Neutral Citation No [2013] NIQB 109 | *Ref:* **TRE9029**

Judgment: approved by the Court for handing down | *Delivered:* **28/10/13**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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John J Rice & Company, Solicitors' Application [2013] NIQB 109

IN THE MATTER OF AN APPLICATION BY JOHN J RICE & COMPANY, SOLICITORS FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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TREACY J

Introduction

1. The leave application was adjourned pending the outcome of the related judicial review in Finucane [2011] NIQB 45 and [2012] NICA 12 which raised the same issues. Following the judgment of the Court of Appeal in that case the present application became academic and was, by agreement, dismissed. The applicant however sought an order for costs against the proposed respondent which was resisted. Skeleton arguments were exchanged on this issue.

Legal Principles

2. The general principles to be applied to the issue of costs where the judicial review is being discontinued were considered in R (Boxall) v London Borough Waltham Forest (2001) 4 CCL Rep 258 [see para 22]. The Boxall principles must now be read in light of the judgment in R (on the application of Bahta) and others v Secretary of State for the Home Department [2011] EWCA Civ 895 [see paras 59-61]. The Bahta judgment was applied by the Court in M v Croydon London Borough Council [2012] 3 All ER 1237 and McTaggart's Application [2012] NIQB 79.

3. In my judgment the fair costs disposal in this case is to make no order as to costs between the parties.

4. I consider that the bringing of the present judicial review was unnecessary since it ought to have been clear from the beginning that the point at issue would (as happened) be determined in the ***Finucane*** litigation. If the applicant entertained any doubts about this it should have sought clarification from the proposed respondent

before issuing proceedings. When it sought clarification, after the issue of proceedings, the applicant received it and then adjourned the leave application until the outcome of the Finucane litigation.

5. The Commission was obliged to pay the applicant firm its fees (in the Walsh case) on the basis of the 2005 Rules because of the ruling of the Court of Appeal in Finucane.

6. Given that the matters in issue between the applicant firm and the Commission were already being litigated in the course of the Finucane judicial review, of which the applicant was aware before commencing these proceedings, this application was unnecessary. Thus the applicant consented to the leave application in this case being adjourned, without leave being granted, and the case being held in abeyance pending the outcome of the Finucane case both in the High Court and on appeal.

7. The proposed respondent submitted that there was a "strong argument" that costs should be awarded *against* the applicant firm for bringing unnecessary proceedings. The proposed respondent did not however seek such an order. I was not addressed by the parties as to whether the court had the power to make such an order before leave. Even if the court had such a power in exceptional circumstances I do not consider, on the facts, that it would have been appropriate to make such an order. The fair disposal is to make no order as to costs.