Federal Court  Cour fédérale

Date: 20180601

Docket: IMM-5367-16

Citation: 2018 FC 569

Ottawa, Ontario, June 1, 2018

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

THECLA SENDWA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Thecla Sendwa, [Ms. Sendwa] seeks judicial review of a decision of the Immigration Appeal Division [IAD] of the Immigration and Refugee Board of Canada [IRB]. The Applicant had appealed a decision of an immigration officer at the Canadian High Commission to Kenya, who refused an application for permanent residence by the Applicant's niece, and the IAD denied this appeal [the Decision]. The IAD appeal under review was a redetermination which was made after a previously denied appeal to the IAD was overturned by

Mr. Justice Shore in *Sendwa v Canada (Citizenship and Immigration)*, 2016 FC 216, 39 Imm LR (4th) 328 [*Sendwa 1*].

II. **Style of Cause Amendment**

[2] Although the Respondent is now commonly known as the Minister of Immigration, Refugees and Citizenship its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *Immigration and Refugee Protection Act*, SC 2001, c 27 s 4(1) [*IRPA*].

[3] Accordingly, as part of this judgment, the style of cause is amended to reflect the Respondent as the Minister of Citizenship and Immigration.

III. **Background Facts**

[4] Ms. Sendwa has been a Canadian citizen since 2014. She has no relatives in Canada. She applied to sponsor her niece, who is a citizen of Tanzania, to be a permanent resident as a member of the family class pursuant to paragraph 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

A. *The first IAD decision*

[5] The first IAD decision, made by a different panel, rejected the sponsorship application because Ms. Sendwa's parents were both alive.

[6] Ms. Sendwa's argument had been that her father would not pass a medical test if she applied to sponsor him and her mother would therefore not be admissible as an accompanying dependent. The IAD however accepted the Minister's position that there is no requirement that the category of persons for whom sponsorship must be pursued prior to considering any other

relative, under paragraph 117(1)(h) of the *IRPR*, must actually be admissible to Canada to count under that paragraph.

[7] The interpretation given to paragraph 117(1)(h) by that panel of the IAD was that it "speaks to the ability of the sponsor to sponsor her parents". The purpose of the provision was said not to address issues of admissibility or inadmissibility.

[8] With respect to the medical condition and admissibility of Ms. Sendwa's parents, the IAD found it was only speculative that they would be inadmissible. The panel added that "in any event", as Ms. Sendwa's parents can be sponsored, her niece falls outside the family class membership by virtue of subparagraph 117(1)(h)(ii) of the *IRPR*.

B. *The decision in Sendwa 1*

[9] Before Mr. Justice Shore, Ms. Sendwa argued that paragraph 117(1)(h) of the *IRPR* is not part of a hierarchy requiring a sponsor to resort to it only if they first tried and failed to sponsor any relatives to which paragraphs 117(1)(a)-(g) were applicable. She also argued that the IAD had interpreted paragraph 117(1)(h) of the *IRPR* from the perspective of the family member who could potentially be sponsored and not from the perspective of the citizen or permanent resident in Canada who was without a relative in Canada and was seeking to sponsor a relative.

[10] In allowing the judicial review, Justice Shore found that a plain reading of the French and English language versions of subparagraph 117(1)(h)(ii) of the *IRPR* "speaks of the capability of an applicant to sponsor a foreign national's application to enter Canada". He agreed that the analysis of the sponsorship application should be made from the viewpoint of the person sponsoring the family member and found that subparagraph 117(1)(h)(ii) does not address the

possible admissibility of the foreign national or the ability of the foreign national to be sponsored.

C. *The current IAD decision under review*

[11] On redetermination a new panel of the IAD found that Ms. Sendwa would likely not have been financially eligible to sponsor her parents the year that she applied to sponsor her niece. The panel determined however that the analysis did not end there. If an application to sponsor her parents had been made, and denied, Ms. Sendwa could have appealed to the IAD under subsection 63(1) of the *IRPA*. Such an appeal could be granted on humanitarian and compassionate grounds under paragraph 67(1)(c) of the *IRPA*. Under subsection 70(1) of the *IRPA* an officer examining a foreign national would then be bound by the appeal decision of the IAD.

[12] In addressing the fact of the possible medical inadmissibility of Ms. Sendwa's father, the IAD noted that *Sendwa* 1 reviewed the English and French versions of the *IRPR* and noted that inadmissibility was not a relevant inquiry when considering the ability of Ms. Sendwa to sponsor her parents. The IAD also found that if it was relevant, Ms. Sendwa could avail herself of the appeal provisions in the *IRPA* and put forward humanitarian and compassionate considerations which could warrant special relief to overcome a finding of financial ineligibility or medical inadmissibility.

[13] The IAD acknowledged that it had been directed to consider whether Ms. Sendwa would be eligible (or in position) to sponsor her parents but, as Ms. Sendwa had declared to the effect that she had no intention of sponsoring her parents, the panel, on the evidence before it, was not

able to fully explore that inquiry. In the end the IAD held that Ms. Sendwa did not meet the burden of proving the Officer's decision was not legally valid.

IV. **The Legislative Scheme for Sponsoring Relatives to Canada**

[14] The legislative scheme governing sponsorship of members of the family class is extensive. Only the sections of the *IRPA* and the *IRPR* that may bear on Ms. Sendwa's sponsorship application are mentioned below.

A. *IRPA*

[15] Subsection 12(1) of the *IRPA* - Family Reunification - provides that a foreign national may be selected as a member of the family class on the basis of their relationship to a Canadian citizen or permanent resident.

[16] Subsection 14(2) of the *IRPA* then provides that the regulations may prescribe and govern any matter relating to classes of permanent residents or foreign nationals including classes referred to in subsection 12 and, may include provisions respecting sponsorships, undertakings and penalties for failure to comply with undertakings.

B. *IRPR*

[17] Subsection 10(4) of the *IRPR* provides that an application by a foreign national as a member of the family class must be preceded by or accompanied by a sponsorship application. In other words the foreign national cannot apply for a permanent resident visa before a sponsorship application has been filed.

[18] Subsections 70(1) and (2) of the *IRPR* deal with the issuance of a permanent resident visa and set out the classes which may apply for such visa. Generally, an officer shall issue a

permanent resident visa to a foreign national if the foreign national has applied as and is found to be a member of the family class and is not inadmissible. The foreign national must also have met the selection criteria and other requirements for being a member of the class.

C. *Member of the Family Class*

[19] Section 116 confirms that the family class is a prescribed class under subsection 12(1) of the *IRPA* and that the requirements for a member of the family class to become a permanent resident are set out in Division 1 of Part 7 - Family Classes which encompasses sections 116-122.

[20] Subsection 117(1) sets out in paragraphs (a) to (g) various familial relationships to the sponsor: “a foreign national is a member of the family class if, with respect to the sponsor, the foreign national is…”.

[21] The relationships in paragraphs (a) to (g), by their wording may include relatives of the half-blood, such as “a child of the sponsor’s mother or father”. As the language is somewhat difficult to read, I have set out the relationships using common parlance. To be a member of the family class under these paragraphs, the foreign national is to be related to the sponsor as:

- a spouse, common-law partner or conjugal partner;
- a dependent child;
- a parent or grandparent;
- a sibling under the age of eighteen;
- a niece or nephew under the age of eighteen;
- a grandchild under the age of eighteen;
- a person under the age of eighteen whom the sponsor intends to adopt in Canada.

The adoption relationship requires that certain conditions be met such as that the adoption is not being entered into primarily for the purpose of acquiring status under the *IRPA*.

[22] The particular focus of this judicial review is paragraph 117(1)(h):

117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	117 (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
(h) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father	h) tout autre membre de sa parenté, sans égard à son âge, à défaut d'époux, de conjoint de fait, de partenaire conjugal, d'enfant, de parents, de membre de sa famille qui est l'enfant de l'un ou l'autre de ses parents, de membre de sa famille qui est l'enfant d'un enfant de l'un ou l'autre de ses parents, de parents de l'un ou l'autre de ses parents ou de membre de sa famille qui est l'enfant de l'un ou l'autre des parents de l'un ou l'autre de ses parents, qui est :
(i) who is a Canadian citizen, Indian or permanent resident, or	(i) soit un citoyen canadien, un Indien ou un résident permanent,
(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.	(ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant.

[23] Subsection 117(9) - Excluded relationships - sets out who shall not be considered a member of the family class by virtue of their relationship to a sponsor. For example, if the

foreign national is the sponsor's spouse and is under eighteen years of age they will not be considered a member of the family class.

[24] Under section 120 unless the sponsor entered into the prescribed undertaking and it is still in effect and it meets the requirements of section 133 - Requirements for sponsor - the sponsored member of the family class shall not be issued a permanent resident visa or become a permanent resident, as the case may be. The person can be sponsored, but they may not receive a visa if the sponsor's undertaking is no longer in effect.

D. *Sponsors*

[25] Regulations concerning sponsors of the family class are contained in Division 3 of Part 7. It encompasses sections 130 to 137. Again, only those sections which may be relevant to the matter in issue will be mentioned.

[26] Subsection 130(1) provides that to sponsor a foreign national as a member of the family class a sponsor must be a Canadian citizen or permanent resident who is at least eighteen years old and resides in Canada. In addition, the sponsor must have filed a sponsorship application in respect of a member of the family class in accordance with the requirements of section 10 which addresses the form and content of an application.

[27] Subsection 130(3) provides that a sponsor who became a permanent resident or a Canadian citizen after they were sponsored as a spouse may not sponsor a member of the family class unless the sponsor has been a permanent resident or a Canadian citizen or a combination thereof for a period of at least five years immediately preceding the day the sponsorship application is filed.

[28] Section 133 is headed “Requirements for sponsor”. Subsection 133(1) requires that on the day an application for sponsorship is filed, and then up to and including the day a decision is made with respect to it, there must be evidence that the sponsor meets certain requirements including that they:

- meet the requirements of section 130 (age 18, Canadian citizen or permanent resident, filed a sponsorship application in accordance with section 10);
- intend to fulfil the obligations in the sponsorship undertaking;
- are not subject to a removal order;
- are not detained in any penitentiary, jail, reformatory or prison;
- have not been convicted under the *Criminal Code*, RSC 1985, c C-46, of various stipulated offences unless there has been an unrevoked pardon or a finally determined acquittal or five years or more have elapsed since completion of the sentence imposed;
- are not in default of any sponsorship undertaking, court-ordered support payments or specified debts due to Her Majesty;
- are not an undischarged bankrupt;
- are not in receipt of social assistance other than for disability.

[29] As the above list shows, the requirements to be a sponsor include financial stability which is sufficient to support the member of the family class being sponsored and their family members, if any. Of particular importance to Ms. Sendwa’s application were the requirements in clause 133(1)(j)(i)(A) which provides that in sponsoring her niece she would need a total income at least equal to the minimum necessary income (as defined in section 2 of the *IRPR*) while to sponsor her parents, Ms. Sendwa would need a total income at least equal to the minimum necessary income plus 30%: subclause 133(1)(j)(i)(B)(I).

[30] Section 134 sets out income calculation rules to be used to determine the total income of a sponsor. The rules are comprehensive. Essentially the sponsor is to provide a notice of assessment issued by the Minister of National Revenue for the preceding tax year from which

deductions will be made for various allowances or social assistance funding received from a province or from the Government of Canada. If however the sponsor is sponsoring a parent or grandparent then notices of assessment for each of the three consecutive tax years immediately preceding the date of filing of the application are to be filed.

[31] Before a decision is made on the application, an officer may request updated evidence of income if more than twelve months have passed since the sponsorship application was filed.

[32] As can be seen from the foregoing, the legislative provisions addressing who may be sponsored as a member of the family class and who may act as a sponsor are comprehensive. The financial ability of the sponsor is important as is their compliance with provisions of the *IRPA* and the *Criminal Code*.

V. **Issues**

[33] At the hearing of this matter Ms. Sendwa abandoned three of her arguments. She did not pursue an argument of institutional bias by the IAD nor did she any longer seek declaratory relief. The question of whether issue estoppel applied was also withdrawn.

[34] Subsequent to the hearing of this matter Ms. Sendwa sent correspondence concerning her allegation of bias. The Minister did not send to the Court any comment on this correspondence. On reviewing the correspondence, this Court does not find that the consideration of institutional bias should be addressed further. Ms. Sendwa provided excerpts of correspondence from the Deputy Chairperson of the IAD in relation to forming a three member panel on a case about paragraph 117(1)(h). These excerpts, when read as a whole, do not evidence institutional or personal bias. It is clearly stated in the excerpts provided that “[u]ltimately how the panel

handles this is for it to decide". The communication from the Deputy Chairperson is said to have asked for recommendations for members to sit on a three person panel about paragraph 117(1)(h) who are "suitable for this task". This does not amount to evidence of bias. As the contemplated issue is one of interpretation it is entirely reasonable for an administrative tribunal to try to place those of its members best suited for such a function on such a panel. Likewise the Deputy Chairperson stating that he "would like to write a set of reasons on this issue" is not evidence of predetermination of the issue by the institution. Furthermore, none of the excerpts provided to the Court were sent from the panel member whose decision is under review and the mere fact that correspondence was sent between the member who heard Ms. Sendwa's appeal at the IAD and legal counsel for the Board does not reasonably suggest that he had a closed mind or was biased. For this reason, along with the fact that oral arguments had already been heard, Ms. Sendwa's correspondence from January 15, 2018 shall not be addressed further.

[35] As set out at the oral hearing, Ms. Sendwa submits that the issues for review are:

1. whether the decision should be quashed as the IAD panel member was biased;
2. whether the IAD refused to adhere to the doctrine of *stare decisis*;
3. whether the IAD misinterpreted and misapplied the statutory provisions.

[36] The Minister submits that the only question to be determined is whether the Decision was reasonable.

[37] The question of whether the Decision is reasonable includes an assessment of the other issues submitted by Ms. Sendwa as well as the various arguments she made in support of a different statutory interpretation than that which was made by the IAD.

VI. **The Standard of Review**

[38] The IAD's handling of the allegation of bias is reviewable on a standard of correctness as it is a matter of procedural fairness: *Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502.

[39] The standard of review of the decision by the IAD was identified in *Sendwa 1* as reasonableness because the IAD was interpreting its home statute. Nonetheless, counsel for Ms. Sendwa argued that each of the three issues she identified involve errors of law and ought to be reviewed on the standard of correctness.

[40] The Supreme Court has made it very clear in several recent cases that when an administrative tribunal is interpreting its home statute there is a rebuttable presumption that the standard of review is reasonableness: *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29, [2016] 1 SCR 770; *Edmonton (City) v Edmonton East(Capilano) Shopping Centres Ltd*, 2016 SCC 47, [2016] 2 SCR 293; *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16, [2015] 2 SCR 3.

[41] There are four categories under which the presumption might be rebutted. These are: 1) constitutional questions regarding the division of powers; 2) true questions of jurisdiction or *vires*; 3) questions of general law that are both of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise; and, 4) questions regarding the jurisdictional lines between two or more competing specialized tribunals: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 58 - 61, [2008] 1 SCR 190 [*Dunsmuir*].

[42] Ms. Sendwa says that when the IAD said that "it was not the intention of the legislators that an officer's determination of the sponsor's financial situation should be the determinative decision on the sponsor's ability" it relied upon the existence of a right of appeal to the IAD in subsection 63(1) of the *IRPA*. She notes that there is no obligation to pursue an appeal and suggests that therefore, when the IAD decided that there should be further consideration beyond mere financial ineligibility to sponsor, the IAD imposed an obligation to appeal that exceeded its jurisdiction. This issue is said to be an important general question of law because the *IRPA* speaks of a right to appeal, not an obligation to appeal and other statutes contain the same or similar wording.

[43] I am satisfied that, on the facts of this case, none of the conditions that could rebut the presumption of reasonableness review are present. Three of the four categories are not present at all. The only possible category is whether the Decision raises a general question of law that is both of central importance to the legal system as a whole and is outside the adjudicator's specialized expertise. Even if it could be of central importance, the interpretation of the appeal provision in the *IRPA* and the application of paragraph 117(1)(h) of the *IRPR* are not outside the adjudicator's specialized expertise. Unless the general question of law is both of central importance and is outside the adjudicator's expertise, the presumption is not rebutted: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 46, [2011] 3 SCR 654.

[44] Accordingly the standard of review for all issues other than the allegation of bias is reasonableness.

[45] A decision is reasonable if the decision-making process is justified, transparent, and intelligible, resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir* at para 47.

[46] If the reasons, when read as a whole, "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16, [2011] 3 SCR 708.

VII. **Was the IAD Panel Member Biased?**

A. *Ms. Sendwa's arguments*

[47] Although Ms. Sendwa abandoned several arguments at the outset of the hearing, she did not resile from her position that the panel member assigned to conduct her redetermination was biased.

[48] Prior to the hearing of the redetermination, Ms. Sendwa's counsel wrote to the chairperson of the IRB asking for the recusal of the panel member assigned to hear her appeal for two reasons. One reason was that in a prehearing conference the member referred to *Sendwa 1* as providing "half a loaf". The other reason was that the IRB had convened a special three-member panel to deal with another paragraph 117(1)(h) appeal because Sendwa 1 had changed the jurisprudence. The member assigned to hear Ms. Sendwa's redetermination was also a member of that panel. Ms. Sendwa believed that because of that assignment the panel member would be biased and would attempt to have the same interpretation made in both decisions.

[49] After oral argument was completed in this matter, counsel for Ms. Sendwa submitted a decision by the Deputy Chairperson of the IAD in which he determined that after *Sendwa 1* there was a split in the jurisprudence of this Court with respect to the interpretation of paragraph 117(1)(h): *Ende v Canada (Citizenship and Immigration),* 2017 CanLII 42825, IAD File No MB6-07260 [*Ende*]. She submitted that as the IAD in *Ende* preferred to follow this Court's jurisprudence in *Nguyen v Canada (Minister of Citizenship and Immigration),* 2003 FCT 325, 231 FTR 51 [*Nguyen*] rather than the decision in *Sendwa 1* it supports her allegations of bias.

B. *The IAD finding on bias*

[50] Before turning to the substantive matter of the sponsorship application the IAD addressed the allegations of a perception of bias, treating it as a request for his recusal. The member clarified that his choice of words "half a loaf" was an attempt to convey in plain language his concern that *Sendwa 1* left unanswered the role of the IAD and its discretionary jurisdiction to overcome a failure by an applicant to meet the necessary income level. The request for submissions about that discretionary jurisdiction was done in order to provide procedural fairness to the parties because the member considered it to be a question that was left unanswered in *Sendwa 1*.

[51] The member also noted that the three-member panel had not yet considered the matter that would be before it, and that task was different than what he was to consider in the redetermination.

[52] After referring to the test for bias as set out by this Court – whether a reasonable person, being reasonably informed of the facts and viewing the matter realistically and practically and having thought it through, would think it more likely than not that the tribunal is biased (*Lawal v*

Canada (Citizenship and Immigration), 2008 FC 861 at para 40, 174 ACWS (3d) 1137) – the panel member concluded that Ms. Sendwa had not put forward substantial evidence that he would not adjudicate the appeal impartially and independently. He dismissed the application for his recusal.

C. *The IAD was not shown to be biased*

[53] With respect, the fact that another member of the IAD, who was not the decision-maker in the matter before this Court, determined not to follow *Sendwa 1* cannot in my view support or substantiate the allegations of bias made by Ms. Sendwa. *Ende* reviews *Sendwa 1* extensively. It post-dates the decision under review by approximately one year. That panel of the IAD preferred, for the reasons it stated, to follow the prior jurisprudence of this Court set out in *Nguyen* which took a different approach to the interpretation of a prior iteration of the sponsorship provision in question which was written in slightly different language and had different age cut-offs.

[54] With respect to the three-member panel, there was no evidence before this Court that the panel member could control, or be controlled by, the other members of the three person panel. Nor was there any evidence that the IRB intended to ignore or overturn *Sendwa 1* by convening a three member panel, which the Court was advised ultimately did not proceed. Ms. Sendwa's allegation that being a member of the three person panel would somehow prejudice the member assigned to her redetermination against her submissions was made without foundation and was purely speculative.

[55] In my view, the panel's conclusion that Ms. Sendwa had failed to present substantial evidence that he would not adjudicate her appeal impartially and independently was correct.

VIII. **Did the IAD Refuse to Apply *stare decisis***

A. *Ms. Sendwa's arguments*

(1) Eligibility versus ability

[56] The *stare decisis* argument put forward by Ms. Sendwa is that the IAD failed to assess her financial eligibility, as directed in *Sendwa 1*. Instead, the IAD spoke of her ability to sponsor her parents and her ability to meet the minimum necessary income for parental sponsorships. It is suggested that, in effect, the IAD rewrote *Sendwa 1* and ignored the clear direction contained in it.

(2) The effect of the decision in *Sendwa 1*

[57] In addition, Ms. Sendwa suggested that *Sendwa 1* had "already ruled on how to interpret s. 117(1)(h)" and, in failing to assess Ms. Sendwa's eligibility to sponsor, the IAD engaged in an abuse of process by obliging her to re-litigate her claim in this Court after it had already been determined in *Sendwa 1*.

[58] Ms. Sendwa felt so strongly that *Sendwa 1* provided the answer to her desire to sponsor her niece that she advised the IAD by letter dated June 30, 2016 that no oral hearing was required. The reason was that "incontrovertible evidence was before the [IAD] establishing she was financially eligible to sponsor her niece yet ineligible to sponsor one or both of her parents". Ms. Sendwa indicated the IAD simply had to apply the *IRPR* in accordance with the reasons given in *Sendwa 1*. This assumption also appears to have contributed to Ms. Sendwa not providing further evidence and submissions to the IAD about how the issue of a potential appeal to the IAD for humanitarian and compassionate relief to alleviate ineligibility to sponsor should be dealt with if found to be applicable.

B. *Stare decisis did not apply to the IAD's consideration of Sendwa 1 on redetermination*

[59] While the words "eligibility" and "ability" have different meanings, neither of them are employed in the IRPA or the *IRPR* with respect to the sponsorship provisions. In my view, on these facts, and given the wording of the legislative provisions and the language employed in the reasons for decision in *Sendwa 1*, nothing turns on the use of either such word.

[60] In *Sendwa 1* words other than "eligible" were used by the Court to explain the decision that paragraph 117(1)(h) should be considered from the viewpoint of the sponsor and not that of the foreign national. References were made to the "capability" of an applicant to sponsor a foreign national and, when citing a paragraph in *Jordano v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1143, 235 ACWS (3d) 1074, [*Jordano*], "the possibility of sponsoring" was emphasized. The IAD was said not to have considered whether the sponsor would be "eligible (or in position) to sponsor her parents" [emphasis added]. These references to other terms in considering whether Ms. Sendwa was in a position to sponsor her parents suggest that it is not inappropriate for ability to be considered along with eligibility.

[61] The crux of the matter is that the decision in *Sendwa 1* did not bind the IAD to solely consider eligibility, which is the interpretation to which Ms. Sendwa subscribes. If there had been an explicit instruction or direction issued in the formal order in the judgment in *Sendwa 1* that obligated certain findings then the IAD would have been bound by same; without such an explicit statement, mere comments or recommendations made by the Court amount to obiter which the IAD should consider but which it was not bound to follow: *Canada (Citizenship and Immigration) v Yansané*, 2017 FCA 48 at para 19, 26 Admin LR (6th) 267 [*Yansané*]. The certified question in *Yansané* was reworded to remove the reference to findings of fact. The

answer then stated that in the absence of a specific verdict, on redetermination the reasons and findings of the judgment allowing the judicial review, as well as directions and instructions explicitly stated by the Court in its judgment, must always be complied with: at para 27.

[62] The formal order in *Sendwa 1* has no explicit statement other than that there should be a differently constituted panel:

> . . . [T]he application for judicial review be granted; and, to be considered anew by a differently constituted panel. There is no serious question of general importance to be certified.

[63] As will be addressed below, the IAD did comply with the reasoning of the judgment in *Sendwa 1* that sponsorship applications are to be looked at from the point of view of the sponsor and not that of the foreign national. The IAD noted that in *Sendwa 1* the prior IAD decision had been "faulted . . . for failing to consider whether the appellant 'would (even) be eligible (or in position) to sponsor her parents.'" As a result, the IAD said that "[i]n accordance with that finding, my analysis below focuses on whether the appellant would be eligible or be in a position to sponsor her parents." This is precisely what the IAD did, in line with *Yansané*. The IAD "compl[ied] with the reasons and findings of the judgment allowing the judicial review" and considered, but was not bound by, directions or instructions not explicitly stated in the judgment of *Sendwa 1*: *Yansané* at para 27.

[64] The IAD took into account the need to examine the financial eligibility of Ms. Sendwa. It recognized that if she had sponsored her parents, Ms. Sendwa would not have met the financial requirements in the *IRPR*. It noted that Ms. Sendwa considered that to be the end of the matter but found that, given the scheme of the *IRPA* and the *IRPR*, Ms. Sendwa's right to appeal meant that her self-assessment was not determinative.

[65] In my view, the reference in isolation to considering whether Ms. Sendwa would be "eligible" to sponsor her parents is, in the words of Mr. Justice de Montigny in *Yansané*, at best a comment or recommendation which is not binding. The analysis at paragraph 21 of *Sendwa 1* states that the IAD rejected the sponsorship application "simply because her parents were alive". The paragraph then adds that the IAD did not consider whether Ms. Sendwa "would (even) be eligible (or in position) to sponsor her parents" [emphasis added]. At the end of which it concludes that "[a]s a result, the IAD's decision is unreasonable". Given that Justice Shore included the reference to "or in position" it is reasonable to take the statement in paragraph 21 as being not solely about "eligibility" but actually having a wider aspect.

[66] As there was no explicit binding instruction in *Sendwa 1*, the IAD could not breach the principle of *stare decisis*. However, even if it did apply, the IAD considered the matters raised in *Sendwa 1* and, as set out below, reasonably concluded that the presence of the appeal right meant that Ms. Sendwa "might otherwise sponsor" her parents.

IX. **Did the IAD Reasonably Interpret and Apply the Legislation?**

[67] There are two principal arguments raised by Ms. Sendwa under this issue.

[68] One involves the statement by the IAD that a right to appeal means an officer's decision is not determinative. The other involves Ms. Sendwa's view that over the years, immigration officers, the IAD and this Court have all misinterpreted section 117 of the *IRPR* to create a hierarchy of relatives who may be sponsored but such hierarchy does not exist in the legislation.

A. *The right to appeal*

(1) Ms. Sendwa's arguments

[69] Ms. Sendwa says that the existence of a right to appeal to the IAD in the *IRPA* creates no obligation to appeal. Therefore, the suggestion by the IAD that an immigration officer's decision to refuse a family class application is not determinative runs contrary to the legislation.

[70] Ms. Sendwa provides two examples of when an officer's decision is determinative. Under subsection 11(2) of the *IRPA* an officer may not issue a visa to a foreign national if the sponsor does not meet the sponsorship requirements of the Act. Under clause 133(1)(j)(i)(B) of the *IRPR* the sponsorship application shall only be approved by an officer if the total income provision required by that clause is met by the sponsor.

[71] It is submitted by Ms. Sendwa that as subsection 63(1) says "may appeal", it gives the sponsor a right to appeal but no obligation to appeal. As Ms. Sendwa reads the Decision, the IAD found that the right to appeal had to be pursued before it could be determined that she could not "otherwise sponsor" her mother and father.

[72] Ms. Sendwa criticizes the IAD for conducting a cursory statutory analysis over three paragraphs, in which she submits the panel member ignored the words, scheme, and objectives of the *IRPA* as well as the intention of Parliament. She indicates that the wording in section 133 of the *IRPR* is mandatory and precise including its detailed amendment in October 2013 that increased the minimum necessary income by 30% when sponsoring parents and doubled the length of years of financial responsibility, from 10 to 20 years.

[73] Her argument concludes by stating that the objective of family reunification is frustrated when, prior to being able to sponsor a relative under paragraph number 117(1)(h), an applicant is forced to pursue an application to sponsor parents, knowing the applicant in not financially eligible to sponsor them, and then also pursue an expensive appeal to the IAD of the financial ineligibility.

(2) The Minister's arguments

[74] The Minister's reply is that Ms. Sendwa has conflated the process of interpreting the regulations with the process of applying them to the facts. When it referred to an appeal as being a way to determine eligibility to sponsor, the Minister states that the IAD was simply defining the scope of the sponsor's "ability" or "capacity" to sponsor as indicated by *Sendwa 1*.

(3) The IAD's interpretation of the right to appeal is reasonable

[75] Contrary to Ms. Sendwa's belief, the examples provided do not show that the Officer's decision is determinative. With respect to both subsection 11(2) of the *IRPA* and clause 133(1)(j)(i)(B) of the *IRPR*, there is an appeal to the IAD available. After the IAD makes a decision there is the opportunity to apply for judicial review. Depending on the issue present at the judicial review there may be a further chance to appeal the decision to the Federal Court of Appeal [FCA] by way of a certified question. If there is a decision by the FCA then there is also the possibility that the Supreme Court of Canada could hear the matter. Until the final decision is made, the issue under consideration has not been determined.

[76] Subsection 63(1) of the *IRPA* specifically provides that a person who has filed an application to sponsor a foreign national as a member of the family class has the right to appeal

against a decision not to issue the foreign national a permanent resident visa. It is in fact the provision that was relied upon by Ms. Sendwa to place the matter before the IAD in *Sendwa 1*.

[77] Ms. Sendwa argues that an appeal is a discretionary right and not an obligation. Be that as it may, it is nonetheless an avenue that was available to her by which she might have put herself "in position [] to sponsor her parents" as mentioned in *Sendwa 1* at paragraph 21, thereby overcoming her ineligibility.

[78] The fact that Ms. Sendwa may choose not to appeal or, that the result of an appeal may not favour her position, does not alter the fact that by appealing the IAD decision she could be in a position to sponsor her parents. Whether Ms. Sendwa's parents are admissible is not a consideration at this stage: *Sendwa 1* at paras 15, 19.

[79] The conclusion by the IAD that a statutory right of appeal provides a sponsor with a means by which an officer's refusal of the sponsorship application may be overcome is reasonable. Ms. Sendwa herself has submitted that "otherwise", by being placed in the middle of "may otherwise sponsor" denotes some other manner or means. She also cites *Jordano* where Mr. Justice Annis equated "otherwise" with "under other provisions" of the *IRPR.* In my view, an appeal is another manner or means by which a rejected sponsorship application might be overcome.

[80] For the forgoing reasons, although it may not be the interpretation which first springs to mind when considering the meaning of "may otherwise sponsor", I am unable to say the interpretation of the IAD falls outside the range of possible, acceptable outcomes based on the facts and law.

B. *Historically, section 117 has not been misinterpreted*

[81] Paragraph 117(1)(h) is concerned with enabling a sponsor to sponsor any relative, regardless of age. I will refer to this person as a generic relative. Within paragraph 117(1)(h) there is also a group of enumerated relatives which includes all those family members who are found in paragraphs 117(1)(a) - (g) but without the limiting factors of those paragraphs such as age or dependency. For example paragraph 117(1)(b) says that a dependent child of the sponsor is a member of the family class. In paragraph 117(1)(h) however the reference is merely to a child; there is no qualification that the child be a dependent. I will call this group the enumerated relatives.

[82] Ms. Sendwa's niece did not qualify as a member of the family class under subparagraph 117(1)(f)(ii) as she was over the age of eighteen and her father and mother were alive. Therefore, to be sponsored as a member of the family class, she had to fall within the category of a generic relative as set out in subparagraph 117(1)(h)(ii) the relevant parts of which in her case are:

117 (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is	117 (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :
…	…
(h) a relative of the sponsor, regardless of age, if the sponsor does not have . . . a mother or father . . .	h) tout autre membre de sa parenté, sans égard à son âge, à défaut … de l'un ou l'autre de ses parents, qui est :
(i) who is a Canadian citizen, Indian or permanent resident, or	(i) soit un citoyen canadien, un Indien ou un résident permanent,
(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.	(ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent

par ailleurs parrainée par le répondant.

(1) Ms. Sendwa's position

[83] Ms. Sendwa maintains that over the years since *Nguyen*, the interpretation of paragraph 117(1)(h) both by the IAD, and by this Court, has been incorrect. The case law has implied there is a hierarchy of relatives which she must exhaust before she may sponsor her non-orphaned and over 18 year old niece. Ms. Sendwa submits that in coming to the conclusion that she must first attempt to sponsor her parents before she may sponsor her niece the IAD rewrote section 117 and did so without applying the rules of statutory interpretation.

[84] In *Sendwa 1* Ms. Sendwa argued that the IAD had incorrectly adopted the Minister's argument that paragraph 117(1)(h) speaks of the ability of the sponsor to sponsor someone and it does not address issues of admissibility or inadmissibility.

[85] While she succeeded in having the matter sent back for redetermination, *Sendwa 1* clearly states that neither the French nor the English version of the provision speak of the possible admissibility of a foreign national or of their ability to be sponsored: *Sendwa 1* at para 19. That is not to say that admissibility is not relevant in the overall statutory scheme; it is taken into consideration as part of the foreign national's application which must be made in accordance with subsection 11(1) of the *IRPA*. Under subsection 11(1) an officer may issue the permanent resident (or other) visa if they are satisfied that the foreign national is not inadmissible and meets the requirements of the Act.

[86] As a result of *Sendwa 1* Ms. Sendwa now appears to be saying that once it is determined that she is financially ineligible to sponsor her parents, she has the right to sponsor any relative. If this is not the case then she states that an improper hierarchy has been created.

[87] Ms. Sendwa submitted as part of her application record the arguments that were put forward for both parties in *Sendwa 1*. As she argued in *Sendwa 1*, Ms. Sendwa is saying that an improper hierarchy has been created ever since *Nguyen* because paragraph 117(1)(h) does not limit her sponsorship to a circumstance where she does not have a mother or father who may be sponsored. In fact, she submits that on a careful reading of paragraph 117(1)(h), the plain meaning is that she may sponsor her niece.

[88] To arrive at that interpretation Ms. Sendwa said that if there were no relatives eligible to live in Canada as a Canadian citizen or permanent resident or registered as an Indian under the *Indian Act*, RSC 1985, c I-5, as set out in subparagraph 117(1)(h)(i) of the *IRPA*, then any other relative could be sponsored under paragraph 117(1)(h). She says the alleged misinterpretation is rooted in misinterpretation of the phrase "may otherwise sponsor" in subparagraph (ii).

(2) The Minister's arguments and Ms. Sendwa's argument in reply

[89] Relying on *stare decisis*, the Minister states that the interpretation of what is now paragraph 117(1)(h), which was originally found in paragraph (h) of the definition under subsection 2(1) of a "member of the family class" (*Immigration Regulations, 1978*, SOR/78-172 [*1978 Regulations*]), has been consistently applied by the IAD from its inception in 2003 until *Sendwa 1*.

[90] The Minister says the two subparagraphs in paragraph 117(1)(h) work together. If none of the enumerated relatives are already Canadian citizens, Indians, or permanent residents, then Ms. Sendwa cannot simply sponsor any relative if she may otherwise sponsor one or more members of the enumerated relatives.

[91] The Minister points out that there is real danger in interpreting paragraph 117(1)(h) to find that a sponsor who has no relatives in Canada can simply choose to sponsor any relative, of any age, based on the sponsor's self-determined intention not to sponsor any of the enumerated relatives who are members of the family class as set out in paragraphs 117(1)(a) – (g) who may otherwise be sponsored.

[92] To support that this interpretation could not be correct the Minister points to private member's Bill C-272 which was put forward in 2004 but was defeated at second reading. The Bill proposed to add a right to sponsor one additional relative. The Minister submits that if the existing provisions in paragraph 117(1)(h) already permitted such expansion of the family class when a sponsor had no relatives that were, or could be, Canadian citizens, Indians, or permanent residents, the amendment would not have been sought.

[93] Ms. Sendwa submits that the IAD should not have followed the decision in *Nguyen* because Mr. Justice Gibson specifically stated in that decision that with "a complete new legislative and regulatory scheme on the scene . . . my decision herein can hardly be regarded as one that is of "general importance"": at para 27. She says that by applying outdated case law such as *Nguyen* to subsequent decisions which have considered paragraph 117(1)(h) the IAD and the Court have erred.

[94] The Minister counters that *Nguyen,* and subsequent cases, continue to remain relevant after the new regulations which contain a provision of similar form and substance.

(3) Analysis

[95] There is no dispute that if one or more members of the enumerated relatives in paragraph 117(1)(h) are already Canadian citizens, Indians, or permanent residents then no generic relative may be sponsored under paragraph 117(1)(h). That is consistent with the principle of family reunification in that reunification is not required because some form of unification or reunification between an individual and a family member has either already occurred by them being in Canada or can occur as they have the right to live in Canada.

[96] However, under subparagraph 117(1)(h)(i), if all the enumerated relatives listed in paragraph 117(1)(h) are not Canadian citizens, Indians, or permanent residents subparagraph 117(1)(h)(ii) is in play.

[97] The question is how should the word "or" found at the end of subparagraph (i) be interpreted. Once subparagraph 117(1)(h)(i) is exhausted does Ms. Sendwa have free reign to sponsor any relative at all? Or, if she "may otherwise sponsor" any of the enumerated relatives in paragraph 117(1)(h) is she precluded from sponsoring a generic relative?

[98] Notwithstanding Ms. Sendwa's certainty that subparagraph 117(1)(h)(ii) is an additional and separate provision enabling her to simply sponsor her niece when no members of the enumerated group fall within, or could fall within, subparagraph 117(1)(h)(i), I am unable, for the reasons which follow, to agree with her interpretation. In my view, in the overall context of this legislation, a plain grammatical reading of the whole of section 117 of the *IRPR* means that

both subparagraphs apply to the enumerated relatives. A generic relative can only be sponsored when there is no one who may be sponsored from the enumerated group of relatives.

(a) *What does "or" mean in section 117(1)(h)(i)?*

[99] Ms. Sendwa's interpretation is that as subparagraphs 117(1)(h)(i) and (ii) are separated by the word "or" they are mutually exclusive alternatives. If there is no enumerated relative that is, or can be, a Canadian citizen, Indian, or permanent resident as required by subparagraph (i) then any generic relative may be sponsored under subparagraph (ii).

[100] It is not that simple. Prof. Ruth Sullivan explains the various ways in which the word "or" might be interpreted in the following manner:

> As Reed Dickerson points out, in ordinary usage each of these words has two distinct senses and therefore each is a frequent source of ambiguity:
>
> > . . . [I]t is not always clear whether the writer intends the *inclusive* "or" (A or B or both) or the exclusive "or" (A or B, but not both) . . .[T]here is a corresponding, though less frequent, uncertainty in the use of "and". Thus it is not always clear whether the writer intends the *several* "and" (A and B, jointly or severally) or the joint "and" (A and B jointly, but not severally).
>
> Using "or" in an inclusive sense, like using "and" in a joint and several sense, is grammatically correct in accordance with both popular and legal usage. To describe this usage by saying that "or" means "and" or that "and" means "or" is inaccurate and misleading. . . . One party claims "or" is exclusive; the other claims that it is "inclusive". In opting for the latter sense, the court does not read "or" as "and"; it reads "or" inclusively.
>
> Dickerson also points out that in legislation "or" tends to be used inclusively and "and" tends to be used jointly and severally.
>
> [Italics in original; underlining added]

> Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, ON: LexisNexis Canada, 2014) at 101.

[101] Ms. Sendwa would have "or" read exclusively so that either subparagraph 117(1)(h)(i) or subparagraph 117(1)(h)(ii) can apply but not both. In my view the proper interpretation is to read them inclusively as "A or B or both". My reasons for this view are found in the following discussion.

(b) *The application of subparagraph 117(1)(h)(ii) to Ms.Sendwa's facts*

[102] Although subparagraph 117(1)(h) (ii) has not been before this Court often, it has been considered on several occasions over the years. All the prior interpretations, other than *Sendwa 1*, are objected to by Ms. Sendwa.

[103] In *Nguyen*, Mr. Justice Gibson specifically addressed the predecessor to paragraph 117(1)(h), which at that time was paragraph (h) of a definition found in subsection 2(1) of the *1978 Regulations* . The differences between the current paragraph 117(1)(h) and paragraph (h) are inconsequential for the analysis herein. Paragraph (h) provided that one relative may be sponsored where the sponsor does not have an enumerated relative who is a Canadian citizen, permanent relative or "whose application for landing the sponsor may otherwise sponsor".

[104] Justice Gibson determined, after reviewing the legislation and the jurisprudence of the IAD as well as of this Court, that paragraph (h) was "a mechanism of last resort" to be used "where there is no one described in paragraphs (a) to (g) of the definition that he or she "… may otherwise sponsor"": at para 17.

[105] As previously stated, Ms. Sendwa says *Nguyen* was wrongly decided. She raises the question of whether subparagraph 117(1)(h)(ii) is a standalone provision that allows her to sponsor any relative if none of her enumerated relatives fall within subparagraph 117(1)(h)(i) by being a Canadian citizen, Indian or permanent resident or are ineligible for such a status.

[106] On eliminating all the words which are not applicable to Ms. Sendwa's situation, paragraph 117(1)(h), would say:

> Member
>
> 117(1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is
>
> > (h) a relative of the sponsor, regardless of age, if the sponsor does not have . . . a mother or father . . .
> >
> > > (ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.

[107] The words "whose application" apply to the sponsor's mother or father; they make it clear that if the sponsor may otherwise sponsor her mother or father then a generic relative of the sponsor is not a member of the family class. In my view, on a plain reading, the wording is not ambiguous and does not require further analysis or interpretation.

[108] Put another way, on paraphrasing subparagraph 117(1)(h)(ii), in order to be a member of the family class Ms. Sendwa's niece must be:

> a relative of Ms. Sendwa, regardless of age; and, Ms. Sendwa must not have a spouse, common-law partner, conjugal partner, child, mother or father, sibling, niece or nephew, grandparent or a grandparent's child whom she may otherwise sponsor to enter and remain in Canada.

[109] The hierarchy to which Ms. Sendwa objects is part and parcel of the legislation. If one of the enumerated relatives in paragraph 117(1)(h) may otherwise be sponsored, as for example

being identified in any of paragraphs (a) to (g), the condition that is front and centre in (h) "if the sponsor does not have" is not met.

[110] The way by which Ms. Sendwa may otherwise sponsor her mother or father arises because they fall within paragraph 117(1) (c) as a member of the family class and therefore may be sponsored other than under paragraph (h).

(c) *Sponsoring a member of the family class has many dimensions*

[111] In the context of sponsorship of a member of the family class it is accepted that one of the objectives of the immigration provisions of the *IRPA* is "to see that families are reunited in Canada": see paragraph 3(1)(d). While the word "families" is not defined, the word "relative" is defined in section 2 of the IRPR:

> *relative* means a person who is related to another person by blood or adoption. (*membre de la parenté*)

[112] From this definition we know for example that a relative is not someone who is related to another person only by marriage.

[113] The legislative scheme defining a member of the family class is first set out in paragraphs 117(1)(a) – (g) in the *IRPR*. Members of the family class are very specific relationships such as spouse, mother, father, grandparent, dependent child, certain orphaned persons under the age of eighteen (sibling, niece, nephew, grandchild) or a person under the age of eighteen whom the sponsor intends to adopt in Canada.

[114] A sponsor's spouse, who now includes a conjugal partner or a common-law partner, is a member of the family class by virtue of their relationship with the sponsor although the spouse may be excluded from the family class in certain circumstances.

[115] At some point in time when seeking to be a member of the family class a person's age may be a factor, as may their previous marital status. For example in subsection 117(9) a number of excluded relationships are listed most of which address a sponsor's spouse, common-law partner, or conjugal partner. It is specifically provided that a person falling within any of the provisions found in subsection 117(9) "shall not be considered a member of the family class by virtue of their relationship to a sponsor".

[116] The first such provision in subsection 117(9) is that of a spouse, common-law partner, or conjugal partner, under the age of eighteen years. Although they would normally be a member of the family class under paragraph 117(1)(a), they may nonetheless be excluded from being a member of the family class because of their age. In that case, the *IRPR* provides that the sponsor may not otherwise sponsor their spouse, common-law partner, or conjugal partner.

[117] This example serves to illustrate that the phrase "may otherwise sponsor" has both an inclusive and an exclusive dimension for potential members of the family class. A right of appeal may provide the means to sponsor a relative by overcoming an ineligibility of the sponsor. Or, it may assist an otherwise inadmissible foreign national to be admitted on humanitarian and compassionate grounds.

[118] The *IRPA* came into force on June 28, 2002 after extensive consultations starting as early as 1996. It replaced the *Immigration Act*, RSC 1985, c I-2, which also had been the subject of

extensive consultation prior to its passage. The role of the court, particularly with respect to the definition of member of the family class in the operation of paragraph (h) was noted in *Nguyen* at paragraph 15, citing from *Rafizade v Canada (Minister of Citizenship and Immigration)* (1995), 30 Imm L R (2d) 261, 1995 CarswellNat 1126 at para 13 (FCTD):

> It is not the role of the court to expand the scope of the family for immigration purposes beyond that which Parliament has determined to be appropriate.

[119] Despite the extensive and determined arguments made by Ms. Sendwa, I am not persuaded that the Decision is unreasonable. In my view the IAD reasonably interpreted and applied section 117(1) consistently with the objective of family reunification after considering the provisions of the *IRPA* and the *IRPR* generally and specifically those of the Family Class.

[120] It was likewise reasonable for the IAD to find that, on the evidence and argument before it, the immigration officer was not wrong in law, fact, or mixed law and fact, and find correctly that there was no breach of natural justice.

[121] This application for judicial review is dismissed for the reasons set out herein.

X. **Possible Certified Question**

[122] Counsel for Ms. Sendwa indicated at the hearing of this matter that she may wish to pose a certified question. She shall have until June 8, 2018 to propose a serious question of general importance which could support an appeal to the Federal Court of Appeal. In that event, she shall serve and file written submissions which are not to exceed five pages in length by 4:30 pm eastern standard time on June 8, 2018.

[123] If such a question is posed, the Minister shall then have until June 15, 2018 at 4:30 pm eastern standard time to reply by serving and filing written submissions also not exceeding five pages in length.

JUDGMENT IN IMM-5367-16

THIS COURT'S JUDGMENT is that:

1. The name of the Respondent is amended to The Minister of Citizenship and Immigration.
2. The application for judicial review is dismissed.
3. Counsel for Ms. Sendwa shall have until June 8, 2018 to propose a serious question of general importance which could support an appeal to the Federal Court of Appeal.
4. In that event, she shall serve and file written submissions, which are not to exceed five pages in length, by 4:30 pm eastern standard time on June 8, 2018.
5. If such a question is posed, the Minister shall have until June 15, 2018 at 4:30pm eastern standard time to reply by serving and filing written submissions which are also not to exceed five pages in length.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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