Date: 20090105

Docket: IMM-2182-08

Citation: 2009 FC 6

Ottawa, Ontario, the 5th day of January 2009

Present: The Honourable Mr. Justice Shore

BETWEEN:

EMMANUEL LALANE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The allegation of risks made in an application for permanent residence on humanitarian and compassionate grounds (H&C) must relate to a particular risk that is personal to the applicant. The applicant has the burden of establishing a link between that evidence and his personal situation. Otherwise, every H&C application made by a national of a country with problems would have to be assessed positively, regardless of the individual's personal situation, and this is not the aim and objective of an H&C application. That conclusion would be an error in the exercise of the discretion provided for in section 25 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) which is delegated to, *inter alia*, the Pre-removal Risk Assessment (PRRA) officer by the Minister

(*Mathewa v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 914, [2005] F.C.J. No. 1153 (QL) at para. 10; see also chapter IP 5 of the Citizenship and Immigration Canada manual on inland processing of applications, entitled "Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds", which expressly provides that the risk identified in an H&C application must be a personalized risk (section 13, p. 34), Exhibit "B", Affidavit of Dominique Toillon; *Hussain v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 719, 149 A.C.W.S. (3d) 303).

[2] Moreover, as noted in Enforcement Manual (ENF) 10, section 11.2, a temporary stay will be imposed where return to a specific country or place presents a generalized risk that the Minister of Public Safety and Emergency Preparedness considers dangerous and unsafe to the entire general civilian population of that country or place. Individualized risk is different from generalized risk and is assessed during Immigration and Refugee Board (IRB), H&C and PRRA assessments (ENF Manual 10, p. 22: Exhibit "A", Affidavit of Dominique Toillon).

[3] It should be noted that under subsection 230(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), the stay of the removal order does not apply to a person who is inadmissible on grounds of serious criminality or criminality under subsection 36(1)(*a*) of the IRPA. (ENF Manual 10, p. 23: Exhibit "A", Affidavit of Dominique Toillon).

[4] Luc Martineau J. made the following comments in the recent decision in *Nkitabungi v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 331, 169 A.C.W.S. (3d) 862:

> [12] ... Moreover, the fact that the relevant authorities have decided not to return to DRC all Congolese citizens in Canada without legal status does not create a presumption of undue or disproportionate hardship as learned counsel for the applicant argues. In fact, every H&C application case is a specific case. With regard to this, I note that in *Mathewa v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 914, it was found that a moratorium on removals to DRC does not in and of itself prevent an application made on humanitarian and compassionate grounds from being denied. (Emphasis added.)

II. Judicial Proceeding

[5] This is an application for judicial review of a decision by an immigration officer of the Department of Citizenship and Immigration Canada, dated April 21, 2008, denying the application for permanent residence.

III. Facts

[6] The applicant, Emmanuel Lalane, is a citizen of Haiti.

[7] In 1990, Mr. Lalane became a permanent resident of Canada.

[8] Between 2003 and 2007, Mr. Lalane was convicted of assault, breach of probation, conspiracy to import narcotics, importing narcotics, possession of narcotics for the purposes of trafficking and possession of substances.

[9] In June 2007, a 44 Report was issued under subsection 36(1)(*a*) of the IRPA, "Inadmissibility on grounds of serious criminality".

[10] In 2008, Mr. Lalane submitted his H&C application, arguing that he was established in Canada and was at risk in Haiti. He alleged that he was at risk because of, *inter alia*:

- the general situation in the country;
- his status as a deportee and former member of the army;
- the fact that he wears a pacemaker and the health system in Haiti would put his life in danger.

IV. Impugned Decision

[11] The IRPA requires that a foreign national who wishes to settle permanently in Canada apply for and obtain a permanent resident visa before entering Canada; under subsection 25.(1) of the IRPA, the Minister may exempt a foreign national from applying for a permanent resident visa outside Canada on humanitarian and compassionate grounds. This is an entirely discretionary process (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 51).

[12] It is up to the applicant to satisfy the immigration officer that there are humanitarian and compassionate considerations that warrant a favourable recommendation for an exemption from the usual process as provided by the IRPA.

[13] More specifically, the applicant must prove that his personal circumstances are such that the hardship of having to obtain a permanent resident visa outside Canada would be (i) unusual and undeserved or (ii) disproportionate (Immigration Manual: (IP) Inland Processing, chapter IP 05 at para. 5.1).

V. Issue

[14] Was the decision of the immigration officer unreasonable?

VI. Analysis

[15] Mr. Lalane advanced the following grounds in support of his application for review of the H&C decision:

- The PRRA officer assessed the evidence improperly;
- The PRRA officer failed to have regard to or comment on the fact that Haiti is on the list of moratorium countries;
- The PRRA officer assigned no weight to the best interests of the children;
- The fact that Mr. Lalane wears a pacemaker that must be replaced in 2010 will be a death sentence because specialized care is not available.

New evidence subsequent to decision

[16] The four documents filed as Exhibits “A”, “B”, “C” and “D” to the affidavit of Gilberte Charles (the applicant’s spouse) are new evidence.

[17] A number of facts set out in that affidavit constitute new evidence in themselves because the affidavit was not in evidence before the PRRA officer.

[18] Exhibits “A”, “B”, “C” and “D” to that affidavit constitute new evidence because they were not brought to the attention of the PRRA officer. The affidavit of Dominique Toillon is thus uncontradicted evidence that those four exhibits are not included anywhere in the court record.

[19] Even more obvious is the fact that Exhibit “B” is dated May 22, 2008, and Exhibit “C” is dated May 6, 2008, that is, subsequent to the PRRA decision dated April 21, 2008.

[20] There can be no doubt that the documents attached to Ms. Charles’ affidavit cannot be considered by this Court when they were not before the PRRA officer at the time he made his decision.

[21] Moreover, it is clear that Mr. Lalane is attempting mainly to use that affidavit to reply to the concerns stated by the PRRA officer in his decision, by adding information or clarifying the information he had already provided in his H&C application. Mr. Lalane is thus trying to submit new evidence to the Court.

[22] It is settled law that in an application for judicial review, this Court may not have regard to evidence that was not before the decision-maker (*C.D. v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 501, [2008] F.C.J. No. 631 (QL) at para. 40; *Alabadleh v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 716, 149 A.C.W.S. (3d) 470 at para. 5; *Mijatovic v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 685, 149 A.C.W.S. (3d) 290 at para. 22).

Evidence

[23] Mr. Lalane argues that the immigration officer assessed the evidence improperly. More specifically, in this regard, he alleges that:

- the officer used the wrong test in assessing whether Mr. Lalane would have difficulty re-entering the labour market in Haiti;
- the officer failed to have regard to the fact that Mr. Lalane has held several other jobs, including one as a volunteer with an organization that assists the Inuit population, while he was incarcerated;
- the officer failed to have regard to the tests set out in the regulations and case law under the IRPA concerning his wife and the reason for the marriage;
- he had a reasonable expectation that his application would be considered and justified in light of the moratorium;
- the PRRA officer "wore two hats" and thus failed to apply the rules of natural justice, in that he relied on a decision he had made himself and failed to inform Mr. Lalane of this, and allowed him no opportunity to make representations to counter that decision.

(Applicant's Record at pp. 166, 168, paras. 8, 10, 13, 15-16, 22, 27 and 30).

[24] First, regarding his re-establishment in Haiti, the immigration officer concluded:

> [TRANSLATION]... The applicant obtained an engineering degree in Haiti. I therefore believe that his employment history and training, both in Canada and in Haiti, may help him to re-enter the labour market in his country of nationality ...

(Decision at p. 3).

[25] In his written submissions in support of his H&C application, Mr. Lalane alleged, *inter alia*:

> [TRANSLATION] Given the context of insecurity and virtually total anarchy, I would have no way of earning a living …

(Applicant's written submissions in support of his H&C application, page 3; Exhibit "C", Affidavit of Dominique Toillon).

The immigration officer therefore cannot be accused of failing to consider this relevant factor in his assessment.

[26] Second, contrary to the allegation, the immigration officer noted, *inter alia*, that Mr. Lalane had started working for the Inuultisivik centre in 2005. The immigration officer stated, *inter alia*, that Mr. Lalane had submitted a pay slip and deposit notice to support that aspect. The immigration officer concluded:

> [TRANSLATION] ... I am of the opinion that holding a job is a positive point in an application on humanitarian and compassionate grounds but it is not a decisive factor …

(Decision at p. 3 at paras. 2 and 3).

[27] The fact that Mr. Lalane had made progress in adapting to Canadian society, that he was working and that he had become financially self-sufficient could not have been a basis for the immigration officer to conclude automatically that there were humanitarian and compassionate grounds. As this Court held in *Tartchinska v. Canada (Minister of Citizenship and Immigration)* (2000), 185 F.T.R. 161, 96 A.C.W.S. (3d) 112, self-sufficiency does not, in itself, guarantee that a

humanitarian and compassionate application will be accepted in the absence of other factors such that refusal of the H&C application would result in unusual or disproportionate hardship.

[28] Third, with respect to his wife and the reason for marriage, the immigration officer concluded:

> [TRANSLATION] He alleges that his wife has been psychologically and physically affected by his incarceration and that she now has to support her two children. He says that she wants him to stay in Canada. However, he produced no documents to establish his wife's health, and no details concerning the nature of their relationship. As well, he submitted no letter of support from her.
>
> ...
>
> ... Little information is given concerning his relationship with his wife and his former wife. Accordingly, the marriage is not a sufficient humanitarian and compassionate ground to grant an exemption.
>
> (Emphasis added.)

(Decision at p. 3 at paras. 6 et 8).

[29] In the absence of any evidence that the separation of Mr. Lalane and his wife would cause unusual and undeserved or disproportionate hardship, it was reasonable for the immigration officer to conclude as he did.

[30] In addition, the courts have held that the separation of family members in itself does not constitute a humanitarian and compassionate ground warranting an exemption, in the absence of any evidence supporting the conclusion that the separation would cause unusual and undeserved or

disproportionate hardship (*Aoutlev v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 111, [2007] F.C.J. No. 183 (QL) at para. 20).

[31] As well, in *Aoutlev*, *supra*, this Court referred to one of its previous decisions to reiterate that the fact that a person leaves family members and employment behind does not necessarily constitute harm warranting a favourable decision on humanitarian and compassionate grounds.

[32] On this point, also, Mr. Lalane does not specify the tests in the regulations and case law under the IRPA that the officer failed to consider.

[33] To conclude, this Court has held in previous decisions that a PRRA officer has no duty to disclose his or her decision regarding a PRRA application to the applicant where that officer also decides the humanitarian and compassionate application. More specifically, in *Zolotareva v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1274, 241 F.T.R. 289, at paragraph 24, Martineau J. said that the PRRA officer had no duty to give the applicant an opportunity to make comments before reaching a final decision on her application (*Rasiah v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 583, 139 A.C.W.S. (3d) 112 at para. 21; *Vasquez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 91, 268 F.T.R. 122; *Aoutlev*, *supra* at para. 39; *Akpataku v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 698, 131 A.C.W.S. (3d) 496; *Chowdhury v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 389, 218 F.T.R. 264; *Pannu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1356, 153 A.C.W.S.

(3d) 195 at para. 37; *Liyanage v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1045, 141 A.C.W.S. (3d) 118 at para. 41).

[34] Mr. Lalane's position on this point amounts to disagreeing with how the immigration officer assessed the various evidence before him in reaching his decision and asking the Court to reconsider the matter and substitute its own decision.

Moratorium

[35] As noted earlier, Mr. Lalane alleges that he had a reasonable expectation that his application would be considered and justified in light of the moratorium. More specifically, he alleges that the PRRA officer should have referred to the moratorium and applied that additional criterion for assessment in considering the facts submitted by him.

[36] The two decisions cited in Mr. Lalane's memorandum, *Isomi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1394, 157 A.C.W.S. (3d) 807 and *Alexis v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 273, [2008] F.C.J. No. 493 (QL), arise out of PRRA assessments, and not humanitarian and compassionate applications.

[37] Because of the humanitarian and compassionate considerations, the immigration officer had no duty to refer to the moratorium in his decision.

[38] The allegation of risks made in an H&C application must relate to a particular risk that is personal to the applicant. The applicant has the burden of establishing a link between that evidence and his personal situation. Otherwise, every H&C application made by a national of a country with problems would have to be assessed positively, regardless of the individual's personal situation, and this is not the aim and objective of an H&C application. That conclusion would be an error in the exercise of the discretion provided for in section 25 of the IRPA which is delegated to, *inter alia*, the PRRA officer by the Minister (*Mathewa, supra*; see also chapter IP 5 of the Citizenship and Immigration Canada manual on inland processing of applications, entitled "Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds", which expressly provides that the risk identified in an H&C application must be a personalized risk (section 13, p. 34), Exhibit "B", Affidavit of Dominique Toillon; *Hussain, supra*).

[39] Moreover, as noted in Enforcement Manual (ENF) 10, section 11.2, a temporary stay will be imposed where return to a specific country or place presents a generalized risk that the Minister of Public Safety and Emergency Preparedness considers dangerous and unsafe to the entire general civilian population of that country or place. Individualized risk is different from generalized risk and is assessed during IRB, H&C and PRRA assessments (ENF Manual 10, p. 22: Exhibit "A", Affidavit of Dominique Toillon).

[40] It should be noted that under subsection 230(3) of the Regulations, the stay of the removal order does not apply to a person who is inadmissible on grounds of serious criminality or

criminality under subsection 36(1)(*a*) of the IRPA. (ENF Manual 10, p. 23: Exhibit "A", Affidavit of Dominique Toillon).

[41] Luc Martineau J. made the following comments in the recent decision in *Nkitabungi*, *supra*:

> [12] ... Moreover, the fact that the relevant authorities have decided not to return to DRC all Congolese citizens in Canada without legal status does not create a presumption of undue or disproportionate hardship as learned counsel for the applicant argues. In fact, every H&C application case is a specific case. With regard to this, I note that in *Mathewa v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 914, it was found that a moratorium on removals to DRC does not in and of itself prevent an application made on humanitarian and compassionate grounds from being denied. (Emphasis added.)

[42] The question is not when or to where the applicant will be removed. The issue here is whether applying for a visa from outside Canada would cause the applicant unusual and undeserved or disproportionate hardship. The applicant has the burden of proving the particular facts of his personal situation, which mean that applying for a visa from outside Canada would cause him unusual and undeserved or disproportionate hardship. There is no particular point that needs to be proved. It is up to the applicant to decide what grounds, in his opinion, are relevant H&C factors in his particular circumstances and to submit comments regarding those factors.

[43] As stated in *Hussain*, *supra*:

> [12] It is also a well-recognized principle that it is insufficient simply to refer to country conditions in general without linking such conditions to the personalized situations of an applicant (see for example, *Dreta* v. *Canada (The Minister of Citizenship and Immigration)*, 2005 FC 1239 and *Nazaire* v. *Canada(Minister of Citizenship and Immigration)*[2006] F.C. 416).

[44] In this case, it is clear in the immigration officer's decision that he considered the difficult conditions in the country in question; however, as Yvon Blais J. said in *Mathewa*, *supra*, that is not sufficient in itself for all applications for exemption on humanitarian and compassionate grounds to be allowed. The applicant must be facing a personalized risk, and that risk, as well as all of the other factors alleged as humanitarian and compassionate grounds, must satisfy the officer that applying for a visa from outside Canada would cause the applicant disproportionate or unusual and undeserved hardship (*Hussain*, *supra*).

[45] In this case, the immigration officer concluded that there was no personalized risk that would result in unusual and undeserved or disproportionate hardship for Mr. Lalane. His conclusion on that point was as follows:

> [TRANSLATION] Notwithstanding that situation, I find that the applicant has not established that his situation is different from that of other Haitian citizens. Accordingly, I find that the sources and the evidence submitted do not establish the existence of a possibility that he would be personally at risk in that country.
>
> **Conclusion**
> Having regard to the foregoing, I find that the humanitarian and compassionate grounds in this application, in relation to establishment in Canada, the best interests of the children and the risks alleged, are not sufficient to warrant granting an exemption. I am of the opinion that the applicant has not established that leaving Canada to apply for a visa would cause him unusual and undeserved or disproportionate hardship.

(Decision at pp. 6 and 7).

[46] The immigration officer assessed the conditions in the country, acknowledged that the situation was still fragile, and concluded that Mr. Lalane was not personally at risk if he were to be returned to Haiti. The immigration officer weighed establishment in Canada, in relation to

Mr. Lalane's occupational situation, his ties in Canada and his criminal record, and took into account the best interests of the children, as will be explained in more detail later. The immigration officer reached a general conclusion encompassing establishment in Canada and the risks alleged, using the appropriate test. Although the immigration officer did not refer to the moratorium in his decision, that is not a reviewable error; an H&C decision and the potential enforcement of a removal order are two completely different things:

> [17] ... In passing, I note that the decision to impose a temporary stay on removals to a country is under the Minister of Public Safety's jurisdiction while the decision made by the Officer regarding an application on humanitarian and compassionate grounds falls within the Minister of Citizenship and Immigration's powers. These two decisions are the concern of two completely different Ministers. In addition, as I made clear earlier, the caselaw shows that a temporary stay on removals does not in and of itself prevent an application made on humanitarian and compassionate grounds from being denied (*Mathewa*, *supra*, para. 9). (Emphasis added.)

(*Nkitabungi*, *supra*).

Best Interests of the Children

[47] It is settled law that it is up to the immigration officer to weigh the relevant factors in deciding an H&C application. The best interests of the children are a factor that the officer must examine very carefully, and when the officer has clearly referred to and defined that factor, it is up to the immigration officer to determine what weight to assign to it in the circumstances (*Baker*, *supra*; *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, [2004] 1 S.C.R. 76; *Legault v. Canada (Minister of Citizenship and Immigration)*, 2002 FCA 125, [2002] 4 F.C. 358 (C.A.); *Bolanos v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1031, 239 F.T.R. 122 at para. 14; *Hussain*, *supra*; *Pannu*, *supra* at para. 37).

[48] As the Supreme Court clearly explained in *Baker, supra* (at para. 75), the fact that the decision-maker should give the children's best interests substantial weight does not mean that those interests must always outweigh other considerations, or that there will not be other reasons for denying an H&C application even when the children's interests are taken into account.

[49] In *Canadian Foundation for Children, Youth and the Law, supra*, the Supreme Court of Canada reiterated the legal principle stated in *Baker, supra*, as follows:

> It follows that the legal principle of the "best interests of the child" may be subordinated to other concerns in appropriate contexts. For example, a person convicted of a crime may be sentenced to prison even where it may not be in his or her child's best interests. Society does not always deem it essential that the "best interests of the child" trump all other concerns in the administration of justice. The "best interests of the child", while an important legal principle and a factor for consideration in many contexts, is not vital or fundamental to our societal notion of justice, and hence is not a principle of fundamental justice. (Emphasis added.)

[50] In addition, it is settled law that the applicant has the burden of presenting all of the relevant information in support of his application. In *Owusu v. Canada (Minister of Citizenship and Immigration)*, 2004 FCA 38, [2004] F.C.R. 635 at paragraph 8, the Court observed: "since applicants have the onus of establishing the facts on which their claim rests, they omit pertinent information from their written submissions at their peril" (*Raji v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 653, 158 A.C.W.S. (3d) 464 at para. 10).

[51] It is apparent from the notes in the record that the immigration officer considered the best interests of the children in the context of the evidence submitted to him. The immigration officer noted:

- The applicant had four children from two different relationships;
- He did not cite the best interests of the children from his first relationship;
- Only his young son has his spouse's permission to visit him;
- The applicant submitted no concrete evidence of his involvement with his children;
- The older children have lived with their mother for a long time, and the applicant does not have visitation rights;
- The younger children have been separated from their father since he was incarcerated in May 2007 and live with their respective mothers in Canada.

[52] There having been no evidence before him as to the nature of the relationship that Mr. Lalane had developed with his children, it was reasonable for the immigration officer to conclude as he did.

[53] The reasons for the immigration officer's decision indicate that the decision was made in a manner that was receptive to the interests of the two children and that intervention by the Court is not warranted. The fact that the immigration officer did not arrive at the result Mr. Lalane had hoped for does not mean that he erred.

Issue of the Pacemaker

[54] Contrary to what Mr. Lalane stated in his memorandum of argument, at paragraphs 37 *et seq.*, the PRRA officer noted in his decision that he had consulted the documents relating to the pacemaker and the documents from the Correctional Service of Canada. As stated in his reasons,

those documents indicate that Mr. Lalane was monitored about every six months by a cardiologist and that the pacemaker's life is about two and a half years (Decision at p. 4, subtitle [TRANSLATION] "Risks").

[55] What the PRRA officer said in his reasons is that Mr. Lalane submitted no evidence to support his allegation that [TRANSLATION] "[I]n Haiti, there is no care available from a competent cardiologist and there are no battery replacement instruments, as is the norm in Canada" (Decision at p. 4, subtitle "Risks").

[56] The PRRA officer analyzed the documentary evidence in the record, which indicated, *inter alia*, that health services are not non-existent, but that access to services is difficult for the poorest individuals. As noted by the PRRA officer, Mr. Lalane did not establish that he fell into that category. As well, he is from Port-au-Prince, where the situation is less problematic (Decision at p. 5 at para. 1).

[57] It is settled law that what an immigration officer must do is examine the documents submitted in evidence and assess their probative value. That is what the immigration officer did, and he then stated precise and complete reasons in support of his conclusion (*Lim v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 956, 116 A.C.W.S. (3d) 929; *Uddin v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 937, 116 A.C.W.S. (3d) 930).

VII. Conclusion

[58] The immigration officer had regard to all of the evidence submitted to him and assessed all of the relevant factors relating to humanitarian and compassionate grounds.

[59] Mr. Lalane has failed to identify any evidence that might persuade this Court that the decision made was unreasonable, and there is nothing that would warrant the intervention of the Court in respect of the immigration officer's decision.

[60] For all these reasons, Mr. Lalane has failed to establish that there are grounds on which the H&C decision made by the immigration officer should be set aside. Accordingly, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed;

2. No serious question of general importance be certified.

"Michel M.J. Shore"
Judge

Certified true translation
Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2182-08
STYLE OF CAUSE:	EMMANUEL LALANE v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	December 17, 2008
REASONS FOR JUDGMENT AND JUDGMENT BY:	THE HONOURABLE MR. JUSTICE SHORE
DATED:	January 5, 2009

APPEARANCES:

Jean-François Fiset	FOR THE APPLICANT
Caroline Doyon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

JEAN-FRANÇOIS FISET Montréal, Quebec	FOR THE APPLICANT
JOHN H. SIMS, Q.C. Deputy Attorney General of Canada	FOR THE RESPONDENT