Federal Court		Cour fédérale

Date: 20100518

Docket: IMM-2486-09

Citation: 2010 FC 547

Ottawa, Ontario, May 18, 2010

PRESENT: The Honourable Madam Justice Johanne Gauthier

BETWEEN:

DAVID PHILIPPE BARLAGNE

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Barlagne is asking the Court to set aside the decision by the visa officer refusing his application for permanent residence on the basis that his daughter, Rachel, who has hypotonic cerebral palsy with cerebellar dysfunction, is inadmissible to Canada on health grounds because her condition might reasonably be expected to cause excessive demand on social services. The fact that young Rachel Barlagne is inadmissible means that the applicant and his family (his wife Sophie and their two daughters, Rachel and Lara) are inadmissible.

[2] Cases like this are always difficult to deal with, particularly when they involve a young girl who is intelligent and endearing, if not exceptional, according to those who know her. However, unlike the application for exemption under subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act), judicial review is subject to specific rules that apply to all cases, even those where strong sympathy for the applicant and his family would favour a different outcome. After thoroughly reviewing the record, the Court cannot allow Mr. Barlagne's application for the following reasons.

Background

[3] The applicant has a Master's in computer science (software engineering). Prior to moving to Montréal and beginning in January 2003, he was the manager and the person in charge of software development for a company called Esprit Technologie s.a.r.l. He was also the majority shareholder (45% of outstanding shares / controlling interest).

[4] After discussions with an investment officer at the Canadian Embassy and, *inter alia*, an exploratory trip to Quebec, the company Esprit Technologie Inc. (ETI) was created in Quebec, and Mr. Barlagne was appointed its Executive Vice-president. The aim of the company was to provide implementation services and to design software adapted to a clientele of libraries and publishing houses in Canada and throughout the entire Francophonie.

[5] With the support of the Canadian Embassy and Investissement Québec, the applicant subsequently obtained a work permit[1] (July 23, 2005, to July 31, 2008) and visitors visas for his family members. They then moved to Quebec.

[6] Mrs. Barlagne, who has only a visitor's visa, has not worked since her arrival.[2] Lara was immediately enrolled in school, and her young sister Rachel, who first went to an integrated day care centre, has been enrolled in École Victor-Doré, a specialized public school for disabled children, since September 2007.

[7] On June 14, 2007, Mr. Barlagne submitted an application for permanent residence, and he has not left Quebec since.

[8] On February 20, 2008, mandatory medical forms were sent to the applicant, and on March 20, 2008, Rachel's initial medical report was completed and signed by Dr. Charles Chocron.

[9] On May 20 and May 23, 2008, requests for additional information were sent. On June 30, 2008, in response to these requests, École Victor-Doré sent a letter setting out the services that Rachel Barlagne's physical condition requires. That letter stated that, for the 2008-2009 school year, Rachel was going to attend a special education class of nine students and that she would be

[1] This permit was renewed and is now valid until July 31, 2011.
[2] In France, before leaving for Canada, Ms. Barlagne worked as a communications officer at the Saint-Claude city hall, Guadeloupe.

receiving the services of a physiotherapist, an occupational therapist, a supply teacher in communication as well as in technical assistance to facilitate her communication.

[10] After a reminder letter dated August 11, 2008, Mr. Barlagne completed his file. On August 13, 2008, Immigration Canada's medical officer, Dr. Hélène Quévillon, made a diagnosis of general developmental delay, a [TRANSLATION] "medical condition that might reasonably be expected to cause excessive demand on social services."

[11] In a letter dated September 2, 2008 (the fairness or "second chance letter"), the visa officer advised the applicant of the diagnosis in the following words and also informed him that his application for permanent residence could be refused under subsection 38(1) of the Act:

> [TRANSLATION]
>
> Narrative: This applicant, who will soon turn six, presents a general developmental delay associated with hypotonic cerebral palsy with cerebellar dysfunction. She presents an ataxia but is able to move on her hands and knees. Her balance is precarious. She requires assistance to stand. She presents a significant speech delay. The latest psychological report does not show any intellectual impairment. She will be in a class of nine students (ratio 1/8-10) in a specialized school for physically disabled children. The class has an attendant for approximately 8 hours a week. She is followed in physiotherapy and occupational therapy. She also has the support of a supply teacher in communication. This applicant requires specialized education services. These services are expensive. Based on a review of the results of the medical assessments and all the reports that I received concerning this applicant's health condition, I find that she presents a medical condition that might reasonably cause an excessive demand on social services. In particular, this condition will likely cause a need for services that will exceed the average Canadian per capita costs over a five-year period. Consequently, this applicant is inadmissible under section 38(1)(c) of the Immigration and Refugee Protection Act. Social services required and associated costs:

> Primary school: In accordance with the standards and definitions of the Ministère de l'Éducation, des Loisirs et des Sports, school boards are required, under the Basic school regulation, to provide special services to disabled children. The additional allowance for these services is approximately $7,045 for each year of primary school.

[12] The officer directed the applicant to provide additional information or documents by November 1, 2008, as follows:

> [TRANSLATION]
>
> Before I make my final decision, you may submit additional information or documents relating to the above illness, medical condition, diagnosis or medical opinion. You may also submit relevant information addressing the issue of excessive demand if it applies to your case.

[13] On October 17, 2008, counsel for the applicant filed an access to information request in order to obtain all the files in Canada and at the Consulate General of Canada in Detroit as well as the medical records related to the applicant's application for permanent residence. A little over 100 documents were received on November 28, 2008. In the meantime, on November 3, 2008, the visa officer received a request from counsel for more time to submit documents. An extension of 45 days was granted, i.e., until December 19, 2008. On December 17, 2008, counsel sent a letter and 51 attachments[3] to the visa officer, and on January 12, 2009, another letter containing corrections to the letter of December 17, 2008 (collectively "the Comments").

[3] See the *Table of Attachments* in Annex A.

[14] As indicated in the Table of Attachments (Annex A), the applicant submitted information on various topics such as[4] the representations made to Mr. Barlagne by the investment officer at the Canadian Embassy, resumés including Mrs. Sophie Barlagne's, her volunteer activities, Lara's academic transcripts, numerous documents about Rachel's condition, her development at school and in therapy (diagnosis and prognosis), the care she received in the past (including music therapy and riding therapy), jurisprudence and agreements between France and Quebec.[5]

[15] In addition, Mr. Barlagne submitted a detailed plan for the 2009-2010 year in his Comments, as required by Operational Bulletin 063 (the Bulletin). In that plan, the applicant indicated that Rachel would continue to attend École Victor-Doré, a public institution that, as I said, offers special education and rehabilitation services. However, the applicant stated that, although he intended to continue to send his daughter to that school, the family would use specialists in the private sector to provide the rehabilitation services that Rachel requires instead of the services offered by the rehabilitation centre affiliated with École Victor-Doré, i.e., speech therapy, physiotherapy and occupational therapy (support services). It also appears that young Rachel receives assistance four times a week from Marie-Hélène Gilbert, a specialized teacher, to help her acquire more independence in various life activities.

[4] This, of course, is not intended to be an exhaustive description of the documentation.
[5] See letter confirming that the France-Québec agreement is not relevant where French nationals become permanent residents under the Act, at page 400 of the Certified Record of the Consulate General of Canada. It is clear that the officer considered this argument.

[16] It should be noted, in particular, that three types of financial documents were provided: a letter from ETI's accountant[6] confirming the incorporation, activities, head office, number of employees (2), the company's share ownership (tab 1), a simplified statement of financial position for the French company, Esprit Technologie s.a.r.l., for the 2005 fiscal year (tab 45) and certified copies of bank statements in euros from the Caisse d'épargne Provence-Alpes-Corse/Guadeloupe for Mrs. Barlagne and her two children dated 2008 (tab 37). At tabs 32 and 33, the applicant included the budgetary rules for the 2008-2009 school year of the Ministère de l'éducation du loisir et du sport (MELS), as well as the allowances for teaching resources prepared and issued by Mr. Serge Dupéré. Last, tab 38 contains the Bulletin dated September 24, 2008, which deals with the assessment of excessive demand on social services by Citizenship and Immigration Canada.

[17] On January 15, 2008, the visa officer reviewed the documents sent by counsel for the applicant, listed them in his own words and commented on them briefly in his CAIPS notes. On January 21, 2008, certain documents were transferred to the medical officer who sent her comments on February 11 and advised the visa officer that, in her view, the inadmissibility assessment should not be changed. Dr. Quévillon noted that Rachel Barlagne still required special education services, for which she assessed an additional allowance of $5,259 $.

[6] He also indicated that ETI is a company in the same group as CD Consulting s.a.r.l. However, there was no evidence before the officer about the latter company or its connection, if any, with Esprit Technologie s.a.r.l. Moreover, this letter contains no information about the finances of the Quebec company.

[18] However, she requested two other documents that apparently were not sent to her. On March 4, based on a review of the two additional documents, the medical officer advised the visa officer that they did not change her opinion.

[19] On March 11, 2009, the visa officer sent a short letter (1 page) refusing the applicant's visa application under subsections 11(1), 38(1) and 42(a) of the Act. On May 15, 2009, Mr. Barlagne filed an application for leave and judicial review in Federal Court.

[20] The parties filed a number of affidavits in this matter. Although the applicant and the respondent submitted contradictory evidence regarding, on the one hand, the failure of the Canadian Embassy and Investissement Québec to inform Mr. Barlagne that Rachel's health condition could preclude admissibility and, on the other hand, Mr. Barlagne's failure to declare his daughter's health condition in his applications for a work permit, it is not helpful to discuss this here. The representations or possible omission by the official at the Canadian Embassy are not relevant to assessing the legality of the impugned decision. As we will see, the visa officer had no discretion to take such a factor into account, a factor that could be relevant on an application for exemption based on humanitarian and compassionate considerations under section 25 of the Act.

[21] As for the "unclean hands" argument based on the failure to declare Rachel's health condition in the applicant's application for a work visa and in his application to change his conditions of stay (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at paras. 38 to 41; *Thanabalasingham v. Canada (Minister of Citizenship and Immigration*)),

2006 FCA 14, 263 D.L.R. (4th) 51 at paras. 9 and 17), the Court does not intend to exercise its discretion to refuse to consider the merits of the case. In fact, the Court of Appeal in *Thanabalasingham* set out guidelines regarding the exercise of this power, and the Court must assess certain factors (see, in particular, paras. 9 and 10) to strike a balance between the need to prevent the abuse of the judicial process and the protection of the applicant's rights. In this case, I am satisfied that the Court must exercise its discretion to hear the application on its merits even if the Court assumes, without deciding, that there was a failure to declare.

Issues

[22] At the outset, it is appropriate to deal with a preliminary issue raised by the respondent in his supplementary memorandum, i.e., that the applicant's record contains fresh evidence, such as tab 52 and the two statements dated October and November 2009 attached as Exhibits E and F to the applicant's supplementary affidavit.[7]

[23] It is settled law that, on a judicial review, the Court must assess the validity of the decision on the basis of the evidence that was before the initial decision-maker. In this case, since the fresh evidence was not relevant to procedural fairness arguments, those documents and the related paragraphs in Mr. Barlagne's affidavit will not be considered: *Ali v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 106, 2008 F.C.J. No. 122 (QL) at para. 26; *Lemiecha (Litigation Guardian of) v. Canada (Minister of Employment and Immigration)* (1993), 72 F.T.R.

[7] This is information relating to the bank account or Mr. Barlagne's financial situation that was not before the officer.

49, 24 Imm. L.R. (2d) 95 at paras. 3, 4; *Abbott Laboratories Ltd. v. Canada (Attorney General)*, 2008 FCA 354, [2009] 3 F.C.R. 547 at paras. 37, 38.

[24] Although the applicant raised a large number of issues in his initial memorandum, which repeated his Comments in detail, and in his supplementary memorandum, they can be consolidated as follows:

1. Did the visa officer fail to observe a principle of natural justice, procedural and administrative fairness, that he was required to observe?
2. Did the visa officer and the medical officer disregard arguments and evidence submitted in response to the fairness letter and was their decision unreasonable?

[25] The applicant also submits that the visa officer did not consider his argument that subsection 38(1) of the Act and its application in this case is unconstitutional because it is contrary to section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

Relevant statutory provisions

[26] The relevant statutory provisions read as follows:

- *Immigration and Refugee Protection Act*, S.C. 2001, c. 27

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

(2) The officer may not issue a visa or other document to a foreign national whose sponsor does not meet the sponsorship requirements of this Act.

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

(2) Ils ne peuvent être délivrés à l'étranger dont le répondant ne se conforme pas aux exigences applicables au parrainage.

38. (1) A foreign national is inadmissible on health grounds if their health condition

(a) is likely to be a danger to public health;

(b) is likely to be a danger to public safety; or

(c) might reasonably be expected to cause excessive demand on health or social services.

(2) Paragraph (1)(c) does not apply in the case of a foreign national who

(a) has been determined to be a member of the family class and to be the spouse, common-law partner or child of a sponsor

38. (1) Emporte, sauf pour le résident permanent, interdiction de territoire pour motifs sanitaires l'état de santé de l'étranger constituant vraisemblablement un danger pour la santé ou la sécurité publiques ou risquant d'entraîner un fardeau excessif pour les services sociaux ou de santé.

(2) L'état de santé qui risquerait d'entraîner un fardeau excessif pour les services sociaux ou de santé n'emporte toutefois pas interdiction de territoire pour l'étranger:

a) dont il a été statué qu'il fait partie de la catégorie « regroupement familial » en tant qu'époux, conjoint de fait

within the meaning of the regulations;

(b) has applied for a permanent resident visa as a Convention refugee or a person in similar circumstances;

(c) is a protected person; or

(d) is, where prescribed by the regulations, the spouse, common-law partner, child or other family member of a foreign national referred to in any of paragraphs (a) to (c).

ou enfant d'un répondant dont il a été statué qu'il a la qualité réglementaire;

b) qui a demandé un visa de résident permanent comme réfugié ou personne en situation semblable;

c) qui est une personne protégée;

d) qui est l'époux, le conjoint de fait, l'enfant ou un autre membre de la famille — visé par règlement — de l'étranger visé aux alinéas a) à c).

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(a) their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible; or

(b) they are an accompanying family member of an inadmissible person.

42. Emportent, sauf pour le résident permanent ou une personne protégée, interdiction de territoire pour inadmissibilité familiale les faits suivants:

a) l'interdiction de territoire frappant tout membre de sa famille qui l'accompagne ou qui, dans les cas réglementaires, ne l'accompagne pas;

b) accompagner, pour un membre de sa famille, un interdit de territoire.

- *Immigration and Refugee Protection Regulations*, SOR/2002-227

1. (1) The definitions in this subsection apply in the Act and in these Regulations. . . .

1. (1) Les définitions qui suivent s'appliquent à la Loi et au présent règlement. […]

"excessive demand" means

« fardeau excessif » Se dit:

(a) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years immediately following the most recent medical examination required by these Regulations, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years; or

a) de toute charge pour les services sociaux ou les services de santé dont le coût prévisible dépasse la moyenne, par habitant au Canada, des dépenses pour les services de santé et pour les services sociaux sur une période de cinq années consécutives suivant la plus récente visite médicale exigée par le présent règlement ou, s'il y a lieu de croire que des dépenses importantes devront probablement être faites après cette période, sur une période d'au plus dix années consécutives;

(b) a demand on health services or social services that would add to existing waiting lists and would increase the rate of mortality and morbidity in Canada as a result of an inability to provide timely services to Canadian citizens or permanent residents. . . .

b) de toute charge pour les services sociaux ou les services de santé qui viendrait allonger les listes d'attente actuelles et qui augmenterait le taux de mortalité et de morbidité au Canada vu l'impossibilité d'offrir en temps voulu ces services aux citoyens canadiens ou aux résidents permanents.

"social services" means any social services, such as home care, specialized residence and residential services, special education services, social and

« services sociaux » Les services sociaux — tels que les services à domicile, les services d'hébergement et services en résidence

vocational rehabilitation services, personal support services and the provision of devices related to those services,

spécialisés, les services d'éducation spécialisés, les services de réadaptation sociale et professionnelle, les services de soutien personnel, ainsi que la fourniture des appareils liés à ces services:

(a) that are intended to assist a person in functioning physically, emotionally, socially, psychologically or vocationally; and

a) qui, d'une part, sont destinés à aider la personne sur les plans physique, émotif, social, psychologique ou professionnel;

(b) for which the majority of the funding, including funding that provides direct or indirect financial support to an assisted person, is contributed by governments, either directly or through publicly-funded agencies.

b) dont, d'autre part, la majeure partie sont financés par l'État directement ou par l'intermédiaire d'organismes qu'il finance, notamment au moyen d'un soutien financier direct ou indirect fourni aux particuliers.

34. Before concluding whether a foreign national's health condition might reasonably be expected to cause excessive demand, an officer who is assessing the foreign national's health condition shall consider

34. Pour décider si l'état de santé de l'étranger risque d'entraîner un fardeau excessif, l'agent tient compte de ce qui suit:

(a) any reports made by a health practitioner or medical laboratory with respect to the foreign national; and

a) tout rapport établi par un spécialiste de la santé ou par un laboratoire médical concernant l'étranger;

(b) any condition identified by the medical examination.

b) toute maladie détectée lors de la visite médicale.

Education Act, R.S.Q. c. I-13.3

1. Every person is entitled to the preschool education services and elementary and secondary school instructional services provided for by this Act and by the basic school regulation made by the Government under section 447, from the first day of the school calendar in the school year in which he attains the age of admission to the last day of the school calendar in the school year in which he attains 18 years of age, or 21 years of age in the case of a handicapped person within the meaning of the Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration (chapter E-20.1).

Every person is also entitled to other educational services, student services and special educational services provided for by this Act and the basic school regulation referred to in the first paragraph and to the educational services prescribed by the basic vocational training regulation established by the Government under section 448, within the scope of the programs offered by the school board.

The age of admission to preschool education is 5 years

1. Toute personne a droit au service de l'éducation préscolaire et aux services d'enseignement primaire et secondaire prévus par la présente loi et le régime pédagogique établi par le gouvernement en vertu de l'article 447, à compter du premier jour du calendrier scolaire de l'année scolaire où elle a atteint l'âge d'admissibilité jusqu'au dernier jour du calendrier scolaire de l'année scolaire où elle atteint l'âge de 18 ans, ou 21 ans dans le cas d'une personne handicapée au sens de la Loi assurant l'exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale (chapitre E-20.1).

Elle a aussi droit, dans le cadre des programmes offerts par la commission scolaire, aux autres services éducatifs, complémentaires et particuliers, prévus par la présente loi et le régime pédagogique visé au premier alinéa ainsi qu'aux services éducatifs prévus par le régime pédagogique applicable à la formation professionnelle établi par le gouvernement en vertu de l'article 448.

L'âge d'admissibilité à l'éducation préscolaire est fixé à

on or before the date prescribed by the basic school regulation; the age of admission to elementary school education is 6 years on or before the same date.

5 ans à la date déterminée dans le régime pédagogique; l'âge d'admissibilité à l'enseignement primaire est fixé à 6 ans à la même date.

2. Every person no longer subject to compulsory school attendance is entitled to the educational services prescribed by the basic regulations established by the Government under section 448, within the scope of the programs offered by the school board pursuant to this Act.

2. Toute personne qui n'est plus assujettie à l'obligation de fréquentation scolaire a droit aux services éducatifs prévus par les régimes pédagogiques établis par le gouvernement en vertu de l'article 448, dans le cadre des programmes offerts par la commission scolaire en application de la présente loi.

3. The educational services provided for by this Act and prescribed by the basic school regulation established by the Government under section 447 shall be provided free to every resident of Quebec entitled thereto under section 1.

3. Tout résident du Quebec visé à l'article 1 a droit à la gratuité des services éducatifs prévus par la présente loi et par le régime pédagogique établi par le gouvernement en vertu de l'article 447.

Literacy services and the other learning services prescribed by the basic school regulation for adult education shall be provided free to residents of Quebec contemplated in section 2, subject to the conditions prescribed by the said regulation.

Tout résident du Quebec visé à l'article 2 a droit à la gratuité des services d'alphabétisation et à la gratuité des autres services de formation prévus par le régime pédagogique applicable aux services éducatifs pour les adultes, aux conditions déterminées dans ce régime.

Basic school regulation for preschool, elementary and secondary education, 2000 G.O.Q. 2, 2593

5. Student services provided under section 4 must include the following:

(1) services designed to promote student participation in school life;
(2) services designed to educate students about their rights and responsibilities;
(3) sports, cultural and social activities;
(4) support services for the use of the documentary resources of the school library;
(5) academic and career counselling and information;
(6) psychological services;
(7) psychoeducational services;
(8) special education services;
(9) remedial education services;
(10) speech therapy services;
(11) health and social services;
(12) services in spiritual care and guidance and community involvement.

5. Doivent faire partie des services complémentaires visés à l'article 4 des services:

1° de promotion de la participation de l'élève à la vie éducative;
2° d'éducation aux droits et aux responsabilités;
3° d'animation, sur les plans sportif, culturel et social;
4° de soutien à l'utilisation des ressources documentaires de la bibliothèque scolaire;
5° d'information et d'orientation scolaires et professionnelles;
6° de psychologie;
7° de psychoéducation;
8° d'éducation spécialisée;
9° d'orthopédagogie;
10° d'orthophonie;
11° de santé et de services sociaux;
12° d'animation spirituelle et d'engagement communautaire

Analysis

[27] The parties did not make any written representations as to the appropriate standard of review, and at the hearing they confirmed that there was no dispute on this point.

[28] In accordance with the principles developed by the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 (*Dunsmuir*), the Court is satisfied that questions of law and breach of procedural fairness are reviewable against the standard of correctness: *Hilewitz v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 S.C.R. 706 at para. 71 (*Hilewitz*); *Sketchley v. Canada (Attorney General)*, 2005 FCA 404**,** [2006] 3 F.C.R. 392 at paras. 52-55.

[29] The application of statutory provisions to the facts of a case is a question of mixed fact and law, and the appropriate standard is reasonableness: *Rashid v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 157, [2010] F.C.J. No. 183 (QL) at paras. 12-15; *Sapru v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 240, [2010] F.C.J. No. 270 (QL) at paras. 13-15.

[30] Before examining the issues, it is appropriate to clearly identify why it was thought that Rachel would cause an excessive demand, since this will lead to a better understanding of how the errors raised by the applicant are relevant.

[31] Under subsection 38(1) of the Act, the visa officer must declare a person inadmissible if that person's health condition might reasonably be expected (reasonable probability)[8] to cause excessive

[8] *Hilewitz*, paras. 58 and 60.

demand on social services.[9] This term is defined in the *Immigration and Refugee Protection Regulations,* SOR/2002-227. It is clear that excessive means that the anticipated costs of health and social services would likely exceed average Canadian per capita costs over a period of five years. Social services include special education services, for which the majority of the funding is provided directly or indirectly by the governments (through publicly-funded agencies).

[32] In Quebec, unlike the situation in other provinces such as Ontario, special education services are provided at no cost, regardless of the parents' ability or willingness to pay, until the child reaches the age of 21.

[33] That being said, in *Hilewitz*[10], the Supreme Court of Canada stated that the medical officer or the visa officer must carry out an individualized assessment of the impairment and the associated costs.

[34] It should be pointed out that in *Hilewitz,* the two families involved were expecting to move to Ontario and that the parents had clearly said they intended to send their child to a private school, which would substantially reduce the costs of social services required from the state. Accordingly, there was only a remote possibility that this family would use the public system if it experienced short- or mid-term financial difficulties.

[9] The Court is only dealing here with the parts of the legislation that are the most relevant in this case.
[10] In this decision, the Court discussed paragraph 19(1)(a), which is essentially the same as the current subsection 38(1).

[35] In this case, as I said, Mr. Barlagne filed a plan that specifically stated that young Rachel would be sent to École Victor-Doré—a public institution— and that he would pay for all the rehabilitation services that had previously been provided at no cost by the rehabilitation centre affiliated with the school. The applicant's ability to pay was therefore only relevant with respect to the cost of support services.

[36] The applicant himself had provided with his Comments documentation indicating the allowances that the MELS pays to the school boards and schools. It appears that the amount per primary school student[11] consists of an allowance for teaching, i.e., for the cost of the teaching staff, and an allowance for other expenses (including support services).

[37] At tab 33 of the documents provided by the applicant, it also appears that the allowance for teaching resources by individual represents an average allowance per student and is only a rough guide because, at that point in time, the number of students for the current academic year had not been finalized. It is clear that, since the Act requires a prospective assessment, i.e., over a period of five years, the visa officer and the medical officer cannot obtain exact figures for each individual whose file they are dealing with. The statutory definition therefore necessarily involves using reasonable estimates.

[11] A student recognized for purposes of funding is a student who was present on September 30, 2008, and whose attendance was confirmed during the 2008-2009 school year: Budgetary rules for the 2008-2009 school year, certified record of the Consulate General of Canada, p. 185.

[38] The Bulletin clearly explains how the calculation is done and the procedure to follow in light of the most recent jurisprudence at the time it was adopted. The document clearly indicates how the average per capita costs referred to in the Act are established. The threshold figure is the Canadian Institute for Health Information (CIHI) aggregate, which represents the average per capita health expenditure; a supplementary amount is added to that figure to account for the missing expenditures for certain social services. In September 2008, it appears that the amount that had been used since January 2003 was $4,057 ($3839 + $ 218), while it was set at $4,806 ($4,548 established by the CIHI plus $258) in September 2008. That amount must then be multiplied by 5 to establish the threshold determined by the Act.

[39] In this case, it appears from the CAIPS notes and the documentation in the record that the medical officer used the figures suggested by the applicant to establish the average cost of the services for which the state would continue to be responsible under the proposed plan, i.e., the additional allowance for the teaching staff in a class of 1 to 10 students[12] for a child disabled by slight motor or organic disability or by a language disability (level 1 disability). That is, $9,023 minus the average cost of a regular student at the same level, $3,764, for an additional allowance of $5,259 per year. This means than even considering that Rachel is otherwise generally in good health (she has had only a little bronchitis and illnesses of children her age), the cost of social services alone, without considering possible increases in costs in future years is above the threshold set by the Act. In the plan and documentation that the applicant provided, there is nothing to indicate that Rachel will be able to attend a regular school in the next five years, even if she were to make

[12] A letter dated June 30, 2008, from André Martin, director of the École Victor-Doré, confirmed that Rachel was in a class of nine students.

enormous physical progress and her needs in terms of adaptive equipment, fittings, (orthotics) and support services diminish.

Procedural fairness

[40] That being said, was there a breach of procedural fairness? The applicant submits in his supplementary memorandum that it was not until he read the respondent's affidavit and memorandum that he became aware of a number of documents concerning the assessment of Rachel's health condition, for example, Dr. Chocron's report, which the medical officer relied on to form her opinion. He specifically refers to Exhibits B to J and N of the affidavit of Ms. Révah, which were not sent to him in response to his access to information request. In his view, this breach prevented him for providing an adequate response to the fairness letter.

[41] The applicant also contends in his initial memorandum that the medical officer and the visa officer did not document in writing, as the Bulletin requires, all the steps of their analysis or all their notes, for example, Dr. Quévillon's calculation of the amount included in her medical notification of August 18, 2008, reproduced in the fairness letter, or the calculation that was done to arrive at the new assessment in 2009. Mr. Barlagne believes that this is a breach of the duty of procedural fairness, which includes providing detailed and complete reasons for the process that was followed.

[42] The respondent argues that the CAIPS notes are sufficiently detailed and provide all the necessary information. He also states that documents B to D and F to H, which deal with Rachel's health condition, did not need to be disclosed because the procedural fairness letter contained a

complete description of the medical officer's medical notification. Moreover, through his access to information request, the applicant obtained the MELS documentation establishing the costs related to the diagnosis and prognosis described in the fairness letter. With respect to documents I, J and E, they were sent to counsel for the applicant.

[43] We note first that the manager of access to information requests explained that these documents were not sent to counsel for Mr. Barlagne because, in her view[13], the application was directed to Mr. Barlagne's file while the documents in question were in Rachel Barlagne's personal file. The applicant disputes this, saying that the access to information section should have known that it had to include Rachel's file, which also bore the same number that he had referred to. It is not necessary to determine or discuss this issue in more detail because there are other remedies available under the *Access to Information Act*, R.S.C. 1985, c. A-1, to deal with such issues.

[44] What must be determined is whether the decision-maker breached its duty of procedural fairness in this application for permanent residence.

[45] The applicant relies on the decisions in *Wong v. Canada* (*Minister of Citizenship and Immigration*) (1998), 141 F.T.R. 62, 42 Imm. L.R. (2d) 17 (F.C.) (*Wong*) and *Jang v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 312, 278 N.R. 172 (*Jang*).

[13] This service is different from the visa officer's.

[46] In my view, the *Jang* decision does not support the applicant's argument. In that case, the Court merely confirmed that a visa officer must give an applicant a second chance by sending a fairness letter, which was done in this case. In addition, it is quite clear from paragraphs 13 to 14, which are reproduced here, that a letter setting out the medical opinion received and describing the diagnosis, prognosis and social services was sufficient to satisfy the requirement to act fairly.

> [13] It is well established that a duty of fairness attaches to the process by which a visa officer considers and decides an application for an immigrant visa. Writing for a unanimous panel of this Court in *Muliadi v. Canada (M.E.I)* [1986] 2 F.C. 205 (F.C.A.) at p. 215 Stone J.A. stated the principle as follows:
>
> > . . . I think it was the officer's duty before disposing of the application to inform the appellant of the negative assessment and to give him a fair opportunity of correcting or contradicting it before making the decision required by the statute.
>
> [14] In my view the duty of fairness in immigration cases does not require the visa officer to divulge to a prospective immigrant the complete details of the medical officers' method of evaluation or the various facets of the specific decision-making processes adopted by ministerial officials. Rather, the duty of fairness requires that a visa officer give an appellant an adequate opportunity to respond to any negative medical assessment, provided always that the medical notification form prepared by the medical officer must clearly enunciate the reasons for the negative assessment.

[47] The *Wong* decision may be distinguished because the fairness letter in that case did not contain sufficient information, and the applicant had asked the visa officer twice for the missing information, to no avail.

[48] In addition, *Khan v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 345, [2002] 2 F.C. 413 (*Khan*), the most recent Court of Appeal decision in this regard, is interesting because it comments on the *Wong* decision in a case where the appellant, who was relying on that case, argued that his right to procedural fairness had been denied because he had not been given an adequate opportunity to respond to the visa officer's concerns about excessive demand. Although the issue of excessive demand will be discussed further on, this case is relevant even with respect to the allegation that there was missing information or documentation that the medical officer had based his opinion on.

[49] First, after discussing *Wong* and dismissing the applicant's argument, the Federal Court of Appeal referred to the response to the fairness letter to verify whether he had been denied his right to comment (see paras. 19 to 25). Second, based on the factors laid out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193 at paras. 21 to 28 (*Baker*), the Court analysed the content of a visa officer's duty of procedural fairness in circumstances similar to the case before us. In addition, the Federal Court of Appeal noted the following at paragraph 29:

> [29] I agree that, where an applicant is clearly advised of the medical diagnosis and prognosis, and of the services likely to be required, he or she effectively knows the grounds for the potential refusal and has the knowledge necessary to pursue the matter further. In these circumstances, the Minister is not normally obliged to disclose in the fairness letter the detail supporting the conclusion that a visa could be refused because admission of the person concerned is likely to cause excessive demands on medical or social services.

[50] Based on these authorities, it appears that the fairness letter of September 2, 2008, which reproduced in their entirety the medical officer's conclusions in her medical notification of August 18, 2008, and which advised the applicant of the diagnosis, prognosis, the social services required and their associated costs, was sufficient to fulfil the visa officer's duty to act fairly. In addition, as in *Khan*, a review of the applicant's exhaustive response confirms that he was not prevented from understanding why his application was refused and providing a full and complete answer to the officer.

[51] In addition and finally, as I indicated above, it is absolutely clear that, regardless of the prognosis or even the diagnosis applicable to this case, there is no dispute, and it is probable, if not certain, that young Rachel Barlagne would use the special education services (teaching resources) offered at École Victor-Doré.

[52] As for the adequacy of the reasons, we note first that the September 24, 2008 Bulletin cannot be relevant to the analysis of the notes or the medical notification dated August 2008. With respect to the 2009 assessment, the Court is satisfied that the CAIPS notes are sufficiently complete for the applicant to exercise his rights and for the Court to conduct a judicial review (*VIA Rail Canada Inc. v. Lemonde*, [2001] 2 F.C. 25, 193 D.L.R. (4th) 357 at paragraph 19).

[53] Indeed, the medical officer indicated that she calculated the additional allowance by using the figures provided by the applicant in Mr. Dupéré's document (tab 33 of the documentation provided with the Comments). She also indicated that she used the scale for disabled students 1.

This is completely sufficient to justify the calculation that is easily done with this data. The medical officer did not consider the support services provided by the rehabilitation centre affiliated with École Victor-Doré because the additional allowance for the cost of teachers already exceeded the threshold set out in the Act, as indicated earlier. She stated in her notes: [TRANSLATION] "The other documents provided as well as the financial ability or the ability and intention to contribute to the future costs of social services support to set aside the excessive demand finding are subject to the immigration officer's assessment." She therefore did not have to comment any further on them.

[54] The Court has read and re-read the CAIPS notes and is satisfied that the recorded explanations and notes are sufficient in the context of this case to satisfy the requirements of the Bulletin although that in itself is not the standard to apply, it being understood that the duty of fairness considers this element, among others, as the Federal Court of Appeal stated in *Via Rail* above and the Supreme Court of Canada in *Baker*.

[55] The Court finds that there was no breach of the duty to act fairly.

Error in law

[56] Mr. Barlagne raises only one error in law although his argument on this issue is not very clear. At paragraph 38(g) of his Comments, he says:

> [TRANSLATION]
>
> The budgetary policy of the Ministère de l'éducation, du loisir et du sport du Quebec that was used to determine the additional allowance of $7,045 (although no assessment or calculation was submitted to that effect) highlights other categories of persons who require more

> social services but who are not considered to cause “an excessive demand” in an immigration process. This distinction between immigrants breaches the Charter of Rights and Freedoms.

[57] The only category of immigrants identified is the category of school children in a welcoming environment supportive of learning French for which MELS pays an additional adjustment of $2,127 according to the document provided at tab 33.

[58] On that basis, the applicant concludes at paragraph 43 of his Comments that the fact that it is acceptable that a category of children that place more demand on Quebec’s social services are not considered to cause an excessive demand under subsection 38(1) of the Act whereas disabled children like the applicant are. Thus, he states that this inadmissibility for permanent resident status is based solely on the disability and is therefore contrary to the Charter.

[59] He argues that the visa officer did not consider the fact that he was challenging the constitutionality of subsection 38(1) of the Act. At the hearing, he emphasized that the officer had jurisdiction to conduct this analysis because he has access to counsel in his Department.

[60] The submissions on this issue were very brief, even though the applicant indicated that this was a very important argument in his case. Basically, he is relying on the Supreme Court of Canada decision in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, 170 D.L.R. (4e) 1, as well as on the *Convention on the Rights of the Child*, without giving any details as

to how this Convention could have a bearing on this case. He refers to paragraphs 38 to 43 of his Comments.

[61] It should first be pointed out that in this case, the applicant did not serve notice on the Attorney General of Canada or on the attorney general of each province as required by section 57 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended. Although in his notice of application, the applicant did not make a specific submission in that regard, he clearly indicated at the hearing that he was challenging the constitutional applicability or operability of subsection 38(1). The absence of such a notice in this case is fatal since it is a *sine qua non* condition for entertaining the constitutional argument raised by the applicant: *Canada (Minister of Canadian Heritage) v. Mikisew Cree First Nation*, 2004 FCA 66, [2004] 3 F.C.R. 436 at paras. 75-78, rev'd on other grounds by [2005] 3 S.C.R. 388, 259 D.L.R. (4th) 610; *Bekker v. Canada*, 2004 FCA 186, 323 N.R. 195 at paras. 8, 9; *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1993] 1 F.C. 427, 57 F.T.R. 180 (F.C.) at paras. 90-92.

[62] Moreover and in any event, the Court is not satisfied that the visa officer in this case had jurisdiction to consider this constitutional argument or take it into account because he was bound to apply the existing Act. In fact, the Act does not confer any discretion or jurisdiction in that regard. Even in applying the test set out in *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504 at para. 48, it seems to me that that the finding in *Gwala v. Canada (Minister of Citizenship and Immigration)*, [1998] 4 F.C. 43, 147 F.T.R. 246 (F.C.) at paras. 10 to 22, affirmed on appeal by [1999] 3 F.C. 404, 242 N.R. 173 (F.C.A.) at paras. 1 to 3, with regard to

the lack of jurisdiction of senior immigration officers to decide constitutionality applies in this context.

[63] Finally, it should be noted that the applicant did not submit sufficient evidence to establish discrimination between different types of immigrants because the class he describes at paragraph 42 is not one that exceeds the threshold set out in the Act. In fact, as the applicant seems to understand very well at paragraph 41 of his Comments, it is not the total cost to MELS that must be compared to the $4,806 threshold, but only the additional allowance of $2,127 which, over five years, is below the threshold set out in the Act. There is therefore no evidence of differential treatment of a class of immigrants as alleged by the applicant. As the Supreme Court of Canada has stated on many occasions, it is important not to trivialize the review of Charter provisions, which requires a well developed factual context. This is especially important given that the constitutionality of subsection 38(1) having regard to section 15 of the Charter has already been reviewed and affirmed by the Court (*Chesters v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 727, [2003] 1 F.C 361).

[64] Moreover, in *Hilewitz*, the Supreme Court of Canada confirmed that subsection 38(1) of the Act is not based on an analogous ground since this subsection emphasizes excessive demand and not an illness or disability. The concept of excessive demand is itself an individualized assessment that takes into account the concrete situation of the child and the child's family as well as the reasonably expected costs for an individual. The fact that scales must be used in the assessment of reasonable costs does not change the character or the emphasis of the legislative provision.

[65] The Court is satisfied that the visa officer and the medical officer performed an individualized analysis of the social services that Rachel Barlagne would probably need in the next five years. Now, finally, we must determine whether the decision is reasonable having regard to the other errors raised by the applicant.

Other errors

[66] Under the standard of review of reasonableness, the Court must determine whether the decision falls within a "range of possible, acceptable outcomes which are defensible in respect of the facts and law."[14] It is not a matter of merely having the Court substitute its own assessment of the evidence and arguments for that of the decision-maker on whom Parliament has conferred this mandate.

[67] The applicant argues that the visa officer and the medical officer did not take all of his documentation and arguments into account, particularly those regarding Rachel's state of health, such as the letter from Ms. Josée Ouimet, Head of the School Rehabilitation Program at the Ste-Justine Hospital (tab 49), which deals with support services.[15] However, in this respect, the Court notes there is a presumption that the decision-maker has considered and assessed all of the evidence before the decision-maker.[16]

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[14] *Dunsmuir*, para 47.
[15] The CAIPS notes indicate that he properly reviewed this letter which he describes as indicating that "school offers fewer rehabs services as child ages; and parents can call on private service". As for the medical officer, see para. 53.
[16] *Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 598 (QL) (F.C.A.), *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317, 36 A.C.W.S. (3d) 635 (F.C.A.).

[68] He also contends that the decision-makers arrived at erroneous findings of fact because they did not take into account his willingness and ability to pay, past family practices for supporting Rachel, their detailed plan, the family and community support she receives, the family's monetary and human support, the uprooting and negative impact on her sister Lara, the incentives to relocate Mr. Barlagne's business, etc.

[69] As I mentioned earlier, none of the documents or arguments described above has a bearing on Rachel's need[17] for specialized education or the fact that, according to the plan submitted, the state would have to cover an additional allowance for the teaching resources. It should be recalled that this is the main reason why the medical officer and the visa officer found that she was inadmissible.

[70] There is no doubt in the Court's mind that the medical officer took into account the applicant's submissions regarding Rachel's condition since, in her evaluation of the additional allowance for teaching services, she went from Class 2 (more expensive) to Class 1. And she made no negative comments on the proposed plan concerning the support services.

[71] As I also previously said, the impact of a relocation on Lara, the relocation incentives, and the future economic contribution of Mr. Barlagne's business to Quebec are not relevant to the process that had to be followed by the visa officer, even if they may be relevant for a possible

[17] This comment should not be understood to imply that the visa officer or the medical officer did not take into account the arguments and documents submitted by the applicant. In this respect, the Court is adopting most of the respondent's comments in his supplementary memorandum dealing with each of the arguments presented. The Court was not satisfied that the decision was made without taking into account this documentation or these arguments.

application for exemption under section 25. The visa officer can and must take into account only the evaluation of the health or social services requirements and how the plan proposed by the parents and their ability to pay would reduce the reasonable estimate of costs for the child's probable care. The visa officer has no discretion except with regard to these factors.

[72] Given the threshold set out in the Act is less than the cost of the additional special education allowance for teaching resources only in a class of 1 to 10 students (Class 7), even if the decision-maker had erred in reviewing Mr. Barlagne's financial ability to pay for support services, this error would not be sufficient to warrant setting the decision aside.

[73] However, given the insistence of the applicant's counsel on this point, I believe it is advisable to make a few comments on the evidence that was before the officer.

[74] Even if the parties agree that the visa officer's notes were inaccurate with regard to the savings of Mrs. Barlagne, whose bank statement indicated, without giving particulars, the balance of a second account (passbook with 16,398.83 euros), the fact remains that the evidence submitted to the visa officer left something to be desired, given the many omissions.

[75] As the officer indicated in his CAIPS notes, Mr. Barlagne had not submitted any personal reference letters or any financial documents with his original application. His counsel described herself as acting *pro bono* (unpaid). The family was without the salary of Mrs. Barlagne, who had worked in Guadeloupe but could no longer do so since her arrival in Quebec, given the conditions

of her visa. Mr. Barlagne did not provide any particulars about his current income (or since his arrival in Quebec).

[76] As mentioned earlier, the only corporate financial document submitted was that of a French company which did not show any profit for a fiscal year ending on December 31, 2005. Although the applicant's counsel stated in her written submissions that the visa officer should have known that 2005 was the French company's last year of operations, nothing was indicated to that effect at paragraph 45 of the applicant's Comments. Moreover, in such circumstances, the Court finds surprising the applicant's argument that the visa officer should have been satisfied with the business income reported in the balance sheet without being concerned about the fact that the company was operating at a loss.

[77] No financial documents or particulars were provided with respect to the Quebec company. Paragraph 46 of the Comments simply states that the company is in a transitional situation with a solid foundation and constantly expanding development opportunities.

[78] Mr. Barlagne did not submit any evidence of personal savings, and instead relied on the savings of the other family members in France, in the amount of approximately 58,285.84 euros (instead of the 42,000 euros described by the visa officer). However, as the visa officer noted, the applicant did not submit any information on the family's cash flow, its resources in Canada or its current ability to save money.

[79] All that to say that if the Barlagne family's financial ability had been essential to the determination of Rachel's admissibility, it is far from evident that the Court would have found that the decision was unreasonable, even taking into account the miscalculation in the savings.

[80] In conclusion, the applicant did not satisfy the Court of the existence of a reviewable error in this file, and the Court can only encourage him again to submit an application for exemption under section 25, if he has not already done so.

[81] The parties were invited to submit questions for certification. They indicated that they did not have any. The Court concurs with the parties in this respect.

JUDGMENT

THE COURT ORDERS AND ADJUGES that the application is dismissed.

"Johanne Gauthier"
Judge

ANNEXE A

Vol 2 de 2

TABLE DES PIÈCES

Onglet	Pièce
1	Lettre datée du 3 décembre 2008 de Monsieur Dominique TRAN, Comptable de ESPRIT TECHNOLOGIE Inc.
2	Curriculum vitae de Monsieur David BARLAGNE
3	Courriel de Madame Laurence de MONARI Directrice de projets-développement des affaires Investissement Québec daté du 8 décembre 2008
4	Courriel de Monsieur Patrice HIDALGO, attaché-investissement, Ambassade du Canada à Paris daté du 8 Septembre 2004
5	Curriculum vitae de Madame Sophie BARLAGNE
6	Attestations scolaires de Lara BARLAGNE incluant neuf (9) bulletins pour les années académiques 2005-2006; 2006-2007; et 2007-2008
7	Lettre datée du 22 septembre 2008 émise et signée par Madame Françoise Bourdut, enseignante de Lara Barlagne
8	Lettre datée du 10 septembre 2008, émise et signée par la Directrice de la *Garderie Papillon*, Madame Chantale THÉROUX
9	Lettre datée du 8 octobre 2008, émise et signée par Monsieur André Martin, directeur de l'*École Victor- Doré*
10	Factures de Mike et Helen DOWNEY *Brain Solutions The Developmental Re-education* Centre *pour service de thérapies*
11	Attestation de bénévolat de Madame Sophie BARLAGNE émise et signée par Madame Pascale ROUSSEAU pour *Dystrophie Musculaire Canada* datée du 22 mai 2008
12	Attestation de bénévolat en francisation de Madame Sophie BARLAGNE pour le Centre Communautaire de loisir de la Côte-des-neiges émise et signée par Jennate Berrahma datée du 6 octobre 2008
13	Copies certifiées conformes des Certificats de sélection des membres de la famille David BARLAGNE
14	*Décision de la Cour Fédérale dans : Karmali c. Canada (Ministre de la citoyenneté et de l'immigration)*

15	*Décision de la Cour Fédérale dans : Alibey c. Canada (Ministre de la citoyenneté et de l'immigration)*
16	*Décision de la Cour Fédérale dans : Wong c. Canada (Ministre de la citoyenneté et de l'immigration)*
17	*Décision de la Cour Fédérale dans : Redding c. Canada (Ministre de la citoyenneté et de l'immigration)*
18	*Décision de la Cour Suprême dans : Hilewitz c Canada (Ministre de la citoyenneté et de l'immigration) (2005) 706,*
19	*Décision de la Cour Suprême dans De Jong c Canada (Ministre de la citoyenneté et de l'immigration) (2005) 706*
20	Lettre datée du 16 octobre 2008, émise et signée par Docteur Gilles Chabot m.d., FRCP(C), Pédiatre, CHU Sainte-Justine
21	Lettre datée du 30 Septembre 2008, émise et signée par Docteur Pierre Marois, m.d. F.R.C.P.C., Physiatre, CHU Sainte-Justine
22	Lettre datée du 2 octobre 2008, émise et signée par Nathalie Turcotte, Physiothérapeute, École Victor-Doré
23	Lettre datée du 15 décembre 2008 émise et signée de Marie-Hélène GILBERT éducatrice spécialisée
24	Lettre datée du 14 Décembre 2008 émise et signée de Chloé PROULX GOULET étudiante en maîtrise professionnelle en Ergothérapie à l'Université de Montréal
25	Lettre datée du 15 décembre 2008 émise et signée de Sara TREMBLAY, amie de la famille BARLAGNE
26	Lettre datée du 10 Septembre 2008 émise et signé du Docteur Gilles JULIEN, Pédiatre Social du Centre de Services Préventifs à l'Enfance de Côte-des-Neiges
27	Lettre de Suzy Cantinol, Professeur en classe Élémentaire Collège International Marie de France, Tutrice adaptée de Rachel Barlagne et aide à l'apprentissage datée du 15 Décembre 2008
28	Note biographique de Suzy Cantinol, Professeur en classe Élémentaire Collège International Marie de France, Tutrice adaptée de Rachel Barlagne et aide à l'apprentissage datée du 15 Décembre 2008
29	Lettre datée du 6 octobre 2008, émise et signée par Madame Nicole Lavigne, Orthothérapeute et enseignante de Rachel Barlagne

30	Article publié par Yvonne Peters : *Reflections on the Latimer case : Rationale for Disability Rights Lens, Saskatchewan Law Review (2001) vol. 64 p.631*
31	Article publié par Ravi Malhotra : *Disability rights and immigration, New socialist,* www.newsocialist.org.
32	Règles budgétaires pour l'année scolaire 2008-2009, *Ministère de l'éducation, du loisir et du sport (mai 2008)*
33	Allocations pour les ressources enseignantes- élève de l'enseignement primaire – Commission Scolaire de Montréal année 2008-2009 - Ministère de l'éducation, du Loisir et du Sport - préparé et émis par Monsieur Serge DUPERRÉ
34	Fiches syndicales – Les Ratios 2006-2010
35	*Colaco c. Canada (Ministre de la citoyenneté et de l'immigration) (2006)*
36	*Sarkar c. Canada (Ministre de la citoyenneté et de l'immigration) (2007)2 F.C.R. D-12*
37	Copies certifiées conformes de relevés bancaires de Madame Sophie BARLAGNE, de Lara BARLAGNE et de Rachel BARLAGNE
38	Bulletin opérationnel 063 (24 septembre 2008) Évaluation de fardeau excessif pour les services sociaux – Citoyenneté et immigration Canada
39	Lettre datée du 13 Décembre 2008 et factures de Musicothérapie incluant la méthode PADOVAN émises par Pascale GAGNON
40	Reçus de *Projet équestre Goldie* pour équitation thérapeutique
41	Déclaration de capacité et d'intention datée du 15 Décembre 2008 et signé par Monsieur David BARLAGNE
42	Lettre datée du 4 décembre 2008, co-signée de Francine Nadeau, art-thérapeute de Lara Barlagne et du Docteur Gilles JULIEN Pédiatre Social du Centre de Services Préventifs à l'Enfance de Côte-des-Neiges
43	Lettre de recommandation de Nicole OLIER, Ingénieur des Travaux Publics de L'État datée du 16 Décembre 2007
44	Lettre datée du 15 Décembre 2008 de Cynthia FERLAND Psycho-éducatrice et coordonatrice du Centre de Répit Philou

45	Copie du Bilan simplifié de Esprit Technologique s.a.r.l. daté de l'année 2005
46	Entente de sécurité sociale entre la France et le Québec
47	Protocole d'entente Québec et France (enseignement primaire et secondaire)
48	Khan c. Canada *(Ministre de la citoyenneté et de l'immigration)*
49	Lettre de Madame Josée Ouimet, Chef de programme réadaptation en milieu scolaire (École Victor-Doré) CHU Sainte-Justine
50	Convention de stages entre Esprit Technologie Inc. et Collège Herzing
51	Dépliants d'information des services d'ergothérapie du centre d'intervention thérapeutique et bien-être pour tous – l'essence en mouvement : Madame Couture
52	Copie ~~certifiée conforme~~ d'un relevé bancaire de Monsieur David Phillippe BARLAGNE

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2486-09
STYLE OF CAUSE:	DAVID PHILIPPE BARLAGNE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Québec
DATE OF HEARING:	February 23, 2010
REASONS FOR ORDER AND ORDER:	GAUTHIER J.
DATED:	May 18, 2010

APPEARANCES:

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Michèle Joubert	FOR THE RESPONDENT

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