Federal Court  Cour fédérale

Date: 20251002

Docket: IMM-10812-23

Citation: 2025 FC 1615

Toronto, Ontario, October 2, 2025

PRESENT: Mr. Justice Brouwer

BETWEEN:

MARTHA LUCIA LOZADA GOMEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] Martha Lucia Lozada Gomez seeks judicial review of the refusal of the Respondent Minister of Citizenship and Immigration to redetermine her application for permanent residence, which she alleges the Respondent was required to do pursuant to terms of settlement that her counsel negotiated with counsel at the Department of Justice [DOJ]. As explained below, I find

that the Respondent breached the terms of settlement and that the refusal to redetermine Ms. Lozada Gomez's application was unreasonable and procedurally unfair. I find further that the conduct of the Respondent was egregious and justifies an award of costs in the lump sum of $10,000.

II. BACKGROUND

[2] Ms. Lozada Gomez and her spouse Marino Victoria Cardenas entered Canada with their two minor children in 2009. Nationals of Colombia, they had fled to the USA in 1992 and 1994 respectively, following death threats to Mr. Victoria Cardenas by members of a notorious guerilla group. Upon their return to Colombia in 1999, Ms. Lozada Gomez was the victim of a brutal gang rape by members of this same group, after which they fled again to the USA. Their claims for refugee protection in Canada were unsuccessful so in 2014 they applied for permanent resident status on Humanitarian and Compassionate [H&C] grounds, pursuant to s. 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA].

[3] By decision dated July 4, 2016, an immigration officer granted the applications of the two minor applicants but refused those of Ms. Lozada Gomez and her spouse, finding that they were both inadmissible to Canada on grounds of serious criminality, pursuant to s. 36(1)(a) of the IRPA. The Officer instead granted the adults Temporary Resident Permits [TRPs] under s. 24 of the IRPA.

[4] Ms. Lozada Gomez and her spouse sought leave for judicial review of the H&C decision. One of the issues they raised was that the finding that Ms. Lozada Gomez was inadmissible for serious criminality had no foundation and had been made in a procedurally unfair manner.

[5] Justice Susan Elliot granted leave for judicial review on July 28, 2017, and the matter was set down for a hearing before Justice James O'Reilly. On November 1, 2017, counsel for the Respondent emailed Ms. Lozada Gomez's counsel with an offer to settle the application in respect of Ms. Lozada Gomez alone on standard terms, namely:

> 1. The decision, dated 4 July 2016, denying Ms. Gomez's H&C application is set aside
> 2. Ms. Gomez's H&C application will be sent back for redetermination by a different decision-maker;
> 3. Ms. Gomez will discontinue her application for judicial review forthwith; and
> 4. No costs to either party.

[6] Ms. Lozada Gomez's counsel accepted the offer by letter dated November 23, 2017. On the morning of the scheduled Federal Court hearing, counsel for the Respondent emailed Ms. Lozada Gomez's counsel observing that no formal notice of discontinuance had been served or filed by Ms. Lozada Gomez, and stating:

> As such, I will be prepared to concede the procedural fairness issue as it relates to Ms. Lozada Gomez at the hearing, unless you file the necessary Notice prior to the hearing.

[7] Ms. Lozada Gomez's counsel did not file a notice of discontinuance. Instead, at the outset of the judicial review hearing before Justice O'Reilly, he advised the Court:

> In regards to the H&C application, I'll advise the Court that there's been a settlement in terms of the female applicant only. We were unable to issue a notice of discontinuance but, in any event, it's proceeding in regards to the male applicant.

[8] Later in the hearing, when co-counsel for Ms. Lozada Gomez began his portion of oral arguments, he also confirmed:

> On a preliminary basis, there's a couple of issues left to tackle. One of which my colleague's already mentioned, is that the application is now being continued, only in relation to the male applicant. And thus, the procedural fairness issues described at paragraphs 26 to 35 of the Applicants' Memorandum are not going to be argued today, as that was only in relation to Ms. Gomez, the female applicant.

[9] Both of Ms. Lozada Gomez's counsel therefore limited their oral arguments to the alleged errors in the refusal of Ms. Lozada Gomez's spouse's application. In her responding arguments counsel for the Respondent likewise limited her submissions to the issues raised regarding Ms. Lozada's spouse. She neither contested counsel's submission to the Court that Ms. Lozada's application had been settled, nor did she "concede the procedural fairness issue as it relates to Ms. Lozada Gomez."

[10] Neither party asked the Court to amend the style of cause to remove Ms. Lozada as an applicant.

[11] By order dated March 7, 2018, Justice O'Reilly dismissed the application. The style of cause continued to name both Ms. Lozada Gomez and her spouse, but the judgment addresses only her spouse. As Justice O'Reilly explained:

> The applicant's children were successful on their H&C applications. Further, Mr Victoria Cardenas's wife's application for judicial review is no longer in issue. Accordingly, the sole issue before me related to Mr Victoria Cardenas's H&C application…
>
> (*Cardenas v Canada (Citizenship and Immigration)*, 2018 FC 263 at para 2 [*Cardenas*])

[12] Ms. Lozada and her spouse remained in Canada for the next six years on consecutive three-year TRPs. However, in mid-2023, their application to renew the TRPs was denied. They contacted their counsel to inquire after the status of Ms. Lozada Gomez's H&C redetermination, and counsel promptly contacted the Respondent's counsel and Immigration, Refugees and Citizenship Canada [IRCC] to ask for an explanation for the delay:

> In November of 2017, you offered settlement of the H&C decision for Martha Victoria. It has now been 5 years since the settlement was accepted yet my client advises me that she has not received any correspondence regarding her H&C redetermination. This delay is not acceptable.
>
> Please advise when the H&C will be reconsidered.

[13] The Respondent's counsel replied the following day thanking counsel for bringing the matter to her attention and advising that she would review the litigation file when it had been retrieved. On August 11, 2023, counsel for the Respondent emailed Ms. Lozada Gomez's counsel as follows:

> I have now had an opportunity to review the litigation file.
>
> In my letter dated November 1, 2017, I made an offer to settle the litigation as it related to the female Applicant only. This offer to settle and redetermine Ms Gomez' H & C application was contingent on the service and filing of a Notice of Discontinuance of the litigation.

> Whereas Ms Gomez accepted the proposed offer in a letter dated November 23, 2017, no Notice of Discontinuance was ever served or filed with the Federal Court.
>
> In an email dated November 27, 2017, the date of the hearing, I acknowledged receipt of your letter dated November 23, 2017 and reminded you that we had not yet been served with a Notice of Discontinuance, nor had one been filed with the Federal Court.
>
> To date, there is no record of a Notice of Discontinuance having been served on the DOJ or filed with the Federal Court.
>
> The Federal Court's order, dated March 7, 2018, dismisses the application for judicial review, in which both parties are named.
>
> In the absence of a Notice of Discontinuance and the ultimate dismissal of the application for judicial review, no instruction was ever given to redetermine Ms Gomez's H & C application.
>
> It is open to Ms Gomez to submit a new H & C application, but there will be no redetermination of her previous H & C application given her failure to file a Notice of Discontinuance.

[14] Ms. Lozada Gomez's counsel responded the same day:

> I am concerned by your position and ask that you revisit your decision not to reconsider Ms. Gomez's H&C. This is especially the case, given that you have conceded that the H&C decision breached procedural fairness.
>
> Moreover, your offer for settlement was based on Ms. Gomez discontinuing her application for judicial review. The settlement was not contingent on filing a notice of discontinuance, especially given that litigation as a whole was not being discontinued.
>
> *3. Ms. Gomez will discontinue her application for judicial review forthwith; and*
>
> This is exactly what Ms. Gomez did. As you may recall, Mr. Goettl and I advised Justice O'Reilly orally, at the JR hearing that, due to our settlement, we were discontinuing the matter as it related to Ms. Gomez. It is for this reason, that no submissions were made and you were not required advise the court that you conceded procedural fairness as you indicated in your Nov 27, 2017 letter, you would do if no notice was filed. As such, clearly notice was orally given and the matter discontinued since you did not make

> any submissions and had no need to concede like you stated. In any event, the settlement was based on discontinuing her application for judicial review which is exactly what she did.
>
> This is also corroborated by the decision of Justice O'Reilly
>
> …
>
> Your position today is troubling. Not only was Ms. Gomez granted leave you also conceded that there was a breach of procedural fairness. In other words, had we not discontinued you would have conceded at the hearing that the H&C should be reconsidered. For judicial expediency, given this concession, we orally advised that were discontinuing the matter. Now you claim this matter was not discontinued and despite your concession that the H&C decision was procedurally unfair, you will not advise your client to reopen it. With all due respect, this borders on sharp practice. I ask that you reconsider your position.

[15] Counsel for the Respondent replied on August 15, 2023:

> I have had a chance to review your response with the client, and must inform you that IRCC's position remains the same and the H & C application will not be redetermined.
>
> Whereas you may have represented orally to the Court that you were discontinuing the application as it related to Ms Gomez, she never engaged the Federal Court process for doing so. The Rules as I read them require a Notice of Discontinuance to be served and filed in accordance with Form 166. There is no provision for the oral discontinuance of an application for judicial review. The terms of settlement agreed upon required Ms Gomez to discontinue the application for judicial review forthwith, which was never done. You are suggesting that your oral representation in Court that Ms Gomez's application is no longer an issue is sufficient and equal to the filing of a Notice of Discontinuance in Form 166, which it is not. There is no reference by the Court to her application being redetermined, and nothing in the Court's order or docket supports your position that the application was formally discontinued. In the end, the application for judicial review as it relates to both applicants was dismissed. The Court never would have dismissed Ms Gomez's application if it had been discontinued.

> Moreover, I reminded you on the day of the hearing that I had yet to receive a Notice of Discontinuance. That I was prepared to concede the procedural issue at the hearing did not relieve you of your obligation to satisfy the terms of settlement and file a Notice of Discontinuance.
>
> In the absence of a Notice of Discontinuance being filed, the redetermination process was never triggered.
>
> Ms Gomez is free to submit a new H & C application.

[16] On August 25, 2023, Ms. Lozada Gomez initiated the present litigation challenging "[t]he decision of Citizenship and Immigration Canada, made by an unknown officer, dated on or about August 11, 2023, refusing to redetermine the Applicant's application for permanent residence on humanitarian and compassionate grounds."

[17] In a November 8, 2023, response to the Registry's request for reasons pursuant to the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR 93-22, r 9 [FCCIRP Rules], the Respondent advised:

> IRCC has no record in [the Global Case Management System] of a Notice of Discontinuance filed with the Court discontinuing the previous litigation, and no record of a decision dated on or about August 11, 2023 refusing to redetermine the Applicant's application for permanent residence based on humanitarian and compassionate grounds.

[18] Notwithstanding the outstanding litigation, Ms. Lozada Gomez and her spouse were scheduled for removal to Colombia on January 18, 2024. They requested that their removal be deferred on several grounds, including to enable an assessment of Ms. Lozada Gomez's humanitarian and compassionate circumstances, but the request was refused by the Canada Border Services Agency. Ms. Lozada Gomez then brought motions before this Court seeking to

stay her and her spouse's removal based on both the within application and a fresh application for leave to judicially review the refusal to defer removal (*Cardenas et al v Minister of Public Safety and Emergency Preparedness*, 2025 FC 1614.

[19] The Respondent opposed both motions but by Orders dated January 18, 2024, Justice Elizabeth Heneghan granted them. The Respondent likewise unsuccessfully opposed leave in both matters.

III. ISSUES AND STANDARD OF REVIEW

[20] Ms. Lozada Gomez alleges that the Respondent breached the terms of settlement by refusing to redetermine her H&C application. She bases her argument on the proposition that counsel's email of August 11, 2023, communicated a decision not to redetermine the application. She asserts that the refusal to implement the terms of settlement was unreasonable, procedurally unfair, and an abuse of process. Ms. Lozada Gomez argues that matters of procedural fairness, including abuse of process, attract no deference from reviewing courts. She seeks costs.

[21] The Respondent denies any breach of settlement. She asserts that her counsel's August 11, 2023, email "was not a 'decision' requiring formal pronouncement and reasons," but was just a response to an "informal request to review her file" which was conducted "as a courtesy". She maintains that this Court's review should be limited to determining whether the response was unreasonable, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 100 [*Vavilov*]. She maintains that a costs award is unjustified.

[22] I will therefore address the following questions:

1. Was the decision refusing to redetermine the H&C application unreasonable?

2. Was the refusal to redetermine the H&C application procedurally unfair?

3. Are there special reasons for costs and if so at what amount?

[23] As explained below, given my conclusions on the first two issues, I do not believe it is necessary or appropriate to decide whether there has also been an abuse of process.

[24] Reasonableness review consists of assessing administrative decisions to determine whether they bear the hallmarks of reasonableness — justification, transparency and intelligibility — and whether they are justified in relation to the relevant factual and legal constraints that bear on the decisions *(Vavilov* at para 99). A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the "constellation of law and facts that are relevant to the decision" (*Mason v Canada (Citizenship and Immigration),* 2023 SCC 21 at para 66, *Vavilov* at 105). As the Supreme Court of Canada reminded us in *Vavilov*, "Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes" (*Vavilov* at para 133).

[25] Questions of procedural fairness do not warrant curial deference. As the Federal Court of Appeal explained in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69:

> [54] A court assessing a procedural fairness argument is required to ask whether the procedure was fair having regard to all of the circumstances, including the *Baker* factors. A reviewing court does that which reviewing courts have done since *Nicholson*; it asks, with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed. I agree with Caldwell J.A.'s observation in *Eagle's Nest* (at paragraph 20) that, even though there is awkwardness in the use of the terminology, this reviewing exercise is "best reflected in the correctness standard" even though, strictly speaking, no standard of review is being applied.

IV. ANALYSIS

[26] Ms. Lozada Gomez argues that IRCC's refusal to redetermine her H&C application was unreasonable, procedurally unfair, and constituted an abuse of process. The Respondent contends that "the heart of the issue" is whether Ms. Lozada Gomez followed the terms of the settlement by discontinuing her judicial review application "in accordance with the Rules, common practice and the terms of the settlement." If she did not, according to the Respondent, her application must fail.

[27] The starting point for the analysis must be the determination of the content of the settlement agreement, in particular the third term requiring that Ms. Lozada Gomez "discontinue her application for judicial review." The parties agree that discontinuance was a condition of settlement, but they disagree about whether the condition could only be met by filing a notice of discontinuance under the *Federal Courts Rules*, SOR/98-106, Rule 166 [FC Rules], which provides: "A party shall file a declaration of settlement or a notice of discontinuance in Form 166 in a proceeding that has been concluded other than by a judgment or discontinuance on consent."

[28] There is no dispute that Ms. Lozada Gomez did not file a notice of discontinuance. She points out, however, that the settlement offer does not stipulate that the discontinuance must be by way of notice under Rule 166. She maintains that she notified the Respondent of her acceptance of the terms of the settlement in writing prior to the hearing, and that she fulfilled the requirement to discontinue the application by advising the presiding judge, Justice O'Reilly, that "there's been a settlement in terms of the female applicant only. We were unable to issue a notice of discontinuance but, in any event, it's proceeding in regards to the male applicant," and later that "the application is now being continued, only in relation to the male applicant." She highlights Justice O'Reilly's finding that "Mr Victoria Cardenas's wife's application for judicial review is no longer in issue" (*Cardenas* at para 2) as evidence that the Court accepted the discontinuance, and points to paragraphs 42 and 43 of the Federal Court's *Amended Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings* of June 20, 2025, as support for the proposition that while the filing of a notice of discontinuance is "recommended" in consent cases, it is only mandatory under Rule 166 for unilateral discontinuances, although counsel acknowledges that the Guidelines were not in place at the time of the hearing.

[29] The Respondent maintains that discontinuance can only be achieved through the filing of a notice of discontinuance pursuant to Rule 166. The Respondent's counsel asserts that written notice is necessary to "give signal to the Court and all interested parties that the Applicant had discontinued the litigation," and notwithstanding Justice O'Reilly's acknowledgement cited above, she relies on the fact that the style of cause was not amended to remove Ms. Lozada Gomez as evidence that there had been no discontinuance. In oral argument the Respondent's

counsel also asserted that practice at the Department of Justice is to require a notice of discontinuance, and that this requirement is implicit in the settlement agreement. She points to her email of November 27, 2017, as evidence that the filing of a notice was required.

[30] I am unpersuaded by the Respondent's arguments.

[31] The starting point for the interpretation of the settlement term must be the language of the term itself, read in the context of the applicable laws, regulation, and required court practices. On its face the disputed term of the agreement does not specify the process by which the application was to be discontinued. While I agree with the Respondent that in the normal course this is achieved by way of the filing of a notice of discontinuance under Rule 166, the Respondent has not persuaded me that this is the only way to discontinue a proceeding. The Respondent provided no relevant authority for her argument that Rule 166 restricts discontinuances to filed formal notices, and indeed the language of the provision itself explicitly excludes from its ambit "discontinuance on consent." The authority that the Respondent seeks to rely on, *Philipos v. Canada (Attorney General)*, 2016 FCA 79, likewise does not support the proposition that a discontinuance is only valid if achieved through a formal written notice. The Respondent's position also was not assisted by her counsel's apparent unwillingness or inability to address the corollary of her position: that a judge sitting in judicial review has no jurisdiction to accept a party's request to discontinue an application at the outset of an application hearing, a proposition that appears inconsistent with the jurisprudence confirming this Court's plenary power to manage its own proceedings (see, e.g., *Dugré v. Canada (Attorney General),* 2021 FCA 8 at paras 19-21, and the cases cited therein)

[32] The Respondent's argument that a formal notice was required to signal to "the Court and all interested parties that the Applicant had discontinued the litigation" has no merit either, as these goals were demonstrably achieved by the Applicant's letter to the Respondent accepting the settlement offer and their oral submission directly to the presiding judge in the presence of Respondent's counsel. The fact that the Respondent's counsel chose not to concede the officer's error during the judicial review before Justice O'Reilly, despite her undertaking to do so in the absence of a discontinuance, also suggests that, at least at the time, she recognized counsel's oral submission as constituting a discontinuance (see below for further discussion of this point).

[33] As for the Respondent's claim during oral argument before me that the Department of Justice always requires the filing of a notice of discontinuance as part of its settlement agreements, I note that this assertion was not grounded in any evidence and is not capable on its own of narrowing the scope of the written terms agreed to by the parties (*Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53 at para 59). If the Respondent required Ms. Lozada Gomez to file a notice of discontinuance in order to have her application redetermined, she should have stipulated that in the agreement.

[34] Finally, the Respondent relies on the inclusion of Ms. Lozada Gomez's name in the style of cause of Justice O'Reilly's decision as evidence that she did not discontinue her litigation. I agree with the Respondent that this is a concern. The discontinuance of Ms. Lozada Gomez's application should have been reflected in an amendment to the style of cause. This amendment could have been requested before or during the hearing upon notifying the Court that Ms. Lozada Gomez's application had been settled; it could likewise have been requested following the

hearing, or even after issuance of the Court's judgment by way of a variance motion under Rule 399(2) of the FC Rules.

[35] I reject the Respondent's argument, however, that the responsibility for seeking this amendment lay solely with Ms. Lozada Gomez and her counsel, and that their inaction vitiated the settlement agreement. I find the responsibility was shared, and I am not convinced that the absence of an amendment relieved the Respondent of any obligation to redetermine the H&C application.

[36] To be sure, Ms. Lozada Gomez should have proactively taken steps to ensure that the style of cause was amended to remove her name rather than relying entirely on the oral discontinuance during the hearing. It is unclear why these steps were not taken. The lack of follow-up on the redetermination until the summer of 2023 is also unexplained and concerning. However, the Respondent was an equal party to the settlement agreement, had conceded that there had been a breach of procedural fairness that required a remedy, and was best placed to know what her officers would be looking for in order to initiate a redetermination. Her counsel, as a barrister and solicitor and an officer of the Court, shared some responsibility to ensure that the oral discontinuance was properly reflected in the record so that the redetermination would be initiated.

[37] I am unable to determine on the record before me when exactly the Respondent or her counsel first decided not to honour the terms of the settlement agreement. However there appear to be three likely points in time when that decision could have been made: (a) during or soon

after the hearing, based on a determination that the oral discontinuance was insufficient; (b) upon receipt of the Court's judgment, which continued to identify Ms. Lozada Gomez as an applicant; or (c) upon review of the file in August 2023, after being contacted by counsel for Ms. Lozada Gomez.

[38] If the first is true, and the Respondent's counsel determined during the hearing that Ms. Lozada Gomez's counsel's oral submissions fell short of what was required for a discontinuance, then as a barrister and solicitor, an officer of the Court, and counsel for a Minister of the Crown, she should have either raised the concern during the hearing so that it could be rectified or made the concession that she had undertaken to make in her email just hours earlier so that the Court could grant Ms. Lozada Gomez's application. She did neither. Staying silent and relying on what she believed to be a mistake by opposing counsel, knowing that Ms. Lozada Gomez would thereby be deprived of the benefit of either a Court order granting her judicial review application or a negotiated settlement, after having explicitly conceded to opposing counsel that the decision under review was procedurally unfair, would be unethical and would not be countenanced by this Court. Indeed, this behaviour, if it occurred, would appear to run afoul of Rule 7.2-2 of the *Rules of Professional Conduct* of the Law Society of Ontario [LSO Rules], which provides:

> A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other legal practitioners not going to the merits or involving the sacrifice of a client's rights.

[39] If the second is true, and the Respondent and/or her counsel decided not to honour the terms of settlement upon receipt of the Court's judgment, then once again I find that the Respondent's counsel should have contacted Ms. Lozada Gomez's counsel to advise that absent

an amendment to the style of cause IRCC would not redetermine Ms. Lozada Gomez's H&C application. The matter could have been rectified by way of a variance motion on consent. While I agree with the Respondent that the primary responsibility to seek to amend the style of cause lay with Ms. Lozada Gomez and her counsel, I find that staying silent was not an option for Respondent's counsel for the same reasons set out in the preceding paragraph.

[40] Even if in fact the Respondent and/or Respondent's counsel, like the Applicant's counsel, did not realize what had happened until they reviewed the file in the summer of 2023 (the third possible point in time noted above), it still was not open to the Respondent to rely on an alleged technical mistake almost six years earlier to refuse to fulfil the terms of settlement. Although an outside observer might look at the style of cause of the Federal Court's decision in isolation and reasonably conclude that Ms. Lozada Gomez had not discontinued her application, the Respondent's counsel was no outside observer: she was present at the hearing in 2017 as counsel for the Respondent and she knew better. It is far from clear, moreover, that the inclusion of Ms. Lozada Gomez's name on the style of cause of Justice O'Reilly's decision prevented the Respondent from exercising her discretion under s. 25 of the IRPA in 2023 to redetermine Ms. Lozada Gomez's H&C application pursuant to the settlement agreement.

[41] I therefore find that the settlement agreement did not establish the process by which the litigation was to be discontinued, and that Applicant counsel's submissions to Justice O'Reilly in the presence of the Respondent's counsel clearly established that Ms. Lozada Gomez had discontinued her application, which was confirmed by Justice O'Reilly in his judgment. I find further that the Respondent's counsel likely relied on this oral discontinuance to decide she no

longer needed to concede the breach of procedural fairness underlying Ms. Lozada Gomez's application. Although Ms. Lozada Gomez and her counsel could have taken steps to ensure that the style of cause of her application was amended to reflect her discontinuance, the Respondent was not entitled to rely on either the absence of a written notice of discontinuance under Rule 166 of the FC Rules or the fact that Ms. Lozada Gomez continued to be named in the style of cause to refuse to honour the terms of the settlement agreement when asked to address the issue in 2023.

A. *The decision was unreasonable*

[42] Having determined that Ms. Lozada Gomez advised the Court and the Respondent that she was discontinuing her application for judicial review, and that the Respondent relied on that oral discontinuance, I find the Respondent's refusal to fulfil her obligation to redetermine the application, even upon being asked to reconsider that decision in 2023, was unreasonable and procedurally unfair.

[43] The unreasonableness of the refusal is apparent on the face of the decision. In conducting reasonableness review, this Court must "consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). As the Supreme Court of Canada explained in *Vavilov*:

> [90] [W]hat is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review. These contextual constraints dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt.

[44] While it was certainly open to the Respondent in this case to refuse Ms. Lozada Gomez's H&C application on redetermination based on a reasonable assessment of the facts and the law, it was not open to her to refuse to even conduct the redetermination after having undertaken to do so by way of a settlement agreement. The Respondent's decision was unreasonable and failed to reflect the constraints imposed by the legal and factual context in which it was made (*Vavilov* at para 105). The refusal to redetermine the application was reached on an improper basis that failed to acknowledge that Ms. Lozada Gomez had in fact abandoned her challenge to the previous decision and had advised the Court that she was no longer seeking a determination of her application pursuant to the settlement agreement. The decision also failed to account for the Respondent's position in 2017 that the decision with respect to Ms. Lozada Gomez was procedurally unfair and therefore required redetermination. There is no explanation as to why the procedural fairness breach acknowledged in 2017 no longer justified remediation through redetermination in 2023.

B. *The decision was procedurally unfair*

[45] I agree with Ms. Lozada Gomez, moreover, that the Respondent's refusal to redetermine the H&C application was procedurally unfair.

[46] As Justice L'Heureux-Dube explained in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]:

> [28] …The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.

[47] When the Respondent's refusal to redetermine Ms. Lozada Gomez's H&C application is considered in light of the nature of the decision and the statutory scheme, the profound importance of the decision to Ms. Lozada Gomez, Ms. Lozada Gomez's legitimate expectation that her application would be redetermined pursuant to the settlement agreement, and IRCC's choice of procedures for the determination of H&C application (*Baker* at paras 23-27), the only available conclusion is that the decision was not procedurally fair. Indeed, I find that the process by which the Respondent decided not to redetermine Ms. Lozada Gomez's H&C application was profoundly unfair and unjust. The Respondent refused to acknowledge the steps taken by Ms. Lozada Gomez to meet the condition of settlement and unfairly refused to fulfil her side of the agreement. As discussed further below, this course of action warrants this Court's unambiguous denunciation.

[48] Ms. Lozada Gomez also alleges that the Respondent's refusal to honour the settlement agreement was an abuse of process. As the Supreme Court of Canada explained in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, and reiterated in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 at paragraph 38, in administrative proceedings abuse of process is a question of procedural fairness. As I have already determined that the decision was unreasonable and procedurally unfair, I decline to make a finding as to whether it also resulted in an abuse of process.

C. *Costs*

[49] Ms. Lozada Gomez argues that there are special reasons warranting an order of costs. She seeks costs in the amount of $31,263.09.

[50] Costs are rarely awarded in immigration matters. Rule 22 of the FCCIRP Rules limits costs awards to those cases that present "special reasons". The threshold is high for establishing that "special reasons" exist (*A.B.C.D. v. Canada (Citizenship and Immigration)*, 2025 FC 1296 at para 87 [*A.B.C.D.*] ; Mamut v Canada (Citizenship and Immigration), 2024 FC 1593 at para 128; Ghaddar v Canada (Citizenship and Immigration), 2023 FC 946 at para 45; Almuhtadi v Canada (Citizenship and Immigration), 2021 FC 712 at para 56; Taghiyeva v Canada (Citizenship and Immigration), 2019 FC 1262 at para 17; Aleaf v Canada (Citizenship and Immigration), 2015 FC 445 at para 45). Nevertheless, this Court has found such reasons to exist based on, *inter alia*, the nature of the case, the behaviour of a party or the behaviour of counsel (*A.B.C.D.* at para 88; Ndungu v Canada (Citizenship and Immigration), 2011 FCA 208 at para 7; Jahazi v Canada (Citizenship and Immigration), 2024 FC 2072 at para 23; Radiyeh v Canada (Citizenship and Immigration), 2022 FC 1234 at para 34).

[51] Justice Denis Gascon summarized other circumstances where there may be "special reasons" for costs in *Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522:

> [69] Conduct that amounts to "special reasons" for costs may include the following: unnecessarily or unreasonably prolonging proceedings, acting unfairly, oppressively, or improperly, engaging in conduct that was actuated by bad faith, and undermining the judicial system's integrity (*Canada (Public Safety and Emergency Preparedness) v Oko-Oboh*, 2022 FC 740 at para 10, citing *Taghiyeva* at para 18 and *Mayorga v Canada (Citizenship and Immigration)*, 2010 FC 1180 at paras 21, 47; *Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201 at para 31). This Court has also found "special reasons" where there has been reprehensible, scandalous, or outrageous conduct on the part of a party (*Kaur v Canada (Citizenship and Immigration)*, 2024 FC 1155 at para 22, citing *Toure v Canada (Citizenship and Immigration)*, 2015 FC 237 at para 16).

[52] Ms. Lozada Gomez alleges that the Respondent and her counsel behaved in a manner that was “unfair, oppressive, improper, [and] in bad faith” (*Singh v. Canada (Citizenship and Immigration)*, 2010 FC 1306 at para 45) and that they unnecessarily or unreasonably prolonged the proceedings after becoming aware that the Applicant’s H&C had not been redetermined. She maintains that this egregious behaviour included not only the Respondent’s initial failure to fulfil the terms of the settlement agreement but also her subsequent refusal to correct the matter despite having acknowledged that the first decision was procedurally unfair; her active attempt to facilitate Ms. Lozada Gomez’s removal from Canada before this judicial review application could be heard, in the face of evidence that the prospect of return had re-triggered her trauma and symptoms of PTSD, by opposing her motion to stay her removal; and her continued defense before this Court of a clearly unfair and unreasonable decision.

[53] Ms. Lozada Gomez also makes allegations directly against the Respondent’s counsel, alleging breaches of several LSO Rules such as a failure to act honourably and with integrity (2.1-1); failure to discourage the client from commencing or continuing useless legal proceedings (3.2-4); dishonesty, misstating facts or law, and knowingly misstating the contents of a document (5.1-2); failing to act for the public and the administration of justice resolutely and honourably (5.1-3); civility and good faith (5.1-5, 7.2-1); failing to “agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client” (7.2-1.1); and sharp practice (7.2-2).

[54] Ms. Lozada Gomez argues that this combination of considerations justifies an order granting solicitor-client and punitive costs to deter and denounce the Respondent’s conduct. She

notes that public decision makers have a heightened duty of fairness, and equates the Respondent's conduct to that discussed by the Supreme Court of Canada in *Odhavji Estate v Woodhouse*, 2003 SCC 69 at paragraph 29: "Liability does not attach to each officer who blatantly disregards his or her official duty, but only to a public officer who, in addition, demonstrates a conscious disregard for the interests of those who will be affected by the misconduct in question." Ms. Lozada Gomez has provided a detailed chart of her costs of this application and the associated stay motion amounting to $21,263.09 in solicitor-client costs and disbursements, or $14,288.31 in partial indemnity costs and disbursements. She seeks a further $10,000 in punitive costs against the Respondent.

[55] The Respondent, for her part, denies all of Ms. Lozada Gomez's allegations and insists that there are no special reasons for granting costs. She maintains that she was justified in relying on the fact that Ms. Lozada Gomez was named in the style of cause in Justice O'Reilly's order as evidence that the settlement agreement had never come into force, and that any delay in redetermination is the fault of Ms. Lozada Gomez.

[56] I find that Ms. Lozada Gomez has established that there are special reasons to grant costs in this case. The behaviour of the Respondent in steadfastly refusing to honour the terms of the settlement agreement, even when reminded about the oral discontinuance that occurred before Justice O'Reilly, was egregious, as was the Respondent's opposition to the stay motion despite the settlement agreement, the evidence of the impact of removal on Ms. Lozada Gomez, and the continued defense of a plainly unreasonable and unfair refusal to redetermine Ms. Lozada Gomez's H&C application. The actions of the Respondent fall far below the standard of fair

dealing that Canadians have every right to expect from their public officials, and this requires a strong denunciation from this Court.

[57] As for Ms. Lozada Gomez's allegations of misconduct by the Respondent's counsel, however, while I agree that there is reason for concern, I am not convinced that the Respondent's counsel has had, in the context of this litigation, an adequate opportunity to defend her actions. The Law Society of Ontario and its Tribunal would be better placed to investigate and adjudicate Ms. Lozada Gomez's claims against the Respondent's counsel than this Court is based on the current record.

[58] I find, however, that responsibility for Ms. Lozada Gomez's present situation does not lie solely with the Respondent and her counsel. As already noted, Ms. Lozada Gomez and her counsel could have filed a formal notice of discontinuance in November 2017, even if not strictly required by the wording of the settlement agreement, which would likely have resulted in an amendment to the style of cause and triggered the redetermination; alternatively, they could have brought a variance motion at any time to amend the style of cause of Justice O'Reilly's decision to reflect their oral discontinuance; and clearly they could have followed up much earlier regarding the status of the H&C redetermination. Ms. Lozada Gomez's failure to take these steps does not disentitle her to costs, however; it only reduces the amount awarded.

[59] Considering all these circumstances, I find that lump sum costs in the amount of $10,000 is appropriate to signal this Court's firm denunciation of the Respondent's conduct. Though this amount is significantly less than what was sought by Ms. Lozada Gomez, it is more reflective of

the full history of this case and of this Court's prior costs awards and is sufficient to serve the goals of denunciation and deterrence.

[60] The parties have not proposed a question of general importance for certification, and I agree that none arises.

V. CONCLUSION

[61] I find that the Respondent's refusal to redetermine Ms. Lozada Gomez's H&C application breached the settlement agreement between the parties and was unreasonable and procedurally unfair. I will therefore set the decision aside and order that the H&C application be redetermined as soon as possible. Ms. Lozada Gomez must also be given a reasonable opportunity to update her application as part of the redetermination process. It is my expectation that this redetermination will be completed before any steps are taken to remove Ms. Lozada Gomez from Canada.

[62] I also find that the egregious conduct of the Respondent constitutes a special reason to award costs against the Respondent, and I do so in the lump sum of $10,000.

[63] Finally, on the unopposed request of the Applicant the style of cause will be amended with immediate effect to correct an error in the spelling of the Applicant's last name.

JUDGMENT in IMM-10812-23

THIS COURT'S JUDGMENT is that:

1. The application is allowed.

2. The decision refusing to redetermine the H&C application is set aside and the application is remitted to a different decision maker for redetermination as soon as possible, after giving the Applicant a reasonable opportunity to provide updated evidence and submissions.

3. Costs are awarded to the Applicant in the amount of $10,000.

4. The style of cause is amended with immediate effect.

5. There is no question for certification.

"Andrew J. Brouwer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10812-23
STYLE OF CAUSE:	MARIA LUCIA LOZADA GOMEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 3, 2025
JUDGMENT AND REASONS:	BROUWER J.
DATED:	OCTOBER 2, 2025

APPEARANCES:

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NEETA LOGSETTY	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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ATTORNEY GENERAL OF CANADA TORONTO, ONTARIO	FOR THE RESPONDENT