Federal Court  Cour fédérale

Date: 20210104

Docket: IMM-7097-19

Citation: 2021 FC 8

Ottawa, Ontario, January 4, 2021

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

CITLALLI GRISEL MIRANDA HERNANDEZ (A.K.A. CITLALLI GRISEL FERNANDA MIRANDA HERNANDEZ)
DANIEL ALEJANDRO MANZANO PINGARRON
FRIDA PAOLA MANZANO MIRANDA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, which set aside the decision of the Refugee Protection Division [RPD] but confirmed it for different reasons. The RAD held the Applicants

were neither Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*] [Decision].

I. Facts

[2] The Applicants are a family of three, a mother [Principal Applicant], a father and their daughter [Minor Applicant]. The Applicants lived in a city in Mexico, just outside of Mexico City where the Principal Applicant worked as a lawyer.

[3] The Minor Applicant has been diagnosed with microcephaly, delayed psychomotor development, small size, variable angle extropy and autism spectrum disorder.

[4] Between January 11, 2017 and February 9, 2017, the Principal Applicant allegedly received threatening text messages from a cartel [Cartel] asking for 500,000 pesos and threatening her and her family if they did not pay.

[5] The Applicants say they fled Mexico on February 11, 2017 because they were afraid they would be killed by the Cartel. The Applicants arrived in Canada and submitted their Basis of Claim [BOC] on February 28, 2017. In the BOC they outlined an additional ground for claiming refugee status, that the Minor Applicant would face persecution in Mexico due to her disabilities.

[6] In its decision dated July 12, 2018, the RPD found the Applicants would not face a serious possibility of persecution or risk to their lives in Mexico because adequate state

protection was available. The RPD also found there was no reliable evidence that the discrimination faced by the Minor Applicant amounted to persecution.

[7] As a result, the RPD found that the Applicants were neither Convention refugees nor persons in need of protection pursuant to section 96 and section 97 of *IRPA.*

II. Decision under review

[8] The Applicants appealed the decision of the RPD to the RAD. The RAD gave notice it would consider a number of cities in Mexico as an Internal Flight Alternative [IFA], including Mexico City. The RAD denied the Applicants' request for an oral hearing, but admitted a number of new documents filed on the issue of IFA.

[9] In its Decision dated October 30, 2019, the RAD determined the RPD "incorrectly analyzed the Appellants' credibility and the availability of state protection as victims of extortion" and found the RPD failed to apply *Chairperson Guideline 3: Child Refugee Claimants* in its assessment of the Minor Applicant. The RAD set aside the RPD decision.

[10] Having set aside the RPD decision, the RAD went on to a detailed consideration of the issue of IFA in the context of Mexico City. The Applicants made no submissions to the RAD regarding their risk of persecution or harm by the Cartel in Mexico City, or any of the other proposed IFAs, notwithstanding they were notified IFAs were proposed by the RAD. The Applicants did submit 19 documents on the possibility of an IFA, one was already in the record and the rest were admitted by the RAD as new evidence.

[11] The RAD determined the Applicants had an IFA in Mexico City and they had failed to establish the Cartel continued to have an interest in them. In addition, the RAD found that there was a lack of evidence that the Minor Applicant would face discrimination and mistreatment on a forward-looking basis.

[12] As a result, the RAD concluded the Applicants are neither Convention refugees nor persons in need of protection pursuant to section 96 and section 97 of *IRPA*.

III. Issues

[13] The only issue in this application is whether the Decision is reasonable.

IV. Standard of Review

[14] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] Justice Rowe said that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] set out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption can be rebutted in certain situations, none of which apply in this case. Therefore, the Decision is reviewable on a standard of reasonableness.

[15] In *Canada Post*, Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] 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"

> (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
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> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[16] The Supreme Court of Canada in *Vavilov*, at para 86 states "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies." The reviewing court must be satisfied the decision maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of

> academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

V. Analysis

[17] The Applicants submit the RAD erred in finding the Applicants had an IFA in Mexico City and also erred in assessing the evidence concerning the Minor Applicant.

A. *IFA in Mexico City*

[18] In *Lawal v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 301, I set out the following regarding the test for an IFA:

> [8] First, it is settled law that the two-prong test to be applied in determining whether there is an IFA was established in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589. The test was recently outlined by Justice Pamel in *Feboke v Canada (Citizenship and Immigration)*, 2020 FC 155 at para 15:
>
> > [15] The decisions in *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706, and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589, have established a two-prong test to be applied in determining whether there is an IFA: (i) there must be no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and (ii) conditions in the proposed IFA must be such that it would not be unreasonable

> in all the circumstances for an individual to seek refuge there (*Reci v Canada (Citizenship and Immigration)*, 2016 FC 833 at para 19; *Titcombe v Canada (Citizenship and Immigration)*, 2019 FC 1346 at para 15). Both prongs must be satisfied in order to make a finding that the claimant has an IFA. This two-prong test ensures that Canada complies with international norms regarding IFAs (UNHCR Guidelines at paras 7, 24–30).

[19] The Applicants submit the RAD "got all the facts wrong" and the National Documentation Package on Mexico [NDP] and other country condition evidence shows "the bigger cartels are leaning on smaller gangs to act as muscle". The Applicants submit it was erroneous for the RAD to assert the Cartel in question did not have means to find the Applicants when the Cartel is affiliated with other cartels.

[20] The Applicants submit the Cartel is still motivated to find the Applicants. "The motivation of Cartels in Mexico has always been money, as their victims are forced to distribute drugs for money or kidnap for ransom or issue threats for payment of money and refusal attracts kidnapping and death". The Applicants reiterate that the Principal Applicant was sent threatening text messages between January 11, 2017 and February 9, 2017 and left Mexico on February 11, 2017 due to fear. Based on the information just presented, the Applicants submit it was a misstatement for the RAD to conclude there was no motivation by the Cartel to find the Applicants.

[21] As a further submission, the Applicants state the Cartel has made attempts to locate them in Mexico. The Principal Applicant's mother-in-law said on February 23, 2017, some "unknown men" came looking for the Applicants and told her to tell them another cartel was looking for

them. They also submit on February 22, 2017, a former co-worker advised he had received several phone calls asking for the Applicants. The Applicants submit this is evidence the Cartel made several attempts to look for the Applicants after they arrived in Canada. Because the Cartel was aware the Applicants entered Canada, it would be "unexpected" they would continue to visit their home "when in fact they have the means to track them any where in Mexico on arrival". The Applicants submit the RAD erred by being of the view that the Cartel should have continued visiting the Applicants' home and "used this implausibility to determine the availability of an IFA in Mexico City for the Applicants."

[22] The Applicants submit the RAD made an error in its determination of the IFA and Mexico City is not safe for the Applicants, especially when the RAD agreed there was evidence that the Applicants' movements were being monitored while they were living in Mexico and receiving threats from the Cartel.

[23] The Respondent submits the evidence in this case is the Cartel looked for the Applicants on February 22 and 23, 2017 and was told the Applicants were unavailable. The Cartel then lost interest and since February 23, 2017, there is no evidence the Cartel has approached anyone inquiring about the Applicants. The RAD found the Cartel did not have the means and motivation to find the Applicants and therefore they did not face a serious risk in Mexico City.

[24] The Respondent submits there is a high threshold to establish that an IFA is unreasonable. For this proposition, the Respondent cites the standard of review analysis I set out in *Ehondor v Canada (Citizenship and Immigration)*, 2017 FC 1143 at para 10:

> [10] In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of review analysis is not necessary where "the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question." This Court has determined that a review of the RAD's determination of the availability of an IFA is entitled to deference: *Pidhorna v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1 at para 39 per Kane J: "[t]he test for an IFA is well established. There is a high onus on the applicant to demonstrate that a proposed IFA is unreasonable (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164, [2000] FCJ No 2118 (FCA))." See also *Olarere v Canada (Minister of Citizenship and Immigration)*, 2017 FC 385 per Russell J at para 19: "[d]ecisions of the RAD in the context of an IFA analysis are reviewed under the standard of reasonableness: *Ugbekile v Canada (Minister of Citizenship and Immigration)*, 2016 FC 1397 at paras 12-14." Therefore, reasonableness is the standard of review for this IFA determination.

[25] In my respectful view, having considered these and other submissions, the Applicants have failed to meet this high threshold and the RAD reasonably found that Mexico City was a viable IFA.

[26] In this connection the RAD reasonably summarized the record in terms of risk as follows:

> [37] I accept that the Principal Appellant received several threatening text messages on her cell phone between January and February 2017 while living in [their home city]. There is also evidence that the Appellants' movements were being monitored while living in this city. However, after the Appellants left Mexico, there is no evidence of anyone from the cartel having any interest in the Appellants after February 23, 2017.
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> [38] At the RPD hearing, the Principal Appellant testified that she had no news from her work colleagues or her mother that anyone was looking for them in the 16 months since they arrived in Canada. When counsel asked the Associate Appellant if anybody is looking for him in Mexico, he only referred to the last incident on

> February 23, 2017 when some men from the Cartel asked his mother about his whereabouts.
>
> [39] I find the Appellants have provided insufficient evidence establishing that the [Cartel] has the means or motivation to find them in Mexico City. They provided no objective evidence of the [Cartel's] profile, including their scope of influence in other areas of Mexico or their ability to find the Appellants anywhere in the country. There is no evidence that the [Cartel] knows that the Appellants left for Canada. There is no evidence that the Cartel has made any attempts to contact friends or family members after February 23, 2017 (i.e. a period of two years and eight months). In other words, there is no evidence that the [Cartel] are still interested in pursuing the Appellants given the passage of time.
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> [40] Having failed to establish that the [Cartel] has the means or motivation to find the Appellants, I find they do not face a serious possibility of persecution by the [Cartel] if they move to Mexico City. I also find the Appellants do not, on a balance of probabilities, personally face a risk of cruel and unusual treatment or punishment, a risk to their lives, or a danger of torture, at the hands of the [Cartel] if they move to Mexico City.

[27] These findings of fact are amply supported by the evidence constraining the RAD in this case. I am not persuaded the Decision is tainted by unreasonableness.

B. *Minor Applicant*

[28] The evidence adduced by the Applicants showed the Minor Applicant was taken out of school because it appeared she was experiencing abuse. It was unclear exactly what occurred because the Minor Applicant is non-verbal; the Applicants took her out of school because "[i]t made no sense complaining as no one cared and we knew it would only make things worse for our daughter. The only option was to take her out of the school, which we did."

[29] The RAD acknowledged the Minor Applicant faced some forms of discrimination and mistreatment in school, but found there was a lack of evidence this would occur in Mexico City. The RAD relied on reports that showing amended education law to assist children with disabilities and nationwide provisions in classrooms to come to its conclusion.

[30] The Applicants submit there is nothing on the record to show the information in the reports was actually being implemented and the specific issue of abuse of children with disabilities was not addressed by the RAD. The Applicant submits the RAD "has completely misconstrued and misstated the facts about children with disability and (*sic*) are faced with abuse and persecution in Mexico."

[31] The Applicants submit the source of threat and agent of persecution in this case is the government itself and the Minor Applicant will continue to face future personalized risk. The Applicant submits, "[f]or a good number of years, the minor claimant has been subjected to risk to her life or to a risk of cruel and unusual treatment or punishment in the hands of teachers, students, and the society."

[32] The Minor Applicant's claim is not one that raises medical concerns nor is it curable if the government was able to provide sufficient medical assistance. Therefore, the Applicant submits that paragraph 97(1)(iv) of *IRPA* does not rebut the Minor Applicant's claim:

Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not	**97 (1)** A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle

have a country of nationality, their country of former habitual residence, would subject them personally	a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
…	…
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	**b)** soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
…	…
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	**(iv)** la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

[33] The Applicant submits that even if the Minor Applicant's condition was medical, this Court found there was a difference between a country's unwillingness to provide medical care and its inability to do so. A country's unwillingness to provide medical care as a matter of public policy is a violation of international standards and is precisely the type of risk to life that is contemplated by section 97 of *IRPA* (*Covarrubias v Canada (Minister of Citizenship and Immigration*, 2006 FCA 365 [Linden JA]).

[34] The Applicants submit subparagraph 97(1)(b)(iv) of *IRPA* is meant to be broadly interpreted and only proof "that the country is not unable to furnish medical care that is adequate for the applicant" is required and "the onus will be met where an applicant can show a personalized risk to life on account of the country's unjustified unwillingness to provide him

(sic) with adequate medical care, where the financial ability is present like in the case of the minor claimant."

[35] With respect, and in my view, the RAD engaged in a quite detailed analysis regarding the Minor Applicant's claims. The RAD acknowledged the difficulties the Minor Applicant previously faced but found there was a lack of evidence the same would occur in Mexico City in the future. There was evidence of clinics and services available to care for children with intellectual disabilities in Mexico, and the Applicants failed to adduce evidence to show that these services would discriminate against the Minor Applicant. The RAD found the Applicants did not present evidence on the future livelihood of the Minor Applicant and found the Applicants' submission the Minor Applicant was an easy target of violence was speculative. I agree.

[36] The RAD concluded, and I agree, that the Applicants did not sufficiently establish an objective basis for the Minor Applicant's claim. The evidence showed that she would have access to an education, health care and other services.

[37] In terms of access to education, and in my view, the RAD reasonably assessed the evidence and concluded:

> [66] The burden of proof is on the Appellants to demonstrate that there is sustained and systematic denial of education for children with disabilities in Mexico City. They failed to do so. Similarly, they have failed to canvass evidence demonstrating systematic or persistent mistreatment of children with disabilities in the public school system in Mexico City. I find, on the balance of probabilities, the Minor Appellant will have access to a meaningful and inclusive education in Mexico City that will accommodate her

> disability. I find that the Appellants have the means to pay for a one-on-one aide, if necessary, because they have previously used private schools and services tor the benefit of the Minor Appellant.

[38] In terms of access to health care, once again the RAD reviewed the evidence in very considerable detail. I am not persuaded its conclusion falls outside the evidence before it, that is, in my view the following conclusions are within the constraining record and are as such reasonable:

> [67] I have insufficient evidence to establish that the Minor Appellant was discriminated against in relation to medical services. The Minor Appellant has been assessed by several Mexican doctors from the time of her birth until leaving for Canada, including specialists in neurology, psychiatry, genetics, pediatrics, ophthalmology and neurophysiology. The Principal Appellant testified that they were able to have the Minor Appellant assessed at the best children's hospital in Mexico. According to the Principal Appellant's testimony, she also had the benefit of on-going treatment by a psychologist and a speech therapist. Aside from rude treatment by a neuro-pediatrician in 2005 and the Principal Appellant's belief, the Appellants failed to submit any independent or objective medical evidence suggesting that the treatment she received in Mexico was subpar because of her disability. On a balance of probabilities, the Appellants failed to establish that the Minor Appellant received inadequate medical services because of her disability.
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> [68] I find that there are medical resources available to the Minor Appellant in Mexico City, including both public and private clinics specialized in treating children with intellectual, disabilities and autism. Sources state that mental health services in Mexico City are significantly better than the rest of the country. For example, the Comprehensive Mental Health Care Centre, a public institution in Mexico City, offers specialized care for children and adolescents in. addition to providing therapies and communication workshops. Other public clinics in Mexico City include the Clinic for Autism, offering evaluation and intervention services, the Regional Center of Ixtapaluca, providing services to children with developmental disabilities, and the Children's Psychiatric Hospital.

[39] Turning to the issue of future livelihood, once again the RAD independently reviewed the evidence in considerable detail, most of which as the Respondent noted, related to individuals who are in institutions. It concluded:

> [71] The Appellants submit that if the Minor Appellant returns to Mexico, the state's refusal to accommodate her unique and special needs would severely and fundamentally restrict her ability to live a normal or safe life. The Appellants rely heavily on several reports of the abuse and torture of children with mental and physical disabilities in orphanages, migrant centres, care facilities, and mental health institutions. These reports focus on the horrific conditions that persons with disabilities face when they are abandoned by their families. Children without parents or familial supports, or families who do not have the financial means to take care of their children, are at risk of being institutionalized because they have no other options. This speaks to the lack of government assistance to families to keep children at home.
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> …
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> [73] I do not find that the evidence relating to mental health institutionalization applies to the Minor Appellant's circumstances. There is no evidence that the Minor Appellant was ever at risk of institutionalization given her family's financial means and support. The Minor Appellant has a supportive and loving family, including grandparents, who have been vigilant in giving her the care that she needs. She does not face a serious risk of abandonment, and she does not fit the profile of children who are at risk of abuse in mental health institutions.
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> [74] The Appellants submit that it is wrong to assume that the Minor Appellant will live with her family permanently who can advocate for her and protect her. However, I have no evidence that she will not have the support of her family in the foreseeable future.
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> [75] The Appellants also rely on a report on how persons with mental disabilities are treated in the criminal justice system. I find this evidence has low probative value to the Minor Appellants' circumstances because there is no evidence that she has been or will be criminally charged or find herself in the criminal justice system.

[40] While the Applicants raised gender-based violence in their submissions to the RAD, the RAD determined their arguments were speculative:

> [76] While the Appellants submit that the Minor Appellant's vulnerability makes her an easy target for multiple types of violence, including gender-based violence, I find this submission is based on speculation. For example, the Appellants have not provided any evidence of systematic or sustained abuse or sexual violence in Mexico City's school system or in the healthcare system, outside of the mental health institutions.
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> [77] I cannot agree with the Appellants' submissions that the lack of research or articles on the treatment of girls with intellectual disabilities in Mexico City is a reflection of attitudes towards persons with disabilities. Based on the hundreds of pages of country conditions documentation provided by the Appellants, and found in the NDP, there are several non-governmental organizations advocating for persons with disabilities in Mexico, including Human Rights Watch and Disability Rights International. If there is systematic and persistent of gender-based violence or mistreatment of girls with intellectual disabilities, in circumstances similar to the Minor Appellant, then it would be reasonable to expect there to be some evidence of this situation.

VI. Conclusion

[41] In my respectful view, the Applicants have not shown that the Decision of the RAD was unreasonable. The controlling issue is IFA. The Applicants filed new evidence which was accepted. They did not make submissions to the RAD regarding their risk of persecution or harm by the Cartel in Mexico City, or in any of the other proposed IFAs. In my respectful view, the RAD conducted detailed reviews of the evidence relevant to the Applicants' claims concerning issues under both sections 96 and 97 of *IRPA*. Its conclusions are well within the constraining facts and law. The reasons of the RAD demonstrate a rational chain of analysis. They are fully justified on the facts and law and are transparent and intelligible. The reasons flow from the facts and applicable law. There are no fatal errors. Therefore judicial review must be dismissed.

VII. Certified Question

[42] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-7097-19

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed, no question of general importance is certified, and there is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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HEARING HELD BY VIDEOCONFERENCE ON DECEMBER 16, 2020 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	BROWN J.
DATED:	JANUARY 4, 2021

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