Federal Court Cour fédérale

Date: 20250411

Docket: T-1251-19

Citation: 2025 FC 673

Vancouver, British Columbia, April 11, 2025

PRESENT: Associate Judge John C. Cotter

SIMPLIFIED ACTION

BETWEEN:

NAZARELYS PAULA MEJIAS TURMERO

Plaintiff

and

AIR CANADA AND
ATTORNEY GENERAL OF CANADA

Defendants

Contents

JUDGMENT AND REASONS

[1] Generally stated, this action arose because the plaintiff, Nazarelys Paula Mejias Turmero [Ms. Mejias], and her three children [Children], who were in transit from Venezuela to Toronto, were not permitted to board an Air Canada flight from Panama City to Toronto on August 4, 2017 (unless otherwise indicated, all dates in these reasons are in 2017). As a result, they ended up in Panama for 33 days before being able to travel to Toronto. The reason why they were not permitted to board that flight is that their Visas (defined below) were cancelled after they presented themselves at the Air Canada check-in counter at Tocumen International Airport [Airport] in Panama City, Panama. When they presented themselves for check-in, the Visas were valid. The Visas were cancelled as a result of a sequence of events set in motion by an Air Canada agent.

[2] Ms. Mejias seeks "compensatory damages for out-of-pocket expenses in the amount of USD$4,520.13," plus interest and costs. She asserts that these are the expenses incurred as a result of being delayed and having to stay in Panama for 33 days.

[3] The claims ultimately pursued by Ms. Mejias were:

a) against Air Canada under Article 19 of the *Convention for the Unification of Certain Rules for International Carriage by Air*, 28 May 1999, 2242 UNTS 309 [*Montreal Convention*]; and

b) in the alterative, in the event Air Canada is not liable, against the Attorney General of Canada [AGC or Federal Crown] for: 1) negligence; and 2) public law damages.

[4] For the reasons set out below, the claim against Air Canada succeeds (but not for all the expenses claimed), and the claim against the Federal Crown is dismissed. The claim succeeds against Air Canada because it failed to prove that its agents took all reasonable measures to avoid the delay in question and therefore, cannot avail itself of the defence provided for in Article 19 of the *Montreal Convention*.

I. The Parties

[5] The action was commenced on August 1, 2019, as a simplified action. Originally, there were four plaintiffs, Ms. Mejias and the Children, namely Santiago Emilio Garcia Mejias [Santiago], Victoria Paulina Garcia Mejias and Paul Emilio Garcia Mejias. Pursuant to the Order

of Associate Judge Trent Horne dated June 13, 2023, the claims by the Children, who are minors, were struck because of non-compliance with Rule 121 (unless otherwise indicated, any reference to a Rule is to those in the *Federal Courts Rules*, SOR/98-106).

[6] When the action was commenced, the only defendant was Air Canada. It is a company licensed to carry on business as an air carrier within Canada and internationally.

[7] In November 2021, the AGC was added as a defendant. Pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 [*CLPA*], proceedings against the Federal Crown may be taken in the name of the Attorney General of Canada. The government agencies and departments principally involved in the events in question are:

a) The Canada Border Services Agency [CBSA]; and

b) Immigration, Refugees and Citizenship Canada [IRCC].

II. Communications Chain on August 4

[8] Before discussing the events in any detail, it is useful to summarize the communications chain on August 4, beginning with when Ms. Mejias and the Children presented themselves for check-in at the Air Canada counter at the Airport, up until Ms. Mejias was informed that the Visas were cancelled.

a) Ms. Mejias and the Children presented themselves at the Air Canada check-in counter at the Airport. They provided their passports to a male Air Canada agent. He is the person who questioned Ms. Mejias about their trip.

b) The male Air Canada agent spoke to another Air Canada agent, Arlin A. Corrales G. [Ms. Corrales], the supervisor, about Ms. Mejias and the Children.

c) Ms. Corrales phoned Nathalie Boisvert [Ms. Boisvert], who was the CBSA Liaison Officer in Panama.

d) Ms. Boisvert phoned Cindy Bouchard [Ms. Bouchard], who was the International Network Manager, CBSA, at the Embassy of Canada to Mexico, in Mexico City.

e) Ms. Bouchard spoke in person with Kent Francis [Mr. Francis], who was the Deputy Program Manager, Counsellor, Immigration, in Mexico City, Mexico. It was Mr. Francis who made the decision to cancel the Visas.

f) Mr. Francis spoke to Ms. Bouchard and informed her of the decision that the Visas were cancelled.

g) Ms. Bouchard phoned Ms. Boisvert and informed her that the Visas were cancelled.

h) Ms. Boisvert phoned Ms. Corrales, informed her that the Visas were cancelled and requested that the Visas be marked as cancelled.

i) Ms. Corrales marked the Visas cancelled with a pen and informed Ms. Mejias that the Visas were cancelled.

III. The Trial

[9] The trial of this simplified action took place over four days.

[10] There was a total of 10 witnesses at the trial. This was a hybrid trial, with some of the witnesses appearing remotely by video (including one from Morocco and one from Panama). Consistent with Rule 299, the evidence-in-chief of eight of the witnesses was adduced by affidavit. These affidavits are noted in the list below. As two of the witnesses testified as a result of having been served with a subpoena, I granted an Order pursuant to Rule 299 that the evidence of those witnesses could be adduced orally rather than by affidavit (see the Order dated May 15, 2024). All the witnesses were cross-examined and, in some cases, there was also re-direct. The witnesses at trial were:

A. *Plaintiff's witnesses*

a) Ms. Mejias – Her evidence-in-chief was by way of affidavit sworn April 29, 2024. Objections were raised by the defendants to certain portions of her affidavit, some of which I ordered struck. As a result, a redacted copy of her affidavit was entered as an Exhibit (Exhibit 24). She testified in person.

b) Santiago - His evidence-in-chief was by way of affidavit sworn April 23, 2024 (Exhibit 3). He testified in person. As noted above, Santiago is one of the Children. He is the eldest.

c) Elizabeth Long [Ms. Long] – Her evidence-in-chief was by way of affidavit sworn April 23, 2024 (Exhibit 2). She resides in Toronto and appeared by video. She is a

lawyer and was retained by Ms. Mejias after the Visas were cancelled. She was engaged sometime around August 18.

d) Mr. Francis – He was one of the witnesses who testified as a result of having been served with a subpoena. He resides in Ottawa, Ontario and appeared by video. As noted above, he is the person who made the decision to cancel the Visas. At the time of the events in question, was the Deputy Program Manager, Counsellor, Immigration, in Mexico City, Mexico. He is also the person who made the decision to re-issue the Visas. Before retiring from the Immigration Foreign Service, he had a lengthy career which included, in addition to the above-noted position, serving as: a Visa Officer in New Delhi, India; a Visa Officer in Bogota, Colombia; the Immigration Control Officer in Buenos Aires, Argentina; the Immigration Program Manager in Guatemala City, Guatemala; the Program and Policy Advisor to the Director General of the International Region at Immigration Headquarters; the Immigration Control Officer in London, United Kingdom; a Unit Manager in Hong Kong; the Immigration Program Manager in Bucharest, Romania; Director of Strategic Review and Director of Operational Coordination at the Immigration Headquarters in Ottawa; the Deputy Program Manager in Manila, Philippines; Program Manager in Nairobi, Kenya; and as the Director of Strategic Planning and Delivery at Immigration Headquarters within the International Region.

B. *Air Canada's witnesses*

e) Aaron Burnett [Ms. Burnett] - Her evidence-in-chief was by way of affidavit affirmed May 8, 2024 (Exhibit 22). She resides in Saint-Laurent, Quebec, and

appeared by video. She was the one witness who was not involved in the events of 2017. She is employed by Air Canada as Manager, Customer Service Delivery Excellence – Airports, and has been with Air Canada for almost 10 years. Her evidence focused on the Air Canada documents relating to the events in issue, and the related systems used by Air Canada, as well as how Air Canada interacted with CBSA.

f) Ms. Corrales - Her evidence-in-chief was by way of affidavit affirmed May 7, 2024 (Exhibit 23) [Corrales Affidavit]. She resides in Panama City, Panama and appeared by video. At the time of the events in question, she was employed by Aircraft Services & Consulting as the Airport Customer Service Supervisor on behalf of Air Canada. At all material times, she was acting as an agent of Air Canada.

C. *ACG's witnesses*

g) Ms. Bouchard - Her evidence-in-chief was by way of affidavit sworn May 8, 2024 (Exhibit 10) [Bouchard Affidavit]. She resides in Cantley, Quebec and appeared by video. At the time of the events in question, she was the International Network Manager, CBSA, at the Embassy of Canada to Mexico, in Mexico City. As Network Manager her duties included overseeing the international operations activities of CBSA liaison officers based in Mexico and various locations in Latin America. She is currently the Manager of the Trusted Trade Compliance Unit in the Commercial and Trade Branch of the CBSA.

h) Ms. Boisvert - Her evidence-in-chief was by way of affidavit sworn May 10, 2024 (Exhibit 11). She resides in Rabat, Morocco and appeared by video. At the time of the events in question, she was the CBSA Liaison Officer in Panama. As the Liaison Officer in Panama her responsibilities covered several countries including Panama. Ms. Boisvert is currently a CBSA Liaison Officer in Rabat, Morocco, a position she has held since August 2023. She has worked for CBSA for over 26 years. Her previous positions include being a CBSA Senior Program Officer in Ottawa and the Liaison Officer in Haiti.

i) Pedro Emilio Garcia Molina [Husband] - He is the husband of Ms. Mejias. He was the other witnesses who testified as a result of having been served with a subpoena. He testified in person.

[11] With one notable exception, all the individuals directly involved in any material way in the events of August 4 were witnesses at trial. The notable exception is the male Air Canada agent who dealt with Ms. Mejias and the Children at the Airport. He was not identified by name in any of the affidavit evidence tendered by Air Canada at trial. During the cross-examination of Ms. Corrales, he was identified only as Alejandro. There was no evidence that he was unavailable or otherwise unable to testify at the trial.

[12] The two younger Children also did not testify, which is understandable as they were only 2 and 3 years of age on August 4.

[13] To the extent that any of the evidence state what may appear to be conclusions on legal issues or what the law is, I take it simply as the understanding of the witness.

D. *Additional matters flowing from closing arguments*

[14] There are three additional matters to be addressed that arose in connection with closing arguments.

(1) Additional exhibits

[15] By way of background, each of the parties had filed a book of documents in advance of the trial. The parties subsequently came to an agreement prior to the commencement of the trial as to the documents for which all parties agreed to: a) authenticity and truth of the contents; or b) authenticity only. This agreement is Exhibit 1. There were other documents in the parties' respective book of documents for which no agreement was reached. Except for the documents on which there was agreement as to both authenticity and truth of the contents, the balance of the documents were to be dealt with at trial depending on whether the appropriate evidentiary foundation had been provided so as to include them as exhibits. For certain of the documents, following the evidence portion of the trial the parties made submissions as to whether they should be accepted as exhibits. Most of these documents were dealt with on June 13, 2024.

[16] The parties, by letter from Ms. Mejias dated June 20, 2024, subsequently wrote to the Court indicating that certain of the documents from the books of documents were overlooked by the parties and not marked as exhibits. They requested, on consent, that they be marked as exhibits. These documents are:

a) Tab 14, pages 169, 193 and 194, of Air Canada's book of documents; and

b) Tabs 1, 2, 3, 4, 5, 6, 7, 8, 20, 23, 24, 25, 26, 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59 of the plaintiff's book of documents.

[17] These documents have been marked as Exhibits 30 to 51 respectively.

(2) Should Tab 21 in the plaintiff's book of documents be marked as an exhibit?

[18] As noted above, following the evidence portion of the trial, the parties made submissions whether the appropriate evidentiary foundation had been laid to include as exhibits certain of the documents in their respective books of documents. For one of them, Tab 21 of the plaintiff's book of documents, I reserved the decision.

[19] Tab 21 of the plaintiff's book of documents (pages 212-214) is an exchange of emails between Ms. Mejias's Husband and the office of Salma Zahid, MP on August 22 and 23, with the August 23 email from that office being of particular interest to Ms. Mejias. There was agreement among the parties as to authenticity. The August 23 email from Salma Zahid's office states that it is forwarding a response "received from CIC today". That content deals with the cancellation of the Visas. The issue is that certain of the factual information is not correct. Ms. Mejias sought to have it marked as an exhibit and argued that it is relevant, because it shows the information that she had received and was operating under at that time. The defendants objected. Tab 21 of the plaintiff's book of documents shall be accepted as an exhibit, but not for the truth of its contents (Exhibit 52).

(3) Transcript-related issue

[20] An issue was raised by Ms. Mejias prior to and during closing arguments regarding transcripts. The background is that the defendants each obtained transcripts of the trial, as did the Court. Ms. Mejias elected not to obtain the transcripts (at least not initially) and instead chose to obtain copies of the DARS recordings of the trial. The AGC's closing written submissions included quoted excerpts from the transcripts. Ms. Mejias raised an issue that the AGC had not provided her with copies of the transcripts and argued that the AGC should have done so. Ms. Mejias, in her written closing submissions, included quotes of testimony with reference to the DARS recordings, including the specific timestamps. During oral closing submissions, on the topic of whether there was any prejudice from not having the transcripts, Ms. Mejias argued that she was concerned that the quotations included in the defendants' written closing submissions may not be accurate transcriptions of the evidence. She asked for the opportunity to compare the audio recordings to the transcript quotations included in the defendants' written closing submissions.

[21] To provide Ms. Mejias with that opportunity, and to permit oral argument to proceed as scheduled on June 13, 2024, Ms. Mejias was given the opportunity to make written submissions by June 20, 2024 (based on her estimate of how much time she needed). The written submissions were to be on the issue of whether the quotes from the transcripts in the defendants' written submissions were accurate. The defendants were given until July 5, 2024, to provide any responding submissions.

[22] Ms. Mejias filed written submissions by letter on June 20, 2024. Counsel for the AGC filed responding submissions by letter on June 26, 2024. In her submissions, Ms. Mejias focused not on whether the quotes from the transcripts in the defendants' written submissions were accurate, but rather, used this as an opportunity to make arguments on how the AGC had dealt with two aspects of her evidence. For the first, she argued that the AGC should have included more of her evidence as to whether the Visas would have been cancelled if she had been given the opportunity to explain to CBSA that her Husband would be applying for a post-graduation work permit. For the second, she argued that the AGC's characterization of the evidence was incorrect with respect to whether she would have attempted to travel on another flight if the Visas had not been marked as cancelled. As both of these factual topics were addressed by the parties in written and/or oral closing submissions, there was no need for further submissions on these topics, and those further submissions have had no impact of this decision.

IV. Background events leading up to August 4

[23] As of 2016, Ms. Mejias, her Husband and the Children were all citizens of Venezuela and lived in Venezuela.

[24] The Husband made an application for a study permit to IRCC. He submitted a letter in support of his application in which he set out his reasons for wanting to study in Toronto, Canada. He stated that it was his ambition to learn as much as possible while in Canada and "replicate these experiences in the Central Bank of Venezuela," and that his family would be traveling with him. His program of study was to begin at Centennial College in January 2017 and

was expected to be completed in August 2017. In late 2016, his study permit application was approved.

[25] Ms. Mejias and the Children applied for entry into Canada as a family unit, with their various applications for temporary resident visas tied to her Husband's study permit. The details are:

a) Ms. Mejias applied for an open work permit. On her work permit application, she stated that the duration of expected employment was from January 9, 2017, to August 9, 2017.

b) The two youngest Children, Victoria and Paul, applied to IRCC for visitor visas. Their applications indicated that they planned to stay from January 9 to August 9, 2017.

c) Santiago applied to IRCC for a study permit. His application indicated that the duration of expected study was from January 6 to September 1, 2017. His application also indicated he would be accompanying his father while studying at Centennial College.

[26] The applications of Ms. Mejias and the Children were approved in December 2016. The details of the approvals and visas issued by IRCC are [collectively, Visas]:

a) Ms. Mejias's application for an open work permit was approved, valid until November 30, 2017. She was also issued a temporary resident visa valid to November 30, 2017.

b) A study permit visa was issued for Santiago, with an expiry date of November 30, 2017.

c) Multiple entry visitor visas were issued for the two youngest children, Victoria and Paul, with expiry dates that aligned with the expiry dates on their passports, with the result that the expiry dates for their visas were later than those of the other family members.

[27] The Husband travelled to Canada on January 11, 2017, to commence his studies. He was issued a study permit at the port of entry valid until November 30, 2017. Ms. Mejias and the Children did not travel with him at that time. They decided to travel later.

[28] In July, one-way tickets were purchased for Ms. Mejias and the Children to travel from Venezuela to Panama on August 3, and then from Panama City to Toronto on August 4, on Air Canada flight AC 1949. As the claim by Ms. Mejias against Air Canada is solely under the *Montreal Convention*, it is not necessary to deal with the contractual terms agreed to when the tickets were purchased.

[29] During the latter part of the Husband's studies at Centennial College, and prior to Ms. Mejias and the Children leaving Venezuela, they decided that he would apply for a 1-year post-graduation work permit. The application for that work permit required proof of confirmation of completion of the program of study which would not be available until late August 2017. As a result, he was not able to apply for the post-graduation work permit until after August 4 (i.e., after Ms. Mejias and the Children were scheduled to travel to Toronto).

V. Check-in process

[30] For context, it is useful to begin with an explanation of Air Canada's check-in process for travel to Canada insofar as passports and visas are concerned.

[31] That process was explained by Ms. Burnett in her affidavit (Exhibit 22), as follows:

> 7. When an Air Canada check-in agent swipes a passenger's passport and enters their Visa information, Air Canada's check-in system either 1) generates a message that the passenger is "Ok to Board", meaning the passenger has the required valid travel documents and is "Ok to Board"; or, 2) generates an alert message "Do Not Board" or "document not on file", meaning the system cannot locate a valid passport and/or Visa. In which case, the agent must call Air Canada at a number provided to ensure the passport and/or Visa is valid before, at the time of the plaintiff's travel, the check-in Manager or Supervisor can override the alert in the system to board the passenger.
>
> 8. The Air Canada check-in system automatically generates an "Ok to Board" message if there is no issue with the passenger's passport and/or Visa. Only when an "Ok to Board" message is generated is the passenger accepted for boarding.
>
> 9. Put another way, if an alert message "Do Not Board" or "document not on file" is generated, or if no message is generated at all, the passenger is not accepted for boarding until permission is obtained to override the alert message or, in the case of no message at all, permission is obtained to override the system to accept the passenger for boarding. In such circumstances, or when in doubt, Air Canada's check-in personnel are to call the Air Canada Airport Help Desk for guidance on passenger documentation.

[32] For the visa information, it is manually keyed in by the Air Canada agent. The visa information that is entered is stored in Air Canada's systems (discussed below).

[33] The Air Canada systems interact with the CBSA's systems. This is how the messages such as "OK to Board" or "Do Not Board" are generated.

[34] Ms. Burnett explained in cross-examination that if the Air Canada agent has any doubts regarding the passenger's travel documents, they can contact any of the Air Canada support centre, the CBSA Liaison Officer or the CBSA's Air Carrier Support Centre.

VI. Air Canada agents at the Airport

[35] Although Ms. Corrales and the male Air Canada agent were employed by Aircraft Services & Consulting, they were acting as agents of Air Canada on August 4. This is confirmed by Ms. Burnett in her affidavit:

> 4. At all material times, Air Canada contracted with Aircraft Services & Consulting to provide ground handling services at PTY, including providing check-in counter agents and supervisors on August 4, 2017, who were acting in the scope of their employment as agents for Air Canada.

VII. Events at the check-in counter on August 4

[36] There is some conflict in the evidence as between Ms. Mejias and Ms. Corrales as to what transpired at the Airport on August 4. For the reasons explained later, to the extent that there is any conflict, I accept the evidence of Ms. Mejias as to her recollection of what transpired between her and the Air Canada agents, and what she observed the Air Canada agents doing that day. This is specific to her recollection and observations. I make this latter point to draw a distinction between her recollection and observations on the one hand, and any conclusions she may have drawn from what happened or what she observed, on the other.

A. *Evidence of Ms. Mejias regarding check-in*

[37] On August 4, Ms. Mejias and the Children attended the Air Canada check-in counter at the Airport for Flight AC 1949 to Toronto, which was scheduled to depart at 1:45 p.m. They were the first passengers in the Air Canada check-in line.

[38] They had a total of six pieces of baggage to be checked for the four of them. Their checked baggage contained:

a) clothing for each of them;

b) footwear including indoor and outdoor shoes;

c) children's books and small toys;

d) baby formula supply for two weeks;

e) diapers, changers and baby wipes supply for two weeks;

f) one month supply of medication for the Children;

g) one month supply of adult medication;

h) three tablets;

i) toddler-sized utensils and mat;

j) bedding and blankets;

k) books; and

l) first aid kit.

[39] In addition, Ms. Mejias had the following in her carry-on bag:

a) A laptop computer with charger; and

b) folders with personal documents.

[40] At the Air Canada check-in counter, they were met by a male Air Canada agent. Ms. Mejias provided him with her passport and those of the Children. The male Air Canada agent questioned her in Spanish. As explained below, the evidence of Ms. Mejias is also the only firsthand evidence as to the questions and answers. Ms. Corrales agreed on cross-examination that she did not hear the answers provided by Ms. Mejias. Rather, she only heard from the male Air Canada agent what he remembered about her answers. As a result, the evidence of Ms. Corrales regarding these answers is inadmissible hearsay evidence.

[41] Ms. Mejias was asked the following questions by the male Air Canada agent and provided the following answers.

a) Question: Are you travelling to Canada? Answer: yes.

b) Question: How many passengers were travelling? Answer: four.

c) Question: Do you have any checked baggage? Answer: yes.

d) Question: Do you have a printed copy of the Government of Canada's approval letter that you received by email? In response to this question, Ms. Mejias provided a printed copy.

e) Question: Is it your first time travelling to Canada? Answer: yes.

f) Question: Can I see Victoria and Paul? In response to this question, Ms. Mejias showed him Victoria and Paul.

g) Question: What are your intentions with your work permit with just three months away from the expiry date? My computer shows that you are travelling on one-way tickets. Is that correct? Answer: She confirmed that they had one-way tickets, and explained why; that her husband was studying in Canada, and he would be applying for a post-graduation work permit upon completion of his studies (as explained below, this latter point is significant and there is no evidence that this was passed on to the CBSA Liaison Officer).

[42] During this exchange, the male Air Canada agent stated that Victoria's and Paul's visas were "incorrect," because they expired at a later time than Ms. Mejias's work permit. However, as noted above, this is because the expiry of Victoria's and Paul's visas was aligned with the expiry of their passports.

[43] After questioning Ms. Mejias, the male Air Canada agent told her that he needed to verify with "Immigration" if everything was all right with their documents. He placed a call on his mobile phone and left the check-in counter area. She could not hear what he was saying. He returned approximately 10 minutes later and told her that "Immigration" was making some routine verifications of their Visas, which would take a couple of minutes.

[44] After waiting for a period of time, the male agent received a phone call. Although he remained at the check-in counter area, he stepped back from the counter and Ms. Mejias was unable to hear what he was saying. While he was still talking on the phone, he waved his hand to call the attention of a female Air Canada agent (who Ms. Mejias now knows was Ms. Corrales), and spoke to her, as well as on the phone. The male agent and Ms. Corrales continued to talk with each other after the phone call ended. At some point, the male Air Canada agent handed over the passports of Ms. Mejias and the Children to Ms. Corrales. Ms. Mejias observed Ms. Corrales writing something on the passports, but did not know what it was at the time.

[45] Both of the Air Canada agents came to the area of the check-in counter where Ms. Mejias and the Children were waiting. The male agent told Ms. Mejias that their Visas were cancelled by Immigration. Ms. Corrales returned the passports.

[46] Ms. Mejias asked how and why the Visas were cancelled. Ms. Corrales stated that they could not provide further information and that Ms. Mejias and the Children needed to go to the Embassy of Canada in Panama if they wanted further information. This was the only exchange that Ms. Mejias had with Ms. Corrales.

B. *Evidence of Arlin A. Corrales G.*

[47] As noted above, to the extent that there is any conflict in the evidence between Ms. Mejias and Ms. Corrales as to what transpired at the Airport on August 4, I accept the evidence of Ms. Mejias as to her recollection of what transpired between her and the Air Canada agents, or what she observed the Air Canada agents doing that day. The reasons for this are:

a) On cross-examination, Ms. Corrales was asked if she had a vivid recollection of what happened on August 4. Her response was that “I wouldn’t call it vivid.”

b) Ms. Corrales also testified that in her capacity as an airline agent she has probably dealt with tens of thousands of passengers. She was testifying almost seven years after the events in question regarding her interaction with one of those passengers.

c) I found Ms. Mejias to be a credible witness with a good recollection of what transpired. This is not surprising given the significance of the events to her.

d) I did not find Ms. Corrales to be a reliable witness.

e) On the issue of whether Ms. Boisvert attended at the Airport on August 4 and whether she spoke with Ms. Mejias, which is discussed below, the evidence of Ms. Mejias on this point is consistent with the evidence of Ms. Boisvert.

f) Ms. Corrales’s claim that the details of the Visas were entered by the male Air Canada agent into the applicable Air Canada system is at odds with the evidence of Ms. Burnett discussed elsewhere in these reasons. As explained below, I do not accept Ms. Corrales’s evidence on this point.

g) Ms. Corrales in her affidavit (Exhibit 23) purported to give direct evidence as to witnessing the questions and answers exchanged between the male Air Canada agent and Ms. Mejias (see para 10). However, this was not true. In cross-examination, Ms. Corrales admitted that she did not hear the answers herself. She

only heard it from him. Specifically, she was asked the following questions by Ms. Mejias and gave the following answers:

> Q. I put it to you that you only heard from your male colleague what he remembered about my answers to his questions but did not hear the answers yourself. Do you agree?
>
> A. Can you repeat that again, please?
>
> Q. Sure. I put it to you that you only heard from your male colleague what he remembered about my answers to his questions but did not hear the answers yourself. Do you agree?
>
> A. Yes, I agree.

[48] A few examples of the conflict in the evidence between Ms. Mejias and Ms. Corrales are:

a) The extent to which Ms. Corrales was present or involved in the check-in process.

b) The luggage that Ms. Mejias and the Children had. The evidence of Ms. Corrales is that she observed them to have a large amount of baggage including two large television boxes and, in her experience, the nature and number of which was atypical and greater than she would typically see for passengers. I accept the evidence of Ms. Mejias as to the baggage she and the Children had (discussed above) and that it did not include any large television boxes.

c) Whether Ms. Boisvert attended at the Airport on August 4 and met with Ms. Mejias. The evidence of Ms. Mejias is that Ms. Boisvert did not question her at the Airport or engage with her there. The evidence of Ms. Boisvert is that she did not attend at the Airport that day and did not speak with Ms. Mejias in person or by phone. The evidence of Ms. Corrales is that Ms. Boisvert attended at the Airport

and spoke with Ms. Mejias and that this happened after Ms. Mejias was informed that the Visas were cancelled. I accept the evidence of Ms. Mejias and Ms. Boisvert that Ms. Boisvert did not attend at the Airport on August 4 and did not speak with Ms. Mejias.

C. *Were the Visa details entered by the Air Canada agent? Did the system generate a message?*

[49] As explained above, at check-in for an Air Canada flight to Canada, a passenger's passport is swiped, and any visa information is typed into the system by the Air Canada agent. After all that information has been entered, Air Canada's check-in system either generates 1) a message that the passenger is "Ok to Board," meaning the passenger has the required valid travel documents and is "Ok to Board," or, 2) an alert message "Do Not Board" or "document not on file," meaning the system cannot locate a valid passport and/or visa.

[50] As to what happened in this particular case, Ms. Corrales states in her affidavit (Exhibit 23) that:

> 8. I observed the plaintiff provide to my colleague, who I was standing next to, their passports; which included their Visas, and, my colleague proceed to swipe the passports in Air Canada's check-in system. In doing so, the Air Canada check-in system did not return a message of "OK to Board" and did not return any message – including "Do Not Board" or "document not on file".

[51] Although Ms. Corrales states in paragraph 8 of her affidavit that she was standing next to her colleague (the male Air Canada), her evidence in cross-examination was different. I also note that paragraph 8 makes no reference to the Visas being entered. During cross-examination, Ms.

Corrales's evidence was that she was not standing next to male Air Canada agent at the time. Specifically, her evidence was:

> Q. […] did you see your male colleague enter our visa details into the check-in system?
>
> A. Yes.
>
> Q. How do you know that your male colleague saw on his screen he swiped our passports?
>
> A. Because he called me, which -- I wasn't standing next to him. He asked me to come over. I went over, and he showed me the screen, the message, and then we made the phone call.

[52] If Ms. Corrales was not standing next to the male Air Canada agent at the time he supposedly swiped the passports, and if according to her evidence, she needed to be called over to see the message supposedly already displayed on the screen, it is implausible that she saw him enter the Visas details. I also note: a) the inconsistency between the above evidence as to what she saw on the screen – "the message" – and her affidavit at paragraph 8 where she states that Air Canada check-in system "did not return any message"; and b) paragraph 8 of her affidavit does not mention anything about the Visas details being entered. Further, the evidence of Ms. Mejias, which I accept, is that the female Air Canada agent, Ms. Corrales, was not called over until later.

[53] Further, and of significance, there is no record of any Visa details in Air Canada's Departure Control System, also known by the acronym DCS. The DCS was explained by Ms. Burnett. It is populated with the travel document information provided by the passenger during the reservation process or at the time of check-in. That information can change when the passenger actually presents for check-in and their travel documents are inspected and entered.

Ms. Burnett's affidavit included as exhibits Air Canada's DCS records for Ms. Mejias and the Children for the August 4 flight they were booked on to Toronto (see para 12 and Exhibit J) [August 4 DCS Records]. During her cross-examination, Ms. Burnett confirmed that at check-in, when the Air Canada agent swipes a passenger's passport and enters any visa information, that information is stored in the DCS. The August 4 DCS Records show the passport information for Ms. Mejias and the Children (which could have been entered during the reservation process), but do not show any visa information. Ms. Burnett's evidence on cross-examination by Ms. Mejias included the following:

> Q. Our visas are not shown in the DCS; correct?
>
> A. Sorry, what was that? What was the question?
>
> Q. Yes, sorry, the question is, our visas are not shown in the DCS; is that correct?
>
> A. That is correct. I only see passport details of a Venezuelan passport on all four customers.
>
> Q. Thank you. So would you agree with me that our visas were not entered by Air Canada's agent on August 4, 2017?
>
> A. I haven't verified any additional information to see if their passports were entered, but from this view, there is no passport -- no visa information entered other than the passport.
>
> […]
>
> Q. Thank you. So I'll go back to my question now. Would you agree with me that our visas were not entered by Air Canada's agent on August 4, 2017?
>
> A. I don't see any information here that the visas are entered.

[54] Based on the above, I do not accept Ms. Corrales's evidence that she saw the male Air Canada agent enter the Visa information into the Air Canada system. Further, I conclude that the Visa information was not entered by the male Air Canada agent.

[55] This leads into the question of whether the male Air Canada agent received any message from the applicable system (e.g., "Ok to Board," "Do Not Board," "document not on file"). The answer to this question is of no consequence. This is because, as indicated above, the Visa information was not entered into the applicable Air Canada system, without which there could be no meaningful response from the system regarding Ms. Mejias and the Children.

[56] Before moving on, I pause to note that the Air Canada discovery evidence is inconsistent with the evidence of its witnesses at trial regarding some of the above. Air Canada's answers on written examination for discovery included the following (part of Exhibit 12):

> 6. The Air Canada agent at PTY (Arline Corrales, Airport Customer Service Supervisor – hereafter "Air Canada's Agent") was prompted to contact the CBSA to obtain clearance to board the Plaintiffs and validate their visas <u>when she was unable</u> to process the Plaintiffs at check-in and print their boarding passes due to an acceptance error (a "DOC alert") that appeared on the check-in system <u>once she scanned the Plaintiffs' passports and entered their visa details</u>. The system would not allow the check-in agent to update the "Ok" to board.
>
> [Emphasis added.]

[57] The Air Canada discovery answer quoted immediately above was put to Ms. Corrales in cross-examination. She was not able to explain it, and once again confirmed that it was not her who scanned the passports. Also, as noted above, her evidence was that she did not enter the Visa information.

D. *Air Canada Agent calls the CBSA Liaison Officer*

[58] As indicated above, the Visa information was not entered into the applicable Air Canada system, without which there could be no meaningful response from the system. I find that Ms.

Corrales was the Air Canada agent that contacted Ms. Boisvert, and that the reason she contacted her was that she was concerned about the intentions of Ms. Mejias and the Children, namely that they would overstay their authorized stay in Canada.

[59] Ms. Boisvert provided the following evidence in her affidavit:

> 5. On August 4, 2017, I was at the Canadian Embassy in Panama City and received a call from an Air Canada agent at the Tocumen International Airport, Panama City, Panama. The agent informed me the Plaintiff and children were at the check-in desk for a flight to Canada, and the agent had concerns because they were travelling with a large quantity of luggage, had one-way tickets, and because of the number of travelers that were travelling from Venezuela at that time.

[60] Paragraph 5 quoted above about the call she received from the Air Canada agent is also generally consistent with an internal email Ms. Boisvert sent dated August 24 (part of Exhibit "A" to her affidavit, which is Exhibit 11). Although the concerns set out in paragraph 5 are not identical to those in the email, they are generally consistent, and deal with two different points – the concerns communicated by the Air Canada agent to Ms. Boisvert, on the one hand, and the reasons why she decided to contact Ms. Bouchard, on the other. The email was sent only 20 days after the events had occurred. In that email, she stated:

> I received a call from AC on these passengers that had a short term visa (v-1) with only one way tickets.
>
> Due to following indicators:
>
> - lack of travel since visa issuance
> - one way ticket on v-1 visas
> - at the last leg of the visa
> - situation in the country of residence (Venezuela)

> I decided to contact my colleague in Mexico (Cindy) to verify with IRCC what they thought about the situation as they were the one that issued the visas. The response I received was that IRCC were cancelling the visas. I recommended NO BOARD (due to decision of IRCC to cancel the visas) to the airline as the visas were now cancelled and ask, on behalf of CBSA to mark the visa as no longer valid to travel.

[61] During cross-examination, Ms. Boisvert agreed with the following from the AGC's amended response to request to admit (which is Exhibit 16): "The CBSA Liaison Officer relied on Air Canada's preliminary assessment to assess whether the Plaintiffs were at risk of overstaying their authorized stay in Canada."

[62] I do not accept the evidence of Ms. Corrales that the reason for calling Ms. Boisvert was the message generated by the Air Canada system after the Visa information was entered. I also note that when Ms. Corrales was asked during cross-examination about the above-quoted paragraph 5 from Ms. Boisvert's affidavit, Ms. Corrales's evidence is that it was consistent with her recollection of the call, namely the call that she says she had with Ms. Boisvert.

[63] Ms. Boisvert explained that in August 2017, it was common practice at CBSA to rely on an airline's preliminary assessment of a foreign national and then conduct its own assessment; that it is the airline's job to do those assessments; and that it was the airlines' obligation to ensure that all the passengers that take a flight to a country have all the required documents to go to that country. After receiving the call from the Air Canada agent, Ms. Boisvert reviewed the information in the files in the Global Case Management System [GCMS] for the Husband, Ms. Mejias and the Children as part of her own assessment. Following Ms. Boisvert's assessment, she had concerns and decided to call Ms. Bouchard.

VIII. CBSA Liaison Officer calls International Network Manager, CBSA, at the Embassy in Mexico City

[64] As Ms. Boisvert had concerns about the situation, she telephoned Ms. Bouchard, the International Network Manager, CBSA, at the Embassy of Canada to Mexico, in Mexico City, so that Ms. Bouchard could verify with IRCC what they thought of the situation as IRCC had issued the Visas. Ms. Boisvert does not recall many of the details of the conversation with Ms. Bouchard.

[65] Similarly, Ms. Bouchard does not recall many of the details about that conversation with Ms. Boisvert, other than that "there were different factors […] that led the airline seeking some information and guidance from Nathalie Boisvert." In cross-examination Ms. Bouchard stated that "What I remember is that Ms. Boisvert shared information with me about the case. I cannot confirm who shared what information."

IX. International Network Manager, CBSA, speaks to Mr. Francis

[66] As a result of the discussion that Ms. Bouchard had with Ms. Boisvert, Ms. Bouchard asked Mr. Francis to review the situation. They both were working at the Canadian embassy in Mexico City, and she met with him in person.

[67] Ms. Bouchard does not recall many of the details about the discussion with Mr. Francis. In cross-examination, she described the discussion with Mr. Francis as follows:

> I indicated I had received a call from the CBSA Liaison Officer in Panama. There was a group of a family of three that were seeking to travel to Canada, and there appeared to be some issues with the visa. I asked him if he could look into it. And there were also some

> factors that were mentioned to me, including a lot of luggage and no return ticket to Venezuela. […] I asked him if he could review the file.

[68] Mr. Francis's evidence as to what was communicated to him by Ms. Bouchard as to why he was asked to review the file is somewhat different. To the extent that there are any differences in the evidence of Ms. Bouchard and Mr. Francis, I accept the evidence of Mr. Francis.

X. Cancellation of the Visas / Evidence of Mr. Francis

[69] I found Mr. Francis to be a credible witness and I accept all of his evidence.

[70] He explained that in August 2017, if he received information from an airline suggesting that a visa holder may intend to overstay their visa in Canada, he was expected to assess the information received, to determine whether it was considered credible, look at the basis for the original visa decision and ascertain whether the new information would in any way impact the decision to issue the visa. In most circumstances, if there were concerns, his practice was to put those concerns to the visa holder, which could be done by a CBSA Officer, and offer them an opportunity to address them.

[71] In this particular case, his understanding was that a CBSA officer was in direct contact with the traveler, Ms. Mejias. However, he later learned that this was not the case. It is possible that in what Mr. Francis described as the "telephone tree" where information was passed from the airline to the CBSA officer in Panama (Ms. Boisvert), to the CBSA officer in Mexico City (Ms. Bouchard), and to Mr. Francis, that "information got misconstrued or the information may have become garbled."

[72] Mr. Francis is the person who cancelled the Visas. He cancelled them on August 4, and the cancellation was entered into the GCMS on August 7. He does not recall why the cancellation was not entered into GCMS immediately. I note that August 4 was a Friday and August 7 was a Monday.

[73] As to what prompted Mr. Francis to review the files of Ms. Mejias and the Children, he was approached by Ms. Bouchard. Mr. Francis and Ms. Bouchard both worked in the same building and met in person. Ms. Bouchard expressed concern over a family of Venezuelan passport holders destined for Canada and indicated that, based on the information received, the overall intent of the purpose of travel had changed dramatically from the time the Visas were issued, and there was a concern that the family would make asylum claims upon arrival in Canada. Ms. Bouchard asked Mr. Francis to review the files on the Visas to see if cancellation was warranted. The information contained in the GCMS on the original rationale for issuing the Visas was based on the assumption that the entire family would be travelling to Canada as a family group. Also, the principal applicant, the Husband, was approaching the end of his studies. In addition, there was information supposedly given to the airline that the family was returning to Canada and not proceeding to Canada for the first time - Mr. Francis later learned that this was not accurate, in that such information had not been provided to the airline (and, as noted above, I accept the evidence of Ms. Mejias that when asked by the male Air Canada agent if it was her first time travelling to Canada, her answer was yes). In light of the information that Mr. Francis had, it appeared to him that the original intent behind the Visas was no longer valid and that there was no clear indication as to what the intention of the family was after the Husband, the principal applicant, finished his studies in Canada and for the family to be travelling on a one-

way ticket at the end of the Husband's studies was problematic and called into question the intent of the travelers. On that basis, the Visas were cancelled. Ms. Bouchard was the sole source of information for Mr. Francis in making his decision. Mr. Francis did not speak to any Air Canada agent.

[74] Ms. Mejias put to Mr. Francis that the determination to cancel the Visas was made by a CBSA officer and not him, and that he simply did the paperwork after the fact. Mr. Francis was very clear in responding that this was not correct and that he alone made the decision to cancel the Visas.

[75] Regarding the reasons for cancelling visas, notes are generally kept which would be recorded in the GCMS. Mr. Francis believes that, but does not recall if, he entered notes in the GCMS regarding the reasons for the decision to cancel the Visas. He does not know why his observations or reasons are not in the GCMS.

[76] The lack of any notes from Mr. Francis regarding the reasons for cancelling the Visas is not significant in the context of this case in view of the information that Mr. Francis provided in his emails a few weeks later to Ms. Long. Mr. Francis received an email dated August 21 from Ms. Long, who was representing Ms. Mejias (see Exhibits A and D to the affidavit of Elizabeth Long, which is Exhibit 2). Mr. Francis responded to Ms. Long in an email dated August 24 (see Exhibits B and D to the affidavit of Elizabeth Long, which is Exhibit 2). In that email, he lists the reasons for cancelling the Visas. A copy of that email was put to Mr. Francis and he confirmed in

his testimony that those were the reasons for his decision, which were considered in the context of what was happening in Venezuela at the time. His reasons, as set out in that email were:

> 1) As indicated above it was believed that the family would travel together as a unit.
> 2) Mr. Garcia's study program ends in August of 2017 and there was no indication that he had applied for a new study permit or was planning to extend his stay in Canada.
> 3) The family were travelling on one way tickets for what would now be a short term stay of a few weeks given that Mr. Garcia's study program was supposed to end in August.
> 4) Ms. Mejia provided misleading or incorrect information to the airline and the CBSA officer in that she indicated they were returning to Canada when in fact they had never been to Canada.

XI. Decision that the Visas are cancelled is relayed back to the Airport

[77] Mr. Francis informed Ms. Bouchard that the Visas were cancelled. Ms. Bouchard then called Ms. Boisvert and informed her that the Visas were cancelled. Ms. Boisvert then spoke with Ms. Corrales by phone, informed her that the Visas were cancelled, recommended "no board" as a result, and requested that the Visas be marked as cancelled. Ms. Corrales marked the Visas with a pen as cancelled. Ms. Mejias was then informed by the male Air Canada agent that the Visas were cancelled, and Ms. Corrales handed the passports to Ms. Mejias.

[78] Ms. Boisvert made the request to Ms. Corrales to mark the Visas as cancelled so that they could not be used. There was some focus during the trial on whether it was common practice for Air Canada to mark visas as cancelled if requested to do so by an airline. It was not common practice, although there was no Air Canada policy prohibiting it. However, the marking of the Visas as cancelled by Ms. Corrales is not important in this case. This is because the decision to cancel the Visas was made by Mr. Francis and is the reason why Ms. Boisvert recommended "no board" to Air Canada, and that is why Ms. Mejias and the Children were not permitted to board

the Air Canada flight to Toronto on August 4. It was not because Ms. Corrales had marked the Visas as cancelled.

XII. Decision to re-issue the Visas

[79] Following the events of August 4, emails were sent by both Ms. Mejias and her Husband, to the Canadian Embassy in Mexico to attempt to resolve the Visa issues. Subsequently, on approximately August 18, Ms. Long, a lawyer, was retained to assist Ms. Mejias with the cancellation of the Visas.

[80] In response to the email from Mr. Francis dated August 24 (quoted above) in which he lists the reasons for cancelling the Visas, Ms. Long sent him an email on the same date in which she stated:

> In your email you mentioned that Ms. Mejia had conveyed information to the CBSA officer. Ms. Mejia does not recall ever speaking with a CBSA officer. Could you clarify who the CBSA officer was, where he/she was stationed, and how they were able to interview Ms. Mejia?

[81] This email from Ms. Long prompted Mr. Francis to go back and re-verify some of the information. In doing so, he spoke with the CBSA officer in Panama (Ms. Boisvert), who confirmed that they were not present at the Airport. Mr. Francis wrote an email to Ms. Long dated August 28 (see Exhibits C and D to the affidavit of Elizabeth Long, which is Exhibit 2). In that email, he confirmed to Ms. Long that "[t]he family did not speak with the CBSA officer, but rather with the airline who consulted the officer stationed in Panama City." As discussed earlier in these reasons, this is consistent with the evidence of both Ms. Mejias and Ms. Boisvert on that point.

[82] Ms. Long responded to the above-noted August 28 email from Mr. Francis, by email of the same date (see Exhibit D to the affidavit of Elizabeth Long, which is Exhibit 2). In addition to setting out certain positions regarding the cancellation of the Visas, she indicated that Ms. Mejias's Husband "is an international student who was completing his studies at Centennial College and is planning to make an application for his post-graduation work permit which would be valid for 1 year." I note that this information had been provided by Ms. Mejias to the male Air Canada agent.

[83] On the basis of the new information received from Ms. Long, Mr. Francis decided to reissue the Visas. He took at face value the statements from Ms. Long that there was an intention by the Husband to seek a postgraduate work permit, which was a key factor in his assessment, and based on that intention, the need for a return ticket was no longer there. In his testimony regarding his decision to re-issue the Visas, Mr. Francis explained that:

> I re-issued them because I received new information. And the decision to issue a visa or to refuse a visa is based on balance of probabilities. When that balance tips in favour of the applicant, as it did with the new information, I re-issued the document.

[84] Mr. Francis does not recall if he made any notes regarding the decision to reissue the Visas.

[85] Mr. Francis was asked if he could go back in time, whether he would do anything differently. In response to that question, Mr. Francis made two points. Keeping better notes and seeking clarification as to what was transpiring, with whom and where, because, as noted previously, he was under the understanding that the CBSA officer was physically present at the

Airport and dealing with Ms. Mejias. He explained that the Air Canada agents dealing directly with Ms. Mejias and her family rather than the CBSA "adds a whole new dynamic to the situation […] not having the officer there, it does change the situation."

XIII. September 6 – Traveling to Toronto

[86] Subsequent to Ms. Mejias and the Children obtaining and presenting new Visas, Air Canada reprotected them with confirmed seats on Air Canada rouge Flight ZX1949 departing from the Airport and arriving at Toronto's Pearson International Airport on September 6, without any additional fee or service charges.

[87] On September 6, Ms. Mejias and the Children travelled to Toronto on that flight. On arrival in Toronto, they were examined by an officer who made the decision as to whether they could enter Canada. They were permitted to enter Canada. Ms. Mejias was issued a work permit, Santiago a study permit, and the Children were admitted as visitors.

XIV. Subsequent events

[88] As planned, the Husband applied for a post-graduate work permit (this was done on September 6). It was issued on November 2, valid for one year until November 2, 2018. Ms. Mejias and the Children subsequently applied to extend their status, and those applications were approved.

[89] Although nothing turns on it for the purposes of this decision, Ms. Mejias, her Husband, and the Children made refugee claims on February 19, 2019, which were approved May 27, 2021. They became permanent residents on August 30, 2022.

XV. Analysis – Claim against Air Canada

A. *Article 19*

[90] The claim against Air Canada is under Article 19 of the *Montreal Convention*. It is part of Canadian federal law by virtue of the *Carriage by Air Act*, RSC 1985, c C-26 (see also *Thibodeau v Air Canada*, 2014 SCC 67 [*Thibodeau*] at paras 1 and 14).

[91] It is common ground between Ms. Mejias and Air Canada that:

a) the claim by Ms. Mejias against Air Canada is governed by the *Montreal Convention*; and

b) Ms. Mejias and the Children suffered a "delay" within the meaning of Article 19 of the *Montreal Convention*.

[92] The key issue on liability is whether Air Canada can avail itself of the defence provided for in Article 19. If not, as per Article 19, it is liable for the "damage occasioned by delay".

[93] Article 19 of the *Montreal Convention* states:

> Article 19 — Delay
>
> The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that

> it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

B. *What must Air Canada prove*

[94] Air Canada argues that what it needs to prove to avail itself of the defence in Article 19 is that it took all reasonable measures, or it was impossible for it to take such measures, to avoid the damage occasioned by the delay, not the delay itself. However, the authorities discussed below do not support that interpretation. Air Canada did not put forward any authorities supporting its interpretation.

[95] In *Lukacs v United Airlines Inc*, 2009 MBQB 29, the interpretation argument now raised by Air Canada was not specifically addressed in the decision. However, it is clear from the following that the analysis focused on whether the delay could have been avoided:

> [47] With respect to the issue of liability, the defendants have not established on a balance of probabilities that they took all measures that could reasonably be required to avoid the damage sustained by the plaintiff arising from the delay.
>
> [48] The evidence did not address the issue of aircraft maintenance and whether the mechanical failure of the aircraft which resulted in the cancellation of the flight was something which could have been avoided. The evidence indicated that one replacement aircraft is available for the Chicago hub. As there was no evidence as to the number of United Airlines aircraft flying from the Chicago hub, it is not possible to determine whether having only one aircraft available is reasonable. No efforts were made to attempt to find another aircraft from another hub, as this is not "standard procedure" for United Airlines.
>
> [Emphasis added.]

[96] In *Lachance v Air Canada*, 2014 NSSM 14, a decision of the Small Claims Court of Nova Scotia, the following was stated regarding the defence under Article 19:

> 64 In other words, a carrier is liable for delay in the carriage of passengers unless (and the onus is on the carrier) the delay is caused by factors beyond its reasonable control. […]
>
> 82 The difficulty with Air Canada's suggestion that the delay coming out of Halifax was something beyond its control is that there was no evidence as to why the delay occurred. Hence there was no evidence as to whether the delay was caused by something in or outside of Air Canada's control. The onus of establishing that the delay was caused by something outside of its control lay with Air Canada. It failed to meet that onus. It cannot accordingly fall back on that defence.
>
> [Emphasis added.]

[97] In *Yalaoui c Air Algérie*, 2017 QCCS 5479 the delay was caused by a mechanical failure (see paragraphs 8 and 9). The Court held that the air carrier had to prove that it took all reasonable steps to avoid or minimize the delay (see paragraphs 37 to 39).

[98] In addition to Canadian case law, it is useful to consider authorities from other jurisdictions on the interpretation of Article 19. As stated by the Supreme Court in *Thibodeau*:

> [50] […] In light of the *Montreal Convention*'s objective of achieving international uniformity, we should pay close attention to the international jurisprudence and be especially reluctant to depart from any strong international consensus that has developed in relation to its interpretation.

[99] As seen in the quotations set out below, the following articles do not support Air Canada's interpretation:

a) Marty Fulgueira Elfenbein & Katherine Abigail Robert, “Stranded: Navigating Aviation Delay Damages Under the Montreal Convention” (2014) 88:8 Florida Bar Journal:

> In a delay damage case, the initial battle between an airline and a passenger will hinge on whether an airline took all reasonable measures to avoid the delay.
>
> […]
>
> […] several courts have analyzed whether the measures taken were reasonable at two different points in time: 1) measures taken to prevent the original delay-causing event, if possible; and 2) measures taken to rebook the passenger on another flight to minimize the delay. Airlines must prove they took all reasonable measures under both circumstances, if possible. Taking reasonable measures to prevent the original delay may not be enough if the airline fails to act reasonably in rebooking the delayed passenger on another flight.
>
> [Emphasis added. Footnotes omitted]

b) Kang Bin Lee, “The Carrier's Liability for Damage Caused by Delay in International Air Transport” (2003), The Conference Proceedings of the 2003 Air Transport Research Society (ATRS) World Conference, Volume 2, at page 9.

> The only way in which the carrier can be relieved of liability is to prove that he has taken all necessary measures to avoid the delay, or that it was impossible for him to take such measures. It is not enough for the carrier to prove that after the cause of delay had occurred, everything possible was done to minimize the damage. The carrier must prove that there was no negligence in the occurrence of the delay itself.
>
> [Emphasis added.]

c) In *Shawcross & Beaumont* "*Air Law*" LexisNexis, issue 187, April 2024 at VII-576, the authors state:

> It is submitted that, in order to satisfy the reasonable measures defence or art 19, the carrier must prove that it took all reasonable measures to avoid the damage (or that it was impossible to take such measures), as art 19 explicitly stipulates. This may, in a given case and depending on the circumstances, encompass proof of all reasonable measures having been taken to avoid the delay as well as the damage resulting from it.
>
> [Emphasis added.]

[100] On the basis of the foregoing, Air Canada must prove that it took all reasonable measures to avoid the delay, as well as the damage resulting from it.

C. *Has Air Canada proved that it took all reasonable measures to avoid the delay as well as the damage resulting from it?*

[101] Air Canada made various arguments based on its obligations as a carrier, including under the *Immigration Refugee Protection Act,* SC 2001, c 27 and the associated *Immigration and Refugee Protection Regulations*, in force at the time. These arguments included Air Canada's obligation not to carry to Canada a person who does not have the necessary documents (e.g., passport; if applicable, a visa). However, it is not necessary to delve into those obligations because this case does not turn on the scope of those obligations. Rather, this case turns on the burden of proof under Article 19. This is because, as explained below, Air Canada did not provide any evidence from the agent that set in motion the chain of events that resulted in the Visas being cancelled, and Ms. Mejias and the Children to be delayed.

[102] While cases have held that airlines are not responsible for a passenger's failure to ensure they have the required visas or other required documents (for example, *Mpamugo v FlightHub Canada Inc*, 2021 ONSC 1671 at paras 37-38), the present case is different. This is because at the time Ms. Mejias and the Children presented themselves at the Air Canada check-in counter, they had valid passports and the required visas and travel documents. The delay was caused by the Visas being cancelled, which was the direct result of a chain of events set in motion by Air Canada.

[103] For Air Canada to be successful in its defence under Article 19, it needed to prove that its agents took all reasonable measures to avoid that delay, which in this case, focuses on the chain of events that its agent set in motion and the information that its agents passed on. In the context of Air Canada's obligations as an air carrier, it may be that all reasonable measures in a case such as this is a relatively low bar, although I need not decide that question. This is because, in this case, establishing that Air Canada's agents took all reasonable measures that could reasonably be required necessitates evidence on what was done or not done. The problem for Air Canada is that the male Air Canada agent who failed to enter the Visa information into Air Canada's system and who questioned Ms. Mejias and passed on that information, resulting in the telephone call to the CBSA Liaison Officer, did not testify, nor was there any evidence that he could not testify for some reason. Air Canada argued that there was no need to call the male agent because Ms. Corrales testified and provided direct evidence as to what occurred, what she saw on the computer screen, that there is no hearsay in her evidence, and that if her evidence is accepted, it is enough. However, as explained above, much of her evidence on key points was not accepted.

[104] On the facts as I have found them:

a) Ms. Mejias explained to the male Air Canada agent at the check-in counter that the reason why she and the Children had one-way tickets was that her Husband was studying in Canada, and he would be applying for a post-graduation work permit upon completion of his studies.

b) This information about the Husband, and in particular, that he would be applying for a post-graduation work permit upon the completion of his studies, was not provided to Ms. Boisvert. The information provided by Ms. Corrales to Ms. Boisvert was that Ms. Corrales had concerns that Ms. Mejias and the Children would overstay their authorized stay in Canada because they were travelling with a large quantity of luggage, had one-way tickets, and because of the number of travelers that were leaving Venezuela at that time.

c) Mr. Francis cancelled the Visas because:

    i. it had been believed that the family would travel together as a unit;

    ii. the Husband's study program was to end in August of 2017 and there was no indication that he had applied for a new study permit or was planning to extend his stay in Canada – this was a very significant factor in Mr. Francis's decision;

iii. Ms. Mejias and the Children were travelling on one-way tickets for what would now be a short term stay of a few weeks given that the Husband's study program was supposed to end in August; and

iv. his belief that Ms. Mejias provided misleading or incorrect information to the airline and the CBSA officer in that she indicated they were returning to Canada when in fact they had never been to Canada.

d) Once Mr. Francis, the person who cancelled the Visas, was informed that it was the Husband's intention to seek a post-graduation work permit, which he took at face value and which was a key factor in his assessment, the need for a return ticket was no longer there, and he decided to re-issue the Visas.

[105] Without evidence from the male Air Canada agent, Air Canada has failed to prove what that agent did, including what information he passed on to Ms. Corrales. In addition, there is no evidence that Ms. Corrales passed on to Ms. Boisvert the critical information that the Husband would be applying for a post-graduation work permit upon completion of his studies, and I find that she did not pass that information on to Ms. Boisvert. Rather, Ms. Corrales formed the view that Ms. Mejias and the Children were at risk of overstaying their authorized stay in Canada, and she passed that assessment on to Ms. Boisvert along with information that aligned with that view.

[106] Accordingly, Air Canada defence under Article 19 fails, as it did not prove that its agents took all reasonable measures to avoid the delay in question.

[107] While the above analysis is sufficient to deal with Air Canada's defence under Article 19, I draw an adverse inference from the failure to provide evidence from the male Air Canada agent, namely that his evidence would be contrary to Air Canada's position that its agents took all reasonable measures to avoid the delay experienced by Ms. Mejias and the Children. As noted above, not only was there no evidence from him, but there was no evidence that he was somehow unavailable or unable to testify. As explained by the Federal Court of Appeal in *Caron Transport Ltd v Williams*, 2020 FCA 106 [*Caron*] and stated:

> [10] A decision-maker is permitted to draw an adverse inference in certain circumstances. Those circumstances are described in the following terms in Alan Bryant, Sidney Lederman & Michelle Fuerst, Sopinka, Lederman & Bryant: *The Law of Evidence in Canada*, 5th ed (Toronto: LexisNexis Canada, 2018) at paragraph 6.471:
>
> > In civil cases, an unfavourable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away. The inference should only be drawn in circumstances where the evidence of the person who was not called would have been superior to other similar evidence. The failure to call a material witness amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it.
>
> [Emphasis added in *Caron*]

XVI. Analysis – Claim against the Federal Crown

[108] As the claim against the Federal Crown was in the alternative, in the event that Air Canada was not liable, it is not necessary to determine if the Federal Crown is liable. However, in the interests of completeness, I deal below with those claims.

[109] Ms. Mejias, relying on section 3 of the *CLPA*, asserted three causes of action against the Federal Crown: negligence, public law damages, and misfeasance in public office. She conceded that in light of the evidence presented at trial, the Federal Crown had not engaged in misfeasance in public office. As a result, this leaves the claims of negligence and public law damages. As explained below, neither of these claims can succeed.

A. *Negligence*

[110] To succeed in her claim of negligence Ms. Mejias must establish that (*Odhavji Estate v Woodhouse*, 2003 SCC 69 [*Odhavji Estate*] at para 44):

a) the Federal Crown owed her a duty of care;

b) the Federal Crown breached that duty of care, and

c) damages resulted from that breach.

[111] As to whether the Federal Crown owed Ms. Mejias a duty of care, this is determined by the following two-step analysis (*Odhavji Estate* at para 46, quoting from *Anns v Merton London Borough Council*, [1978] A.C. 728, at pp. 751-52):

> First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter — in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise.

[112] The negligence analysis here need not go further than the first step in the duty of care analysis, whether there is a sufficient relationship of proximity. A number of cases have held that the relationship between Canada's immigration authorities and those subject to immigration decisions is not one that gives rise to a duty of care because the relationship is not one of individual proximity (*Haj Khalil v Canada*, 2007 FC 923 at paras 170-193, aff'd 2009 FCA 66; *Szebenyi v Canada*, 2006 FC 602 at paras 84-93, aff'd 2007 FCA 118; *Premakumaran v Canada*, 2005 FC 1131 at paras 22-25, aff'd 2006 FCA 213; *Goyal v Niagara College of Applied Arts and Technology*, 2018 ONSC 2768 at para 58, aff'd 2019 ONCA 263; *Al Omani v Canada*, 2017 FC 786 at paras 75-79; *Paszkowski v Canada (Attorney General)*, 2006 FC 198 at paras 86-96; *Farzam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1659 at paras 89-101; *Maliqi v Canada*, 2024 FC 1979 at paras 32-34). The same principles apply in the present circumstances - there is not a sufficient relationship of proximity and therefore, there is no duty of care owed by the Federal Crown to Ms. Mejias.

B. *Public Law Damages*

[113] Ms. Mejias asserts a claim for public law damages, relying on the decision of the Federal Court of Appeal in *Paradis Honey Ltd v Canada (Attorney General)*, 2015 FCA 89 [*Paradis*

Honey]. However, as explained below, the notion of public law damages from *Paradis Honey* has been rejected by the Supreme Court of Canada.

[114] In *Paradis Honey*, the Federal Court of Appeal stated:

> [129] As well, the current law of liability for public authorities—the provenance and essence of which is private law—sits as an anomaly within the common law. By and large, our common law recognizes the differences between private and public spheres and applies different rules to them. Private matters are governed by private law and are addressed by private law remedies; public matters are governed by public law and are addressed by public law remedies. This has become a fundamental organizing principle: *Dunsmuir*, above; *Canada (Attorney General) v. Mavi*, 2011 SCC 30, [2011] 2 S.C.R. 504; *Air Canada v. Toronto Port Authority*, 2011 FCA 347, [2013] 3 F.C.R. 605.
>
> [130] This anomaly should now end. The law of liability for public authorities should be governed by principles on the public law side of the divide, not the private law side. A number now seem to agree: see, e.g., United Kingdom Law Commission, *Administrative Redress: Public Bodies and the Citizen* (London: The Stationery Office, 2010); Peter Cane, "Remedies Available in Judicial Review Proceedings" in David Feldman, ed. *English Public Law* (Oxford: Oxford University Press, 2004) 915, at page 949.
>
> […]
>
> [139] This framework—the unacceptability or indefensibility in the administrative law sense of the public authority's conduct and the court's exercise of remedial discretion—should govern whether monetary relief in public law may be had by way of action.

[115] Ms. Mejias argues that "*Paradis Honey* remains good law in the Federal Courts in spite of the doubts expressed in *Nelson (City) v. Marchi*, 2021 SCC 41" [*Nelson*]. The sole support for this argument is that in *Ronsco Inc v Canada*, 2022 FC 1029 [*Ronsco*], which post-dates *Nelson*, a claim for public law damages was not struck out. However, in *Ronsco*, the Court did not

consider *Nelson*. The notion of public law damages discussed in *Paradis Honey* was rejected in *Nelson* where the Supreme Court of Canada stated:

> [40] Although there is consensus "that the law of negligence must account for the unique role of government agencies", there is disagreement on how this should be done (*Imperial Tobacco*, at para. 76). Some even argue that private law principles of negligence are wholly incompatible with the role and nature of public authorities. Echoing the *obiter* in *Paradis Honey Ltd. v. Canada (Attorney General)*, 2015 FCA 89, [2016] 1 F.C.R. 446, at paras. 130 and 139, for example, the City of Abbotsford intervened to propose that only public law principles should govern public authority liability. Instead of examining how core policy immunity operates within negligence law, it suggests that courts should focus on indefensibility in the administrative law sense and exercise remedial discretion where appropriate to grant monetary relief.
>
> [41] Such an approach has no basis in this Court's jurisprudence. […]

[116] As stated by Justice Grammond in *Telus Communications Inc v Vidéotron Ltée*, 2021 FC 1127:

> [84] […] The excerpts cited by TELUS form part of a discussion of a novel remedy of public law damages, which was recently disapproved by the Supreme Court of Canada: *Nelson (City) v Marchi*, 2021 SCC 41 at paragraphs 40-41 […]

[117] Accordingly, the claim by Ms. Mejias for public law damages cannot succeed.

XVII. Damages

[118] Ms. Mejias claims USD 4,520.13 in compensatory damages for out-of-pocket expenses incurred during the 33 days she and the Children were in Panama. Ms. Mejias breaks this amount into the following three categories in her written closing arguments (para 228):

a) “accommodation in the amount of US$2,301.10, for which receipts or other documentary proof is available”;

b) “food, medication, clothing items, and expenses other than accommodation for which receipts are available, totalling US$1,293.53”; and

c) “taxis, tips, and other expenses for which receipts are not available, totalling US$925.50.”

[119] Before discussing each of these three categories, it is useful to first deal with general issues.

A. *Damages – general issues*

[120] Air Canada and the Federal Crown argue that there was nothing preventing Ms. Mejias and the Children from returning to Venezuela until the issues with the Visas were resolved, and not doing so was a failure to mitigate her damages. I disagree. Although Ms. Mejias acknowledged in cross-examination that there was nothing preventing her from returning to Venezuela, her explanation as to why she did not do so included the following, which I accept:

> Q. […] will you agree with me that if you had returned to Panama -- sorry, Venezuela at the cost of approximately $240, you would have avoided all of the $5,000 in damages that you're seeking in this action?
>
> A. That is a possibility, yes.
>
> Q. Well, what other possibility would there be?
>
> A. Remaining in Panama and actually knowing what exactly happened at the airport that day, obtaining the information.
>
> […]

> Q. You'll agree with me that when your visas were cancelled, you had no idea how long it would take and what would be involved to ensure that your visas were reinstated; correct?
>
> A. That is correct, although I thought it will be an expeditious process and very easy to prove, to demonstrate that what happened was completely out of line, incorrect and it was an error.

[121] Even if there was nothing preventing Ms. Mejias and the Children from returning to Venezuela, it is not as if they knew on August 4 that they would end up being in Panama for 33 days. Leaving aside the issue of whether a delayed passenger should have to travel to and temporarily stay in a different country to attempt to mitigate the damages suffered during a delay, in the circumstances of this case and the events that unfolded after August 4, it was reasonable for Ms. Mejias and the Children to remain in Panama at least for the time that they ended up being there while attempts were being made to resolve the Visa issues, which were ultimately successful.

B. *Accommodation Expenses – USD 2,301.10*

[122] Air Canada has acknowledged that Ms. Mejias "has provided proof of the expense of accommodation at Panama City of USD$2,301.10, which had an average value for the period August 4 to September 6, 2017, of approximately CAD$2,893.86."

[123] I find that these hotel expenses were caused by the delay.

C. *Other expenses for which receipts are available – USD 1,293.53*

[124] As noted above, Ms. Mejias described this category as being "food, medication, clothing items, and expenses other than accommodation for which receipts are available, totalling

US$1,293.53." These expenses are itemized in Exhibit "B" to Ms. Mejias's affidavit (Exhibit 24) and the receipts were tendered as exhibits at trial (Exhibits 6 and 19).

[125] Air Canada argued that all these expenses would have been incurred regardless of whether Ms. Mejias and the Children were in Panama or elsewhere. However, with one exception, these particular expenses were incurred because they were delayed and in Panama during the period of the delay. Expenses for food illustrate this point. It is true that Ms. Mejias and the Children would have needed to eat during the period of August 4 to September 6 had they not been delayed and had arrived in Toronto on August 4. However, the delay prevented them from obtaining the food of their choosing in Toronto. Instead, they were required to purchase meals and food in Panama. That is an expense incurred because of the delay. The one exception to this is "Pharmacy" expenses, as described in the itemized list noted earlier. The pharmacy expenses include medication and related supplies because the Children had chickenpox, one of whom, Santiago, had contracted it before leaving Venezuela (although I accept the evidence of Ms. Mejias that he appeared to have recovered before leaving Venezuela). As a result, at least some of the pharmacy expenses are not a direct result of the delay. Since there is no breakdown as to what specific pharmacy expenses relate to the Children having chickenpox, and particularly Santiago, it has not been established what pharmacy expenses, if any, are a direct result of the delay. The pharmacy expenses listed in Exhibit "B" to the affidavit of Ms. Mejias affidavit (Exhibit 24) total USD 311.36. As a result, for this category USD 982.17 was incurred due to the delay (USD 1,293.53 – USD 311.36 = USD 982.17).

D. *Other expenses for which receipts are not available – USD 925.50*

[126] As noted above, Ms. Mejias described this category as being “taxis, tips, and other expenses for which receipts are not available, totalling US$925.50.”

[127] The figure of USD 925.50 is derived from the amounts set out in Exhibits “C” and “D” to her affidavit (Exhibit 24), plus the USD 181.50 for tips that is set out in paragraph 109 of her affidavit (paras 107-109, Exhibit 24). I note that these three items add up to a little more than USD 925.50, namely USD 943.50, although nothing turns on that difference.

[128] Ms. Mejias did not have receipts for these items. To the extent she had receipts, she did not retain them. Her evidence was that at some point after the events in question, she started to list these expenses based on her recollection and some notes that she had made. She explained that this was the basis for the table of expenses that are Exhibits “C” and “D” to her affidavit (Exhibit 24). However, she did not retain those original notes and lists. It is also apparent from the amounts listed that they are all estimated or approximate, as none of them include the amount in dollars and cents (unlike the expenses listed in Exhibits “A” and “B” to her affidavit). The amount of USD 181.50 for tips is clearly an estimate. It is apparent from the affidavit of Ms. Mejias (para 109, Exhibit 24) that this is merely an estimate calculated at USD 5.50 per day multiplied by 33 days, rather than her recollection of how much was actually spent on tips.

[129] While I accept that Ms. Mejias incurred expenses for taxis, tips and other items, and while it may be possible to prove expenses without receipts, she has not satisfactorily established the amount of those damages. As a result, it is not necessary to consider any of the other issues raised by the defendants in connection with this category.

E. *Conclusion – expenses established*

[130] Ms. Mejias has established that she incurred damages occasioned by the delay totalling USD 3,283.27 (USD 2,301.10 + USD 982.17 = USD 3,283.27).

F. *Foreign Exchange Rates*

[131] Air Canada indicated that it had no issue with the exchange rate between Panamanian and the U.S. dollar as the Panamanian currency is tied one to one with the U.S. dollar.

[132] Any judgment must be rendered in Canadian dollars (section 12 of the *Currency Act*, RSC 1985, c C-52; *Hapag-Lloyd Aktiengesellschaft v Golden Trust Trading Inc*, 2022 FC 1766 at para 25).

[133] Only Ms. Mejias provided evidence and made submissions regarding the foreign exchange rate to be used. Her evidence on the exchange rate for the conversion from U.S. dollars to Canadian dollars is found in her supplementary affidavit sworn May 17, 2024 (Exhibit 13). She was not cross-examined on this evidence, nor was there any issue taken with it. That evidence indicates that as per the Bank of Canada, the average exchange rate from August 4 to September 6, 2017, resulted in USD 1.00 converting to CAD 1.2576.

[134] Therefore, the damages Ms. Mejias has established of USD 3,283.27 is equal to CAD 4,129.04.

G. *Pre-judgment and post-judgment interest*

[135] Ms. Mejias submitted that pre-judgment interest should be awarded from August 2017 at the rate of 2%, on the basis that this is the average bank rate from August 2017 to the present. On post-judgment interest, she submitted that it should be at the rate of 4.75%, on the basis that this was the current Bank of Canada interest rate at the time of the submissions. The defendants did not make any submissions on interest.

[136] As the claim of Ms. Mejias did not arise in one province, pre-judgement and post-judgment interest is governed by subsections 36(2) and 37(2) of the *Federal Courts Act*, RSC 1985, c F-7 (see also *Richards* v Canada, 2022 FC 1763 [*Richards*] at para 284). As stated by Justice Norris in *Richards* (para 284), "[u]nder both provisions, the Court may set the rate of interest that it considers reasonable in the circumstances." Having regard to all the circumstances, including the fluctuation in interest rates between 2017 and now, I find that the requested rate of 2% for pre-judgment interest to be reasonable and should be awarded. As the expenses were incurred by Ms. Mejias over the period August 4 to September 6, and considering the amounts involved, pre-judgement interest shall be calculated from August 20, the approximate mid-point.

[137] I also find the requested post-judgment interest rate of 4.75% to be reasonable and should be awarded.

H. *Costs*

[138] The matter of costs will be addressed on the basis set out below in the Judgment.

JUDGMENT in T-1251-19

THIS COURT'S JUDGMENT is that:

1. The plaintiff's claim against Air Canada is allowed, in part.

2. Air Canada is ordered to pay the plaintiff damages in the amount of CAD 4,129.04, plus pre-judgment and post-judgment interest on this amount as follows:

    a) pre-judgment interest at a rate of 2% per annum, not compounded, from August 20, 2017, to the date of this Judgment; and
    b) post-judgment at a rate of 4.75% per annum, not compounded, from the date of this judgment until payment.

3. The plaintiff's claim against the Attorney General of Canada is dismissed.

4. Regarding costs:

    a) If the parties are able to agree on costs, they shall submit a letter to the Court by May 9, 2025, setting out the details of same.

    b) If the parties are unable to agree on costs:

        i. By May 9, 2025, each party shall serve and file any submission on costs, including on liability and quantum. Each party's cost submissions shall not exceed 10 pages, not including a bill of costs, if provided, or other attachments.

ii. By May 23, 2025, each party shall serve and file any responding submissions. Any responding submissions shall not exceed 10 pages, not including attachments.

"John C. Cotter"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1251-19
STYLE OF CAUSE:	NAZARELYS PAULA MEJIAS TURMERO v AIR CANADA AND ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATES OF HEARING:	MAY 21 - 23, AND JUNE 13, 2024
JUDGMENT AND REASONS:	COTTER A.J.
DATED:	APRIL11, 2025

APPEARANCES:

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