

Federal Court



Cour fédérale

Date: 20141117

Docket: IMM-694-14

Citation: 2014 FC 1082

Ottawa, Ontario, November 17, 2014

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

MUHAMMAD IMTIAZ CHEEMA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an Application for leave to commence an application for judicial review pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the IRPA) of a decision of Anna Brychey of the Refugee Protection Division (RPD) dated December 9, 2013, which held that the Applicant was not a Convention Refugee nor a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

II. Facts

[2] The Applicant is a 41 year-old man from Pakistan.

[3] The Applicant is a homosexual and commenced an intimate relationship with his business partner, Mr. Saif Ullah (Mr. Ullah), by the end of 2008. The Applicant and Mr. Ullah each owned 25% in a rice mills company, Falcon Rice Mills, in Gujranwala, Pakistan. The other 50% of the company is owned by Mr. Muhammad Tariq Aziz (Mr. Tariq Aziz).

[4] The Applicant and Mr. Ullah rented an apartment close to their place of work in Gujranwala. In February 2010, Mr. Tariq Aziz visited the apartment where the Applicant and Mr. Ullah were living and saw the Applicant half-naked while Mr. Ullah was in the shower. Mr. Tariq Aziz came to suspect their homosexual relationship and started to blackmail the Applicant and Mr. Ullah. Mr. Tariq Aziz proposed that they take over his 50% share in the company by paying him 13 million rupees. The Applicant borrowed money from different individuals, including 10 million rupees from Mr. Tariq Aziz's right hand man, Mr. Muhammad Afzal.

[5] In April 2010, the lawyer who was in possession of the documents of sale could not be found and Mr. Tariq Aziz kept his 50% shares of the company, along with the money given to him by the Applicant and Mr. Ullah. Also around April 2010, the Applicant was shot by Mr. Mohammad Afzal, a body guard of Mr. Tariq Aziz.

[6] In September 2010, the Applicant demanded either the return of the money or the shares in the mill from Mr. Tariq Aziz, but the latter threatened to disclose the Applicant's homosexual relationship. The Applicant and Mr. Ullah therefore decided to leave Pakistan for Canada.

[7] On October 29, 2010, the Applicant and Mr. Ullah were approached by Mr. Tariq Aziz's brother-in-law and a religious clerk from the Jamia mosque near the mill, while they were in a car, and were told that they should prepare themselves for death by stoning, because of their homosexual relationship. The Applicant and Mr. Ullah went to hide at a friend's house, Mr. Waseem, in Lahore.

[8] The Applicant and Mr. Ullah enlisted the help of a travel agent in order to leave Pakistan. They received their Canadian visas and left Pakistan for Canada on November 16, 2010. They alleged coming to Canada to assess the rice market. They subsequently claimed refugee protection after being questioned by immigration authorities at the airport.

III. Procedural History

[9] The Applicant's refugee claim was originally joined with that of Mr. Ullah. The two claims were originally heard together on June 15, 2012, September 20, 2012 and September 25, 2012 by Member Aronoff.

[10] Me Bohbot was initially counsel for both the Applicant and Mr. Ullah. Me Jessica Lipes became counsel for the Applicant after the February 9, 2012 hearing.

[11] By a decision dated January 30, 2013, Member Aronoff, decided to recuse himself from hearing the claims, because Mr. Ullah's counsel, Me Bohbot, made allegations of bias against him.

[12] A request to separate the files was made and was granted on May 1, 2013 by the coordinating member.

[13] A *de novo* hearing was held on August 12, 2013 for the Applicant. On October 24, 2013, counsel for the Applicant filed a motion for recusal of the board member, Member Brychcy, because she was in possession of the transcript of the previous hearings. Me Lipes felt that the Applicant's testimony on August 12, 2013 was being compared to Mr. Ullah's testimony of the previous hearings, given under very strenuous circumstances, as will be seen later. In comparing testimonies, counsel felt that Member Brychcy would unjustly undermine the Applicant's testimony. On November 15, 2013, Member Brychcy informed Me Lipes that she would not recuse herself. The Applicant's testimony continued on December 2, 2013. The RPD rendered its decision on December 9, 2013.

IV. Contested Decision

[14] The panel was satisfied of the Applicant's identity, but did not find the Applicant to be credible. The RPD made the following conclusions in their decision:

1. The panel does not find the Applicant's testimony credible with regards to who, between the Applicant and Mr. Ullah, saw Mr. Tariq Aziz first when the latter entered their apartment in February 2010 (RPD's Decision at paras 24 to 28 and 31).

2. The panel finds the Applicant inconsistent in his August 2013 and December 2013 testimonies with regards to the condoms being left on the table in the apartment. The panel finds that the mention of the condoms on the table was made to embellish the Applicant's claim to make it look as if he and Mr. Ullah had been caught "red handed" (RPD's Decision at paras 29 to 31).
3. The panel does not find the Applicant credible with regards to how a letterhead paper from Falcon Rice Mills was obtained by the visa agent for their visa application. The Applicant's testimony at the September 20, 2012 hearing is inconsistent with his December 2, 2013 testimony. The panel therefore concludes that the Applicant's mention of a blank letterhead being given to the visa agent at the December 20, 2013 hearing was an attempt from the Applicant to undo the damage of his previous story told on September 20, 2012, where he denied knowledge of the letter (RPD's Decision at paras 32 to 35).
4. The panel does not find the Applicant to be a forthcoming witness. The panel believes that the Applicant tried to anticipate the information being sought in their questions and concludes that the Applicant would frequently claim not to understand the question or say that his "head was about to explode" when asked a key question or when discrepancies were pointed out to him (RPD's Decision at para 36).
5. The panel finds the Applicant's lack of proof of attending the 2012 and 2013 Gay Pride Parade and his inconsistencies with regards with whom he attended those parades negatively affects his credibility as to his alleged homosexuality (RPD's Decision at para 37).

6. The panel finds that the Applicant is not a forthright witness because it believes that the Applicant could not have forgotten to mention his homosexuality in the IMM 5611 form. The panel does not accept that the Applicant's psychological state was what caused him to forget this information (RPD's Decision at paras 38 to 41).
7. The panel does not see any reason why the Applicant presented himself as Mr. Ullah's cousin and not just his business partner. The panel also concludes that the Applicant's general credibility is negatively affected because he misrepresented his visa application (RPD's Decision at para 42).
8. The panel gives little probative value to the documents presented by the Applicant, because they contradict one another. For example, a letter from a lawyer in Pakistan, dated September 13, 2011, speaks of a verbal complaint by Mr. Tariq Aziz to the police station, which states that no First Information Report or arrest warrant was issued for the Applicant. This contradicts a newspaper article printed in The Daily Pakistan, dated August 17, 2011, stating that there is a search to arrest the Applicant because of his homosexuality. Evidence was also presented to the panel that explains that it is possible to pay to have false stories printed in newspaper articles (RPD's Decision at para 44).
9. The panel concludes that there is insufficient credible evidence to establish that the Applicant has a well-founded fear of persecution for a Convention ground because of his homosexuality under section 96 of the IRPA. The Panel then considers whether or not the Applicant is a person in need of protection under subsection 97(1) of the IRPA. The panel states that it did not believe the Applicant's homosexuality to be the root cause of his problems with Mr. Tariq Aziz. The Applicant would thus not be wanted by the police

because of his homosexuality. The panel goes on to state that the Applicant could easily avoid anyone to whom he owes money by moving to Karachi, where the Applicant would have an Internal Flight Alternative (“IFA”). The panel also finds that the Applicant could find a doctor in Karachi with regards to his health issues if he ever needed to (RPD’s Decision at paras 44 to 48).

10. The panel finally concludes that because of the credibility issues identified, the Applicant does not have a well founded fear of persecution for a Convention ground in Pakistan. Furthermore, his removal to Pakistan would not more likely subject him personally to a risk to his life or to a risk of cruel and unusual treatment or punishment or to a danger of torture (RPD’s Decision at para 49).

V. Parties’ Submissions

[15] The Applicant first submits that Member Brychey erred by not recusing herself at the *de novo* hearing after relying on a third party testimony from the original hearing. The Applicant submits that he was not given a fair hearing because there was an apprehension that the panel was biased.

[16] Moreover, according to the Applicant, “at a *de novo* hearing before the RPD, the new panel is generally entitled to consider the transcript from the claimant’s original hearing” (Applicant’s memorandum at para 34). However, in this case, the new panel used the original transcript in an unfair way and gave rise to a reasonable apprehension of bias. The original

transcript contains Mr. Ullah's testimony, on which the panel relies to arrive at a negative conclusion with regards to the Applicant's credibility.

[17] The Respondent submits that the decision of Member Aronoff to recuse himself is not an indication that the evidence collected during the Applicant's first three hearings should not be included in his *de novo* hearing, as the transcript does not bias the reader nor give rise to a reasonable apprehension of bias. The Respondent further submits that the recusal of Member Aronoff related to tension between him and Me Bohbot and not the Applicant or Mr. Ullah.

[18] The Applicant also submits that procedural fairness was breached at the *de novo* hearing because Mr. Ullah was not present and therefore he had no opportunity to make representations and provide explanations for his testimony. The Applicant submits that the panel erred in law when it rejected the motion for recusal. The Respondent replies that Member Brychey did not make a decision regarding Mr. Ullah's rights and that in order for the Applicant to argue a breach of natural justice, the unfairness has to be towards the Applicant.

[19] In the alternative, the Applicant submits that the Board's credibility analysis was not reasonable since the panel relied on seven concerns to justify its negative credibility findings, where three of those concerns arose from a comparison with the previous hearings' testimony. The Respondent replies that the Board is in a better position to assess the credibility of the Applicant. The Respondent also notes discrepancies between the Applicant's different testimonies and between the Applicant's testimonies and Mr. Ullah's testimonies to conclude that the Board did not err in not finding the Applicant credible. The Respondent also submits that

the Board was conscious of the Applicant's mental state and its impact on his testimony. According to the Respondent, the Applicant's mental state along with being declared a vulnerable person by the coordinating board member does not mean that his testimony is credible.

VI. The Issues

[20] The Applicant states the following issues:

1. The RDP member's reliance on a third party testimony from the original hearing gives rise to a reasonable apprehension of bias;
2. The Board's credibility analysis was not reasonable.

[21] The Respondent submits the following issues:

1. Having considered the transcripts of previous hearings, did the Board member err in failing to recuse herself?
2. Did the Board err in concluding that the Applicant's claim to be a homosexual was not credible?

[22] I have reviewed the issues identified by the parties and I believe that the central issue of this case can be summarized as follows:

1. Did the Board member err by relying on the transcript of the original hearings in the Applicant's *de novo* hearing?

VII. Standard of Review

[23] The main issue identified above raises questions of mixed facts and law. The applicable standard of review is therefore that of reasonableness (*Sing v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 125 at para 43 (*sub nom Lai v Canada (Minister of Citizenship and Immigration)*)). The Court shall only intervene if it concludes that the decision is unreasonable, where it falls outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at para 47).

VIII. Analysis

- A. *Did the Board member err by relying on the transcript of the original hearings in the Applicant's de novo hearing?*

[24] I find that Member Brychcy erred by relying on the original transcript at the Applicant's *de novo* hearing. The original hearings were conducted in a very difficult atmosphere, where the right to counsel was denied to Mr. Ullah. For the reasons below, it was thus unreasonable to subsequently use this transcript in the Applicant's *de novo* hearing.

- (1) The original hearings

[25] It is settled law that it is acceptable for a new panel to use the transcripts from a refugee claimant's original hearing in a *de novo* hearing before the RPD (*Darabos v Canada (Minister of Citizenship and Immigration)*, 2008 FC 484 at para 13 [*Darabos*]; *Diamanama v Canada*

(*Minister of Citizenship and Immigration*), [1996] FCJ No 121, 61 ACWS (3d) 160 at para 10).

It can be used by a panel for purposes of fact-finding, such as to verify the veracity of a claimant's story (*Kabengele v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ No 1866, 197 FTR 73 at para 47; *Badal v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 311, [2003] FCJ No 440 at para 16). However, in the case at bar, the use of the transcript of the original hearings is problematic. First, member Brychey used not only the Applicant's testimony, but also the co-claimant's testimony at the time, Mr. Ullah, to make credibility determinations of the Applicant, without Mr. Ullah being present at the *de novo* hearing to explain his previous testimony. There is little evidence as to why Mr. Ullah could not be present at the *de novo* hearing. Second, the original hearings were conducted in a tensed atmosphere, where on two occasions Mr. Ullah was denied legal representation. He was therefore questioned without his lawyer present, due to no fault of his own, as will be described below. Also, the atmosphere at those hearings was tensed and hostile as there was animosity between Member Aronoff and Me Bohbot. On one occasion, Me Bohbot had to be escorted out of the room by security. It was thus unreasonable for Member Brychey to have used the original transcript at the Applicant's *de novo* hearing to make credibility determinations. This deprived him of the opportunity to present his case afresh, which created an unfair situation for the Applicant.

(2) The right to counsel

[26] The right to counsel in administrative law is not absolute. However, "when the absence of counsel results in depriving the individual of his right to a fair hearing, the decision is invalid" (*Mervilus v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1206 at para 21). In the case at bar, even if Member Aronoff never rendered a decision with regards to the original

hearings, the right to legal counsel was denied to Mr. Ullah at the June 15, 2012 and September 20, 2012 hearings, because of animosity between his lawyer and the board member. He was questioned in a tensed atmosphere without his lawyer present to intervene or make representations. Mr. Ullah's testimonies were subsequently used at the Applicant's *de novo* hearing to make unreasonable credibility determinations.

[27] Counsel for the Respondent argues that the Applicant cannot use rights not given to his partner as being reason to justify that fairness was not given to him at the *de novo* proceeding. I disagree. As the transcript of the first proceeding shows, the unfolding of the hearings was such that the tension arising from the exchange between Member Aronoff and counsel for Mr. Ullah (for a certain time, Me Bohbot was also counsel for the Applicant), created an atmosphere that did not permit or facilitate the testimonies of all concerned. For that reason, the events surrounding the right to counsel involving Mr. Ullah were such that the hearing presided by Member Aronoff created an unfair climate and a tensed atmosphere that tainted these hearings and did not facilitate the testimonies of everyone concerned. In the following paragraphs, a review of the transcript of the original hearings describes the situation as it was lived by all present.

(a) *The June 15, 2012 Hearing*

[28] At the June 15, 2012 hearing, Mr. Ullah states that he knew ten days before the hearing that Me Bohbot would not be present at the hearing. Me Bohbot is said to have advised Mr. Ullah to find another lawyer to represent him. Mr. Ullah contacted two lawyers, but neither could take his case (Tribunal Record (TR) at pages 587 to 590). Me Bohbot also told the tribunal by letter, on May 1, 2012, that he would not be present for "confidential reasons" (TR at pages 585-

647). At the beginning of the hearing, Mr. Ullah mentioned that he was willing to proceed, but to take into account that he has no legal representation (TR at page 590). Following questions regarding modifications to the Personal Information Forms of the claimants, Member Aronoff began questioning Mr. Ullah. Then, Mr. Ullah expressed his concern that even though he is present at the hearing, he does not have legal representation (TR at page 606). The transcript states (TR at page 606):

BY PRESIDING MEMBER (to claimant): Mr. Ullah, since you've come Canada which was on November 16th, 2010, has anything happened in Pakistan concerning your situation that we should know about?

BY CLAIMANT (MR. ULLAH) (to presiding member): My request, my concern is that I am present, but I don't have a lawyer to represent me.

BY PRESIDING MEMBER (to claimant): Okay. That is not what I asked you. Did you understand the question?

BY CLAIMANT (MR. ULLAH) (to presiding member): Could you repeated (*sic*) please?

[29] Member Aronoff continued Mr. Ullah's questioning. The Applicant was then questioned by Member Aronoff and Me Lipes. Mr. Ullah intervened at some point during the Applicant's testimony to discuss the Applicant's health situation (TR at page 635). Mr. Ullah was again questioned by Member Aronoff regarding the rented apartment and the shower incident (TR at pages 638 to 643).

(b) *The September 20, 2012 Hearing*

[30] After the June 15, 2012 hearing, Me Bohbot remained as counsel for Mr. Ullah. At the September 20, 2012 hearing, there was again a tensed altercation between Member Aronoff and Me Bohbot. Me Bohbot also asked and stated to Member Aronoff, with regards to the June 15, 2012 hearing (TR at page 656):

“[...] Were you fair towards the right of the claimant to be represented by his counsel of choice?

No, off course not. You said you had to proceed.

So on June 15th, Me Lipes was there with her client and you decide to ask my client questions knowing he's not represented and knowing very well that I sent letters saying I can't make it because I did not agree to scheduling a hearing on that date.

Is that a respect of principles of natural justice and fairness? I don't think so.”

[31] The heated discussion continued between the two men until Member Aronoff had Me Bohbot removed from the hearing room by security (TR at pages 651-666), the following exchange takes place (TR at page 665):

BY COUNSEL (to presiding member): So for the record, I'm leaving the room and my client is unrepresented from now on before you.

BY PRESIDING MEMBER (to counsel): Your client will make a decision.

BY COUNSEL (to presiding member): You made the decision, not my client.

[32] Me Lipes, counsel for the Applicant subsequently expressed her concerns about Mr. Ullah being unrepresented (TR at page 669). The transcript also contains the following discussion (TR pages 673 to 680):

BY PRESIDING MEMBER (to claimant Mr. Ullah): And I'm ready to proceed.

Mr. Ullah, you don't have counsel. Unfortunately, your counsel made a determination that he prefers not to represent you rather than to undertake to change the submissions that he was wishing to make on your behalf.

It is my intention to proceed with the hearing with respect to both you and Mr. Chimah (*sic*) and it is your decision whether you will remain or not.

I will suspend for ten minutes to give you an opportunity to think about it after which time the hearing will commence.

[...]

BY PRESIDING MEMBER (to all): Okay.

We're back on the record and I'm asking Mr. Ullah whether he is going to continue in the hearing room for his hearing.

BY CLAIMANT (to presiding member): No, how can I do without my lawyer—without my lawyer?

BY PRESIDING MEMBER (to claimant): Unfortunately, that is the circumstances you're in. You have a choice to make.

BY CLAIMANT (to presiding member): No, sir, I'm not going without him.

BY PRESIDING MEMBER (to claimant): Okay.

So you may leave the room and a decision will be rendered dismissing your – unless I won't render a decision immediately, but your absence here is an indication that you were present and you made a decision not to proceed.

In the opinion of the tribunal –

BY INTERPRETER (to presiding member): He wants me to repeat sir.

BY PRESIDING MEMBER (to interpreter): Okay.

BY COUNSEL (to presiding member): My understanding is that he's staying in the room and that's why he's here.

BY PRESIDING MEMBER (to counsel): Pardon.

BY COUNSEL (to presiding member): My understanding is that he is going to stay in the room.

BY PRESIDING MEMBER (to counsel): Well that's not what he just said.

BY COUNSEL (to presiding member): I understand that that's what – well, you understood that's what he said, but...

BY CLAIMANT (to presiding member): I'm going to—or whatever you're going to order me, I'm bound to whatever you order me, I'll bound to that.

BY PRESIDING MEMBER (to claimant): No. I'm not ordering you.

I'm telling you that you are here and that your case will proceed and – okay, you're going to have to bear with me, I want to make sure I have to (*sic*) correct article.

BY COUNSEL (to presiding member): Mm'hm.

BY PRESIDING MEMBER (to claimant): Under article 58 – under article 58(2) of the Rules of Practice, you must be given an opportunity to explain why your claim should not be declared abandoned.

“The Division must give this opportunity if the claimant is present at the hearing and the Division considers that it is fair to do so.

The Division must consider if the claim should be declared abandoned, the explanations given by the claimant at the hearing and any other relevant information including the fact that the claimant is ready to start or continue the proceedings. If the Division decides not to declare the claim

abandoned, it must start or continue the proceedings without delay”.

Are you ready to proceed?

BY CLAIMANT (to presiding member): Actually, to be true, I did not understand you very well, but I do want to proceed, go through the proceedings for my case.

But without my lawyer, I’m feeling very uncomfortable and I’m nervous without him and my body is not coordinating with my language – or my tongue rather.

BY PRESIDING MEMBER (to claimant): Well unfortunately, you are not represented because your counsel was removed from the hearing room and the Tribunal’s determination is that it’s going to proceed.

The Tribunal will take into account your feelings on being uncomfortable and nervous. But if you don’t proceed, your claim will be declared abandoned.

[33] The exchange between Member Aronoff, Me Lipes and Mr. Ullah continued, as Mr. Ullah reiterated his concerns regarding proceeding without legal representation. Member Aronoff decided to proceed with the hearing regardless. The Court is limiting itself to these excerpts, as the Tribunal Record contains more pages of discussions between the parties with regards to Member Aronoff’s decision to proceed with the matter despite Mr. Ullah’s concerns regarding his lack of representation. These excerpts, however, illustrate how Mr. Ullah was denied legal representation due to no fault of his own, that he expressed concerns for being unrepresented and was forced to make a decision to either proceed without the presence of his lawyer or see his claim declared abandoned. Mr. Ullah was questioned without the opportunity for his lawyer to make representations, ask questions and intervene. Therefore, Mr. Ullah and the Applicant’s testimonies took place in a difficult environment, where in the end, Member Aronoff recused himself, due to a reasonable apprehension of bias (TR at pages 254-255). The use of the

transcript in the Applicant's *de novo* hearing is thus problematic and unfair to all involved since the testimonies given were done in an atmosphere not suitable in creating a climate where justice is done and also appears to be done.

(3) The use of the original transcript at the Applicant's *de novo* hearing

[34] Member Brychcy erred by relying on the original transcript at the Applicant's *de novo* hearing. The use of the original transcript was first raised in Me Lipes' motion for recusal of Member Brychcy (TR at pages 227-228). In her motion, Me Lipes objects to having the original transcript part of the record and explains how the original hearings took place in a tense and hostile atmosphere. Member Brychcy responded that she would not recuse herself. With regards to the June 15, 2012 hearing, she states that even though Mr. Ullah's lawyer was not present, the hearing still proceeded and Mr. Ullah was able to answer the questions asked by Member Aronoff. With regards to the September 20, 2012 hearing, she says that even though there was tension at the hearing and that Me Aronoff had to be escorted out of the room, the hearing still continued and the "normal atmosphere" resumed after the departure of Me Aronoff. She adds that both claimants were then asked questions about the events they were expected to recall from their time in Pakistan and that there is no reason not to believe their testimonies. Member Brychcy stated that any discrepancies between the Applicant's testimonies and any previous testimonies would be addressed at the December 2, 2012 hearing (TR pages 221-222).

[35] As stated above, Member Brychcy erred by relying on the original transcript at the Applicant's *de novo* hearing. Her negative credibility determination of the Applicant is greatly supported by a comparison between Mr. Ullah's testimony from the original hearing to that of

the Applicant at his *de novo* hearing (RPD's decision at paras 24-25, 26-27, 28-29, 30-31, 33-34 and 35). To rely on such a testimony, given under the circumstances described above, to make credibility findings, is unfair to the Applicant. He had the right to a fair *de novo* hearing.

[36] Even though, under normal circumstances, it is acceptable for the *de novo* panel to consider the transcript of a refugee claimant's original hearing before the RPD, in the present circumstances, which were clearly abnormal, the original hearings were conducted in a tensed atmosphere, where on at least two occasions Mr. Ullah was questioned without his lawyer present. Me Bohbot also had to be escorted out of the room by security in a hostile atmosphere and Member Aronoff ended up recusing himself. It was therefore unreasonable for Member Brychey to have used the transcript to make a credibility determination against the Applicant. The transcript of the first hearings should not have been used in such abnormal circumstances.

IX. Conclusion

[37] The Board erred in relying on the original transcript in making a credibility determination at the Applicant's *de novo* hearing. As such, the decision falls outside the range of possible outcomes. The decision is therefore sent back for re-determination before a new panel and the transcript of the original hearings and of the *de novo* hearing are to be excluded from the re-determination of the Applicant's refugee claim.

[38] The parties were invited to submit further submissions regarding the issue of the use of the original transcript at the Applicant's *de novo* hearing, but both parties declined.

[39] The parties were invited to submit questions for certification but none were proposed.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the decision of Member Brychcy dated December 9, 2013 is granted and the matter shall then be referred to a new panel so that a new hearing can be held.
2. There is no serious question of general importance to be certified.

“Simon Noël”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

Jessica Lipes FOR THE APPLICANT

Thomas Cormie FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jessica Lipes FOR THE APPLICANT
Lawyer
Montreal, Quebec

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of
Canada