Federal Court  Cour fédérale

Date: 20210316

Dockets: IMM-5410-19
IMM-5510-19

Citation: 2021 FC 228

Ottawa, Ontario, March 16, 2021

PRESENT: The Honourable Madam Justice Roussel

Docket: IMM-5410-19

BETWEEN:

GURMINDER SINGH TOOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Docket: IMM-5510-19

AND BETWEEN:

KIRANDEEP KAUR TOOR

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are husband and wife, both citizens of India. In December 2017, they were charged with importing cocaine and methamphetamine pursuant to subsection 6(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 [CDSA], and with possession of cocaine and methamphetamine pursuant to subsection 5(2) of the CDSA, when entering Canada from the United States at a port of entry in Alberta. They are also facing allegations of inadmissibility pursuant to paragraph 37(1)(*b*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for engaging in transnational crime.

[2] In the course of their admissibility proceedings, the Applicants filed separate motions seeking to adjourn their hearing before the Immigration Division [ID] until the criminal charges against them were finally determined.

[3] On August 29, 2019, the ID denied their request for an adjournment and issued written reasons on September 3, 2019. The Applicants seek judicial review of that decision.

[4] While articulated differently, the Applicants submit that the ID's decision is unreasonable because it violates their right to a fair hearing and their right against self-incrimination under sections 7 and 13 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. They argue that the ID's refusal to adjourn its proceedings places them in an untenable and unfair position of

choosing between testifying voluntarily at the ID hearing, thereby revealing their criminal defence to the Crown and their co-accused (for the male applicant, his wife and for the female applicant, her husband), as well as waiving the *Charter* protection of derivative use immunity, or remaining silent at their admissibility hearing and thereby, not addressing the allegations made against them. In addition, they contend that the ID failed to apply subsection 43(2) of the *Immigration Division Rules*, SOR/2002-229 [ID Rules] and unreasonably faulted them for not disclosing the evidence that they fear would not be protected in the criminal proceedings.

[5] In response, the Respondent submits that the Court should dismiss the applications for judicial review because they are premature given the interlocutory nature of the ID's decision. In the event the Court is prepared to entertain the applications, the Respondent submits that the ID reasonably concluded that an adjournment was not warranted since the request was based on speculation and issues outside the procedural purview of the ID.

II. Analysis

A. *Prematurity*

[6] It is settled case law that absent exceptional circumstances, the courts will not interfere with interlocutory decisions until the ongoing administrative processes have been completed and until all other available effective remedies have been exhausted. This rule has been described in a number of ways, including the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews

(*Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30-32 [*CB Powell*]). The underlying purpose of this rule is to prevent fragmentation of the administrative process and to reduce the large costs and delays associated with premature court challenges, particularly where the party may ultimately be successful at the conclusion of the administrative process (*CB Powell* at para 32).

[7] It is also well-established that very few circumstances qualify as exceptional and that the threshold for exceptionality is high (*CB Powell* at para 33). The presence of an important jurisdictional or constitutional issue, or concerns about procedural fairness, do not constitute exceptional circumstances (*CB Powell* at paras 33, 39-40, 45).

[8] These principles were reiterated by the Supreme Court of Canada in *Halifax (Regional Municipality) v Nova Scotia (Human Rights Commission)*, 2012 SCC 10 at paragraphs 35 to 38 and in several subsequent decisions of both the Federal Court of Appeal and this Court (*Constantinescu v Canada (Attorney General)*, 2019 FCA 315 at para 2; *Agnaou c Canada (Procureur général)*, 2019 CAF 264 at paras 2-3; *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2017 FCA 241 at paras 47-50, 53; *Forner v Professional Institute of the Public Service of Canada*, 2016 FCA 35 at paras 13-16; *Wilson v Atomic Energy of Canada Limited*, 2015 FCA 17 at paras 28-34; *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at paras 16-18; *Wang v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 690 at paras 12-13, 16 [*Wang*]; *Girouard v Inquiry Committee Constituted Under the Procedures for Dealing With Complaints Made to the Canadian Judicial Council About Federally Appointed*

Judges, 2014 FC 1175 at paras 18-19; *Douglas v Canada (Attorney General)*, 2014 FC 299 at para 128).

[9] While I recognize the narrowness of the "exceptional circumstances" exception and that concerns of procedural fairness do not usually meet the requisite threshold, I find that this is one of those rare situations where the Court should exercise its discretion to intervene before a final decision has been rendered.

[10] The right against self-incrimination is one of the fundamental principles of criminal law (*R v Henry*, 2005 SCC 76 at para 2 [*Henry*]; *Application under s 83.28 of the Criminal Code (Re)*, 2004 SCC 42 at para 70 [*Application s 83.28*]). It is constitutionally entrenched by sections 11(*c*) and 13 of the *Charter* and it enjoys residual protection under sections 7 and 24 of the *Charter*. It is also protected by section 5 of the *Canada Evidence Act*, RSC 1985, c C-5 [CEA].

[11] Some of the procedural safeguards against testimonial self-incrimination that have emerged in the jurisprudence include use immunity and derivative use immunity. Use immunity, under section 5 of the CEA and section 13 of the *Charter*, serves to protect the individual from having compelled incriminating testimony used directly against him or her in a subsequent proceeding (*Application s 83.*28 at para 71).

[12] Section 5 of the CEA reads:

Incriminating questions	**Questions incriminantes**
5 (1) No witness shall be excused from answering any question on the ground that	**5 (1)** Nul témoin n'est exempté de répondre à une question pour le motif que la

the answer to the question may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person.	réponse à cette question pourrait tendre à l'incriminer, ou pourrait tendre à établir sa responsabilité dans une procédure civile à l'instance de la Couronne ou de qui que ce soit.
Answer not admissible against witness	**Réponse non admissible contre le témoin**
(2) Where with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act, or the Act of any provincial legislature, the witness would therefore have been excused from answering the question, then although the witness is by reason of this Act or the provincial Act compelled to answer, the answer so given shall not be used or admissible in evidence against him in any criminal trial or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of that evidence or for the giving of contradictory evidence.	**(2)** Lorsque, relativement à une question, un témoin s'oppose à répondre pour le motif que sa réponse pourrait tendre à l'incriminer ou tendre à établir sa responsabilité dans une procédure civile à l'instance de la Couronne ou de qui que ce soit, et si, sans la présente loi ou toute loi provinciale, ce témoin eût été dispensé de répondre à cette question, alors, bien que ce témoin soit en vertu de la présente loi ou d'une loi provinciale forcé de répondre, sa réponse ne peut être invoquée et n'est pas admissible en preuve contre lui dans une instruction ou procédure pénale exercée contre lui par la suite, sauf dans le cas de poursuite pour parjure en rendant ce témoignage ou pour témoignage contradictoire.

[13] Section 13 of the *Charter* states:

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in	**13.** Chacun a droit à ce qu'aucun témoignage incriminant qu'il donne ne soit utilisé pour l'incriminer dans d'autres procédures, sauf

any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.	lors de poursuites pour parjure ou pour témoignages contradictoires.

[14] Derivative use immunity is available under the residual protection of section 7 of the *Charter* and "insulates the individual from having the compelled incriminating testimony used to obtain other evidence, unless that evidence is discoverable through alternative means" (*Application s 83.*28 at para 71). Derivative evidence has been defined as evidence which could not have been obtained, or the significance of which could not have been appreciated, but for the witness's testimony (*R v S (RJ)*, [1995] 1 SCR 451 at 454).

[15] The Applicants submit that while they may enjoy the protection of use immunity under the CEA and section 13 of the *Charter*, in order for them to receive the benefit of derivative use immunity, they must be compelled to testify before the ID. If the Minister considers he can establish his case without the benefit of the Applicants' testimony and does not compel them to testify, they will be placed in an impossible situation. If they choose to testify in order to exonerate themselves through their testimony, they will lose the benefit of derivative use immunity. If they choose not to testify, they risk being found inadmissible pursuant to paragraph 37(1)(*b*) of the IRPA. Moreover, as they are both involved in the immigration and criminal proceedings, if the husband chooses to testify, the waiver of derivative use immunity would also mean that any evidence he gives could be used against his wife in the criminal trial and the same is true if the wife chooses to testify. The Applicants argue that forcing them to reveal their legal defence to the criminal charges to the Crown and the other co-accused spouse would compromise their right to a fair trial.

[16] The Applicants further argue that the evidence gathered as a result of a witness's testimony – derivative evidence – is not guaranteed to be excluded from a subsequent criminal proceeding and is left to the discretion of the trial judge. The burden is on the accused to demonstrate that the proposed evidence is derivative evidence deserving of immunity protection. The exclusion of derivative evidence can only arise when a witness is compelled to testify, not when he or she chooses to testify.

[17] Relying on the decisions of the Supreme Court of Canada in *Henry* and *R v Nedelcu*, 2012 SCC 59 [*Nedelcu*], the Respondent argues that evidence given, even voluntarily in a proceeding where a witness was compellable, though not actually compelled, is protected by the *Charter* against self-incrimination. The test is whether the Applicants can be compelled and whether they feel compelled to testify. There is no dispute that the Applicants can be compelled to testify before the ID and that they feel they must testify to have any chance of not being found inadmissible. In the Respondent's view, the test is satisfied and the Applicants' testimony would be protected, as would their evidence against the other spouse under section 13 of the *Charter*. The Respondent submits that the fact that the Applicants do not trust the criminal court to enforce their *Charter* protected rights is not sufficient to delay the ID hearing indefinitely. In any event, the ID is not responsible for the procedural protections afforded by the law in criminal prosecutions. It must only concern itself with respect to the procedural fairness rights of the Applicants in their admissibility hearing. Any argument regarding breaches of the *Charter* should be made in the criminal trial.

[18] After reviewing the jurisprudence on the procedural safeguards against testimonial self-incrimination, and in particular, the *Henry* and *Nedelcu* decisions, I am not persuaded by the Respondent's argument that the Applicants' voluntary testimony at their admissibility hearing would constitute "compelled" testimony for the purpose of claiming derivative use immunity at their criminal trial.

[19] In *Henry*, the appellants, who had testified in their first trial, had told a different story under oath in their retrial on the same charge of first-degree murder. At the retrial, they were cross-examined on their prior inconsistent statements and were again convicted of first-degree murder. They appealed on the basis that the use of their prior statements violated their constitutional right against self-incrimination guaranteed by section 13 of the *Charter*.

[20] In his reasons, Binnie J. noted that section 13 of the *Charter* embodies a *quid pro quo*: when a witness who is compelled to give evidence in a court proceeding is exposed to the risk of self-incrimination, the state offers protection against the subsequent use of that evidence against the witness in exchange for his or her full and frank testimony (*Henry* at para 22, quoting from *R v Noël*, 2002 SCC 67 at para 21). He found that accused persons who testify at their first trial and then volunteer inconsistent testimony at the retrial on the same charge were in no need of protection from being indirectly compelled to incriminate themselves and section 13 protection should not be available to them (*Henry* at paras 43, 47). The source of the *quid pro quo* was missing (*Henry* at para 42). He concluded that the appellants' section 13 *Charter* rights were not violated by the Crown's cross-examination.

[21] In *Nedelcu*, the issue was whether the Crown could cross-examine the respondent at his criminal trial on statements he had made during discovery in a civil action without infringing his rights against self-incrimination. The Crown contended that the decision in *Henry* should not apply, because the accused's civil discovery evidence was not "compelled" within the meaning of *Henry*.

[22] The Court held that the respondent was "statutorily compellable, and therefore 'compelled' …" to give evidence by virtue of rule 31.04(2) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, which compels a defendant in a civil action to be examined for discovery whether or not the defendant files a statement of defence (*Nedelcu* at paras 1, 109).

[23] Neither case mentions derivative use immunity nor is it unequivocal that *Nedelcu* intended to equate "compellable" with "compelled" in all circumstances.

[24] The circumstances here are also distinguishable from those in *Wang*, where I dismissed the application for judicial review because of prematurity. In that case, the applicant had sought judicial review of the Immigration Appeal Division [IAD]'s interlocutory order compelling him to testify. The ID had previously found the applicant not inadmissible to Canada under paragraphs 34(1)(*a*) and 34(1)(*f*) of the IRPA. The Minister appealed the ID's decision to the IAD and sought to call the applicant as a witness. The applicant declined to testify but was ordered by summons to testify. The applicant contended that compelling him to testify engaged his right to liberty under section 7 of the *Charter* and that if he was compelled to testify for the

purpose of testing his credibility before the IAD, the damage would be done and could not be corrected afterwards.

[25] In my reasons, I noted that it was not "a case in which once the evidence is disclosed, it cannot be taken back" (*Wang* at para 19). The applicant had testified over a period of two (2) days before the ID during which he had communicated extensive details of his life and spoken to his alleged involvement with foreign intelligence and security agencies. I was not persuaded that any potential damage that could result from him testifying before the IAD would be such that it would be so fundamentally unfair not to decide the issue of his compellability at that stage of the IAD's proceedings (*Wang* at paras 19-20).

[26] Unlike in *Wang*, the Applicants here have not previously testified and they have not been compelled to testify. If their testimony before the ID gives rise to incriminating derivative evidence that does not attract immunity at the criminal trials, judicial review at the end of the proceedings will not provide an effective remedy as the testimony will have already been given. This is so regardless of the outcome in the admissibility proceedings. The Applicants would be denied the very remedy they seek, namely the right not to disclose that evidence to the Crown or the co-accused.

[27] I note that in *Seth v Canada (Minister of Employment and Immigration)*, [1993] 3 FC 348 (FCA), upon which the ID relied, the Federal Court of Appeal mentioned in footnote no 13 that it was disposed, for the sake of argument and without reaching a final conclusion on the point, to recognize that a Convention refugee claimant could be equated with a "compellable witness". It

noted that although not bound to testify personally at the hearing, the refugee claimant could not be successful in his claim unless he met his burden and tendered sworn documentary evidence in support of his claim respecting his personal history.

[28] This reasoning does not necessarily apply here. In order to obtain a deportation order against the Applicants, the Minister must first establish the elements of inadmissibility under paragraph 37(1)(*b*) of the IRPA (*B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at para 72; *Handasamy v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1389 at para 40). If the Minister were to adduce insufficient evidence to that effect, the Applicants could choose to remain silent.

[29] Given the uncertainty in the case law regarding the application of derivative use immunity to the Applicants if they testify voluntarily at their admissibility hearing and my finding that judicial review at the end of the proceedings could fail to provide an effective remedy, I am satisfied that the threshold for early intervention is met.

B. *The ID's refusal to adjourn the admissibility proceedings*

[30] Citing *Bruzzese v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1119 and *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97, the ID noted that there was no dispute that the Applicants are compellable witnesses at their admissibility hearing. If the Applicants were compelled to give testimony at their admissibility hearing, the compelled testimony would be protected pursuant to section 13 of the *Charter*. They could also request that the criminal trial judge exclude any derivative evidence.

Though the ID recognized the Applicants' concern that they might have to testify voluntarily at their admissibility hearing to avoid being found inadmissible, it found that the Applicants had not provided any idea of the type of evidence they might have to give in order to avoid being found inadmissible or how giving this evidence could help the Crown at the criminal trial.

[31] In addition, pointing to the decision of this Court in *Akinsuyi v Canada (Citizenship and Immigration)*, 2015 FC 1397, the ID confirmed that it had no role in ensuring the fairness of the criminal prosecution. It found that it was for the criminal trial judge to determine the appropriate remedy for the breach of any *Charter* rights caused by the admissibility hearing. As the potential use of any derivative evidence was highly speculative and conjectural, the ID concluded that it was not a sufficient ground for adjourning the admissibility hearing. Instead, the ID suggested that the Applicants request that their admissibility hearing be conducted *in private* and that the presiding member prohibit the Minister from communicating to the Royal Canadian Mounted Police or to any other person the transcript of the proceedings or any content thereof at any time while the charges against the Applicants were outstanding in the courts.

[32] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada held that reasonableness is the presumptive standard of review for administrative decisions (*Vavilov* at paras 10, 16-17). None of the exceptions described in *Vavilov* apply here.

[33] Where the standard of reasonableness applies, the Court shall examine "the decision actually made by the decision maker, including both the decision maker's reasoning process and

the outcome" (*Vavilov* at para 83). It must ask itself "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[34] With respect to the issue of procedural fairness, the Federal Court of Appeal clarified in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [*Canadian Pacific*] that issues of procedural fairness do not necessarily lend themselves to a standard of review analysis. Rather, the role of this Court is to determine whether the proceedings were fair in all the circumstances. In other words, "whether the applicant knew the case to meet and had a full and fair chance to respond" (*Canadian Pacific* at paras 54-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[35] As noted earlier, the Applicants challenge the ID's decision on a number of grounds. They contend that it was unreasonable and unfair to place them in a position that compromises their section 7 and 13 *Charter* rights to a fair hearing and their right against self-incrimination. Even if it is up to the criminal court judge to determine the appropriate remedy for the breach of any *Charter* right caused by the admissibility hearing, the ID has the duty to be fair and avoid breaches of the *Charter*.

[36] The Applicants also contend that the ID erred in failing to apply the criteria set out in subsection 43(2) of the ID Rules. This provision sets out the factors that the ID is required to

consider and balance when assessing whether a motion for an adjournment of proceedings is warranted. These factors include the nature and the complexity of the hearing and whether allowing the application would unreasonably delay the proceedings or likely cause an injustice. In the Applicants' view, the only factor considered by the ID in refusing the adjournment was whether allowing the applications would unreasonably delay the proceedings.

[37] Finally, they argue that the ID imposed an unreasonable burden upon them. In order to prove that they would be prejudiced in providing evidence or revealing their criminal defence to the co-accused and the Crown at the ID hearing, they were required to provide the very evidence or reveal the criminal defence they wished to protect.

[38] Let me begin by addressing the Applicants' argument that the ID erred by not considering the factors listed in subsection 43(2) of the ID Rules. I note that this provision governs "application[s] to change the date or time of a hearing". When the Applicants made their request for an adjournment, the hearing date and time were not set. Their request was made in the context of scheduling the date for the hearing. There was no hearing date to change.

[39] Even if the ID was required to consider the factors set out in subsection 43(2) of the ID Rules, the ID cannot be faulted for not specifically addressing the factors that the Applicants did not themselves rely on to request the adjournment. The thrust of the Applicants' argument was that failing to postpone the admissibility hearing until the final disposition of the criminal proceedings would potentially prejudice the criminal and immigration proceedings. The ID addressed this argument in its reasons.

[40] Moreover, since there is no absolute protection against self-incrimination, it was incumbent on the Applicants to demonstrate that the continuation of the admissibility proceedings would prejudicially affect their right to a fair hearing and their right against self-incrimination.

[41] In the case before me, the Applicants did not articulate before the ID the nature of the evidence they may have to give in order to avoid being found inadmissible, nor did they explain how that evidence could assist the Crown in the criminal proceedings. Not all derivative evidence is necessarily incriminating. In addition, the Applicants' admissibility hearing was not scheduled when the Applicants brought their motions nor had the Minister completed disclosure of the evidence upon which he intended to rely in the admissibility proceedings. It is my understanding that the evidentiary disclosure in the criminal proceedings was also incomplete. While the Applicants contend that there is no indication that the Minister will compel them to testify, there is also no indication that he will not. In my view, it was reasonable for the ID to find that the potential use of any derivative evidence was at that point highly speculative and conjectural. The Applicants' request was based on a set of circumstances that were both undefined and speculative. Vague allegations are not enough.

[42] As I agree with the ID that the Applicants' request was based on speculation, it is not necessary for me to determine at this time whether the Applicants' voluntary testimony would attract the protection of derivative use immunity.

[43] Furthermore, the ID reasonably suggested that the Applicants request other protective measures that could address their concerns and allow the admissibility hearings to proceed in a timely manner. Paragraph 166(*b*)(ii) of the IRPA provides that any division of the Immigration and Refugee Board can, on application or on its own motion, take any measures it considers necessary to ensure the confidentiality of the proceedings if, after considering available alternative measures, it is satisfied that there is a real and substantial risk to the fairness of the proceeding such that the need to prevent disclosure outweighs the societal interest that the proceeding be conducted in public. This provision appears, at first glance, to be sufficiently broad to allow the ID to order that the admissibility proceedings, or parts thereof, be conducted *in private* and to restrict the use to be made of evidence given by the Applicants.

[44] In addition, pursuant to subsection 44(2) of the ID Rules, the Applicants can request that their hearings be separated, thereby eliminating the issue of one co-accused having to divulge their defence or strategy to the other. The Applicants have not demonstrated that such procedural mechanisms would not address their concerns of fairness and confidentiality regarding the potential use of derivative evidence that could result from their testimony if they chose to testify.

[45] To conclude, the Applicants have failed to persuade me that in refusing their request for an adjournment of the admissibility hearing, the ID unreasonably placed them in a position that compromises their section 7 and 13 *Charter* rights to a fair hearing and their right against self-incrimination or breached their rights to procedural fairness or natural justice.

[46] Accordingly, the applications for judicial review are dismissed.

[47] The Applicants have requested that the Court certify the following question:

> Would the conduct of an admissibility hearing of a person concerned under the Immigration and Refugee Protection Act before the final determination of criminal charges against the person for an act relevant to the admissibility proceedings violate the rights of the person under the Canadian Charter of Rights and Freedoms because of the loss of derivative use immunity in criminal proceedings when the person is not compelled to testify at their admissibility hearing but testifies voluntarily?

[48] The criteria for certification are well established. The proposed question must be a serious question that is dispositive of the appeal. It must transcend the interests of the parties and raise an issue of broad significance or general importance. Furthermore, the question must have been dealt with by the Federal Court and must arise from the case itself rather than from the way in which the Federal Court may have disposed of the case. A question in the nature of a reference or whose answer turns on the unique facts of the case cannot ground a properly certified question (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paras 46-47 [*Lunyamila*]; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15-17; *Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 at para 4; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at paras 28-29; *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paras 11-12; *Canada (Minister of Citizenship and Immigration) v Liyanagamage*, [1994] FCJ No 1637 (FCA) at para 4).

[49] The answer to the question proposed by the Applicants is dependant on the determination that a person who testifies voluntarily at his or her admissibility hearing may not claim derivative

use immunity at a later criminal proceeding. Given that I have decided the applications for judicial review on a different basis and have not pronounced myself on this issue, it would be inappropriate to certify the question (*Lunyamila* at paras 3, 46).

[50] Accordingly, no question will be certified.

JUDGMENT in IMM-5410-19 and IMM-5510-19

THIS COURT'S JUDGMENT is that:

1. The applications for judicial review are dismissed;

2. No question of general importance is certified.

3. A copy of this Judgment and Reasons will be placed on both Court files (IMM-5410-19 and IMM-5510-19).

"Sylvie E. Roussel"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET:	IMM-5410-19
STYLE OF CAUSE:	GURMINDER SINGH TOOR v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
AND DOCKET:	IMM-5510-19
STYLE OF CAUSE:	KIRANDEEP KAUR TOOR V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN OTTAWA, ONTARIO AND CALGARY, ALBERTA
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APPEARANCES:

Michael Greene	FOR THE APPLICANT, KIRANDEEP KAUR TOOR
David Matas	FOR THE APPLICANT, GARMINDER SINGH TOOR
Galina Bining	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sherritt Greene Barristers & Solicitors Calgary, Alberta	FOR THE APPLICANT, KIRANDEEP KAUR TOOR
David Matas Barrister and Solicitor Winnipeg, Manitoba	FOR THE APPLICANT, GARMINDER SINGH TOOR
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT