Federal Court

Cour fédérale

Date: 20141016

Docket: T-1929-13

Citation: 2014 FC 982

Ottawa, Ontario, October 16, 2014

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

NUSRAT MASHOOQULLAH
ALEEZA MUNSHI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants seek the judicial review of the decision made by the respondent, the Minister of Citizenship and Immigration, through his delegate, to deny citizenship to Aleeza Munshi, one of the applicants. The application for judicial review is made pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

I. Facts

[2] The facts of this case are not controversial. Nusrat Mashooqullah was born in Pakistan in 1968. For a reason that remains unknown, the documentation involving her court proceedings in Pakistan in order to gain the guardianship of Aleeza Munshi is produced under the name Nusrat Munshi. A review of the file would lead to the possible conclusion that "Mashooqullah" was the name of her husband. They have since divorced. Remains unclear why proceedings in Pakistan are initiated under one name while those initiated in Canada are under another. At any rate, it has not been contested that the applicant is the same person as the one having the guardianship of Aleeza Munshi.

[3] It appears that Nusrat Mashooqullah was granted Canadian citizenship in 2007, after she successfully concluded an MBA degree at Queen's University, in Kingston, Ontario. Following her obtaining the Canadian citizenship, she decided to go back to Pakistan where she has been since. Indeed, she is gainfully employed in Pakistan and it is acknowledged that she is not a resident of Canada.

[4] Aleeza Munshi was born on or about March 3, 2012 in Karachi, Pakistan. She was abandoned on March 3, 2012. Nusrat Mashooqullah made an application on April 24, 2012 under the *Guardians and Wards Act, 1890* of Pakistan before the Family Court, in Karachi. On May 22, the Court granted Nusrat Mashooqullah the order sought. It reads:

> I have heard the learned counsel of the applicant and perused the record of the case. In my humble opinion, the applicant is fit person to be appointed as Guardian, in respect of the person of the minor baby girl ALEEZA MUNSHI. She will look after the welfare of the minor properly and would safeguard her rights and

> interests. As such, the applicant is appointed as Guardians [*sic*] of the person of the minor baby girl ALEEZA MUNSHI. She is also allowed to take the custody of the minor baby out of the jurisdiction of this Court, to the CANADA/ABROAD for immigration and adoption purpose. The present application stands allowed as prayed, in terms of the above order. Let the Guardian Ship Certificate be prepared and the petitioner are allowed to collect the Guardian Ship Certificate.

[5] In the view of the applicants, being awarded the guardianship of baby Aleeza is enough to avail themselves of section 5.1 of the *Citizenship Act*, RSC, 1985, c C-29 [the Act]. The Minister disagrees and, in my view, an examination of the legislative regime leads to the conclusion that section 5.1 cannot find application in the circumstances of this case.

II. <u>Decision under review</u>

[6] The Minister's delegate, in the decision issued on October 2, 2013, concluded that citizenship could not be granted. The gist of the decision is to be found in the following three paragraphs:

> Under Pakistan's *Muslim Family Law Ordinance, 1961* or Sharia Law, there is no provision for adoption. The *Muslim Family Law Ordinance, 1961*, provides for a guardianship known as *kafala*. Kafala being a form of guardianship, is not an adoption, and is commonly viewed as a commitment to take charge of the needs, upbringing and protection of a minor child and does not create permanent parent-child relationship.
>
> As such, no adoption as it is understood in Canada or under the framework provided by *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* has taken place. Therefore the application for Canadian Citizenship for a person under the guardianship of a Canadian Citizen to be adopted cannot be processed.
>
> Based on the information provided and the legal framework that is in place in the Islamic Republic of Pakistan, you have failed to

> establish that your child meets the requirements for a grant of Canadian citizenship as per subsection 5.1(1) of the *Citizenship Act* and your application has not resulted in a grant of citizenship.

III. Issue

[7] Usually, the standard of review applicable in a case like this is determined first. Once the standard of review has been ascertained, the question will be whether the guardianship granted to Nusrat Mashooqullah satisfies the requirements of section 5.1 of the *Citizenship Act*. In my view, this case does not turn on whether the standard of review is correctness or reasonableness as to the question of law raised herein. Either way, the applicants cannot succeed.

[8] It is subsection 5.1(1) of the *Citizenship Act* which is at issue and, in particular, paragraph (c). The subsection reads:

Adoptees — minors	**Cas de personnes adoptées — mineurs**
5.1 (1) Subject to subsections (3) and (4), the Minister shall, on application, grant citizenship to a person who was adopted by a citizen on or after January 1, 1947 while the person was a minor child if the adoption	5.1 (1) Sous réserve des paragraphes (3) et (4), le ministre attribue, sur demande, la citoyenneté à la personne adoptée par un citoyen le 1er janvier 1947 ou subséquemment lorsqu'elle était un enfant mineur. L'adoption doit par ailleurs satisfaire aux conditions suivantes :
(a) was in the best interests of the child;	a) elle a été faite dans l'intérêt supérieur de l'enfant;
(b) created a genuine relationship of parent and child;	b) elle a créé un véritable lien affectif parent-enfant entre l'adoptant et l'adopté;

(c) was in accordance with the laws of the place where the adoption took place and the laws of the country of residence of the adopting citizen; and	c) elle a été faite conformément au droit du lieu de l'adoption et du pays de résidence de l'adoptant;
(d) was not entered into primarily for the purpose of acquiring a status or privilege in relation to immigration or citizenship.	d) elle ne visait pas principalement l'acquisition d'un statut ou d'un privilège relatifs à l'immigration ou à la citoyenneté.

As we shall see, the heart of the matter will be the meaning to be ascribed to the word "adoption" in subsection 5.1(1) and whether guardianship under the Pakistani statute satisfies that definition. I have concluded that there is only one interpretation of the word that can be made reasonably or correctly.

IV. Argument on behalf of the parties

[9] The applicants did not discuss in their Memorandum of Fact and Law or at the hearing before this Court what the standard of review ought to be in this case. They seem to take the position that whatever it is, their application for judicial review should succeed. In their Memorandum of Fact and Law, the applicants refer to the decision of this Court in *Dufour v Canada (Citizenship and Immigration)*, 2013 FC 340 where the Court states that a standard of correctness should apply as "the Court is better placed than a citizenship officer to interpret domestic and foreign adoption law" (at para 16).

[10] As best as I can understand it, the argument of the applicants boils down to something rather simple. They claim that the guardianship that was awarded by the Family Court in Pakistan is the equivalent of adoption in the particular circumstances of this case. These circumstances, they claim, are the fact that the child was abandoned less than a day after her birth and that, therefore, there is no child-parent relationship that can be a bar to the equivalency they seek. There is no pre-existing parent-child relationship between the child and the biological parents such that the guardianship in this case is the equivalent of a full adoption and, therefore, satisfies the requirement of paragraph 5.1(1)(c). The officer's error lies in the fact that he did not recognize the special circumstances of abandonment.

[11] The only authority cited in support of that proposition is the case of *Reza v Canada (Citizenship and Immigration)*, 2009 FC 606 [*Reza*]. The applicants cited in their Memorandum of Fact and Law only a portion of paragraph 13 of the Reasons for Judgment in this case. We find the following in the Memorandum of Fact and Law:

> The IRB also refused to accept Mr. Ali's allegation that he would be prohibited from adopting the applicant in Pakistan because the concept of adoption does not exist in that country. The IRB based itself on documentary evidence in stating that ***abandoned*** children were indeed adopted in Pakistan... . [Emphasis in the Memorandum of Fact and Law]

Actually, the full paragraph reads:

> [13] The IRB also refused to accept Mr. Ali's allegation that he would be prohibited from adopting the applicant in Pakistan because the concept of adoption does not exist in that country. The IRB based itself on documentary evidence in stating that abandoned children were indeed adopted in Pakistan, and that Mr. Ali, as the child's uncle, would be an ideal candidate, given that his biological parents had given him custody of the applicant and that Mr. and Mrs. Ali were his legal guardians. The IRB therefore

> found that there was no risk of their being separated from him in Pakistan.

[12] This case is of no assistance to the applicant as the issue before the Court was an application for judicial review of a decision to refuse refugee status; the applicant in that case, a child under the age of 18, could be returned to Pakistan. In Pakistan, it would be possible for his uncle and his aunt to take care of him. The issue in the case at hand is completely different. The Court is not faced with a child under 18 going back to Pakistan where the central issue would be the availability of care for the child and the alleged statelessness. Indeed, the Court in the case of *Reza* concluded:

> [33] Having read through all of the documentary evidence, I am satisfied that the panel did not err in finding that the applicant would not face persecution in Pakistan because of the mother's religion and ethnicity. In this regard, I would note that, if the applicant were to return to Pakistan, it would most likely be to live with his guardians, Mr. and Mrs. Ali, who are Sunni and do not appear to have any connection with his biological mother's family.

Accordingly, the Court can only conclude that the applicants did not offer any authority in support of their position.

[13] On the other hand, the Minister argues that guardianship under Pakistani law does not equate with adoption. In the view of the Minister, the concept of adoption found in section 5.1 requires more than what is possible under the law of Pakistan. To put it bluntly, the position of the Minister is that Pakistani law does not recognize our concept of adoption. Indeed, counsel for the Minister used some of the documentation presented in bulk by the applicants on this

application to bolster his argument that guardianship and adoption are two different things. A document presented as "Pakistan Adoption" states:

> 2. What Islam says about adoption?
>
> There are often misconceptions about the role of adoption in Islam. The fact is that the Islamic form of "adoption" is called kafâla, which literally means sponsorship, but comes from the root word meaning "to feed." It is best translated as "foster parenting." Algerian family law defines the concept thusly: "Kafala, or legal fostering, is the promise to undertake without payment the upkeep, education and protection of a minor, in the same way as a father would do for his son".
>
> …
>
> Some of the confusion centers around the issues of changing the child's name or the inheritance of money. Addressing such issues, Dr. Muzammil H. Siddiqi, former President of the Islamic Society of North America, states:
>
> > May Allah bless you and reward you for your concern to help those who are in need. I strongly recommend that you take care of the orphans. As far as adoption is concerned, I can say that according to the Shari`ah it is not allowed to deprive a child of his/her biological parents' name. You can keep the child, provide him/her good home and take good care of him, but do not give him/her your last name. Allah says in the Qur'an,
> >
> > > He (Allah) has not made your adopted sons as your sons. Such is only your speech by your mouths. But Allah tells you the truth and He shows you the right way. Call them by the names of their fathers, that is more just in the sight of Allah. But if you do not know their fathers' names, call them your brothers in faith or your friends. There is no blame on you in whatever mistakes you made in this matter, but what counts is the intention of your hearts. Allah is oft-Forgiving and most Merciful. (Al-Ahzab: 4-5)

> In US for the purpose of tax-exemptions, health insurance, school admissions etc. you may need to give the adopted child your last names. Such names can be provided with a clear understanding that you are only the guardians. The orphan children should be told about the names of their real parents. In your own home you and your children should be aware of this fact that these children are not your biological children and you are not their biological parents.
>
> It stands to reason that when those orphans grow up then they will not be mahram (unmarriageable) to you, to your spouse and to your own sons and daughters. They will also not inherit anything from your property unless you give them something as a special gift through the provision of will.

[14] The respondent also relies on the *Consideration of Reports Submitted by States parties Under Article 44 of the Convention on the Rights of the Child* (United Nations. Committee on the Rights of the Child. *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention*, Thirty-fourth Session, CRC/C/15/Add.215 (2003)) which discussed the situation in Pakistan. While the applicants relied on paragraph 205, the respondent referred to paragraph 204. He could have referred also to paragraph 203. They read:

F. Children deprived of a family environment (art. 20)

> 203. Foster placement is not recognized in Pakistan under any law. Adoption is also not permitted in Pakistan under Islamic law. Courts have given a ruling that there is nothing in Islamic law that is similar to adoption as recognized under Roman legal systems. Yet the concept of guardianship assures protection of family life. Guardianship ensures that the child knows his/her paternity.

G. Adoption (art. 21)

> 204. As stated above, adoption is not permitted under Islamic laws, and provisions of the Convention pertaining to adoption cannot be enforced in Pakistan. As a substitute to adoption, Islamic

> law provides for a very strong system of guardianship through the immediate as well as the extended family.
>
> 205. The Guardians and Wards Act (Annex 7, Appendix XVIII), however, provides for the care of children without parents. One provision of this Act states that "in appointing or declaring a guardian under this section, the Court shall be guided by the law, consistent with the law to which the minor is subject, that appears in the given circumstances to be for the welfare of the minor". The appointment of the court-guardian is similar in some cases to adoption and the recommendation in this article of the Convention is not totally alien to the law in Pakistan.

V. Analysis

[15] To state that the applicants have offered a paucity of evidence in support of their application for citizenship would be an understatement. For all intents and purposes, they rely on the view that guardianship in the circumstances of this case is the equivalent of adoption in the face of other statements to the effect that the notion of adoption does not exist because it is not permitted under Islamic laws.

[16] The peculiar circumstances of this case take us to consider what is meant by adoption in section 5.1. Indeed, adoption is referred to elsewhere in the *Citizenship Act* and it must be taken that the meaning given to the word in other sections would have to be consistent with the meaning to be ascribed in section 5.1.

[17] In *The Construction of Statutes* (Ruth Sullivan, *Sullivan and Driedger on The Construction of Statutes*, 4th ed (Markham: LexisNexis Butterworths Canada, 2002)) Driedger and Sullivan can only confirm that the same words in a statute must be given the same meaning:

> It is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings. (p 162)

Indeed, Justice Sopinka put it very bluntly in *R v Zeolkowski*, [1989] 1 SCR 1378, where he agreed with Driedger (1983): "Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation" (p 1387).

[18] It would appear that section 5.1 of the *Citizenship Act* seeks to make easier the granting of citizenship to children involved in intercountry adoption (*An Act to amend the Citizenship Act (adoption)*, SC 2007, c 24, tabled in the House of Commons as Bill C-14). Instead of relying on sponsorship under section 117 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, the *Citizenship Act* cuts to the chase and grants (the Act speaks of "*shall* on application grant citizenship"; see section 11 of the *Interpretation Act*, RSC, 1985, c I-21) citizenship once the four conditions listed in subsection 5.1(1) are met. Bur first and foremost, there must be an adoption.

[19] In the case at hand, the decision under review speaks of the requirements of subsection 5.1(1) not being met. It does not appear that paragraph (a) (best interest of the child) and paragraph (d) (for the purpose of acquiring status) are truly in play and were challenged by the Minister's delegate. On the other hand, the Minister's delegate concluded that the guardianship declared in Pakistan does not create a permanent relationship of parent and child and it does not constitute an adoption. That in my view begs the question of what constitutes an adoption in paragraph 5.1(1)(c).

[20] Not only should the word “adoption” receive the same meaning throughout the Act, but it must be understood that the meaning to be given to a term of art like “adoption” must be its meaning in Canadian law. There is nothing to suggest that anything short of adoption, or something presented as akin to adoption, will do. Surely, when Parliament states that the “adoption” must meet certain conditions, the only meaning intended is that it is an adoption as understood under Canadian law. It would be absurd to seek to read anything other than adoption as understood in Canada when considering the word throughout the *Citizenship Act*. If the use of the word “adoption” can relate to something other than adoption in Canadian law, then what can that be?

[21] The effect of adoption in Canada is determined by provincial legislation. The common denominator is that the adoptive parent becomes the parent of the adopted child. Halsbury’s Laws of Canada, *Infants and Children* (Markham, On: LexisNexis Canada, 2014 Reissue), while referring specifically to legislation in every province and territory of the country, summarizes the effect of adoption in the following fashion:

> **HIC-68 Child of adoptive parent.** Once an adoption order is made, subject to appeal or the expiration of the time limit for commencing an appeal, the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child. In addition, the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made, and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adoptive parent. All support obligations of the original parents cease upon the event of an adoption.

[22] The order issued by the Pakistani Court in this case is clear. It is an order of guardianship that was made. It is an order of guardianship that allows the guardian to take the custody of a

child outside of the jurisdiction. The taking of the child outside of the jurisdiction would be for adoption purposes. That would seem to confirm that no adoption has taken place in Pakistan.

[23] That inference is consistent with the legislation under which Ms. Mashooqullah was made the guardian of Aleeza Munshi. The *Guardians and Wards Act, 1890* does not provide on its face for an adoption that has the features of provincial legislation to that effect.

[24] A "guardian" is defined as the "person having the care of the person of a minor or his property." Section 24 provides for the duties of the guardian of the person as:

> **24. Duties of guardian of the person.** - A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

[25] The *Guardians and Wards Act, 1890* provides that the guardian stands in a fiduciary relationship with the ward (section 20), but she may receive remuneration "as the Court thinks fit for his care and pains in the execution of his duties" (section 22). A guardian may be removed (section 39) or discharged (section 40), and someone else may be appointed in her stead. In fact, a plain reading of the statute leads to the conclusion that when considered in its entirety, one is hard pressed to see anything that would suggest that there exists a child-parent relationship. At best, the *Guardians and Wards Act, 1890* provides for a guardianship regime that is perhaps analogous to foster care for children. Indeed, the child has no right or duty toward an "adoptive parent". The duties go from the guardian toward the child (ward). The applicants have not offered anything that could contradict the plain reading.

[26] These findings are of course completely consistent with the international instruments submitted to the Court. Reference has already been made to the *Consideration of Reports Submitted by States parties Under Article 44 of the Convention on the Rights of the Child* with respect to Pakistan where it is said that "adoption is not permitted under Islamic laws, and provisions of the Convention pertaining to adoption cannot be enforced in Pakistan." An examination of the Convention (*Convention on the Rights of the Child*, 20 November 1989, entered into force 2 September 1990), in accordance with article 49 itself leads inexorably to the conclusion that parenthood and guardianship are different. Article 21 of the Convention speaks in terms of "States Parties that recognize and/or permit the system of adoption...", thus acknowledging specifically that adoption is not universally recognized. Article 20 had already shown that foster care and kafalah (guardianship) and adoption are all different:

> **Article 20**
>
> 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
>
> 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

[27] In the case at bar, because both applicants reside in Pakistan, the requirements that would usually apply to an intercountry adoption do not apply. The only condition under paragraph 5.1(1)(c) of the Act is that there be an adoption under the laws of the country of residence of both

applicants, that is, Pakistan in the instant case. However, there must be an adoption. Not only is there uncontroverted evidence that adoption does not exist in Pakistan, but the Act under which the order presented as the equivalent to an adoption does not allow even one hint that guardianship might be a close substitute to adoption, as it is understood in our law. As stated earlier, the *Guardians and Wards Act, 1890* provides for, at best, what we would call foster care.

[28] In an ultimate effort, the applicants argue that, in this case, the child has been abandoned by the birth mother and that the Pakistani Court has allowed the custody of the child to be taken out of the jurisdiction for adoption purposes. Surely, the argument goes, this court-guardian arrangement is similar to adoption. Although this Court is sympathetic to the applicants, the argument falls short. In fact, the Pakistani Court order confirms that no adoption could have taken place in Pakistan. Adoption is a requirement that cannot be avoided. The fact that the child was abandoned, without more, is of no great moment. Without an adoption having occurred in Pakistan, there can be no adoption in this case.

[29] As a result, the Minister's delegate was right to deny granting citizenship. It follows that it does not matter whether the standard of review is reasonableness or correctness. Had I had to pronounce on this issue, I would have had to follow the jurisprudence of the Federal Court of Appeal in *Canada (Citizenship and Immigration) v Kandola*, 2014 FCA 85, [2014] 372 DLR (4th) 342 [*Kandola*]. The *stare decisis* doctrine commands that precedent be followed. In it, the Federal Court of Appeal concludes that the presumption of reasonableness (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 SCR 654) applies to decision-makers even where they do not exercise adjudicative functions. However, the

Court found that "presumption can be quickly rebutted" (*Kandola*, at para 42) and proceeded to displace it:

> [43] Specifically, there is no privative clause and the citizenship officer was saddled with a pure question of statutory construction embodying no discretionary element. The question which he was called upon to decide is challenging and the citizenship officer cannot claim to have any expertise over and above that of a Court of Appeal whose sole reason for being is resolving such questions.

[30] In *Kinsel v Canada (Citizenship and Immigration)*, 2014 FCA 126 [*Kinsel*], another case concerned with the interpretation of a provision of the *Citizenship Act*, the Court received the findings of *Kandola*, *supra*, and concluded that the analysis conducted therein applied in the *Kinsel* case:

> [28] In *Kandola*, the Court found this presumption could be quickly rebutted for a number of reasons, including the following:
>
> - The absence of a privative clause.
> - The nature of the question; namely, a pure question of statutory interpretation.
> - The absence of any discretionary element in the decision.
> - The absence of anything in the structure or scheme of the Act suggestive of the notion that deference should be accorded to the delegate on the question he or she had to decide.
>
> [29] These factors are also present in this case.

(See also *Canada (Citoyenneté et Immigration) c Dufour*, 2014 CAF 81.)

[31] There is not, in my view, any distinguishing feature in the case at hand that could justify departing from the results reached by the Court of Appeal in three cases involving the same statute. This case and the three appellate decisions were concerned with the interpretation of

provisions of the *Citizenship Act*. The Court of Appeal found that the presumption of reasonableness can be quickly rebutted and this Court finds itself bound by this approach. Correctness is the standard.

[32] Nevertheless, I note that the Supreme Court asserted again in *Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40, a decision released after *Kandola*, *supra*, and *Kinsel*, *supra*, that “deference will usually result where a decision maker is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity [references to case law omitted]” (at para 55). The Supreme Court then examined the categories that call for a correctness standard (constitutionality, competing jurisdiction between tribunals, questions of central importance to the legal system as a whole and true questions of jurisdiction or *vires*) and found that none applied in that case. One was not left with the impression that the presumption can be quickly rebutted.

[33] Be that as it may, the alternative approach used by the Court of Appeal in *Kinsel*, *supra*, would find equally application in this case:

> [31] In the event I am wrong in this conclusion and, as the Attorney General submits, *Kandola* should be distinguished, I rely upon the decision of the Supreme Court in *McLean*.
>
> [32] In *McLean*, the Supreme Court considered the standard of review to be applied to a securities commission’s interpretation of a limitation period contained in its home statute. Justice Moldaver (writing for the majority) observed that where the ordinary tools of statutory interpretation lead to a single reasonable interpretation and the administrative decision-maker adopts a different interpretation, that interpretation will of necessity be unreasonable (*McLean*, paragraph 38).
>
> [33] For reasons developed below, I have conducted the required textual, contextual and purposive analysis of the relevant

> legislation. I am satisfied that there is only one reasonable interpretation of the legislation.

[34] In the case at hand, the interpretation of the word “adoption” in section 5.1 of the Act simply does not accord with the guardianship order issued in Pakistan on the basis of the *Guardians and Wards Act, 1890*, which ostensibly was used in this case. In my view, there is only one reasonable interpretation of the legislation here. Whether the standard of review is reasonableness or correctness, the result is the same.

[35] As a result, the application for judicial review is dismissed. As with other cases involving the interpretation of the *Citizenship Act*, I see no reason to depart from the principle that costs follow the event. Costs are awarded to the respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

Costs are awarded to the respondent.

"Yvan Roy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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