Federal Court  Cour fédérale

Date: 20160201

Docket: T-969-15

Citation: 2016 FC 111

Ottawa, Ontario, February 1, 2016

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

MOVEED ARSHAD FAZAIL

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant appeals the decision of a Citizenship Judge dated May 19, 2015 which found that, on a balance of probabilities, he did not meet the residence requirement under paragraph 5(1)(c) of the *Citizenship Act*, RSC, 1985, c C-29, as amended [the Act] which governed his application at the relevant time.

[2] The applicant argues that the Citizenship Judge breached the duty of procedural fairness by not advising him that the quantitative or "analytical" test set out in *Pourghasemi (Re)*, [1993] FCJ No 232 (QL), 62 FTR 122 (FCTD) [*Pourghasemi*] would be applied to determine if he met the residence requirement. The applicant acknowledges that the Citizenship Judge has the discretion to apply one of the three tests recognised in the jurisprudence, but argues that the Citizenship Judge should have advised him of the test that would be applied and he should have had an opportunity to make submissions with respect to the choice of test or to dissuade the Citizenship Judge from applying the test the Judge was inclined to apply.

[3] The applicant relies on the decision of Justice Hughes in *Dina v Canada (Minister of Citizenship and Immigration)*, 2013 FC 712, [2013] FCJ No 758 (QL) [*Dina*] and notes that, in accordance with the principle of judicial comity, *Dina* should be applied, as there is no compelling reason not to do so.

[4] For the reasons that follow, I find that, on the facts of this case, there was no breach of procedural fairness and that the principles of judicial comity are not at play because both the key issue and the facts are different from *Dina*. As a result, the application for judicial review is dismissed.

I. Background

[5] The applicant is a citizen of Pakistan who first entered Canada on August 28, 1993 to attend university. He became a permanent resident on February 26, 2006.

[6] The applicant recounted his education in Canada and abroad, his business ventures in Canada and his employment.

[7] The applicant had lengthy absences from Canada in 2008, totalling 340 days, because he was pursuing his Master's degree in France. Although he had less than the required 1,095 days of physical presence, on the advice of his lawyer that he could succeed in his application for citizenship because he met the other basic requirements, he submitted his application for Canadian citizenship on May 31, 2010 prior to returning to Pakistan for a family emergency.

[8] The relevant period for determining whether the applicant meets the residence requirement in the Act is, therefore, May 31, 2006 to May 31, 2010.

[9] The applicant acknowledges that he fell short of the required days of physical presence. His application and Residence Questionnaire indicated that he did not meet the strict physical presence requirement. At his hearing, his counsel requested that the Citizenship Judge apply the test from *Koo (Re)*, [1993] 1 FC 286, 59 FTR 27 (FCTD) [*Koo*].

[10] In his affidavit, he states that the Citizenship Judge did not advise him of the test he intended to apply. The Judge did not question him about why he applied in May 2010 while short of the required number of days, why he studied in France, or why he spent time in the USA where his wife was studying.

II. The Decision

[11] The Citizenship Judge's brief decision notes that an applicant bears the burden of proving that they meet the residence requirement. The Judge clearly states that he adopts the "analytical" approach to the residence requirement from *Pourghasemi*, which requires that the applicant be physically present in Canada for 1,095 days in the relevant four year period.

[12] The Judge notes that the applicant reported 511 days absent and 949 days present in Canada. Given that the Act requires 1,095 days, the Citizenship Judge notes that the applicant is short by 146 days.

[13] The Judge concludes that, on a balance of probabilities, the applicant does not meet the residence requirement under paragraph 5(1)(c) of the Act.

III. The Issues

[14] The applicant argues that in accordance with the principle of judicial comity, the Court should find that there was a breach of procedural fairness. However, there are two issues:

1. Did the Citizenship Judge breach the duty of procedural fairness owed?
2. Does the principle of judicial comity require the Court to find that there was a breach of procedural fairness?

IV. The Standard of Review

[15] Although this is an appeal from a decision of a Citizenship Judge and not a judicial review, the jurisprudence has established that the administrative law principles governing the standard of review apply: *Canada (Minister of Citizenship and Immigration) v Rahman*, 2013 FC 1274, [2013] FCJ No 1394 (QL); *Canada (Minister of Citizenship and Immigration) v Lee*, 2013 FC 270, [2013] FCJ No 311 (QL).

[16] A Citizenship Judge's application of a particular test for residency is a question of mixed fact and law that is reviewable on the reasonableness standard.

[17] Questions of procedural fairness are reviewable on the correctness standard of review: *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43, [2009] 1 SCR 339; *Zhou v Canada (Minister of Citizenship and Immigration)*, 2013 FC 313 at para 12, [2013] FCJ No 350 (QL).

V. The Applicant's Position

[18] The applicant acknowledges that the Citizenship Judge had the discretion to apply one of the three tests and must apply the test chosen correctly and consistently. The applicant argues that the Citizenship Judge must also advise an applicant of the test that will be applied, so that the applicant will know the case that they have to meet.

[19] The applicant argues that the Citizenship Judge breached the duty of procedural fairness by not advising the applicant at the outset of the hearing that he would apply the test from *Pourghasemi* and by not giving the applicant an opportunity to make submissions regarding the choice of test before exercising his discretion to determine the test that would be applied.

[20] The applicant points to *Dina* and *Miji v Canada (Minister of Citizenship and Immigration)*, 2015 FC 142 at para 21, [2015] FCJ No 131 (QL) [*Miji*] in support of the proposition that there should be no doubt as to which test will be applied, noting that *Dina* has been cited in other decisions and that there is no contradictory jurisprudence on this specific point.

[21] The applicant submits that based on the principle of judicial comity, *Dina* should be followed as the circumstances do not point to any exception from the principle.

VI. The Respondent's Position

[22] The respondent notes that the jurisprudence is clear that a Citizenship Judge has no obligation to apply a particular test and is entitled to apply any of the three tests, as long as the choice of test is clearly articulated. The Citizenship Judge is not required to also consider the other tests: see *Shubeilat v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1260 at para 34, [2010] FCJ No 1546 (QL) [*Shubeilat*]).

[23] The respondent argues that the proposition relied on by the applicant in *Dina*, that the Citizenship Judge must give prior notice of the test to be applied, is not reflected in the broader

jurisprudence of this Court. *Dina* has been cited in other cases, but for the proposition that it is an error for a Citizenship Judge to fail to articulate which test has been applied, not for the proposition that they must notify applicants in advance of the choice of test. In this case, the Judge clearly articulated in the decision that *Pourghasemi* had been applied.

[24] There was no breach of procedural fairness. The applicant is presumed to know the law, including that the Citizenship Judge may apply one of three tests. The applicant acknowledged that he did not meet the physical presence test. He knew that either the test in *Koo* or *Pourghasemi* could be applied. The applicant clearly indicated that he requested that the Judge apply the *Koo* test; he was, therefore, not deprived of the opportunity to make such submissions.

[25] Moreover, even if the applicant had been advised in advance of the test the Citizenship Judge would apply, he would not have been able to show that he met the requirements because he had acknowledged that he was short 146 days in the relevant period.

VII. There Is No Breach of Procedural Fairness

[26] In *Canada (Minister of Citizenship and Immigration) v Purvis*, 2015 FC 368, [2015] FCJ No 360 (QL), Justice Mosley provided an overview of the three tests which may be applied by a Citizenship Judge, noting there are really two tests, a quantitative and qualitative test:

> [26] It is settled law that a Citizenship Judge may reasonably rely on one of three residence tests: (1) the quantitative test set out in *Pourghasemi (Re)*, [1993] FCJ No 232 (TD) [*Pourghasemi*]; (2) the qualitative test set out in *Papadogiorgakis (Re)*, [1978] FCJ No 31 (TD) [*Papadogiorgakis*]; or (3) the modified qualitative test set out in *Koo (Re)*, [1992] FCJ No 1107 (TD) [*Koo*].

> [27] As I explained in *Hao v Canada (Citizenship and Immigration)*, 2011 FC 46 at paras 14-19, these cases really set out two tests because *Koo* is an elaboration on *Papadogiorgakis*. These are the quantitative physical presence test from *Pourghasemi* and the qualitative test from *Koo* and *Papadogiorgakis*.

[27] There is no dispute that any of the three approaches to the concept of residence can be applied by Citizenship Judges (*Shubeilat* at paras 1-2) and that a Citizenship Judge does not "have to consider the *Papadogiorgakis* and *Koo* tests" (*Shubeilat* at para 34).

[28] There has been a significant amount of commentary in the jurisprudence regarding the confusion and lack of consistency that results from the application of one of three different tests (including, for example, *Huang v Canada (Minister of Citizenship and Immigration)*, 2013 FC 576 at para 18-24, [2013] FCJ No 629 (QL)).

[29] In *Boland v Canada (Minister of Citizenship and Immigration)*, 2015 FC 376, [2015] FCJ No 340 (QL), Justice de Montigny noted:

> [17] In *Lam v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No 410 [*Lam*], Justice Lutfy, as he then was, came to the conclusion that until the Act is amended to resolve this conflicting jurisprudence, it is open to a citizenship judge to choose any one of the three tests to assess the residency requirement, provided that he or she demonstrates an understanding of the case law and properly decides that the facts meet the test that has been applied.

[30] Noting the concerns expressed by the Court regarding the various tests that could be applied and the resulting uncertainty, Justice de Montigny added:

> [19] Like the Chief Justice in *Huang*, I am of the view that *Lam* is still good law and that a citizenship judge is free to assess an

> application for citizenship according to any one of these three tests, provided of course that the test selected is then applied correctly to the facts of the case. That may not be the most satisfying outcome for litigants, but until the matter is resolved legislatively or judicially, this is the inevitable result of the absence of a definition for the concept of "residence" in the Act. Fortunately, the introduction of sections 22.1 and 22.2 in the Act will allow for this matter to be definitively resolved by the Federal Court of Appeal, on a certified question from this Court.

[31] A Citizenship Judge that applies the *Koo* test could find that an applicant meets the requirements of the Act while the application of the *Pourghasemi* test could lead to the opposite result. In the present case, it appears that if the Judge had chosen to apply *Koo*, the result for this applicant may have been different.

[32] With respect to whether the Citizenship Judge is required to give notice of the test to be applied in advance of or at the outset of the hearing, and whether failure to do so is a breach of procedural fairness, in *Dina* Justice Hughes stated:

> [8] My reasoning for returning the matter is that persons such as the Applicant here should not be put in a position of doubt as to what test a Citizenship Judge will be applying. The three different tests could yield a different result on the same set of facts. It is a denial of natural justice not to reveal to the Applicant, prior to the time that the matter is to be determined, which of the three tests will be applied by the Judge. In that way the Applicant, and Applicant's Counsel will know the case to be met.
>
> [Emphasis added.]

[33] *Dina* was cited by Justice Locke in *Miji*, who also found that it was a breach of procedural fairness for an applicant to be "put in a position of doubt as to what test a citizenship judge will be applying" (at para 21). Justice Locke added at para 22, that on the evidence, it was

possible that the Citizenship Judge would have reached a different conclusion if he had applied a qualitative test.

[34] As noted by both the applicant and respondent, *Dina* has been cited in other cases by Justice LeBlanc, for the proposition that it is an error for a Citizenship Judge to "fail to articulate which residency test was applied in a given case": *Canada (Minister of Citizenship and Immigration) v Bayani*, 2015 FC 670 at para 25, [2015] FCJ No 693 (QL); *Canada (Minister of Citizenship and Immigration) v Bani-Ahmad*, 2014 FC 898 at para 19, [2014] FCJ No 1095 (QL); *Canada (Minister of Citizenship and Immigration) v Pereira*, 2014 FC 574 at para 16, [2014] FCJ No 604 (QL).

[35] I note that in each of those cases, Justice LeBlanc referred to the need for the Citizenship Judge to indicate the test that was applied; he did not refer to *Dina* for the proposition that the Judge should advise the applicant in advance of the test that would be applied. Moreover, in each of those cases, Justice LeBlanc did not find any breach of procedural fairness; rather, he found that the decisions were not reasonable.

[36] The principle that the Judge must clearly indicate in the decision the test that was applied is not in dispute and in the present case, the Judge clearly did so.

[37] In *Dina*, Justice Hughes noted the need for the applicant to know the case he has to meet and clearly found, on those facts, that there was a breach of procedural fairness. His finding that the Citizenship Judge should advise the applicant of the test that will be applied was for the

purpose of permitting the applicant to know the case he has to meet. Justice Hughes did not elaborate upon the scope of the duty of procedural fairness or why, on the facts in *Dina*, the applicant did not know the case he had to meet.

[38] In *Miji*, Justice Locke found that the applicant was not aware of the test that would be applied because the request to bring specific documents to the hearing could have implied that the qualitative test could be applied. Justice Locke relied on *Dina* and did not elaborate on the scope of the duty of procedural fairness owed in such cases.

[39] I regard the key issue in this case as whether there was in fact a breach of procedural fairness. This requires consideration of the scope of the duty of procedural fairness owed to applicants by Citizenship Judges.

[40] In *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 23-28, 174 DLR (4th) 193 [*Baker*], Justice L'Heureux-Dubé emphasized that the content of the duty must be determined in the specific context of each case; the duty of fairness is flexible and variable, and depends on the context of the particular statute and the rights affected. Justice L'Heureux-Dubé identified five non-exhaustive factors that should be considered: 1) the nature of the decision; 2) the statutory scheme; 3) the importance of the decision to the individual affected; 4) the legitimate expectations of the person challenging the decision; and 5) the choice of procedure by the decision-making agency. She reiterated that procedural fairness is based on the principle that individuals affected by decisions should have the opportunity to present their case and to have decisions affecting their rights and interests made in a fair, impartial and open

process "appropriate to the statutory, institutional, and social context of the decision" (*Baker* at para 28).

[41] The level of procedural fairness owed by a decision-maker may be affected by the nature of the decision being made and the process followed in making it. The more the process resembles judicial decision-making, the more likely it is that procedural protections closer to the trial model will be required by the duty of fairness (*Baker* at para 23). In the present case, the Citizenship Judge's process differs somewhat from judicial decision-making as the hearing is not adversarial and the Minister is not usually represented, although the report from a Citizenship and Immigration Officer outlining any concerns, based on an assessment of the application, is before the Citizenship Judge.

[42] Greater procedural protections are required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted (*Baker* at para 24). Citizenship decisions have a right of appeal to this Court with leave, pursuant to subsection 22.1(1) of the Act. In addition, an applicant may bring subsequent applications for citizenship following a refusal.

[43] The importance of a decision to the individual affected is a significant factor affecting the content of the duty of procedural fairness (*Baker* at para 25). Clearly, the applicant's citizenship is of high importance to him.

[44] The legitimate expectations of the individual is also a factor; if the individual has a legitimate expectation that a certain procedure will be followed, this procedure will be required by the duty of fairness (*Baker* at para 26). In the present case, the applicant did not have a legitimate expectation that a particular test would be applied, despite the earlier advice of his counsel. He acknowledged that he did not meet the required number of days for the physical presence test. He was represented by counsel and was aware that there were three tests the Judge could apply. His counsel made submissions that the *Koo* test should apply. This demonstrates that he did not have a legitimate expectation that *Koo* would be applied; only that he preferred that *Koo* be applied.

[45] The choice of procedure by the decision-maker is also a relevant consideration; when the statute leaves the decision-maker the ability to choose its own procedures, this should be respected (*Baker* at para 27). In the present circumstances, the Citizenship Judge has the discretion to apply one of three tests. This arises from the jurisprudence and, as noted above, has created inconsistency, however, the choice is that of the Citizenship Judge.

[46] Consideration of the *Baker* factors, therefore, suggests that the duty of procedural fairness owed to applicants by Citizenship Judges is at the lower end of the spectrum. Even at the lower end of the spectrum, the individual affected must know the case he or she has to meet and have an opportunity to respond to the case to be met. However, based on the *Baker* analysis, the scope of the duty of procedural fairness does not extend beyond this.

[47] In my view, this duty of procedural fairness was met in the present case.

[48] The applicant made submissions at the outset of his hearing asking that the *Koo* test be applied. Therefore, he was not under the impression that the Citizenship Judge had already decided the test that he would apply. The decisions in *Dina* and *Miji* do not reveal whether those applicants made submissions regarding which test should be applied. It appears that in *Dina* the concern was that the applicant was deprived of such an opportunity and that they did not know the case they had to meet. In *Miji*, the concern was that the application of the qualitative test would have led to a positive result, that the strict quantitative approach was unfair in the overall circumstances and that the request for documents could have implied that the qualitative test would be applied. In the present case, the applicant knew he had to meet either the quantitative test (*Pourghasemi*) or the qualitative test (*Koo*). He knew and had acknowledged that he could not meet the quantitative test because he was short 146 days in the relevant period.

[49] The applicant now argues that there is a distinction between submissions on how he meets the *Koo* test and submissions on why the Citizenship Judge ought to apply the *Koo* test. The latter submissions could raise issues relating to the broader context, including, in this case, that the applicant had applied in 2010 at a time where qualitative factors were more readily considered, that the applicant was truthful in noting his absences and that the applicant had waited five years for his hearing to be convened. The applicant notes that his submissions were focussed only on how he would meet the *Koo* test.

[50] Although there is no transcript of the hearing, the applicant states that his counsel made submissions to the Citizenship Judge asking that *Koo* should apply. Presumably those submissions also addressed, or could have addressed, why *Koo* should apply, given the

applicant's reference in his affidavit to the documents he provided. The applicant states in his affidavit that the Judge did not question him about his absences or his travels, including his education abroad and his wife's education in the USA, which suggests that this information had been put before the Judge. However, the procedural fairness issue focuses on whether he knew the case he had to meet and had an opportunity to make submissions. He clearly knew the case he had to meet and did make submissions to the Judge at the outset of the hearing, asking the Judge to apply the *Koo* test.

[51] He was not prevented from addressing why the Judge should consider the *Koo* test. It would be difficult to draw a fine line between submissions on why the Judge should consider the *Koo* test and how the applicant met the *Koo* test. In other words, the applicant's submissions on how he met the *Koo* test would alert the Citizenship Judge whether that test should be applied and nothing prevented the applicant from noting the broader issues, including, for example, the delay in the processing of his application.

[52] The applicant emphasizes that in *Dina*, the Court found that there is a duty to advise the applicant in advance of the test the Judge will apply and argues that if this is done, an applicant will have an opportunity to dissuade the Judge from applying that test. However, the issue is not whether a particular form of words was used signaling the test that the Judge is contemplating applying, but whether there was a breach of procedural fairness.

[53] In the present case, the applicant knew he did not meet the quantitative test. As noted, he asked the Judge to apply the *Koo* test, and in so asking, he had an opportunity to make

submissions about why he was making the request that the Judge exercise his discretion to apply that test. In my view, there was no enhanced duty of procedural fairness to require the Citizenship Judge to advise the applicant that his inclination was to apply a particular test and to invite a rebuttal.

[54] In *Dina*, Justice Hughes implicitly found, on the facts of that case, that the applicant did not know the case he had to meet. However, I do not agree that there would be a breach of procedural fairness where an applicant clearly knows the case he or she has to meet and has had an opportunity to be heard. A breach of procedural fairness does not arise simply because an applicant is not alerted to something the applicant is clearly aware of, including the state of the law.

[55] I acknowledge, as did Justice Locke in *Miji*, the unfortunate results of the uncertainty in the law which permits a Citizenship Judge to apply different tests which could lead to different outcomes. As noted above, the jurisprudence has recognised that reality, but this is not a breach of procedural fairness.

[56] In my view, the Court would be adding to uncertainty in the law regarding the duty of procedural fairness to find a breach where none exists by focussing on form rather than substance.

VIII. Judicial Comity Does Not Apply

[57] In *Alyafi v Canada (Minister of Citizenship and Immigration)*, 2014 FC 952, [2014] FCJ No 989 (QL), in the context of the different approaches in the jurisprudence regarding the standard of review to be applied by the Refugee Appeal Division to decisions of the Refugee Protection Division, pending resolution by the Federal Court of Appeal, Justice Martineau highlighted the rationale for the principle of judicial comity. His eloquent words provide guidance in other contexts, including the uncertainty that has prevailed in the determination of the citizenship residency requirements:

> [42] As we said above, standards of review are judicial creations. Nonetheless, once established, they must be respected by the courts just as any other rule of law. And what gives the rule of law its precedence is its universality: It applies equally to all; there is no place for judicial or administrative discretion. Further, following the principle of judicial comity and, unless certain exceptions apply, a judge of this Court should not deviate from decisions made by his or her colleagues to avoid creating a situation of uncertainty in the law. It would be expected that the principle of judicial comity is particularly important in immigration matters, since under the IRPA, decisions of this Court may uniquely be subject to an appeal to the Federal Court of Appeal if a question of general importance is certified. Therefore, it is desirable to have some consistency in the Court's decisions. Yes, the judge can make the law, but when each judge makes his or her own law, the rule law that is no longer applied withers. To use descriptive language, the law loses weight and this unbearable lightness of being makes it irrelevant, leaving more room than is needed for administrative or legal discretion.

[58] Justice Martineau summarized the jurisprudence regarding judicial comity at para 45:

> [45] I repeat: the principle of judicial comity aims therefore to prevent the creation of conflicting lines of jurisprudence and to encourage certainty in the law. Generally, a judge should follow a decision on the same question of one of his or her colleagues, unless the previous decision differs in the facts, a different

> question is asked, the decision is clearly wrong or the application of the decision would create an injustice. Judicial comity requires much humility and mutual respect. If the rule of law does not tolerate arbitrariness, judicial comity, its loyal companion, relies on reason and the good judgment of each person. Failing a final judgment from the highest court, respect for the other's opinion can speak volumes. In short, judicial comity is elegance incarnate in the person of the magistrate who respects the value of precedents.

[59] In the present case, judicial comity is not at stake. The facts of the present case are similar to those in *Dina* only insofar as the applicant had not been physically present for the requisite number of days, as in many other citizenship applications. The key facts are not the same. In *Dina*, Justice Hughes' concern was that the applicant should know the "case to be met" as this is a minimal procedural fairness requirement. Justice Hughes found that the applicant in *Dina* did not know the case to be met and that no opportunity was provided to make submissions regarding the test that the Citizenship Judge should apply. In the present case, based on the applicant's description of the hearing, noting that no transcript is available, the applicant was clearly aware that the Judge had a choice of tests and did make submissions that *Koo* should apply. The issue, if it is characterised as whether there was a breach of procedural fairness by not providing an opportunity for the applicant to make submissions, is not the same as in *Dina*. Similarly, if the issue is characterised as whether the applicant should know the case to be met, the issue is also not the same as *Dina*. As noted above, a more extensive analysis of the scope of the duty of procedural fairness leads me to conclude that there was no breach of procedural fairness because, unlike *Dina*, on the facts of the present case, the applicant was aware of the "case to be met", had an opportunity to make submissions and did so at the outset of the hearing.

[60] With respect to the rationale for judicial comity to avoid more uncertainty in the law, I acknowledge that the uncertainty created by the jurisprudence regarding the application of the residency requirements in the Act is troubling. The recent amendments to the Act, which change the requirements and focus on physical presence, will hopefully rectify this situation.

[61] In my view, it would create greater uncertainty in the law regarding procedural fairness to add requirements to that duty where none are needed, including finding a breach of procedural fairness based on a failure of the Citizenship Judge to invite submissions before he or she exercises the discretion to choose the test to be applied, when such submissions have been provided without a specific invitation.

[62] As a result, the application for judicial review is dismissed.

JUDGMENT

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

"Catherine M. Kane"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-969-15
STYLE OF CAUSE:	MOVEED ARSHAD FAZAIL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 21, 2016
JUDGMENT AND REASONS:	KANE J.
DATED:	FEBRUARY 1, 2016

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
Jelena Urosevic	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT