's statement when making his decision, even though Ms. Boles had not seen it nor been given the opportunity to respond. I will now address the RTO's argument that, even if the deputy director did consider the statements, it did not have an effect on the outcome and therefore did not amount to a breach of procedural fairness.

*Impact of Failure to Disclose the Statement on the Outcome*

[75] Relying on *Canadian Cable Television Assn v American College Sports Collective of Canda, Inc*, [1991] 3 FC 626, the RTO's counsel submits that Mr. Kuhn's original submission provided sufficient information for Ms. Boles to adequately respond. The new statements did not provide any truly new evidence but provided information similar to that which Mr. Kuhn had submitted. Ms. Boles was therefore fully equipped to respond to the case against her and was not prejudiced by the new statements. The outcome would also have been the same whether or not Ms. Boles received the additional statements and been given the opportunity to reply.

[76] I am not persuaded by this argument. While the courts consider whether there was a possibility of prejudice in determining whether there was a breach of procedural fairness, the bar for concluding that a party may have been prejudiced is low. The court "will not inquire whether the evidence did work to the prejudice of one of the parties; it is

sufficient if it might have done so." (*Kane v Board of Governors (University of British Columbia)*, [1980] 1 SCR 1105 at 1116).

[77] In cases where evidence has not been disclosed to a party, the court will generally find a breach of procedural fairness where the information was prejudicial to the party and was new or different than the evidence previously filed (*Taseko Mines Ltd v Canada (Minister of the Environment)*, 2019 FCA 320 at para. 53).

[78] In the case at bar, Ms. Chatterton provided a five-page, single-spaced statement, detailing Ms. Chatterton's own direct observations of Ms. Boles' interactions with others and providing replies to Ms. Boles' evidence. Even when echoing the evidence of Mr. Kuhn, it served to corroborate his testimony. The evidence she provided was prejudicial to Ms. Boles and significant and specific to the issues the deputy director was required to resolve. Thus, while the case against Ms. Boles was already strong, it cannot be said that this statement had no impact on the deputy director's decision.

[79] Moreover, I believe that, in this case, focusing purely on the result would minimize the importance of procedural fairness. Parties subject to an administrative body are entitled to a proceeding that is procedurally fair. As the Supreme Court of Canada stated: "It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been" had the deputy director complied with procedural fairness (*Cardinal v Kent Institution*, [1985] 2 SCR 643 at para. 23).

6. Did the RTO breach procedural fairness by accepting unsworn statements as evidence?

[80] I will not consider whether the RTO breached procedural fairness in accepting unsworn statements because Ms. Boles did not provide adequate notice that this would be an issue in the application for judicial review.

[81] In her application for judicial review, Ms. Boles did not clearly state that the deputy director erred by accepting unsworn testimony. It arose only when Ms. Boles made her arguments.

[82] While neither the RTO nor Mr. Kuhn objected to Ms. Boles raising this issue only in argument, they also did not address it. It would be unfair and unwise to consider it in the absence of adequate notice and a full opportunity to argue the issue.

[83] Ms. Boles also submitted that the deputy director's decision was unreasonable. I have, however, determined that the deputy director breached Ms. Boles' rights to know the case against her and provide a response. As a result, the decision may have been different, or differently explained, had Ms. Boles been given an opportunity to respond to Ms. Chatterton's evidence. In the circumstances, I have concluded that it would not be useful to determine whether the deputy director's decision was reasonable.

**CONCLUSION**

[84] The deputy director breached the rules of procedural fairness because Ms. Boles was not provided with evidence and a chance to respond, which the deputy director then considered in coming to his decision. However, because the matter is moot, the matter will not be remitted to the RTO, and no order is required.

[85] There has been a request for costs. Ms. Boles has been substantially successful in her application, although no order was issued as a result. Costs may be spoken to in case management if the parties are unable to agree.

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WENCKEBACH J.