Federal Court Cour fédérale

**Date: 20200909**

**Docket: IMM-5464-19**

**Citation: 2020 FC 889**

**Ottawa, Ontario, September 9, 2020**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**OSCAR DAVID TAPIA FERNANDEZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] The Applicant had a work permit to be a jockey. Canada Border Services Agency [CBSA] did a site visit to the horse racetrack on another investigation, stopped the Applicant and asked to see his work permit. He showed it to them and when they questioned him, he said he worked as a groomer and not a jockey. He was arrested and after a hearing, he was issued an

Exclusion Order because of a misrepresentation. He will not be allowed back in Canada on a work permit for 5 years.

[2] The Applicant now applies for a review of the decision dated August 21, 2019 by the Immigration Division [ID] of the Immigration and Refugee Board.

## II. Background

[3] The Applicant is a citizen of Mexico. He has had work permits authorizing him to work at the racetrack in Canada since 2013. In March 2019, he applied for and received another permit to work as a jockey at the Hastings Racecourse in Vancouver [Racecourse]. Most employers of temporary foreign workers must obtain a Labour Market Impact Assessment prior to hiring. Employers of jockeys working in British Columbia are exempt from this requirement.

[4] In the summer of 2019, CBSA and the British Columbia Gaming Policy and Enforcement Branch [GPEB] were conducting a joint investigation into allegations of illegal foreign workers at the Racecourse. On August 19, 2019, as part of this investigation, a CBSA officer and a GPEB officer approached the Applicant while at work. The Applicant presented the officers with a British Columbia Gaming Commission identification card licensing him to work as a groomer. The CBSA officer asked him why—given that he had a permit to work as a jockey—his identification stated that he was a groomer.

[5] After the interview, the CBSA officer arrested the Applicant. The officer wrote a subsection 44(1) report outlining his concerns.

[6] Two days later, on August 21, the Applicant's admissibility and detention hearing took place. His sister-in-law, a Canadian citizen who lives in Abbotsford and works at the track, was present at the hearing. He was represented by former counsel, who is also a horse owner and trainer at the Racecourse. His former counsel met the Applicant for the first time on the morning of the hearing and they spoke for just under an hour.

## III. Hearing

[7] It should be noted here that there are two official transcriptions of the hearing, one in the Certified Tribunal Record [CTR] and one in the Applicant's Record. They were transcribed by two different people. They are essentially the same, with a few minor differences. One such difference was that in the version in the Applicant's Record, a sentence by the Applicant's sister-in-law begins with her asking "[d]o we have a right to an appeal?" which does not appear in the CTR version. However, it does not change the essence of her comment or be in dispute that it occurred.

[8] At the beginning of the admissibility hearing, the Applicant's former counsel confirmed that he was ready to represent the Applicant.

[9] The ID Member then explained the reason for the hearing: that the Minister of Public Safety and Emergency Preparedness believes that the Applicant is inadmissible for misrepresentation. She then explained that the Minister will first present evidence and then the Applicant will have the opportunity to examine that evidence and present evidence of his own.

[10] The ID Member asked previous counsel if they had any documents or witnesses. Previous counsel did not. The ID Member then said, "Not even Mr. Tapia?" Counsel replied "No". Then when asked about concessions of facts former counsel said much of it could be agreed on, "But I find one or two matters that are perhaps not accurate or not as they should be." When asked what, previous counsel said "…But I do want to speak at—an opportunity to speak at some length—not a long length—of the solemn declaration of Chris Johnson (phonetic)".

[11] The Minister's presentation was brief. The Minister's counsel demonstrated:

a) that the Applicant is not a permanent resident or a Canadian citizen (based on IRCC status checks);
b) that he is authorized to work as a jockey (based on the Applicant's work permit);
c) that he admitted to misrepresenting himself in obtaining the work permit (based on the officer's Solemn Declaration);
d) that he has been working as a groomer and not a jockey (based on his identification card); and
e) The Minister's counsel also noted that employers of jockeys in British Columbia are exempt from the Labour Market Impact Assessment requirement.

[12] Following the Minister's presentation, the Applicant's former counsel stated that they had "[n]o more to add." The ID Member asked whether they intended to speak about the CBSA officer's Solemn Declaration, as initially indicated. Counsel responded:

> COUNSEL: No. No, I'm not going to – not contest that any longer.
>
> MEMBER: Okay. Thank you. So have both you had your final statements?

[…]

COUNSEL: I've got no more to say.

[13] The ID Member then concluded that the Applicant is inadmissible for misrepresentation because he was working as a groomer on a work permit for a jockey. In making this decision, the ID Member noted that the Applicant, through his counsel, did not refute or even contest the evidence forming the basis of the Minister's allegation. She went on to say "It seems strange that a jockey doesn't have a Labour Market Assessment, while a groomer does, but that is not the point. The fact of the matter is you prevented authorities from doing the appropriate assessment of your application, thereby inducing an error in the administration of the Act." As such, the ID Member issued an Exclusion Order against the Applicant.

[14] The ID Member then commenced the detention hearing. The Minister's counsel did say that when the officer first spoke to the Applicant he had claimed to work as a jockey on occasions and then recanted. Former counsel then said that "I have submissions of course", and indicated that the Applicant complied with all instructions upon arrest, that he had no previous criminal charges, and that the Applicant's sister–in-law was at the hearing and was willing to have him stay with her. His sister-in-law was a witness at the detention hearing.

[15] The ID Member decided to not detain the Applicant because he was able to stay with his sister-in-law pending execution of the Exclusion Order. The Applicant's sister-in-law, at the conclusion of that hearing, asked whether the Applicant had a right of appeal, noting that "some of the things weren't stated that are facts," and that the Applicant is a licensed jockey in Mexico. The ID Member said "[l]isten you talk to counsel about that", and then "Start to raise an issue

after all the evidence is in and the decision has been made." The Applicant's sister-in-law replied "Well I didn't know I was allowed to talk about it, so I'm--" and the ID Member concluded the hearing.

[16] The judicial review is regarding the inadmissibility hearing and not the detention hearing.

## IV. Issue

[17] The issue is whether counsel's incompetence lead to a breach of procedural fairness.

## V. Standard of Review

[18] The standard of review for matters of procedural fairness is not settled law, and the Supreme Court of Canada, in its recent decision of *Canada v Vavilov (Minister of Citizenship and Immigration)*, 2019 SCC 65 [*Vavilov*] did not help to clarify the matter. The Federal Court of Appeal recently noted that:

> The standard of review for procedural fairness issues is currently in dispute in this Court (see *Bergeron v. Canada (Attorney General)*, 2015 FCA 160, 99 Admin. L.R. (5th) 1 (F.C.A.) at paras. 67-71) and the Supreme Court has not given any guidance on this in its recent decision in *Vavilov*.
>
> (*CMRRA-SODRAC Inc v Apple Canada Inc*, 2020 FCA 101 at para 15 [*Apple Canada*]).

[19] Despite the unclear situation regarding the standard of review for issues of procedural fairness, considering whether a decision and process was "fair" is the most important factor in the decision, and also that no deference is owed to the decision-maker. The Federal Court of

Appeal in *Lipskaia v Canada (AG)*, 2019 FCA 267, asserted that questions of procedural fairness are not decided according to any standard of review, but rather are legal questions to be answered by the Court.

[20] Two decisions in early 2020, however, identify the standard of review on matters of procedural fairness as being of correctness (see *Oleynik v Canada (AG)*, 2020 FCA 5 at 39; and *Langevin v Air Canada*, 2020 FCA 48 at 11). One decision simply states that no deference is owed to a decision-maker without making an explicit determination (*Escape Trailer Industries Inc v Canada (AG)*, 2020 FCA 54 at 13). *Apple Canada*, released in June of 2020, simply notes that the issue is not settled.

[21] In this situation, I will review the matter to determine if it was fair or not. Given that counsel competence, "is determined by a reasonableness standard. The analysis proceeds upon a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance". The implication of this is that the act of former counsel must not have been the result of "reasonable professional judgment" (*R v GDB*, 2000 SCC 22 at para 27 [*GDB*]).

## VI. Analysis

### A. *Protocol Re: Allegations Against Counsel or Other Authorized Representative in Citizenship, Immigration and Protected Person Cases before the Federal Court, March 7, 2014*

[22] The Court's protocol (which can be found in the *Practice Notices* of the Federal Court) on allegations against counsel [*Protocol*] establishes the conditions that an applicant must meet

to plead counsel incompetence as a basis for judicial review. Current counsel must notify former counsel of the allegation, advise former counsel that they have seven days to respond, and provide former counsel with both a signed authorization from the applicant releasing privilege and a copy of the *Protocol*. Current counsel should wait for a response before filing and serving the Application Record. Any application that raises allegations against former counsel must be served on former counsel. If the Court grants leave, current counsel must provide a copy of the order granting leave to former counsel forthwith.

[23] Current counsel has notified former counsel of the allegation, advised former counsel that they had seven days to respond, and sent former counsel a copy of the *Protocol*. Current counsel has not sent former counsel a signed authorization form releasing the privilege attached to the former representation. I regard this as a minor procedural defect that should not preclude review. Former counsel has provided no response to the notice. Current counsel has also served the Application Record on former counsel, and provided a copy of the order granting leave to former counsel. At the hearing, I confirmed with both parties that former counsel apparently did not wish to participate given that both counsel had attempted to contact former counsel and there was no response.

[24] The Applicant has filed with the Court a copy of a complaint to the professional regulator regarding the incompetence of former counsel.

B. *Counsel Incompetence*

[25] The core test for setting aside a decision due to counsel incompetence consists of two components: a performance component and a prejudice component. The burden is on the Applicant to prove both. The Applicant must prove that counsel performed incompetently. The incompetence must be specific and supported by evidence. The Applicant must also prove that the incompetence caused a miscarriage of justice. A miscarriage of justice may manifest in procedural unfairness, a compromise of trial fairness, or some other readily apparent form (*GDB* at paras 26-28).

[26] A third element to this test has been added as can be seen in *Yang v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1189 at para 16 [*Yang 2015*] requiring there to be reasonable notice given to former counsel. In this case, I find that this criterion has been met as explained above. I will deal with the prejudice component first.

(1) Prejudice Component-Procedural Fairness

[27] Procedural unfairness in cases of counsel incompetence exists if there is a reasonable probability that the decision-maker would have reached a different conclusion if counsel had acted competently. There is a strong presumption that counsel act competently. As such, the test is strict, and counsel incompetence will only be found to have caused procedural unfairness in extraordinary circumstances (*Yang 2015* at para 15).

[28] The Respondent submits that the burden of proving procedural unfairness based on counsel incompetence would mean that the Applicant must prove that there is a reasonable

probability that the hearing's outcome would have been different had former counsel introduced evidence.

[29] The Applicant indicated that had his former counsel competently represented him he would have:

a) presented evidence, and called his sister-in-law as a witness, to provide background about his credentials as a jockey in Canada;
b) presented evidence that he is a licensed jockey in Mexico;
c) presented evidence about his work conditions in Canada, particularly the level of control he has over his day-to-day tasks;
d) presented evidence about corruption at the Racecourse;
e) cross-examined on the Minister's evidence, particularly the CBSA officer's Solemn Declaration; and
f) that he had previously complied with all immigration rules and left when his permits expired.

[30] The Respondent states that the Applicant must provide the Court with evidence on which to base the conclusion that there would potentially be a different outcome. As he has not done so, they argue the Court has no basis on which to conclude that the hearing's outcome would have been different had counsel introduced evidence. The Respondent indicated that providing no evidence at the hearing may have been a litigation strategy and without the former counsel's participation in these proceedings, we will never know. Thus, in this case, counsel incompetence did not lead to procedural unfairness.

[31] I disagree. I find that because of former counsel's not presenting or refuting any evidence regarding the misrepresentation allegations that there is a reasonable probability that the incompetence affected the outcome of the case. This I find satisfies the prejudice component of the test.

[32] The ID Member even prompted former counsel that at the start of the hearing he had stated that he was going to refute the statutory declaration as well as prompting that he could present evidence or witnesses including his client. Former counsel did neither. When the transcript is reviewed, it is clear that the ID Member had no alternative to finding a misrepresentation because nothing was refuted. This was very prejudicial to the Applicant given that he had evidence to present, had his sister-in-law ready to testify on his behalf, and may have been able to ask for an adjournment to properly prepare and possibly have other witnesses or adduce further evidence.

[33] There was also the possibility of the Applicant being successful in presenting evidence that his employer was not complying with the conditions of the work permit and this was out of his control. The law surrounding this is found at Division 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR]. The complaint to the law society notes that the Applicant "was at the mercy of the horse owner to provide him jockey work". Under the IRPR, an employer must "provide the foreign national with employment in the same occupation as that set out in the foreign national's offer of employment…" (IRPR s 209.2(1)(a)(iii)). Counsel, however, did not explore this very reasonable line of argument.

[34] As well IRPA regulations have separate enforcement and compliance sections. Section. 200(3) deals with if you are a temporary worker and who work contrary to the conditions on their work permit. Sections 29(2) and 41 of the IRPA set out if a worker contravenes the act what the consequences are. No evidence or argument was presented at the hearing regarding these portions of the IRPA and IRPR.

[35] Given the severity of the outcome—a five-year ban from Canada—the consequences the Applicant will face is particularly egregious and thus prejudicial.

[36] While I understand the burden is high, I do find that there was a reasonable chance that the outcome of the hearing may have been different. I stress, though, that the test is not that it is an absolute that the outcome would have been different. Given that this was a case where no evidence was led from the Applicant even though the sister-in-law indicated she had something to say and the Applicant had paper work and possibly evidence to present on his behalf. Given there was a reasonable chance the outcome may have been different, thus the Applicant met the branch of the test regarding procedural fairness.

(2) Performance component

[37] The performance component is met if counsel's conduct falls outside the range of reasonable professional assistance. For example, counsel have been found incompetent for preventing a refugee claimant from presenting critical evidence (*El Kaissi v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1234 at para 21), inadequately preparing a client for a hearing, or presenting inadequate evidence to support a claim (*Galyas v Canada (Minister of*

*Citizenship and Immigration)*, 2013 FC 250 at para 86). Counsel have also been held incompetent because of the cumulative impact of many acts and omissions which alone would not amount to incompetence (*Memari v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1196 at para 64).

[38] Former counsel and the Applicant met for the first time on the morning of the hearing. Notably, it appears that former counsel only intended to retain duty counsel but then stepped in to fully represent him at both hearings. Former counsel confirmed at the beginning of the hearing that he was prepared to act as the Applicant's counsel. In doing so, he assumed the full burden of his professional responsibilities.

[39] The Applicant indicates because of the incompetence of his former counsel he was denied the opportunity to:

a) Present facts that he came to Canada to work as a horse jockey, including his own testimony and that of others who worked with him and employed him;
b) Present documentary evidence that he is a licensed horse jockey in Mexico;
c) Present witnesses to support his background credentials, including calling his sister-in-law, who was present at the proceedings;
d) Adduce evidence as to his conditions of work in Canada, including the level of control he has over his day to day tasks at the racetrack;
e) Present evidence as to the corruption that was being investigated at the racetrack where he was working by a former GPEB officer;

f) Cross-examine the evidence put forward by the Minister, including statutory declarations and interview notes from the CBSA officers that led the interview and provided notes of his interview; and

g) Provide arguments as to the abuse of process of the misrepresentation allegation being brought against him, when border officers could have more appropriately alleged unauthorized work or work contrary to the conditions of his work permit.

[40] The Applicant states that if his former counsel had not been present, he could have sought an adjournment to retain counsel. The Applicant also felt that counsel possibly did not understand that there were two separate hearings and it is at that first hearing that the Applicant argues he did not receive competent counsel.

[41] The Law Society complaint summary is illustrative of what is presented as incompetence. Former counsel made the decision not to file anything or respond regarding this case after being provided with the material which makes me draw the inference that the Applicant is not refuting the allegations against him. These acts, when considered together, fall outside of what might have been the result of reasonable professional judgment.

[42] The cumulative acts and omissions, which when considered alone may not be enough, in this case cause me to find the hearing to be unfair given that seriousness of the ramifications to the Applicant.

[43] I do not have to find any one act of egregious conduct to find that former counsel was incompetent. I need to establish that the actions fell outside of the realm of reasonable judgment, and that there was a miscarriage of justice as there was a reasonable possibility that the original decision could have been different. This is especially apparent because the employer did not meet the conditions of the permit and this was out of the Applicant's hands. This line of argumentation was not even explored by counsel.

[44] Justice demands that I grant the Applicant's application. It will be reheard and re-determined by a different officer.

[45] No certified questions were proposed.

**JUDGMENT in IMM-5464-19**

**THIS COURT'S JUDGMENT is that:**

1. The Application is granted and sent back to for a new hearing to be re-determined by a different decision maker;

2. No question is certified.

"Glennys L. McVeigh"
Judge

## ANNEX

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

| | |
|---|---|
| **Misrepresentation** | **Fausses déclarations** |
| 40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation | 40 (1) Emportent interdiction de territoire pour fausses déclarations les faits suivants : |
| (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act; | a) directement ou indirectement, faire une présentation erronée sur un fait important quant à un objet pertinent, ou une réticence sur ce fait, ce qui entraîne ou risque d'entraîner une erreur dans l'application de la présente loi; |
| **Report on Inadmissibility** | **Constat de l'interdiction de territoire** |
| **Preparation of report** | **Rapport d'interdiction de territoire** |
| 44 (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister. | 44 (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre. |

*Immigration and Refugee Protection Regulations* (S.O.R./2002-227)

| | |
|---|---|
| **Issuance of Work Permits** | **Délivrance du permis de travail** |
| **Work permits** | **Permis de travail — demande préalable à l'entrée au Canada** |
| **Exceptions** | **Exceptions** |
| 200 (3) An officer shall not issue a work permit to a foreign national if | 200 (3) Le permis de travail ne peut être délivré à l'étranger dans les cas suivants : |
| (a) there are reasonable grounds to believe that the foreign national is unable to perform the work sought; | a) l'agent a des motifs raisonnables de croire que l'étranger est incapable d'exercer l'emploi pour lequel le permis de travail est demandé; |
| (b) in the case of a foreign national who intends to work in the Province of Quebec and does not hold a Certificat d'acceptation du Québec, a determination under section 203 is required and the laws of that Province require that the foreign national hold a Certificat d'acceptation du Québec; | b) l'étranger qui cherche à travailler dans la province de Québec ne détient pas le certificat d'acceptation qu'exige la législation de cette province et est assujetti à la décision prévue à l'article 203; |
| | c) le travail que l'étranger entend exercer est |

(c) the work that the foreign national intends to perform is likely to adversely affect the settlement of any labour dispute in progress or the employment of any person involved in the dispute;

(d) [Repealed, SOR/2017-78, s. 8]

(e) the foreign national has engaged in unauthorized study or work in Canada or has failed to comply with a condition of a previous permit or authorization unless

(i) a period of six months has elapsed since the cessation of the unauthorized work or study or failure to comply with a condition,

(ii) the study or work was unauthorized by reason only that the foreign national did not comply with conditions imposed under paragraph 185(a), any of subparagraphs 185(b)(i) to (iii) or paragraph 185(c);

(iii) section 206 applies to them; or

(iv) the foreign national was subsequently issued a temporary resident permit under subsection 24(1) of the Act;

(f) in the case of a foreign national referred to in subparagraphs (1)(c)(i) to (iii), the issuance of a work permit would be inconsistent with the terms of a federal-provincial agreement that apply to the employment of foreign nationals;

(f.1) in the case of a foreign national referred to in subparagraph (1)(c)(ii.1), the fee referred to in section 303.1 has not been paid or the information referred to in section 209.11 has not been provided before the foreign national makes an application for a work permit;

(g) [Repealed, SOR/2018-61, s. 1]

(g.1) the foreign national intends to work for an employer who, on a regular basis, offers

susceptible de nuire au règlement de tout conflit de travail en cours ou à l'emploi de toute personne touchée par ce conflit;

d) [Abrogé, DORS/2017-78, art. 8]

e) il a poursuivi des études ou exercé un emploi au Canada sans autorisation ou permis ou a enfreint les conditions de l'autorisation ou du permis qui lui a été délivré, sauf dans les cas suivants :

(i) une période de six mois s'est écoulée depuis soit la cessation des études ou du travail faits sans autorisation ou permis, soit le non-respect des conditions de l'autorisation ou du permis,

(ii) ses études ou son travail n'ont pas été autorisés pour la seule raison que les conditions visées à l'alinéa 185a), aux sous-alinéas 185b)(i) à (iii) ou à l'alinéa 185c) n'ont pas été respectées,

(iii) il est visé par l'article 206,

(iv) il s'est subséquemment vu délivrer un permis de séjour temporaire au titre du paragraphe 24(1) de la Loi;

f) s'agissant d'un étranger visé à l'un des sous-alinéas (1)c)(i) à (iii), la délivrance du permis de travail ne respecte pas les conditions prévues à l'accord fédéral-provincial applicable à l'embauche de travailleurs étrangers;

f.1) s'agissant d'un étranger visé au sous-alinéa (1)c)(ii.1), les frais visés à l'article 303.1 n'ont pas été payés ou les renseignements visés à l'article 209.11 n'ont pas été fournis avant que la demande de permis de travail de l'étranger n'ait été faite;

g) [Abrogé, DORS/2018-61, art. 1]

g.1) l'étranger entend travailler pour un employeur qui offre, sur une base régulière,

striptease, erotic dance, escort services or erotic massages; or

(h) the foreign national intends to work for an employer who is

(i) subject to a determination made under subsection 203(5), if two years have not elapsed since the day on which that determination was made,

(ii) ineligible under paragraph 209.95(1)(b), or

(iii) in default of any amount payable in respect of an administrative monetary penalty, including if the employer fails to comply with a payment agreement for the payment of that amount.

**Canadian interests**

205 A work permit may be issued under section 200 to a foreign national who intends to perform work that

(a) would create or maintain significant social, cultural or economic benefits or opportunities for Canadian citizens or permanent residents;

des activités de danse nue ou érotique, des services d'escorte ou des massages érotiques;

h) l'étranger entend travailler pour un employeur qui :

(i) soit a fait l'objet d'une conclusion aux termes du paragraphe 203(5), s'il ne s'est pas écoulé deux ans depuis la date à laquelle la conclusion a été formulée,

(ii) soit est inadmissible en application de l'alinéa 209.95(1)b),

(iii) soit est en défaut de paiement de tout montant exigible au titre d'une sanction administrative pécuniaire, notamment s'il n'a pas respecté tout accord relatif au versement de ce montant.

**Intérêts canadiens**

205 Un permis de travail peut être délivré à l'étranger en vertu de l'article 200 si le travail pour lequel le permis est demandé satisfait à l'une ou l'autre des conditions suivantes :

a) il permet de créer ou de conserver des débouchés ou des avantages sociaux, culturels ou économiques pour les citoyens canadiens ou les résidents permanents;

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-5464-19 |
| **STYLE OF CAUSE:** | OSCAR DAVID TAPIA FERNANDEZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |

**HEARING HELD BY VIDEOCONFERENCE ON AUGUST 25, 2020 FROM VANCOUVER, BRITISH COLUMBIA (COURT AND PARTIES)**

| | |
|---|---|
| **DATE OF HEARING:** | AUGUST 25, 2020 |
| **JUDGMENT AND REASONS:** | MCVEIGH J. |
| **DATED:** | SEPTEMBER 9, 2020 |

**APPEARANCES:**

| | |
|---|---|
| Amanda Aziz | FOR THE APPLICANT |
| Brett Nash | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| Embarkation Law Corporation<br>Vancouver, British Columbia | FOR THE APPLICANT |
| Attorney General of Canada<br>Vancouver, British Columbia | FOR THE RESPONDENT |