

Federal Court



Cour fédérale

Date: 20251104

Docket: IMM-4109-24

Citation: 2025 FC 1771

Ottawa, Ontario, November 4, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

**INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION CANADA**

Applicant

and

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
GCT CANADA LP
BIG LIFT SHIPPING BV**

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, the International Longshore and Warehouse Union Canada, seeks judicial review of a decision made by an officer (the “Officer”) of Canada Border Services Agency (“CBSA”) under section 186 of the *Immigration and Refugee Protection Regulations*,

SOR/2002-227 (the “*Regulations*”), granting work permit exemptions to foreign nationals working as crew members on the vessel, the Happy Star (the “Exemption”).

[2] The Applicant submits that the Exemption is unreasonable and that it forms part of a larger pattern of the CBSA failing to protect the interests of its members.

[3] I am dismissing this application for judicial review. Despite counsel for the Applicant’s able submissions, I find that the Applicant does not have standing to bring this application and that the issue is outside the Court’s jurisdiction. I further find that the application for judicial review is moot.

II. **Legal Framework**

A. *Direct Interest Standing*

[4] Subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“*IRPA*”) provides that an application for judicial review may be brought “with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act.”

[5] Section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (“*Federal Courts Act*”) provides that individuals who seek judicial review before this Court must be “directly affected by the matter in respect of which relief is sought.”

[6] Interpreting these provisions, this Court has previously found that “for an applicant to be considered ‘directly affected’, the matter at issue must be one which adversely affects its legal rights, impose legal obligations on it, or prejudicially affect it directly” (*CanWest MediaWorks Inc v Canada (Health)*, 2007 FC 752 (“*CanWest*”) at para 13 (affirmed on appeal in 2008 FCA 207); *Soprema Inc v Canada (Attorney General)*, 2021 FC 732 (“*Soprema*”) at para 28).

B. *Work Permit Exemptions*

[7] In order to work in Canada, a foreign national is generally required to obtain a work permit (*IRPA*, s 30). However, paragraph 186(s) of the *Regulations* allows CBSA officers to grant exemptions to:

(s) ...a member of a crew who is employed by a foreign company aboard a means of transportation that

(i) is foreign-owned and not registered in Canada, and

(ii) is engaged primarily in international transportation[.]

[8] In 2012, CBSA issued an Enforcement Directive concerning the application of paragraph 186(s). With respect to dockworkers in particular, the Enforcement Directive states that, in order to qualify for the exemption in paragraph 186(s), a foreign national’s duties “must be related to the operation or maintenance of the means of transportation or the provision of services to passengers”. The Enforcement Directive further states that “dockside functions such as the loading or unloading of cargo” falls outside the scope of paragraph 186(s).

[9] These statements in the Enforcement Directive are consistent with guidelines from Immigration, Refugees and Citizenship Canada (“IRCC”). For instance, IRCC’s Program Delivery Instructions entitled “International Mobility Program: Authorization to work without a work permit – Crew” specify that the duties of a foreign national who are exempt under paragraph 186(s) of the *Regulations* must be “related to the operation or maintenance of the means of transportation or the provision of services to passengers.” Similarly, IRCC’s Maritime Procedures Enforcement Manual states that paragraph 186(s) of the *Regulations* does not apply to crew members who “perform dockside functions such as the loading or unloading of cargo” (s 5.1).

[10] In addition to the exemptions listed in section 186, section 187 of the *Regulations* allows CBSA to grant a work permit exemption to “a business visitor to Canada [who] is a foreign national...described in subsection (2) or who seeks to engage in international business activities in Canada without directly entering the Canadian labour market.”

III. **Facts**

[11] The Applicant is a union representing longshore workers in British Columbia.

[12] There are three Respondents in this matter. The first Respondent, the Minister of Public Safety and Emergency Preparedness (the “Minister”), is responsible for enforcing the *IRPA* and the *Regulations*. CBSA reports to the Minister. The second Respondent, GCT Canada LP (“GCT”), operates the GCT Deltaport container terminal (the “Terminal”) at 2 Roberts Bank

Way, Delta, BC. The third Respondent, Big Lift Shipping B.V. (“Big Lift Shipping”), is a Dutch shipping business that owns the Happy Star.

[13] On February 16, 2024, a representative of GCT contacted the Applicant to confirm that the Happy Star would be docking at the Terminal later that day. GCT stated that the Happy Star would be unloading Rubber-Tired Gantries (“RTG”) and that the Applicant “has no jurisdiction over this work as it is not cargo”. GCT disclosed that the manufacturer is contractually responsible for “all aspects of the RTG delivery, assembly, and testing”.

[14] On February 18, 2024, after the Applicant raised concerns, CBSA conducted an investigation of potential unauthorized labour on the Happy Star. CBSA determined that “[t]he RTGs [were] welded onto the vessel” and “needed to be worked in tandem with the vessel in order to avoid...marine disaster”. CBSA found that the foreign crew was “responsible for ensuring the vessel’s structural integrity remains intact and seaworthy for contract service of [the Happy Star’s] next customer”. CBSA further noted that the foreign crew “had flown in as after sales support to help facilitate the discharge of the [RTGs] as per the sales agreement”.

[15] As a result, CBSA found that the Happy Star’s foreign crew were exempt from the work permit requirement under section 186 of the *Regulations*. This is the decision presently under review. CBSA also found that the foreign crew members qualified for the work permit exemption for business visitors in section 187 of the *Regulations*.

[16] Upon disembarking from the Happy Star, the Applicant's members approached the Officer. The Applicant's members stated that the foreign crew of the Happy Star were performing "work in Canada" and that CBSA was failing to uphold the Enforcement Directive. In response, CBSA stated that "what the crew members are doing does not constitute as work by foreign nationals nor are they entering in to the Canadian labour market". CBSA further stated that "immigration exams are private and will not be discussed" and "advised [the Applicant's members] to take up their concerns with GCT management".

IV. **Preliminary Issues**

[17] In support of their application, the Applicants filed three affidavits: the Affidavit #1 of AR (the "AR Affidavit"), the Affidavit #1 of PB (the "PB Affidavit"), and the Affidavit #2 of AR. The Minister challenges the admissibility of certain sections of the AR Affidavit and PB Affidavit, as they were not before CBSA at the time of the decision (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 ("Access Copyright") at para 19). The Applicant disagrees, submitting that much of this material is admissible under the exception for background information (*Access Copyright* at para 20(a)).

[18] The disputed material describes communications between the Applicant and GCT before the Happy Star docked and compares the work the Happy Star's foreign crew performed to work the Applicant's members performed on other vessels.

[19] The Minister is correct that this material is inadmissible. None of this material was available to the CBSA at the time of the Exemption. As a result, the Court will not consider paragraphs 7-8 and 14-17 and Exhibits A and D of the AR Affidavit (*Access Copyright* at para 19).

[20] I do not accept the Applicant's submission that this evidence falls under the exception for background information. Background information is admissible only to the extent that it "assist[s the Court] in understanding the issues relevant to the judicial review" (*Access Copyright* at para 20). The Applicant's Collective Agreement and the enforcement actions of CBSA on vessels at other ports are not relevant to the present application. The Court recognizes that the Applicant is alleging a detrimental pattern of non-enforcement of the work permit requirement by CBSA. However, even if this allegation were proven, it would not be relevant to the present application, as there is nothing to suggest that CBSA's previous enforcement actions affected its decision to grant the Exemption. There is similarly no evidence that the PB's actions during the Happy Star's unloading operations were relevant to the Exemption. In my view, the background information exception does not apply.

[21] The Applicant also argued that paragraphs 12-13 and 17-19 and Exhibits C and D of the PB Affidavit are nonetheless admissible as the information they contain was before CBSA at the time of the Exemption. The Applicant submits that they presented this information to agents of CBSA, including a CBSA Superintendent and the CBSA Regional Director General, in 2024 and 2019.

[22] I disagree. These submissions relate to the Collective Agreement and CBSA enforcement actions in Kitimat in 2019.

[23] This evidence was not before the CBSA at the time of the Exemption. The communication between PB and the CBSA Superintendent in 2024 did not relate to the Collective Agreement or enforcement actions at Kitimat in 2019.

[24] Although the Applicant may have engaged in correspondence with the CBSA Regional Director General about enforcement actions in Kitimat in 2019, I do not find that this correspondence was before CBSA for the purposes of the Exemption. The Exemption was granted five years after the events in Kitimat and the Applicant's resulting correspondence with CBSA. I further note that the Exemption concerned a different vessel at a different port. The Applicant has not demonstrated why CBSA ought to have considered their 2019 correspondence as relevant for the purposes of the Exemption, particularly in light of the Applicant's failure to bring this correspondence to CBSA's attention in February 2024.

[25] I therefore cannot accept the Applicant's submissions that paragraphs 12-13 and 17-19 and Exhibits C and D of the PB Affidavit were before CBSA. Consequently, paragraphs 8, 12-13, 17-19, 25-26 and 35-42 as well as Exhibits A, C, D, and E of the PB Affidavit will not be considered in this decision.

V. **Issues and Standard of Review**

[26] The four issues in this application for judicial review are:

- (1) Does the Applicant have standing to bring this application?
- (2) Is the matter within the Federal Court's jurisdiction?
- (3) Is the matter moot?
- (4) Is the Exemption reasonable?

[27] With respect to the first three issues, no standard of review applies. Because I declined to address the fourth issue, the standard of review is not at issue.

VI. Analysis

A. *The Applicant Does Not Have Standing*

[28] I first note that one of the three Respondents in this matter, Big Lift Shipping, did not make submissions in this application for judicial review. All references to the Respondents, therefore, relate solely to the Minister and GCT.

[29] The Applicant submits that it has standing to bring this application because it could adversely affect the Applicant's legal rights and have direct prejudicial impacts (*Clark v Canada (Attorney General)*, 2024 FC 395 (“*Clark*”) at para 42). The Applicant submits that the Exemption deprived its members of work that the Collective Agreement would have otherwise allocated to the Canadian resident members. The Applicant also submits that the Exemption undermined the Applicant's rights to a safe work environment in a highly regulated sector due to differences in the foreign crew's training, safety procedures, and language.

[30] The Minister's arguments are framed as challenges to the justiciability of the matter and cite paragraphs 23 and 29 of *Democracy Watch v Canada (Attorney General)*, 2021 FCA 133. However, the Minister's arguments centre on the direct interest standing of the Applicant and the jurisdiction of the Court to hear a matter related to the Applicant's rights in the Collective Agreement. As GCT clarified during the hearing, these issues are properly characterized as standing and jurisdictional issues, and I have addressed them as such.

[31] The Respondents both submit that the Exemption did not directly affect the Applicant, and, therefore, the Applicant does not have standing to bring the present application (*Federal Courts Act*, s 18.1). The Respondents' position is that the Applicant's preferential access to work opportunities under the Collective Agreement is a private law matter that must be determined through the labour arbitration process. The Respondents further submit that the Applicant has failed to establish that their members experienced an unsafe work environment due to the Exemption.

[32] I agree with the Respondents that the Applicant does not have standing.

[33] The parties agree that the substance of the test for direct interest standing under section 18.1 of the *Federal Courts Act* and section 72 of the *IRPA* is whether the Exemption adversely affects the Applicant's legal rights, imposes legal obligations on the Applicant, or has a direct, prejudicial effect on the Applicant (*Soprema* at para 28; *CanWest* at para 13).

[34] On its face, the Exemption does not directly impact the Applicant's legal rights. The Applicant's own characterization of the issue reflects that it is not a party. Specifically, the Applicant states the issue before the Court is "whether the [CBSA] erred in deciding that the Foreign Crew was permitted to perform the unloading work without a work permit". The Exemption is a matter between the Minister and the foreign national crew members. The Applicant is not a party to the Exemption.

[35] While it is true that a decision's indirect impacts may lead third parties to have standing, this impact must have some "directness" or a "causal relationship" to the applicant's injury (*Finlay v Canada (Minister of Finance)*, [1986] 2 SCR 607, 1986 CanLII 6 (SCC) at paras 21-22; *Oceanex Inc v Canada (Transport)*, 2018 FC 250 ("*Oceanex*") at para 273.

[36] Further, the decision must affect more than the third parties' general or commercial interest (*Unifor v Vancouver Fraser Port Authority*, 2017 FC 110 ("*Unifor*") at para 29; *Oceanex* at paras 259; *Novo Nordisk Canada Inc v Canada (Health)*, 2019 FC 822 at para 3; *Soprema* at para 29).

[37] In *Unifor*, Justice Boswell found that the truckers' union had no standing to challenge a policy restraining the age of trucks operating at the port. The interest the union had in protecting its members' financial viability was not sufficient to ground direct interest standing.

[38] In a similar case, a union representing miners challenged the Minister of Labour's Opinion that temporary foreign workers employed by a mine would have a positive or neutral

impact on the labour market (*Construction and Specialized Workers' Union, Local 1611 et al v Canada (Minister of Citizenship and Immigration)*, [2012] FCJ No 1459, 2012 FC 1353 (“*Construction and Specialized Workers*”)). The union argued that it represented several unemployed but skilled workers that could have been employed in the mine had the Opinion not allowed for the mine to hire temporary foreign workers. Still, Justice Campbell found that this possibility was insufficient to show that the union had a direct interest in the Minister of Labour’s Opinion (at para 4).

[39] In the case before me, like in *Construction and Specialized Workers*, the record does not show whether the Applicant’s members would have been hired to perform work on the Happy Star if the Foreign Crew had not received the Exemption. During its investigation, CBSA found that “[t]he RTGs [were] welded onto the vessel” and that their removal affected the “structural integrity” of the Happy Star. CBSA observed that the unloading of the RTGs “required precise movement on board in concert with ballast changes to maintain the overall stability and safety of the vessel and crew”. CBSA’s overall determination was that the Happy Star’s foreign crew “[were] responsible for” safeguarding “the vessel’s structural integrity” and ensuring the vessel would “[remain] intact and sea worthy for contract service of their next customer”.

[40] I recognize that the Applicant’s members have expertise in dock work. However, the foreign nationals in the crew completed somewhat unique and delicate work on board the Happy Star. Given the evidence, I do not find that the Applicant has established that, were it not for the Exemption, their members would have been hired to unload the RTGs. Instead, the Applicant’s

standing relies on a particular interpretation of the Collective Agreement, which the Court lacks jurisdiction to determine, as discussed below.

[41] I also agree with the Respondents that the Applicant has failed to establish that the Exemption violated their members' right to a safe work environment. Again, the Exemption considered the safety of the vessel and crew to avoid "marine disaster". Although the Applicant raised the risk to non-union members due to miscommunication based on the unique signalling system at Deltaport and language barriers with the foreign nationals in the crew, this does not amount to evidence that their members were endangered by the work Happy Star's foreign crew performed.

[42] As a result, I find that the Applicant does not have standing to challenge the Exemption. The Applicant was not a party to the Exemption. Further, the Exemption did not adversely affect the Applicant's legal rights or cause direct prejudicial affects to the Applicant (*Clark* at para 42; *Soprema* at para 28). This is sufficient to dismiss this application for judicial review.

B. *The Matter is Not Within Federal Court Jurisdiction*

[43] The Responding Minister submits that this Court lacks jurisdiction to hear the Applicant's claim because the matter at issue is private and pertains to the contractual rights between the Applicant and GCT.

[44] GCT also alleges that this Court does not have jurisdiction because resolving the matter would interfere with an issue covered in the Collective Agreement and subject to arbitral

proceedings. GCT bases this submission on subsection 57(1) of the *Canada Labour Code*, RSC 1985, c L-2, stating that it generally requires collective agreements to include a method of final settlement “of all differences ... concerning [the collective agreement’s] interpretation, application, administration or alleged contravention”.

[45] To determine whether the arbitration agreement under the Collective Agreement excludes this matter from Federal Court’s jurisdiction, the Court must examine if the essential character of the dispute arises from the factual issues covered under the Collective Agreement (*Weber v Ontario Hydro*, [1995] 2 SCR 929, 1995 CanLII 108 (SCC) at paras 51-52; *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at paras 17-21).

[46] The Applicant submits that the dispute at issue does not arise from the factual circumstances covered by the Collective Agreement. Instead, the Applicant characterizes the issue as “whether the Officer erred in deciding that the Foreign Crew was permitted to perform the unloading work without a work permit”.

[47] However, the Applicant also characterizes the issue as affecting its direct interest under the Collective Agreement, submitting that its members “would have” received this work if the foreign crew members were not permitted to continue. It also acknowledged that it “may seek further determination on the jurisdiction issue in front of a labour arbitrator”. These statements show that the essential issue in this case pertains to the Applicant’s interests under the Collective Agreement, not CBSA’s Exemption.

[48] I have already determined that the Applicant's standing is contingent on a particular interpretation of the Collective Agreement. Consequently, the essential character of this matter is inextricably linked to the interpretation of the Collective Agreement, and I agree with the Respondents that the Applicant has failed to raise a matter within this Court's jurisdiction.

C. *The Matter is Moot*

[49] The Minister submitted that the issue of whether the Exemption was reasonable, is no longer relevant. There is no practical benefit to set aside this decision because any heavy lift carrier like the Happy Star would face different factual circumstances, and IRCC policies have changed. It further states that a declaratory remedy, such as a declaration that foreign crews may not perform dockside work without a work permit, would usurp a legislative function.

[50] The Applicant submits that the issues raised in this case are not moot because the uncertainty surrounding the decision will affect future heavy deliveries. It argues that several RTGs are set to be replaced at the Deltaport and that they will be delivered in a similar way as those on the Happy Star. The Applicant argues that, if not addressed, the CBSA's inconsistent decision making will continue to affect port workers at Deltaport and across Canada.

[51] I agree in part with the Respondents; the matter is moot.

[52] The Supreme Court stated that mootness of an issue depends on (1) "whether the required tangible and concrete dispute has disappeared and the issues have become academic" and (2) if

so, whether the court should still exercise its discretion to hear the case (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 1989 CanLII 123 (SCC) (“*Borowski*”)) at 353).

[53] In this case, the underlying tangible and concrete dispute, meaning the reasonableness of CBSA’s Exemption, has not disappeared. Rather, as held above, this the Applicant’s rights are not affected. As such, the issue raised does not resolve a controversy affecting or potentially affecting “the rights of the parties” (*Borowski* at 353). As noted above, the issue raised by the facts of this case may affect contractual rights or the rights of some other party, but it is not for this Court to determine that issue.

[54] For a similar reason, I will not exercise my discretion to hear the issue despite its mootness. The Court’s residual discretion may sometimes be used to hear a case that would otherwise be dismissed as moot if the Applicant lacks access to a grievance mechanism or independent adjudication, amongst other reasons (*Public Service Alliance of Canada v Canada (Attorney General)*, 2020 FC 481 at paras 64-69). In the case before me, the Applicant retains access to a grievance mechanism, specifically labour arbitration. As such, it would not be in the interests of judicial economy to exercise my discretion to address the merits of this case (*Lavergne-Poitras v Canada (Attorney General)*, 2022 FC 1391 at paras 22, 33).

VII. Conclusion

[55] This application for judicial review is dismissed, without costs. The Applicant does not have standing to bring this application (*Federal Courts Act*, s 18.1). The Court does not have jurisdiction because the essential character of the matter relates to the Collective Agreement

(*Federal Courts Act*, s 18.1; *IRPA*, s 72). Additionally, the matter is moot, and I will not exercise my discretion to hear the matter.

JUDGMENT in IMM-4109-24

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed without costs.

“Shirzad A.”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4109-24

STYLE OF CAUSE: INTERNATIONAL LONGSHORE AND WAREHOUSE
UNION CANADA v MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS, GCT CANADA
LP, AND BIG LIFT SHIPPING BV

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DATED: NOVEMBER 4, 2025

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