

Federal Court



Cour fédérale

Date: 20200130

Docket: IMM-4019-19

Citation: 2020 FC 175

Ottawa, Ontario, January 30, 2020

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

**OLAITAN EBENEZER OKUNOWO
SAMUEL IREMIDE OKUNOWO (MINOR)
MOFIYINFOLUWA OPEMIPO OKUNOWO
(MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicants, Olaitan Ebenezer Okunowo [Mr. Okunowo] and his two children, seek judicial review of the decision of the Refugee Appeal Division [RAD] dated May 30th 2019. The RAD decision confirmed the decision of the Refugee Protection Division [RPD] dated April 5, 2018, which rejected the refugee claim of the Applicants under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] For the reasons that follow, the Application is dismissed. The Court finds that the decision of the RAD bears all the hallmarks of a reasonable decision. The RAD reasonably refused to admit new evidence, finding that it did not meet the criteria for admissibility set out in subsection 110(4) of the Act. The RAD independently assessed the evidence and confirmed the credibility findings of the RPD. In determining that the Applicants had not established that Mr. Okunowo was at risk of persecution as a bisexual man, the RAD applied the Chairperson's *Guideline 9: Proceedings before the Immigration and Refugee Board of Canada Involving Sexual Orientation and Gender Identity and Expression* [SOGIE Guidelines]. The RAD acknowledged that it is a challenge to establish sexual orientation in a culture of secrecy and intolerance, but reasonably found that this did not override or explain the numerous negative credibility findings.

I. Background

A. *The Applicants' claim*

[3] The Applicants are citizens of Nigeria. They arrived in Canada in January 2017 on visitor visas. Mr. Okunowo's wife arrived in Canada at the same time but did not make a refugee claim. She returned to Nigeria but has visited her family in Canada several times.

[4] Mr. Okunowo claims persecution based on his sexual orientation. He recounts that he went into hiding after his neighbour entered his home and found him engaging in sex with another man. He further recounts that his children were attacked and ridiculed at school as news of his sexual orientation spread in their community.

[5] Mr. Okunowo recounts that he had two same-sex relationships in Nigeria. He recounts that his second relationship lasted from 2007 until December 10, 2016, when his neighbour exposed him. He recounts that he immediately fled to the house of his friend, Abdul Olufemi, [Mr. Olufemi] where he stayed in hiding until January 2017, when he came to Canada.

B. *The RPD decision*

[6] The RPD found that Mr. Okunowo had not established his sexual orientation on a balance of probabilities due to omissions and inconsistencies in his evidence. The RPD applied the SOGIE Guidelines, noting the difficulties faced by claimants to establish their sexual orientation, yet found that Mr. Okunowo's testimony and other evidence was evasive, inconsistent and contradictory.

[7] The RPD also found that Mr. Okunowo had provided fraudulent documentation in support of his claim, in particular, the affidavit of his friend Mr. Olufemi.

[8] Mr. Okunowo testified that he had stayed in hiding at the house of his friend Mr. Olufemi in Ogun State, Nigeria. The RPD focussed on the address provided by Mr. Okunowo. He testified at the hearing that Mr. Olufemi lived at #5, Old Ibadan, Iperu Road, Iperu, Ogun State, and that he had lived there for at least 20 years. The affidavit provided by Mr. Olufemi states the same. However, in Schedule A of Mr. Okunowo's Basis of Claim [BOC], Mr. Okunowo set out a different address as his place of hiding ; #4 Lotto Road, Mowe, Ogun State. The RPD found that Mr. Okunowo did not offer any reasonable explanation for this inconsistency, despite having claimed to have hid at the former address for almost two months. Mr. Okunowo simply said he

did not know what went wrong. The RPD noted that it expected Mr. Okunowo to provide consistent evidence about where he was hiding as this went directly to the core of his claim as an alleged bisexual man who had been exposed.

[9] The RPD considered Mr. Olefumi's affidavit, which was signed at a Magistrate's Court of Ogun State before a Commissioner. Mr. Olefumi attests to knowingly assisting and harbouring Mr. Okunowo, a bisexual person, to avoid societal lynching and police arrest until Mr. Okunowo could relocate to Canada. The RPD did not find it credible that Mr. Olufemi would sign such an affidavit in front of a government official and in a Nigerian Court because it could put him in danger of prosecution or persecution. The RPD concluded that it is unlikely that a Nigerian would swear an affidavit in support of a homosexual person due to the criminalization of homosexuality. The RPD drew an adverse inference about the general credibility of Mr. Okunowo from his submission of a fraudulent document about the key element of his claim.

[10] In reaching this finding, the RPD considered the information in the National Documentation Package, Response to Information Request [RIR] (RIR NGA 105379.E "Nigeria: Whether a Commissioner of Oaths or a notary public would notarize a statement or swear an affidavit in which an individual admits to being bisexual or homosexual, or to knowing of someone's sexual orientation; documentation taken by police upon arrest for same-sex activity regarding such affidavits"). The RPD noted that the RIR stated that family members might be more willing to swear such an affidavit if they were "guaranteed absolute confidentiality or security." The RPD added that swearing an affidavit at the Court is the opposite of "guaranteed absolute confidentiality or security."

[11] The RPD found that there was no credible evidence that Mr. Okunowo hid with anyone after his sexuality was allegedly exposed.

[12] With respect to Mr. Okunowo's claim to have been in a same-sex relationship with the same man for nine years, the RPD questioned why he would not have some pictures, letters, or any other record of their relationship, even in otherwise non-suspicious settings given the long duration of the relationship and particularly since the two men allegedly met through mutual friends who are not homosexual and had a business relationship.

[13] The RPD also questioned why Mr. Okunowo and his same-sex partner did not have any plan to warn each other in the event that their planned meetings had to be cancelled in order to avoid detection and exposure by a family member or others. The RPD found Mr. Okunowo's responses evasive and inconsistent with a subjective fear of persecution given the laws and societal homophobia in Nigeria.

[14] Mr. Okunowo testified that he attended the 519 Centre, (an organization that advocates for the inclusion of lesbian, gay, bisexual, transgender and queer [LGBTQ] communities), as recently as two weeks before the RPD hearing. However, the attendance records provided noted that his last visit was in 2017. Mr. Okunowo's stated that he forgot to bring the updated attendance sheet. The RPD noted that the Applicants had not attempted to provide the updated document after the hearing and drew a negative inference. The RPD noted that attendance would not establish sexual orientation but Mr. Okunowo's responses were relevant to the assessment of his credibility.

[15] Due to an inconsistency between Mr. Okunowo's Canadian visa application, which indicated that he had never been refused any kind of visa, and his Schedule A declaration, which indicated multiple visa refusals, the Immigration and Refugee Board [IRB] had previously requested that Mr. Okunowo provide copies of all Canadian, U.K. and U.S. visa applications. Mr. Okunowo did not provide any of these documents. The RDP noted that when asked, Mr. Okunowo denied that these records had been requested, and then changed his response to indicate that he did not attempt to provide the records because they were on his wife's computer and printouts from the computer would not appear official. The RPD was not satisfied with Mr. Okunowo's explanation, noting his evasive and evolving testimony.

[16] Given the several credibility findings, the RPD found that Mr. Okunowo was generally not credible. The RPD noted that this general lack of credibility extended to all of Mr. Okunowo's allegations and relevant parts of his testimony.

[17] The Applicants appealed the decision of the RPD to the RAD.

II. The RAD Decision Under Review

[18] In the appeal to the RAD, the Applicants sought to adduce new evidence.

[19] The Applicants sought to submit a legal opinion dated May 11, 2018 from Itunu Sipe, a lawyer licensed to practice law in Nigeria [the legal opinion]. The legal opinion addressed the authenticity of affidavits and was intended to contradict the RPD's reliance on information in the RIR with respect to Mr. Olefumi's affidavit.

[20] The Applicants also sought to admit the visa records from Canada and the United Kingdom [UK], which had been previously requested, along with a letter from the United States [US] Citizenship and Immigration Office dated February 26, 2018.

[21] The RAD refused to admit the new evidence pursuant to subsection 110(4) of the Act.

[22] The RAD found that the Canadian and UK visa records and the US Citizenship and Immigration Office letter were not new and could have reasonably been provided either before the RPD hearing, as requested by the IRB, or before the RPD rendered its decision.

[23] The RAD also found that the legal opinion was not new evidence within the meaning of subsection 110(4) noting that it contained information that was similar to the information entered into the record during the RPD hearing. The RAD noted that Counsel for the Applicants had made submissions to the RPD at the hearing to the effect that the RIR, which noted the possible danger to affiants, did not state that it was impossible for individuals to swear an affidavit of support for LGBTQ friends and family. The RAD also noted that Counsel for the Applicants had argued that the RIR should be given less weight because the information comes from LGBTQ organization in Nigeria that are not legal experts.

[24] With respect to Mr. Okunowo's credibility, the RPD reviewed all the testimony at the RPD hearing, the BOC form, affidavits and submissions.

[25] The RAD considered and applied the SOGIE Guidelines, noting the challenges faced by claimants in establishing their sexual orientation due to the intimacy of such relationships and the need for secrecy. The RAD acknowledged that often the only evidence of sexual orientation is that of the claimant. The RAD concluded that given the overall concerns regarding Mr. Okunowu's credibility, his testimony was not trustworthy or probative enough to establish, on a balance of probabilities, that he was in a same-sex relationship.

[26] The RAD agreed with the RPD's general credibility assessment that Mr. Okunowo was not a credible witness and that he had not adduced sufficient trustworthy evidence to establish, on a balance of probabilities, that he is a bisexual man.

III. The Issue and Standard of Review

[27] The issue is whether the decision of the RAD is reasonable. This entails consideration of whether the RAD reasonably refused to admit the new evidence and whether the RAD's credibility findings are reasonable.

[28] The Supreme Court of Canada's recent decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] establishes that reasonableness is the presumptive standard of review for decisions made by administrative decision-makers. The pre-Vavilov jurisprudence had also established that reasonableness is the standard to review for the merits of a RAD decision, including its findings with respect to the admission of new evidence pursuant to subsection 110(4) of the Act (*Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30-35, 264 ACWS (3d) 2); *Canada (Minister*

of Citizenship and Immigration) v Singh, 2016 FCA 96 at para 29, [2016] 4 FCR 230 [*Singh*]; *Akanniolu v Canada (Citizenship and Immigration)*, 2019 FC 311 at para 27, 305 ACWS (3d) 598).

[29] In *Vavilov*, the Supreme Court of Canada elaborated on what constitutes a reasonable decision, and provided guidance in conducting a reasonableness review. A hallmark of a reasonable decision remains that the decision is justified, transparent and intelligible. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention, seeking to understand the reasoning process followed by the RAD to arrive at a conclusion. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker.

IV. The Applicants' Submissions

[30] The Applicants' key argument is that the RAD erred by refusing to admit the legal opinion as new evidence. The Applicants argue that the legal opinion directly rebuts the RPD's finding that Mr. Olufemi's affidavit was fraudulent. The Applicants submit that they could not have reasonably been expected to provide such an opinion at the RPD hearing because they were not aware that the RPD would dispute Mr. Olufemi's affidavit and find it to be fraudulent and that the RPD would rely to such a great extent on the RIR.

[31] The Applicants submit that the RAD did not analyse the legal opinion before casting it aside. They submit that the RAD erred by finding that the legal opinion was similar information

to that included in the RIR (NDP) and reflected the oral submissions made by Applicants' counsel at the RPD hearing. The Applicants also argue that the RAD erred by not considering that the legal opinion was more recent and more reliable than the RIR which relied on unnamed non-legal sources.

[32] The Applicants further submit that the RPD erred in finding that Mr. Okunowo was not credible based on peripheral factors such as the conflicting information regarding the address of where he went into hiding, which in turn led to the rejection of other evidence, including the affidavit of Mr. Olufemi and the affidavit of Mr. Okunowo's wife. The Applicants submit that the address is of no significance; the key point is that he had to stay in hiding until he left the country.

[33] The Applicants also argue that the RPD erred in its application of the SOGIE Guidelines by requiring corroborative evidence of Mr. Okunowo's same-sex relationship. They note that Mr. Okunowo explained that he kept this relationship a secret, as would be expected in the circumstances.

V. The Respondent's Submissions

[34] The Respondent submits that the RAD conducted a thorough review of the evidence and reasonably concluded that Mr. Okunowo was not credible and that he is not a bisexual man.

[35] The Respondent submits that the RAD did not err in refusing to admit the legal opinion. The opinion was not new information. In addition, the Applicants could have reasonably been

expected to submit such evidence to the RPD, or before the RPD rendered its decision, given that the authenticity of Mr. Olufemi's affidavit was clearly highlighted by the RPD at the hearing and addressed in submissions.

[36] The Respondent submits that both the RAD and the RPD applied the SOGIE Guidelines. The RAD considered the possible explanations regarding the credibility findings in light of the guidelines, yet found them insufficient.

VI. The Decision of the RAD is Reasonable

A. *The RAD did not err in refusing to admit the legal opinion.*

[37] Subsection 110(4) provides:

4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.	(4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
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[38] The role of the Court is not to redetermine whether the new evidence should have been accepted, but to determine whether the RAD's finding that the new evidence did not meet the admissibility criteria is reasonable. The RAD's reasons for refusing to admit the legal opinion reflect a coherent chain of analysis with reference to the facts and the criteria in subsection 110(4) of the Act.

[39] The Applicants rely on *Singh* to argue that the RAD erred by not considering the context of an appeal and adopting a flexible approach to the admission of new evidence. This argument overlooks the key principles of *Singh*.

[40] In *Singh* at para 63, the Federal Court of Appeal emphasized that the RAD cannot disregard the clear statutory criteria of subsection 110(4). While the factors established in *Raza v Canada (Minister of Citizenship & Immigration)*, 2007 FCA 385, at paras 13-14, 162 ACWS (3d) 1013 [*Raza*], (credibility, relevance, newness, and materiality) remain applicable to determinations by the RAD to admit new evidence, the Federal Court of Appeal noted that only evidence that meets the criteria set out in subsection 110(4) is admissible.

[41] The jurisprudence has established that the statutory criteria must be satisfied before the RAD considers how the *Raza* factors should be applied in the context of the appeal (*Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 459 at para 21, 305 ACWS (3d) 156; *Majebi v Canada (Minister of Citizenship and Immigration)*, 2016 FC 14 at para 19, 305 ACWS (3d) 156). In other words, the flexibility that the Applicants now argue should have been applied arises only after the statutory criteria are met.

[42] In the present case, the RAD adopted this approach, noting that if the evidence met the statutory criteria, the RAD would then consider the factors in *Singh* and *Raza*.

[43] The RAD acknowledged that the Applicants argued that they could not have reasonably been expected to provide this evidence to the RPD because they could not have anticipated that the RPD would question the authenticity of the affidavit.

[44] It appears that the RAD rejected this argument. However, this was not the primary reason that the RAD rejected the new evidence.

[45] The RAD refused to admit the legal opinion as evidence because it found that it was not new information; rather, the information in the legal opinion was similar to the information on the record (the RIR) and to the submissions made by the Applicants' Counsel to the RPD. This finding is justified based on comparison of the RIR, submissions of the Applicants' Counsel and the legal opinion.

[46] At the RPD hearing, Mr. Okunowo was questioned about whether Mr. Olufemi had any fear of swearing in front of a commissioner at the Court House that he had assisted a bisexual man. Mr. Okunowo's answers were non-responsive. He stated only that they would "write it in front of him and nothing going to happen".

[47] In addition, the Applicants' Counsel made extensive submissions at the RPD hearing on the issue of whether such an affidavit would be sworn. Counsel sought to overcome the content of the RIR, including arguing that it was not a legal opinion. Counsel asked the RPD to give weight to Mr. Olufemi's affidavit and Mr. Okunowo's wife's affidavit. At the RPD hearing, Applicants' Counsel argued that the RIR was not authored by lawyers and, as a result, the RPD

should attach little weight to the RIR. He added, “there is nothing in the RIR that says . . . it is impossible to swear to an affidavit in respect of supporting or stating somebody’s sexual orientation.”

[48] Applicants’ Counsel also noted that the RIR stated that no one needs such affidavits in Nigeria, only outside Nigeria.

[49] Applicants’ Counsel added that the RIR stated, “where people are assured of secrecy it’s possible for them to be able to get such documents and they are before a Commissioner of oaths who is, or who has authority to secrecy for the affiants that come before him.” (In other words, there would be no risk because the Commissioner would ensure secrecy).

[50] The submissions of the Applicants’ Counsel were lengthy and somewhat disjointed, but clearly referred to the RIR and clearly attempted to highlight that the RIR indicated only that it was difficult, rather than impossible, to obtain such an affidavit.

[51] Contrary to the current submissions of the Applicants to this Court, the submissions of the Applicants’ Counsel to the RPD clearly referred to the RIR, even to the extent of arguing that it was not accurate and should be given little weight.

[52] The RAD considered the content of the legal opinion, which the Applicants sought to admit as new evidence, in light of the evidence and submissions before the RPD.

[53] The legal opinion states at the outset that some of the conclusions of the RPD “may be true”, pointing to the criminalization of homosexuality.

[54] The legal opinion disagrees that it would be “strange” (as found by the RPD) or unusual for a Commissioner of oaths or Notary to swear such an affidavit in Nigeria. The legal opinion explains the procedural requirements for an oath and notes the presumption of regularity and authenticity of a properly sworn affidavit. The legal opinion states that any citizen of Nigeria is free to make an affidavit and that it is not the duty of the Commissioner or Notary to “initiate the arrest of the deponent”. The legal opinion notes that there is a penalty for false affidavits but there is no obligation on the Commissioner or Notary to hand over to law enforcement anyone who confesses to a crime in an affidavit. The legal opinion also notes that it would be unethical for a lawyer or legally trained person to divulge the contents of an affidavit to anyone, unless the law requires him to do so.

[55] The differences between the legal opinion and the RIR and Counsel’s submissions to the RPD are not contradictions, rather they emphasize different aspects of the same or similar information from different perspectives. The RIR puts the emphasis on the person who seeks to swear the affidavit – not the Commissioner or Notary. The legal opinion focuses on the role of the Commissioner or Notary. The RIR states that it was not “a standard practice” for a Commissioner or Notary to swear an affidavit about a person’s sexuality and that it would be “strange” for a person to depose such information because homosexuality is a crime. The legal opinion does not dispute that it is not a standard practice. The RIR notes that a person in Nigeria would not swear such an affidavit out of fear of being outed due their association with a

homosexual person. The RIR notes that the Commissioner or Notary “may also refuse ... due to the same homophobia and criminalization”. The RIR does not say that it is impossible for a person to swear such an affidavit, or that the Commissioner or Notary would refuse or that this would lead to reporting to the authorities.

[56] The message in the RIR is that a person would not likely swear an affidavit deposing to homosexual behaviour of another person because of the risk to the affiant. In other words, affiants would be reluctant do so. The message in the legal opinion is that the Commissioner or Notary is not required to refuse to swear such an affidavit. Although the legal opinion states that the Commissioner or Notary would not divulge the contents of the affidavit and would not be required to report that a crime had been committed, it does not rebut the RIR or the RPD’s finding that there would be risks to the affiant for swearing such an affidavit.

[57] The RAD questioned why Mr. Olufemi would run the risk of disclosing that he had harboured his bisexual friend and swearing to this before a magistrate. The legal opinion does not address this concern nor does it rebut the RPD’s finding. Moreover, the Applicants’ argument that the NDP addresses only the fact that such affidavits are not common in Nigeria overlooks that the affidavit was sworn in Nigeria by a Nigerian man.

[58] In summary, based on the RIR, the RPD did not believe that Mr. Olufemi would have signed such an affidavit in a public setting in front of a government official as it could put him in danger. The legal opinion does not rebut the information in the RIR upon which the RPD relied.

[59] The evidence on the record does not support the Applicants' current submission that they could not have reasonably been expected to provide the legal opinion to the RPD because they were not aware that this would be an issue. The reference to the RIR by the RPD put the Applicants on notice that this was an issue for the RPD, as did the RPD's questions about the risks to the affiants to swear such affidavits. Mr. Okunowo's response was evasive and non-responsive. As noted above, the Applicants' Counsel made extensive submissions about the RIR at the RPD hearing. The Applicants could have indicated that they would provide post-hearing submissions to the RPD and sought time to do so. The RPD cannot be faulted for issuing its decision in a timely way after the hearing.

B. *Other credibility findings*

[60] Contrary to the Applicants' submissions that the legal opinion rebutted the RPD's finding that Mr. Olufemi's affidavit was fraudulent and provided credible evidence to support their claim, there were several other credibility findings, as described above, that would not have been overcome by the affidavit.

[61] The Applicants submit that Mr. Olufemi's affidavit confirmed the address where Mr. Okunowo hid after being exposed. Contrary to the Applicants' submissions, the credibility findings regarding the inconsistent address provided by Mr. Okunowo are based on the inconsistency in Mr. Okunowo's documents, not on the address set out in Mr. Olufemi's affidavit. In addition, contrary to the Applicants' submissions, the inconsistent address was not an insignificant matter. The two addresses were remarkably different and Mr. Okunowo offered

no explanation. The RPD noted that it expected consistency given that Mr. Okunowo claimed to have hidden at this address for two months and that this went to the core of his claim.

[62] As an observation, even if Mr. Olufemi's affidavit had been accepted, it could not establish Mr. Okunowo's sexual orientation as it states only that Mr. Okunowo disclosed this to the affiant when he asked to hide at his house, although the two had allegedly been friends for many years. In addition, Mr. Olufemi's affidavit is not entirely consistent with Mr. Okunowo's account.

[63] The affidavit of Mr. Okunowo's wife also could not establish his sexual orientation as it reiterated the same information, which was not believed by the RPD and RAD and was only based on what Mr. Okunowo told his wife.

[64] The RAD confirmed several credibility findings. The fact that Mr. Okunowo withheld visa records was not addressed. The RPD had noted that his testimony was evasive and non-responsive. Mr. Okunowo did not address his failure to produce updated attendance sheets from the 519 Centre. Mr. Okunowo changed his testimony about the requested visa records. The RAD and the RPD did not believe Mr. Okunowo's testimony regarding his long-term same-sex relationship, noting that he was evasive. In addition, Mr. Okunowo gave inconsistent evidence about his wife's forgiveness. The RAD's reasons for confirming the negative credibility findings are justified.

[65] The Applicants' submissions regarding the RAD's credibility findings amount to a request to the Court to reweigh evidence, which is not the Court's role as recently confirmed in *Vavilov* at para 125.

C. *Application of SOGIE Guidelines*

[66] The RAD considered the SOGIE guidelines and recognized that it was a challenge for a claimant to establish their sexual orientation. However, the RAD reasonably found that given the several credibility findings, Mr. Okunowo's evidence was not trustworthy or probative and did not establish that he was in a same sex relationship. The credibility findings relate to core elements of the Applicants' claim. The SOGIE guidelines are not a cure-all for such findings of credibility.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is dismissed.
2. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4019-19

STYLE OF CAUSE: OBAITAN EBENEZER OKUNOWO, SAMUEL
IREMIDE OKUNOWO (MINOR), MOFIYINFOLUWA
OPEMIPO OKUNOWO (MINOR) v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 22, 2020

**REASONS FOR JUDGMENT
AND JUDGMENT:** KANE J.

DATED: JANUARY 30, 2020

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