

Federal Court



Cour fédérale

**Date: 20180529**

**Docket: IMM-4742-17**

**Citation: 2018 FC 551**

**Ottawa, Ontario, May 29, 2018**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**DOREEN OUCHORO KAHUMBA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant seeks judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], of a decision made by the Refugee Protection Division [RPD] of the Immigration and Refugee Board, finding that she is not a Convention refugee or a person in need of protection and that her claim is manifestly unfounded.

[2] For the reasons elaborated upon below, I find that the RPD did not err in finding that the Applicant had not established her claim that she faces a serious possibility of persecution in accordance with section 96 of the Act, or that she is in need of protection pursuant to section 97 of the Act. As a result, the application for judicial review is dismissed.

I. Background

[3] The Applicant is a citizen of Uganda. In May 2017, she travelled to Canada to attend a three-week course at Saint Francis Xavier University in Nova Scotia. Once in Canada, she applied for refugee protection. The Applicant claimed that she was at risk of persecution based on her gender and her sexual orientation as a bisexual woman. She also claimed that she was at risk of domestic violence perpetrated by her husband.

II. The Decision Under Review

[4] The RPD issued its decision on September 28, 2017 rejecting the Applicant's claim for refugee protection and finding that her claim was manifestly unfounded.

[5] The RPD noted that it had considered the Applicant's oral and written testimony and had applied the Chairperson's Guidelines with respect to Sexual Orientation and Identity and with respect to Gender Related Persecution.

[6] In brief, the RPD found that the Applicant had not presented credible or trustworthy evidence to establish that she had been assaulted by her husband or that she is bisexual. The RPD

assessed the Applicant's oral testimony and found it vague and lacking in detail. The RPD also found that much of the documentation provided by the Applicant to establish her sexual orientation and to support her claim of domestic violence was fraudulent. This finding stemmed from issues with the Applicant's documentary evidence, as well as objective country condition evidence regarding the prevalence of fraudulent documents in Uganda.

[7] With respect to the fraudulent documents, the RPD reviewed a letter from the Applicant's Local Village Council Chairman purporting to summarize the abuse that the Applicant suffered. The RPD noted that the name of the village was misspelled twice on the same document and that the ink stamps on the document were not authentic. Similarly, they found that a police report which purported to document an instance of domestic violence suffered by the Applicant was fraudulent, because the handwriting of the report lay above the official stamp, rather than below it. An affidavit from the Applicant's divorce lawyer was also found to have a fraudulent commissioner's stamp, which was digitally printed under the printed text. In addition, the letter notifying the Applicant's husband of the divorce listed an address for the husband which differed from the address where the Applicant and her husband had lived.

[8] The affidavit from the Applicant's uncle, which described her abusive relationship with her husband, was found to have stamps from a notary public that were inverted, a mistake which the RPD noted that a notary would not make.

[9] The RPD found that the Applicant's reliance on the fraudulent documents to establish key elements of her claim diminished the reliability of her other evidence. The RPD concluded that the Applicant was not at risk of domestic violence in Uganda.

[10] With respect to the Applicant's claim that she was at risk due to her sexual orientation and, more specifically, her relationship with her female partner, Sheila, the RPD found again that the Applicant had submitted fraudulent documents.

[11] For instance, the RPD found that the affidavit from the Applicant's sister, which stated that the Applicant had been expelled from school for homosexuality, was fraudulent. The RPD noted that the lawyer's notarial stamp on the affidavit was not authentic, and had been digitally printed in a manner which was meant to replicate an authentic ink stamp. Further, the RPD found that the Applicant's supposed membership documents in the Pan Africa International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) were fraudulent, as they contained a similarly fraudulent stamp. Moreover, the documents listed an email address which did not correspond with the official email address of the organization, as listed on their website. The RPD also noted that the Applicant had not provided an explanation for the email address, although she was given time to do so. The RPD concluded that the Applicant was not a member of the ILGA due to her vague testimony about the nature of the organization, her inability to describe her activity as a member, the email address, and her reliance on a fraudulent support letter.

[12] With respect to the Applicant's relationship with Sheila, the RPD found that the evidence was not probative or reliable. The Applicant's testimony was generally vague, and she could not sufficiently describe special moments or how they spent time together. The RPD also found that her testimony about her sexual relationship with Sheila appeared to be rehearsed. The RPD noted that the text messages between the Applicant and Sheila were contrived, and began after her arrival in Canada and her refugee claim. There was only one letter from Sheila, but no affidavit. In addition, the RPD noted that Sheila was not called as a witness to attest to the relationship. The RPD found that the Applicant's explanation that she was not aware that she could call Sheila as a witness at the RPD unreasonable. The RPD noted that she was represented by competent counsel who was familiar with the RPD's processes. The RPD concluded that the applicant was not in a same sex relationship with Sheila.

[13] The RPD concluded that on a balance of probabilities, the Applicant had not established the central elements of her claim with credible and trustworthy evidence. The RPD went on to cite section 107.1 of the Act and found that the Applicant's claim was manifestly unfounded. The RPD stated that the Applicant had "deliberately attempted to deceive the Board of a matter which was both material and substantive and therefore highly relevant to the determination of her status."

### III. The Applicant's Submissions

[14] The Applicant submits, generally, that the RPD ignored key evidence, misapprehended other evidence, did not address corroborating evidence, and failed to approach her claim with an open mind.

[15] The Applicant submits that it is apparent that the RPD did not consider the many documents she submitted. For example, the RPD mistakenly stated that she came to Canada to attend a conference, rather than to study as she stated. The RPD also questioned her about her membership in the ILGA despite her view that her documents sufficiently established this.

[16] The Applicant also points to a letter from a doctor, which describes injuries allegedly inflicted by her husband, noting that the RPD failed to mention this. In addition, photographs of property damaged by her husband and of her injuries were not mentioned by the RPD. She submits that this evidence establishes the domestic violence she claimed.

[17] The Applicant argues that the RPD's finding that the documents were fraudulent is not reasonable. She submits that the RPD erred because it started from the premise that documents from Uganda may be fraudulent and failed to assess each document presented (*Jacques v Canada (Minister of Citizenship and Immigration)*, 2010 FC 423 at para 14, [FCJ] No 487 (QL) [*Jacques*])

[18] With respect to the Letter from the Village Council Chairman, the Applicant argues that spelling mistakes occur on many documents, including those filed with this Court, and this does not indicate that they are fraudulent.

[19] The Applicant now offers new affidavits from her lawyer in Uganda and the Village Council Chairman stating that the original documents were not fraudulent. She argues that the Court should accept these documents because credibility findings were made about the original

documents, which she should have had an opportunity to address (relying on *Dimgba v Canada (Minister of Citizenship and Immigration)*, 2018 FC 14 at para 10, [2018] FCJ No 7 (QL) [*Dimgba*]).

[20] The Applicant also submits that the RPD erred in finding that her explanations for their concerns were not reasonable. For example, she explained to the RPD that the Notice of Divorce was sent to her husband's business address.

[21] With respect to her relationship with Sheila, the Applicant submits that she provided ample evidence that she was bisexual and that Sheila was her partner. She submits that the RPD ignored the fact that she could not openly communicate with Sheila while she was in Uganda. She points to the letter from Sheila dated July 2017 and submits that this evidence, together with the other evidence, establishes that they were in a same sex relationship. The Applicant also suggests that the RPD ignored other evidence of her bisexuality, including her membership in the 519 Centre in Toronto.

[22] The Applicant argues more generally that the RPD erred in not considering the evidence which contradicts its findings, including the medical reports and photographs and the evidence of her relationship with Sheila. She relies on *Simba v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 14777 at para 29, [2000] FCJ No 1118 (TD), which reiterates passages from *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] 157 FTR 35 at paras 15-17, 1998 CanLII 8667 [*Cepeda-Gutierrez*]. The Applicant submits that

the evidence she submitted, which was not mentioned by the RPD, should lead to the inference that this evidence was not considered.

#### IV. The Respondent's Submissions

[23] The Respondent submits that the RPD's decision is reasonable, and that the RPD's credibility findings are owed significant deference. The Respondent maintains that the RPD's credibility findings were well supported given the Applicant's unreliable and vague testimony and her reliance of fraudulent documents. The Respondent submits that the Applicant's testimony is the key evidence which was found not to be credible. In addition, the RPD assessed the original documents submitted in support of the claim and provided specific reasons to find the documents fraudulent.

[24] The Respondent adds that, contrary to the Applicant's submission, corroboration of testimony is required where there is a reason to doubt the credibility of the sworn oral testimony. The RPD reasonably doubted the Applicant's testimony regarding her sexual orientation and relationship with Sheila and, therefore, did not err in scrutinizing the other evidence and finding that it did not support the claim (*Hohol v Canada (Minister of Citizenship and Immigration)*, 2017 FC 870 at para 21, [2017] FCJ No 1025 (QL) [*Hohol*]).

[25] With respect to the domestic violence allegations, the Respondent notes that the errors on the letter from the Village Council Chairman cannot be explained as simple typos, or as resulting from Uganda being a third world country. The explanation for the wrong address on the divorce notification was also not reasonable, given that the address is not the business address of her



husband but of a friend and the documents she provided to establish the address are completely illegible.

[26] The Respondent submits that there was no reliable evidence of the Applicant's sexual orientation. The unsworn letter from Sheila does not describe a sexual relationship; rather it describes a close relationship and simply states that they are both bisexual. The Respondent notes that the onus was on the Applicant to provide reliable evidence and not on the RPD to call Sheila as a witness. The Applicant had two oral hearings and had ample opportunity to call Sheila, and the RPD was justified in not providing a third opportunity. In addition, the Applicant's membership in the 519 Centre does not establish sexual orientation, only membership in an organization that supports the LGBTQ community.

[27] More generally, the Respondent submits that the RPD did not ignore contradictory evidence. The Respondent notes the principle established by the Federal Court of Appeal in *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 at para 1 (CA) (QL) [*Florea*], that the decision maker is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown. The Respondent notes that the RPD's findings are consistent with the evidence presented. The RPD did not fail to mention relevant evidence that contradicted the RPD's findings of fact. The RPD had ample evidence upon which to base its findings.

[28] The Respondent submits that the Court should review the decision of the RPD on the record before it, noting that the new affidavits, which assert that some of the original documents

were authentic, were not before the RPD. The Respondent also points out that the Applicant makes no mention of these affidavits in her memorandum of argument.

V. Standard of Review

[29] The standard of review of issues of fact – including credibility – and mixed fact and law, is reasonableness. The RPD’s decision should be given deference as long as the decision “falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 53, 55, [2008] 1 SCR 190; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59, [2009] 1 SCR 339).

[30] To determine whether a decision is reasonable, the Court looks for “the existence of justification, transparency and intelligibility within the decision-making process” and considers “whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Deference is owed to the decision-maker and the Court will not re-weigh the evidence.

[31] In addition to the general principles regarding the assessment of reasonableness, it is well established that boards and tribunals, such as the RPD, are best placed to assess credibility (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (QL) at para 4, 160 NR 315 (CA)) and that their credibility findings should be given significant deference (*Lin v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1052 at para 13, [2008] FCJ No 1329 (QL); *Fatih v Canada (Minister of Citizenship and Immigration)*, 2012 FC 857 at para

65, 415 FTR 82; *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, 228 FTR 43).

[32] In *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319, [2012] FCJ No 369 (QL) [*Rahal*], Justice Mary Gleason summarized the key principles from the jurisprudence regarding credibility (at paras 41-46). Justice Gleason explained why the Court's role in reviewing credibility findings is so limited, at para 42:

[42] First, and perhaps most importantly, the starting point in reviewing a credibility finding is the recognition that the role of this Court is a very limited one because the tribunal had the advantage of hearing the witnesses testify, observed their demeanor and is alive to all the factual nuances and contradictions in the evidence. Moreover, in many cases, the tribunal has expertise in the subject matter at issue that the reviewing court lacks. It is therefore much better placed to make credibility findings, including those related to implausibility. Also, the efficient administration of justice, which is at the heart of the notion of deference, requires that review of these sorts of issues be the exception as opposed to the general rule. As stated in *Aguebor* at para 4:

There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony: who is in a better position than the Refugee Division to gauge the credibility of an account and to draw the necessary inferences? As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review...

(see also *Singh* at para 3 and *He v Canada (Minister of Employment and Immigration)*, 49 ACWS (3d) 562, [1994] FCJ No 1107 at para 2).

VI. The Decision is Reasonable

[33] It is against all these principles that the RPD's decision has been reviewed, along with the record before the RPD, the transcript of the RPD hearing and the relevant jurisprudence.

[34] The role of the court is not to re-weigh the evidence, but to determine, based on the record before the RPD, whether the RPD ignored or misconstrued evidence. That is not the case in the present circumstances. A high level of deference is owed with respect to credibility findings and there is no reason for the Court to interfere. The RPD's decision bears all the hallmarks of a reasonable decision.

[35] Contrary to the Applicant's submissions, the RPD's credibility findings are not microscopic or built on a misunderstanding of the evidence. The RPD focused on the Applicant's key claims and the key evidence she relied on to support those claims. The RPD reasonably found that the Applicant's testimony was not credible. The Applicant's oral testimony was found to be not credible due to vagueness, lack of detail and other factors observed by the RPD. Given the credibility concerns, the RPD looked to the corroborating evidence, scrutinized it, and found it to be unreliable and, more particularly, found that several documents were fraudulent.

[36] As noted by Justice Manson in *Hohol*, at para 19:

[19] The RPD is also entitled to make general findings of lack of credibility. The accumulation of inconsistencies, contradictions, etc., taken as a whole, can lead to such a finding. As well, a general finding of lack of credibility can extend to all relevant evidence emanating from the Applicant's version and all documentary evidence he submitted to corroborate his version of

the facts (*Lawal v Canada (Minister of Citizenship and Immigration)*, 2010 FC 558 at para 22).

[37] The RPD is well placed to assess the authenticity of documents. The RPD did not start from the assumption that the documents were fraudulent because they emanated from Uganda. Rather, the RPD reviewed the originals submitted and clearly indicated why it found the documents to be suspect. Ink stamps that do not resemble ink stamps and inverted seals would justify such findings. Having found that the majority of the documentation was fraudulent, and based on the concern of the prevalence of fraudulent documents in Uganda, the RPD reasonably doubted the reliability of other evidence, of which there was little.

[38] The Applicant pointed to *Jacques* in support of her argument that the RPD erred in presuming that all documents from Uganda are fraudulent, and that the Board is not an expert in assessing documents. I do not agree that *Jacques* supports the Applicant's argument in the present circumstances. In *Jacques*, Justice O'Reilly noted at para 14:

[14] It is clear that the Board does not have an obligation to have documents reviewed by experts before concluding that they are fraudulent (*Culinescu v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 73). However, there must be some evidence before the Board on which to base a finding that a document is not genuine, unless the problem is apparent on the document's face (*Kashif v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 179; *Riveros v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1009).

[39] Justice O'Reilly also provided examples from the jurisprudence of circumstances where the Court found that the decision-maker had erred in finding documents to be fraudulent. None of the examples cited are helpful to the Applicant. In the present case, the RPD explained why it

found the documents reviewed to be fraudulent; the problems were apparent on the face of the document. Moreover, unlike in *Jacques* where the Court had found Mr. Jacques' oral testimony to be otherwise credible and only one document was questioned, in the present case, the RPD found the Applicant not to be credible before engaging in an assessment of the documentary evidence and finding several documents to be fraudulent.

[40] The Applicant's explanation regarding the Divorce Notification does not suggest that the Board erred. The letter from Mr. Oburo, a business colleague, coupled with an illegible business card, does nothing to confirm the Applicant's explanation that the Divorce Notification was sent to the her husband's business. Moreover, this is only one of many documents found to be fraudulent.

[41] With respect to the allegations of domestic violence, as noted by the Applicant, the RPD did not specifically refer to the March 2015 doctor's note or to photographs. However, it is presumed that the RPD considered all the evidence submitted. The RPD did specifically note the police report which describes an alleged incident of domestic violence on March 17, 2015 and which the RPD found to be fraudulent. The Applicant does not address the finding that the police report was found to be fraudulent.

[42] In *Florea*, the Federal Court of Appeal found that the fact that the decision-maker "did not mention each and every one of the documents . . . does not indicate that it did not take them into account: on the contrary, a tribunal is assumed to have weighed and considered all the evidence presented to it unless the contrary is shown." (at para 1).

[43] The oft-cited principle in *Cepeda-Gutierrez* at para 17 is not inconsistent with *Florea*. In *Cepeda Gutierrez* at para 17, the Court stated:

However, the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence"; *Bains v. Minister of Employment and Immigration* (1993), 63 F.T.R. 312 (T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[44] The principle relied on – that inferences may be drawn from the decision-maker's failure to mention important evidence – must also be considered in the context of the overall guidance from that decision, which also confirmed that the reasons of the decision-maker are not to be read hypercritically, and decision-makers are not required to refer to every piece of evidence that they receive that is contrary to their findings and to explain how they dealt with it (at para 16).

[45] In *Rahal*, Justice Gleason explained the principle at paragraph 39, noting that *Cepeda-Gutierrez* "actually says . . . that a tribunal need not refer to every piece of evidence; rather, it is only where the non-mentioned evidence is critical and contradicts the tribunal's conclusion that the reviewing court may decide that its omission means that the tribunal did not have regard to the material before it."

[46] In the present case, the RPD had ample evidence to support its conclusion. Although it did not mention the medical letter or the photos, or the Applicant's membership in the 519 organization, it is presumed to have considered all the evidence, and this evidence did not clearly contradict their findings that: the Applicant was not credible; much of the evidence submitted by the Applicant appeared to be fraudulent; and, as a result, the Applicant had not provided sufficient evidence to support her claims. Moreover, having found that the Applicant was generally not credible based on its assessment of her testimony and of key documentary evidence, the RPD could extend that finding to all other evidence (*Hohol* at para 19).

[47] It is acknowledged that establishing sexual orientation may not be simple, as it is very personal, and living openly may expose persons to risks, depending on their environment. Therefore, decision-makers are generally reluctant to impose unrealistic evidentiary burdens to establish sexual orientation. However, there must be some credible evidence to support the claim, coupled with country condition evidence to establish persecution. One without the other is simply not sufficient.

[48] As noted by Justice Manson in *Hohol* at para 21:

[21] Moreover, sworn testimony is presumed true unless there is a reason to doubt its truthfulness. Furthermore, a lack of corroborating evidence of one's sexual orientation, in and of itself, absent negative, rational credibility or plausibility findings related to that issue, is not enough to rebut the presumption of truthfulness (*Sadeghi-Pari v Canada (MCI)*, 2004 FC 282 at para 38).

[49] In the present case, the presumption of truth in sworn testimony was rebutted. The Applicant's evidence supporting her claim was reasonably found to not be reliable. The RPD



noted the Applicant's vague testimony; she could not describe the relationship, despite her allegation that it was her most significant relationship and had been on-going for over two years; her testimony about the sexual relationship was found to be rehearsed; she had only a series of "Whats App" texts with Sheila from her time in Canada; and she provided few pictures of Sheila. The RPD was not satisfied with the Applicant's explanation for not calling Sheila as a witness. It is not accurate for the Applicant to suggest that the Board "waived" its right to call her as a witness. The onus was on the Applicant to support her claim.

[50] I agree with the Respondent that the letter from Sheila does not describe an intimate same sex relationship. While there may be a reason why Sheila could not do so, no reason was offered. The RPD did not err in finding that this letter is not sufficient to ground the Applicant's claim that she is in a same sex relationship with Sheila.

[51] With respect to the Applicant's oral arguments that the new affidavits rebut the RPD's finding that the stamps on previous documents were fraudulent, this evidence is not admissible. The RPD decision is reviewed on the record before the RPD, and the recent affidavits were not part of the record. The reasonableness of the RPD's decision must be assessed in light of the evidentiary record that was put before it.

[52] Contrary to the Applicant's submission that she should have had an opportunity to respond to the findings about the fraudulent documents, the jurisprudence (*Dimgba*) relied on by the Applicant arose in the context of the decision of a Visa Officer, which refused an application for a work permit based on the documentary evidence, and where there was no oral hearing. In

*Dingba*, the applicant argued that this breached the duty of procedural fairness. The context, facts and issues are very different.

[53] Moreover, in the present context, the jurisprudence has established that evidence which was not before the decision-maker is not admissible on judicial review unless it falls within recognized exceptions; where the evidence provides context; where it is filed to support an allegation of breach of procedural fairness; or, where it is filed to demonstrate the absence of evidence (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20, [2012] FCJ No 93 (QL)).

[54] In the present case, there is no allegation of a breach of procedural fairness and there is no breach of procedural fairness. The Applicant had two oral hearings before the RPD and was granted additional time to gather evidence where the Board had specific questions. The RPD put their concerns about the evidence to the Applicant during her hearing, including with regard to the stamps, and it was not satisfied with the explanations offered.

[55] A finding that a claim is manifestly unfounded is not made lightly. The Applicant has not specifically addressed the reasonableness of this additional finding. Regardless, it is justified in the circumstances.

VII. No Certified Question

[56] The Applicant proposed two questions for certification: whether the RPD member is an expert in assessing the genuineness of documents; and, whether the RPD member can determine that a document is not genuine based on the stamps on it, without other evidence.

[57] The questions do not meet the test for certification. There is considerable jurisprudence on the issue of the RPD's assessment of documentary evidence, including *Jacques*. The proposed questions are focussed only on the facts of this case. Moreover, the answer would not be dispositive. The RPD provided several justifications for its finding that the Applicant had not established her claim, including credibility findings to which a high degree of deference is owed.

**JUDGMENT in IMM-4742-17**

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

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

"Catherine M. Kane"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-4742-17

**STYLE OF CAUSE:** DOREEN OUCHORO KAHUMBA v THE MINISTER  
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**PLACE OF HEARING:** TORONTO, ONTARIO

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**JUDGMENT AND REASONS:** KANE J.

**DATED:** MAY 29, 2018

**APPEARANCES:**

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