Federal Court  Cour fédérale

Date: 20181113

Docket: IMM-4197-17

Citation: 2018 FC 1141

Ottawa, Ontario, November 13, 2018

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

SARVJIT SINGH PABLA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Sarvjit Singh Pabla (the Applicant) brings this application for judicial review of a decision by the Immigration Appeal Division (the IAD) of the Immigration and Refugee Board, dismissing his appeal of the refusal of his wife's permanent resident application in the family reunification category.

[2] This refusal was on the grounds that the marriage was entered into primarily for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC

2001, ch 27 [*IRPA*], which is contrary to s. 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The IAD also found that the marriage was not genuine.

[3] Mr. Pabla claims that the IAD contradicted itself in its findings about the validity of the marriage, focused unreasonably on a few minor details to make negative credibility findings, and ignored relevant evidence which demonstrated that his marriage was genuine and not entered into for the purpose of gaining immigration status.

[4] After careful review of the record and the precedents, and having considered the matter from all perspectives, I am dismissing this application for judicial review. The law clearly provides that if it is found that a marriage was entered into for the primary purpose of obtaining a privilege or status under *IRPA*, the relationship cannot form the basis for a sponsorship, even if it is also found that the relationship subsequently became a genuine marriage. The IAD conclusion that this marriage was entered into for immigration purposes is reasonable, in light of the law and the evidence in this case.

I. Facts and Background

[5] The Applicant is a 33-year old citizen of Canada, and his wife, Satvir Kaur Tamber is a 32-year old citizen of India. They met in 2012 in the context of an arranged marriage in Ludhiana, India. He proposed the day they met, engagement ceremonies were held two days later, and the couple married February 20, 2012. The Applicant applied to sponsor his wife in June 2012.

[6] The Visa Officer, following an interview on February 19, 2013, concluded that there remained serious questions regarding the truthfulness and credibility of the wife. The Visa Officer found problems based on her explanation of her previous Canadian work permit refusal, the haste of the arranged marriage, and her prior Indian work history. The Visa Officer concluded that she had an extremely strong intent to go to Canada, and the marriage was arranged primarily for immigration purposes, and was not genuine.

[7] The Applicant appealed this decision. The IAD upheld the Visa Officer's decision, concluding that the Applicant had failed to discharge his burden of proof to show that the marriage was not entered into to acquire a status or privilege under *IRPA*. Although that finding was sufficient to dispose of the appeal, the IAD also assessed the genuineness of the marriage. The birth of their son in 2015 created a presumption that the marriage was genuine, but the IAD outlined the problems with other evidence about the relationship, and ultimately concluded that the presumption of genuineness had been rebutted.

[8] The IAD concluded that the marriage was entered into primarily for the purpose of acquiring a status or privilege under *IRPA* and that the marriage was not genuine. It dismissed the appeal because the wife did not qualify as a member of the family class who may be sponsored to Canada under s. 117(1) of *IRPA*.

[9] The IAD decision is the basis for the application for judicial review before me.

II. Issue and Standard of Review

[10] The only issue is whether the IAD decision is unreasonable.

[11] The standard of review going to the merits of this type of decision is reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*]. A reviewing court, when assessing a decision for reasonableness, looks for the existence of justification, transparency, and intelligibility within the decision making process. A decision-maker's findings ought not to be disturbed if they fall within a range of possible, acceptable outcomes which are defensible on the facts and the law (*Dunsmuir* at para 47). It is not the role of the court to re-weigh factual findings or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59.)

[12] An assessment of the credibility of applicants for permanent residence goes to the core of the competence of visa officers and the IAD. Therefore, this Court owes deference to the decision-makers, and will only interfere if the conclusions cannot be justified on the facts and the law. This is particularly the case where the question involves assessing whether the marriage was entered into for the primary purpose of immigration, or is genuine. This is a highly factual inquiry: *Burton v Canada (Citizenship and Immigration)*, 2016 FC 345 at para 15; *Bercasio v Canada (Citizenship and Immigration)*, 2016 FC 244 at para 17; *Shahzad v Canada (Citizenship and Immigration)*, 2017 FC 999 at para 14 [*Shahzad*].

[13] Finally, it is important to note that this is a judicial review of an IAD decision, which followed a full hearing of the matter. I would adopt the following observations of Justice Richard Mosley in *Igiewe v Canada (Citizenship and Immigration)*, 2018 FC 101 at para 15:

> The finding of facts by the IAD is owed a high degree of judicial deference given the IAD's opportunity to hear and observe the testimony of the witnesses before it: *Thach v Canada (MCI)*, 2008 FC 658, at paras 15-19; *Valencia v Canada (MCI)*, 2011 FC 787 at

para 25 [*Valencia*]. As discussed in *Grewal v Canada (MCI)*, 2003 FC 960, at para 9 [*Grewal*]:

> The Board is entitled to determine the plausibility and credibility of the testimony and other evidence before it. The weight to be assigned to that evidence is also a matter for the Board to determine. As long as the conclusions and inferences drawn by the Board are reasonably open to it on the record, there is no basis for interfering with its decision. Where an oral hearing has been held, more deference is accorded the credibility findings.

III. Analysis

[14] The Applicant pursued two primary lines of attack on the decision of the IAD: (i) that the decision-maker contradicted itself in finding that the marriage had all of the attributes of a genuine marriage, but then concluding that it was entered into for an invalid purpose and was not genuine; and (ii) the decision is unreasonable because the IAD ignored persuasive and relevant evidence that showed the marriage was valid, and gave undue weight to minor issues and contradictions. There was no evidence to support a finding that it was entered into for the primary purpose of obtaining a status or privilege under *IRPA*.

[15] The Applicant also asserted that the decision was unreasonable because of the lengthy delay between the hearing and the release of the decision. There is no merit to this argument and I will not address it further.

[16] The Respondent argues that the Applicant is misreading the decision in regard to the key findings, and that there is no contradiction in the reasons. Further, the Respondent submits that

the IAD considered all of the relevant evidence, and its findings of multiple contradictions and inconsistencies in the evidence is fully supported on the record.

A. *Does the IAD contradict itself without an explanation?*

[17] To put this argument into context, it is necessary to examine the relevant legal provisions. Subsection 4(1) of the *IRPR* sets out a two-part test:

Bad faith	**Mauvaise foi**
4 (1) For the purposes of these Regulations, a foreign national shall not be considered a spouse, a common-law partner or a conjugal partner of a person if the marriage, common-law partnership or conjugal partnership	**4 (1)** Pour l'application du présent règlement, l'étranger n'est pas considéré comme étant l'époux, le conjoint de fait ou le partenaire conjugal d'une personne si le mariage ou la relation des conjoints de fait ou des partenaires conjugaux, selon le cas :
(a) was entered into primarily for the purpose of acquiring any status or privilege under the Act; or	**a)** visait principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi;
(b) is not genuine.	**b)** n'est pas authentique.

[18] This requires an assessment of whether the marriage was entered into primarily for the purpose of acquiring any status or privilege under *IRPA* (the "primary purpose test"), as well as whether it is genuine (the "genuineness test"). Either finding is sufficient to preclude the spouse from obtaining the necessary visa to come to Canada (*Dalumay v Canada (Citizenship and Immigration)*, 2012 FC 1179 at para 25; *Singh v Canada (Citizenship and Immigration)*, 2014 FC 1077 [*Singh*]).

[19] It should also be noted that the tests focus on different time periods: the "primary purpose test" requires an examination of the intentions of each spouse at the time of entry into the marriage ("was entered into…"), whereas the genuineness of the relationship is to be assessed at the time of the decision ("is not genuine") (*Singh* at para 20; *Gill v Canada (Citizenship and Immigration)*, 2012 FC 1522 at para 33 [*Gill 2012*]).

[20] In relation to the alleged contradiction in the decision, the Applicant points to the reference by the IAD to his yearly visits to India to be with his wife, behaviour which the IAD stated was "certainly an indicator of a couple involved in a genuine spousal relationship." The Applicant contends that this "finding", together with the IAD's acceptance that the birth of their child gives rise to a presumption as to the genuineness of the marriage, is contradicted later in the decision with no explanation, and that this is unreasonable.

[21] I am not persuaded. The IAD decision is clear – the first half of the analysis, which is described in more detail below, leads to the conclusion that the marriage was entered into to acquire a status or privilege under *IRPA*. The IAD then explains why it continues with its analysis:

> [40] Given the disjunctive test under subsection 4(1) of the *Regulations*, this negative finding is sufficient to dispose of this appeal. However, given the linkage between the 'primary purpose test' and the 'genuineness of the marriage test' I will briefly consider the latter.

[22] There is simply no contradiction in the decision. The IAD does find certain facts would tend to support a finding of a genuine marriage, but it weighs these against all of the credibility concerns around core issues relating to the marriage as well as a number of other difficulties with

the evidence and explanations offered by the couple. These are explained in more detail below, but for the purposes of this part of my analysis I will simply mention the findings that support the IAD's conclusion.

[23] The IAD cites the following difficulties in the evidence: (i) an inadequate explanation for why the relationship evolved so quickly to a marriage proposal and wedding; (ii) uncertainty regarding the extent and frequency of communication between the couple after the marriage, despite the fact that this issue was raised by the Visa Officer at the original interview; (iii) the lack of knowledge of the couple about each other's life history; (iv) the likely family pull and continuing interest of the wife in establishing herself in Canada; (v) inadequacies in the evidence in support of the husband's claim that he had been providing financial support to his wife since the marriage; and, (vi) the fact that the husband did not travel to India for the birth of his son.

[24] This, together with the contradictions, overall hesitancy, and frequent superficiality in the testimony of the Applicant and his wife lead the IAD to the following conclusion: "the importance of the birth of a child cannot reasonably be said to be determinative of a genuine marriage when weighed against the accumulation of negative factors."

[25] This finding is consistent with the case law of this Court, and with the evidence before the IAD (see *Gill v Canada (Citizenship and Immigration)*, 2010 FC 122 at para 9 [*Gill 2010*]; *Dhaliwal v Canada (Citizenship and Immigration)*, 2012 FC 1182; *Lamichhane v Canada (Citizenship and Immigration)*, 2016 FC 957 at para 14).

[26] For these reasons, I do not find that there is any contradiction in the decision.

B. *Does the IAD ignore relevant evidence and give undue weight to small details and minor contradictions?*

[27] The parties both submit that a leading decision in regard to the criteria to be considered in making this assessment is *Chavez v Canada (Citizenship and Immigration)*, [2005] IADD No 353 (QL) [*Chavez*]. I would note that the IAD expressly relied on this decision. *Chavez* outlines a list of criteria a decision-maker may consider when assessing whether or not a marriage is genuine. These can include, but are not limited to:

> [3] …such factors as the intent of the parties to the marriage, the length of the relationship, the amount of time spent together, conduct at the time of meeting, at the time of an engagement and/or the wedding, behaviour subsequent to a wedding, the level of knowledge of each other's relationship histories, level of continuing contact and communication, the provision of financial support, the knowledge of and sharing of responsibility for the care of children brought into the marriage, the knowledge of and contact with extended families of the parties, as well as the level of knowledge of each other's daily lives…

[28] The Applicant argues that the marriage had all of the attributes of a genuine marriage arranged in accordance with Sikh customs and traditions, and that the explanations of the husband and wife could only lead to the conclusion that the marriage was valid. There is no evidence that the marriage was entered into for the primary purpose of enabling the wife to immigrate to Canada.

[29] The Applicant submits that not only does the record show that the marriage meets each of the *Chavez* factors, but also that the parties never contradicted themselves, answered all questions and doubts raised by the Visa Officer, and that the IAD unreasonably disregarded sworn testimony of the Applicant and his wife.

[30] The Applicant submits further that the IAD focused on small details, was narrow and microscopic in its approach to the testimony, and disregarded the evidence as a whole. He refers to precedents in which this Court has overturned decisions about marriage validity because it concluded that these were based on innuendo and speculation, or on a microscopic examination of minutiae and marginalities rather than on the substance of the relationship, and therefore unreasonable: *Tamber v Canada (Citizenship and Immigration)*, 2008 FC 951 at para 18 [*Tamber*]; *Dhudwal v Canada (Citizenship and Immigration)*, 2016 FC 1124 at para 20; *Saroya v Canada (Citizenship and Immigration)*, 2016 FC 414 at para 49 [*Saroya*].

[31] Lastly, the Applicant argues that the presumption in favour of genuineness, which was produced by the birth of a child, was not rebutted.

[32] The Respondent submits that the IAD's finding that the testimony of the spouses was hesitant, inconsistent, and contradictory is supported by the record. Further, the IAD's careful examination of the inconsistencies is both reasonable, and within the competence of the IAD. A reviewing court owes particular deference on findings of credibility, which are central to the analysis of the genuineness of the relationship (*Keo v Canada (Citizenship and Immigration)*, 2011 FC 1456 at para 24). It is also well-recognized that decision-makers are presumed to have weighed and considered all of the evidence unless the contrary is shown (*Sing v Canada (Citizenship and Immigration)*, 2005 FCA 125 at para 90). The question is not whether another outcome or interpretation might have been possible, but rather if this conclusion is within the range of acceptable, possible outcomes (*Shahzad* at para 31).

[33] The findings that the marriage was entered into primarily for the purposes of acquiring a privilege under *IRPA*, and that the marriage was not genuine, are findings of fact based upon an analysis of credibility. Such findings are entitled to significant deference.

[34] In this case, the IAD based its decisions on facts in the record. It assessed the evidence which weighed in favour and against the Applicant and his wife, and ultimately concluded that they were not credible. It is not necessary to recite each of the findings; it will be sufficient to mention some of the most important difficulties, inconsistencies, and contradictions in their testimony. First, a brief overview of the events will help to place this into context.

[35] The Applicant travelled to India with his family in January 2012 to get married. A meeting was arranged by a "go-between" between his family and the family of a potential bride. The Applicant and his potential bride did not attend this meeting; members of both families were in attendance, including the bride's father, her uncle from Canada, together with the uncle's wife and son. The bride's mother did not attend as she was seriously ill at the time.

[36] A few days later there was another meeting; this time the Applicant and potential bride were there, and they had their first conversation. Both testified that by the end of this meeting, they had decided to get married.

[37] Two days later, the couple exchanged rings and held the Shagun ceremony (exchange of clothes and money) in the presence of 40-45 people. Again, the bride's mother could not be present because she was undergoing medical treatment.

[38] The couple married on February 20, 2012, at a traditional ceremony attended by both families – and the bride's mother was able to attend the wedding. The couple then cohabited at a relative's house until June 2012, when the Applicant returned to Canada.

[39] The first area of concern for the IAD related to the circumstances surrounding the meeting and marriage of the Applicant and his wife. The Applicant testified that he went to India to find a wife, and that he had no particular person in mind. The marriage was to be arranged, in accordance with Sikh custom. On that trip he was accompanied by his mother, father, sister and brother. The IAD found it surprising, and not credible, that the entire family would undertake the expense and disruption of such a trip without some certainty that a marriage would actually occur.

[40] This was also not consistent with the affidavit of the "go-between", Mr. Gurmel Singh. He said that he knew both families very well and that he was related by marriage to the wife's family. He said that he mediated the marriage, and given the close relationship between the go-between and the families, the IAD concluded that it was more likely that the marriage had been arranged in advance.

[41] The finding that the marriage was likely pre-arranged was also consistent with the sequence of events. For example, the IAD noted that it was not realistic to believe that the families had managed to arrange all of the details of the Shagun ceremony in only a few days. In that time-frame, the families would have had to obtain wedding rings and clothes, have them fitted, as well as find a venue, and invite 40-45 guests. Again, the IAD concluded that the arrangements had more likely been made in advance.

[42] A further significant difficulty for the IAD was the explanation for why the process unfolded so quickly, in particular in light of the fact that the bride's mother was ill and thus unable to attend. The wife acknowledged that her mother's involvement in these meetings and ceremonies was very important according to Sikh tradition. The wife explained that her mother's absence from the process was due to a medical problem discovered on January 23, 2012. Yet the mother was not present at the family meetings on January 18 and 21, 2012. This was not addressed in the wife's explanation.

[43] The wife further explained that the engagement was not postponed despite her mother's illness and lack of participation, because the husband needed to return to Canada. The IAD found that not compelling, since the husband remained in India from January to June 2012, and considering the cultural and traditional importance of the role of the mother, there seems to have been ample time to fix a later date between January and June of 2012.

[44] The wife explained that her mother was shown a picture, and upon this basis approved of the Applicant and their marriage. She also explained that her husband met her mother in the hospital before the wedding. This is in direct contradiction to the husband's testimony, as he stated he met the mother for the first time at the wedding.

[45] A further concern was that if the events unfolded as described by the Applicant and his wife, there would not have been time for the usual checks by the family as to the background and compatibility of the couple. The IAD found that this was not consistent with Sikh tradition. It relied on the *Saroya* decision, which had found that in the Sikh tradition, where "compatibility, suitability and propriety are so important" the absence of the "usual checks" raised doubts about

whether the marriage had been entered into for immigration purposes. The IAD had similar concerns in this case.

[46] A further significant area of concern for the IAD related to the role played by Ajit Singh, the wife's uncle from Canada, and his son. This uncle had been involved in the wife's previous application for a work permit to come to Canada – he ran a restaurant in Vancouver and wanted her to come to Canada to work for him. This application was refused in June 2008 for misrepresentation; the wife had stated that she had previous experience working in a restaurant in India, but investigation established that this was not true.

[47] The IAD noted that this same uncle had been present for the introductory meetings, and the wedding. Although the wife testified that her uncle "just happened to be in India" at that time, this was contradicted by her statement on the questionnaire she completed for the sponsorship application, in which she identified the uncle as a relative who came to India to attend her wedding. She also testified that the uncle's son had helped her father with all of the wedding arrangements. The IAD found this discrepancy to be troubling, in particular given the uncle's role in the previous application for a work permit.

[48] The wife's credibility was further undermined by the fact that she had repeated the misrepresentation about her work history in two different immigration contexts. She stated that she had worked in a restaurant in the initial process associated with her application for a work permit in 2008, but this was found to be a misrepresentation. She repeated it during the interview relating to the sponsorship application in 2013. It was only at the IAD hearing that she admitted the truth – and she offered no explanation for this other than to say that she had relied on her

uncle, but he had filled in the forms incorrectly and had told her what to say to immigration officials. The difficulty with that explanation is that it contradicted her testimony that her uncle had not been involved in her sponsorship application.

[49] Another instance where documentary facts and considerable hesitation in demeanour detracted from the credibility of the Applicant and his wife were their comments on their communication after the Applicant returned to Canada in June 2012. Firstly, she wrote in the questionnaire that they spoke frequently, at first by telephone then by Skype. However, her testimony about the frequency of contact was questioned by the IAD. She first said she did not know how often they spoke; then suggested it was on Mondays when her husband did not work; and then, after considerable hesitation, she said they communicated five times a week.

[50] The husband testified that they spoke almost every day. The concerns about this inconsistency were increased by the lack of documentary proof as to the frequency of communication. The IAD noted that there was only a brief period of time, between July 2012 and January 2013, that documentation was provided – a time just after the initial rejection letter from the Visa Officer had cited the lack of evidence of communication as problematic.

[51] As a final point, I would note that both the Visa Officer who conducted the sponsorship interview and the IAD found that the wife lacked credibility because of her manner of recounting her evidence, noting the long pauses, hesitation, and evasiveness of her answers to questions which went to the core of the issues.

[52] I find that the IAD's assessment of the credibility of the Applicant and his wife is reasonable. The concerns expressed were neither trivial nor illusory, and the IAD took great care to situate the behaviour of the couple within the cultural context of a marriage arranged in accordance with Sikh tradition. I do not find the cases cited by the Applicant to be applicable, since they deal with different factual situations. For example, in *Tamber* the Court overturned the decision primarily on the basis of a denial of procedural fairness and the "minutiae and marginalities" that concerned the Court did not relate to the relationship between the spouses. That is simply not the situation here.

[53] The reasons for the credibility findings are clearly expressed, in a detailed assessment of the testimony and documentary evidence. The IAD outlines its reasoning in a transparent, intelligible manner. I find that the decision falls well within the range of reasonable alternatives which could be arrived at based upon the law and this evidence.

[54] I also do not find it to be unreasonable for the IAD, having made its finding that the primary purpose of the marriage was to acquire a status or privilege under *IRPA*, to continue with an analysis of the genuineness of the marriage. Many decisions of this Court have found the tests to be distinct, but closely related, and it was not an error to consider this aspect of the case as well (see, for example: *Gill 2012* at para 30, and the cases cited therein; *Singh* at para 26; *Canada (Citizenship and Immigration) v Genter*, 2018 FC 32 at para 13).

[55] The wording of the decision is clear – the IAD knows that it could have decided the case solely on the primary purpose ground, but it goes on to analyze the genuineness aspect because some of the evidence on one ground is pertinent for the analysis of the other. And in this case the

birth of the child and the conduct of the couple subsequent to the marriage called for some analysis.

[56] In regard to this aspect of the decision, I find that the IAD examined factors which weigh both in favour and against the finding that the marriage was genuine. For example, the decision cites the relevance of the couple living together from the time of the marriage, until the husband's return to Canada in June 2012. Further, that there were lengthy visits to India, including a visit of five months in 2013, two months in 2014, and three months in 2015. The IAD states these are certainly indicators "of a couple involved in a genuine spousal relationship."

[57] The birth of a child also created a presumption in favour of genuineness. The decision cited jurisprudence of this Court, which states that great weight must be attributed to the birth of a child, and since paternity was not questioned in this case, "it would not be unreasonable to apply an evidentiary presumption in favour of the genuineness of the marriage" (*Gill 2010* at para 8).

[58] The presumption was explicitly applied in this case, but then rebutted. The reasons justifying the rebuttal included the following: (i) a lack of knowledge a spouse would reasonably know about their partner (such as employment history); (ii) the contradictions in the testimony as to the roles played by various persons in their arranged marriage (especially the go-between and the wife's uncle and his son); (iii) defects in money transfer documentation showing the Applicant's continuing financial support of his wife; and, (iv) the fact that the Applicant was not present at the birth of his son.

[59] The IAD also notes that much of the testimony and documentation that was available arose only after the initial refusal letter of the Visa Officer, and that this fact undermined, rather than dissipated, its concerns about the testimony of the couple.

[60] I find the IAD decision on the genuineness of the marriage to be reasonable. I am sympathetic to the situation of the Applicant in this case, and there is evidence that tends to support his claim that the relationship is genuine. I am also conscious of the difficult task assigned to immigration officials, and the IAD, in making this determination.

IV. Conclusion

[61] I find the decision to be reasonable. There is no contradiction in the decision that would warrant overturning it. In addition, the assertion that the IAD was cherry-picking from the evidence or giving undue weight to trivial contradictions or inconsistencies does not have merit. I find that the IAD decision is long, detailed and thorough, and I do not see grounds to interfere with its conclusion.

[62] Having made these findings, I would adopt the following passage from the decision of Justice David Near in *Valencia v Canada (Citizenship and Immigration)*, 2011 FC 787, which applies with equal force to the case before me:

> [24] Determining whether a marriage is genuine, and assessing the true intentions of the parties as they entered into that marriage is a difficult task fraught with many potential pitfalls. As I review the record I am cognizant of the challenge faced by the IAD in hearing such an appeal, and am mindful that as long as the IAD draws inferences that are reasonably open to it based on the evidence, it is not appropriate for the Court to interfere, even had I been tempted to come to a contrary conclusion (*Grewal v Canada*

(Minister of Citizenship and Immigration), 2003 FC 960, 124 ACWS (3d) 1149 at para 9).

[63] The parties did not propose any question for certification, and none arises in this case.

JUDGMENT in IMM-4197-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no serious question of general importance to be certified.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Mr. Harry Blank	FOR THE APPLICANT
Mr. Mario Blanchard	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Harry Blank Barrister and Solicitor Montreal, Quebec	FOR THE APPLICANT
Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT