Federal Court  Cour fédérale

Date: 20161102

Docket: IMM-18-16

Citation: 2016 FC 1217

Ottawa, Ontario, November 2, 2016

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

NELLY PENOL CEDANA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Nelly Cedana [Nelly], came to Canada on March 4, 2009, under the Live-In Caregiver Program. After her original placement did not materialize, she received a new work permit on June 17, 2009, to work for a teacher [Shirel] and a lawyer [David]. Nelly became a nanny and live-in caregiver to their three young children. Shirel and David employed Nelly in that capacity for approximately one year. In September 2010, Nelly was ill and stayed

at a friend's house for the weekend and Monday. When she reported for work on Tuesday afternoon her employment was terminated. She was told she could still live at the house but she should look for a new live-in position.

[2] Nelly found such a position three weeks later. She had misgivings about the shared bathroom arrangement with the new employer. She shared her misgivings with David when he asked her about the new position. David then suggested an alternative: that Nelly continue to live in the home and look after the children part-time but also look for part-time work elsewhere. On this basis, Nelly agreed to stay on with Shirel and David. Financially, it was arranged that Nelly pay David and Shirel $500, in cash, twice a month. On receipt, they would immediately issue Nelly a cheque for the same amount. David told Nelly he was still her employer. Nelly found jobs cleaning houses for other people and used that cash to pay David and Shirel. Shirel issued T4 slips to Nelly claiming the recycled cash was employment income paid to Nelly.

[3] In July 2011, Nelly applied for permanent residence status. She declared in her application that from June 2009 to July 2011, she had worked full time for Shirel and she was supporting herself from her monthly salary as a live-in caregiver. She did not mention her part-time weekly cleaning work. In November 2011, the immigration authorities received a detailed anonymous tip letter that Nelly was working for several employers other than her legal employer.

[4] On February 21, 2013, Nelly attended an interview with an immigration officer regarding her application for permanent residence. At the interview, Nelly said she worked for Shirel from June 17, 2009 to October 15, 2012, eight hours a day, five days a week and was paid biweekly.

As proof she produced her bank statements. She also produced an employment letter, T4s for the 2011 and 2012 tax years and a Record of Employment, all of which were received from Shirel. Prior to meeting with Nelly, the immigration officer had a telephone interview with Shirel, who confirmed to the officer that Nelly worked for her full-time until October 15, 2012, and did not work anywhere else during that time. The employment documents indicated Nelly worked for Shirel as a full-time live-in caregiver who was paid a total of $18,903.96 and $14,824.81 in 2011 and 2012. This was not true. Nelly worked approximately twenty hours per week for Shirel and David; she worked approximately twenty-five hours per week cleaning homes for various other people who paid her directly, in cash.

[5] At her interview, Nelly at first confirmed that she worked full-time for Shirel as a caregiver. When the officer raised the information in the tip letter, Nelly then admitted she had worked at other addresses cleaning houses. She confirmed she was still working without authorization. She apologized for telling a lie; she admitted the documents submitted contained fraudulent information. She concluded the interview saying she knew she did "things that are not acceptable" and "I know this is very serious". Nelly's application for permanent residence was denied on February 22, 2013. Nelly sought leave to apply for a judicial review of this decision, but leave was denied on March 18, 2014.

[6] On April 12, 2013, the officer reported to the Minister under s 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] that Nelly was inadmissible under s 40(1)(a) of the *IRPA* "for directly or indirectly misrepresenting or withholding material facts that induces or could induce an error in the administration of the Act" by submitting fraudulent information in support of her application for permanent residence and withholding material facts about her

employment. On April 15, 2013, the Minister's delegate referred the report pursuant to s 44(2) of the *IRPA* to the Immigration Division [ID] of the Immigration and Refugee Board of Canada for an admissibility hearing.

[7] The hearing before the ID took place over seven different dates throughout 2015. Nelly did not deny that she had misrepresented or withheld material facts, but said that the misrepresentations were really the fault of her former employers. She said she genuinely and reasonably believed that the information she was providing to Citizenship and Immigration Canada was true. Her counsel submitted Nelly was in an exceptional situation. She was a vulnerable person who had been victimized and exploited by her employers.

[8] On December 14, 2015, the ID found that Nelly was inadmissible to Canada for misrepresentation, contrary to s 40(1)(a) of the *IRPA*. An exclusion order [the Decision] was issued under s 45(d) of the *IRPA*. An application for leave and judicial review of the Decision was filed by Nelly on January 4, 2016. Leave was granted on July 8, 2016.

II. **ISSUES AND STANDARD OF REVIEW**

[9] Two issues have been raised in this application. One is that the ID hearing was procedurally unfair because the ID refused to issue a summons to compel Nelly's former employers to testify. The other issue is that the Decision is unreasonable on the merits.

A. *Refusal to Issue Summons to Employers*

[10] The ID refused to issue a summons to Shirel or David. Counsel for Nelly says that was procedurally unfair. He did not address the question of the standard of review. Counsel for the Minister refers to *Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paragraphs

34 and 42 to say that the standard of review is correctness but procedural decisions made by a panel are to be given weight with respect to the manner in which the panel sought to balance maximum participation on one hand and efficient and effective decision-making on the other.

[11] Issues of procedural fairness are reviewable on a standard of correctness: *Mission Institution v Khela*, 2014 SCC 24 at para 79 [*Khela*]. However, as Mr. Justice Stratas points out in *Bergeron v Canada (Attorney General)*, 2015 FCA 160 at paragraphs 67-71, the Supreme Court in *Khela* also stated that "some deference should be owed to the administrative decision-maker on some elements of the procedural decision." Justice Stratas concludes that the law in this area is in "a jurisprudential muddle." In *Canadian Tire Corporation, Limited v Koolatron Corporation*, 2016 FCA 2, Mr. Justice Near differentiates procedural fairness issues from other procedural matters. He says at paragraph 14, "[w]hile I agree that procedural issues generally attract considerable deference, I do not agree that this is so when the issue involves a breach of procedural fairness."

[12] Underlying the factors considered in determining the content of the duty of procedural fairness is the notion that the purpose of the participatory rights contained within the duty is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and the statutory, institutional, and social context. Those affected by the decision are to be provided with an opportunity to put forward their views and evidence fully and have them considered by the decision-maker: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 22.

[13] In this case, the statutory provisions of rule 33(2) of the *Immigration Division Rules*, SOR/2002-229 [*ID Rules*] provide particular factors to be considered by the ID when issuing a summons. Rules 33(1) and (2) address obtaining a summons:

Application for a summons	**Citation à comparaître**
33(1) A party who wants the Division to order a person to testify at a hearing must make an application to the Division for a summons, either orally at a proceeding or in writing.	33(1) La partie qui veut que la Section ordonne à une personne de témoigner à l'audience lui demande soit oralement lors d'une procédure, soit par écrit, de délivrer une citation à comparaître.
Factors	**Éléments à considérer**
(2) In deciding whether to issue a summons, the Division must consider any relevant factors, including	(2) Pour décider si elle délivre une citation à comparaître, la Section prend en considération tout élément pertinent. Elle examine notamment :
(a) the necessity of the testimony to a full and proper hearing; and	a) la nécessité du témoignage pour l'instruction approfondie de l'affaire;
(b) the ability of the person to give that testimony.	b) la capacité de la personne de présenter ce témoignage.

[14] Whether the standard of review is correctness or correctness with some deference, the requirement of the duty of fairness in each case is driven by the particular circumstances. The legislative and administrative context is crucial to determining the content of the duty. The *ID Rules* provide a degree of discretion to the ID when determining whether to issue a summons. This suggests a measure of deference. However, at the end of the day, the simple and overarching requirement is fairness, which is a central notion of the "just exercise of power" that should not be diluted or obscured by jurisprudential lists developed to be helpful but not exhaustive: *Canada (Attorney General) v Mavi*, 2011SCC 30 at paras 40-42.

B. *Merits of the Decision*

[15] Nelly alleges the ID committed reviewable errors: (1) the treatment of a psychological report; (2) the handling of Nelly's arguments about the vulnerability of live-in caregivers; and (3) her defence based on the fiduciary duty owed to Nelly by her employers. Each of these arguments involves questions of mixed fact and law. They are reviewable on the standard of reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*].

[16] In applying the reasonableness standard of review, the question is not whether the court would have reached the same conclusion as the tribunal or whether the conclusion the tribunal made is correct. Reasonableness involves deference to the tribunal, particularly where it is dealing with a case involving the tribunal's particular expertise. This means the tribunal is to receive latitude to make decisions and to have their decision upheld where it is understandable, rational and reaches one of the possible outcomes legitimately available on the applicable facts and law: *Majlat v Canada (Citizenship and Immigration)*, 2014 FC 965 at paras 24-25; *Dunsmuir* at para 47.

III. **REFUSAL TO ISSUE SUMMONS**

A. *Positions of the Parties*

[17] A review of the tribunal record and hearing transcript indicates there was extensive written argument by Nelly's counsel seeking to convince the ID to issue a summons to several people, including Shirel and David. After the ID initially rejected the summons application, Nelly's counsel asked for and received reconsideration of the issue. Following additional oral argument, the summons was still denied. In this application, counsel alleges the decision not to summons the employers was in error and was procedurally unfair to Nelly.

[18] Nelly's counsel argued before the ID that testimony from the employers was necessary, as exculpating and mitigating factors would come out through his vigourous cross-examination. He alleged that, as the employers had retained a lawyer, they must have something to hide and after hearing their testimony, the ID would get a different view of the situation. Counsel also wanted the employers to testify because they prepared the documents that the Minister alleged to be fraudulent. In the view of counsel, after the testimony of the employers it would be clear to the ID that the employers were responsible for the arrangement and the documentation.

[19] The Minister argues that the ID properly considered the necessity of the testimony and determined that Nelly was capable of providing the required information without the ID hearing from the employers.

B. *Analysis*

[20] Rule 33(2) of the *ID Rules* provides that in deciding whether to issue a summons, the ID must consider any relevant factors. Two such factors are specifically identified in the sub-rules: (a) the necessity of the testimony to a full and proper hearing; and (b) the ability of the person to give that testimony. Each sub-rule will be considered in turn.

(1) Sub-rule 33(2)(a) – the Necessity of the Testimony to a Full and Proper Hearing

[21] Nelly's counsel argued in this application, as he did before the ID, that the employers' testimony was needed to present a full picture. He said that the ID had no valid reason for rejecting the application. That assertion is not borne out. A review of the transcript shows the ID considered the following factors in rejecting the application for a summons:

1. there are serious consequences to the applicant;

2. the central issue is misrepresentation and the case law in that area will guide the decision;

3. in determining whether the evidence of the employers is needed the ID found it will have the testimony of the applicant and the arguments of counsel to provide a full hearing;

4. context would be provided by the applicant's testimony as would the background and back story to which counsel had referred;

5. the exculpating and/or mitigating factors could be provided directly by the applicant;

6. the information about the fraudulent documents could be testified to by the applicant.

[22] The ID concluded that Nelly could provide all the facts, context and information to support her position without the necessity of hearing from the employers. After the ruling, the ID also indicated that if, after hearing all the evidence, it felt the testimony of the employers was necessary then the issue would be revisited. In other words, the door was not firmly closed on the request for a summons, but it would be issued only if necessary in order to provide a full hearing.

[23] Ultimately, the ID found that Nelly did receive a full and proper hearing as required by sub-rule 33(a)(2). The ID fully considered and completely accepted Nelly's testimony about the employment relationship and the arrangement. It also reviewed the documentary evidence, which included the fraudulent employment documents provided by Shirel to Nelly. The ID found that the testimony of the employers was not necessary to show they were responsible for the financial arrangement or the fraudulent documentation. It concluded that Nelly's testimony provided a full understanding of the circumstances of the case and the underlying issues.

[24] I am not persuaded that the hearing Nelly received at the ID was in any way procedurally unfair or compromised by the refusal to issue a summons to the employers. Both the interview notes taken by the immigration officer who spoke with Shirel, recording her false representations, as well as the fraudulent documents filed with the CRA were produced to the ID. This evidence buttressed Nelly's testimony about the employers' actions. The ID found that Shirel had created the false documents. Counsel put forward no evidence that the ID failed to receive or consider and that the employers would have been able to provide. Neither did he suggest there was any evidence or view that Nelly was unable to provide to the ID in her testimony.

[25] The stated purpose for seeking the summons was to give counsel the opportunity to cross-examine the employers to show that they were responsible for the arrangement and the documentation. After Nelly's evidence was heard, the ID accepted that was the case. I am unable to find fault with the ruling made by the ID. The determination that the evidence of the employers was unnecessary was borne out by the full acceptance of Nelly's evidence detailing the arrangement and the actions of her employers, including the falsification of documents. Accordingly, the ruling not to issue a summons to the employers was procedurally fair.

(2) Sub-rule 33(2)(b)

[26] Nelly's counsel also argued the ID did not consider the factor in sub-rule 33(2)(b) of "the ability of the person to give the testimony." In my view, sub-rule 33(2)(b) addresses the situation where a person to be summonsed cannot testify for some reason and there would be no point in issuing a summons. For example, the person may have no knowledge of the matter in dispute or they may be unable to testify by reason of age or infirmity, whether physical or

mental. There was no evidence that the employers were unable to testify for any such reason. The employers simply did not want to testify. The Minister supported that position.

[27] The argument of counsel in this respect was that the testimony of the employers was indispensable to the case in order to determine "what they were hiding" by retaining a lawyer and refusing to testify. Contrary to counsel's submission, the ID did consider this argument. The ID found it was not relevant that the employers had retained a lawyer, but, as already mentioned, went on to say it would be willing to revisit the summons decision if the employers' testimony became relevant. After Nelly's testimony, the ID confirmed it did not need to hear from the employers. I can find no fault at all with how the ID handled this factor; it was imminently fair to Nelly.

C. *Conclusion*

[28] For the reasons given above, I am not persuaded that the ID erred in refusing to issue a summons to the employers. Nelly's disagreement with the ruling by the ID does not mean it was arrived at in a procedurally unfair manner. The provisions of rule 33(2) were considered and applied by the ID. The full participation of counsel for Nelly took place over the course of several days of sittings. Nelly testified and was able to tell her story. Nelly's counsel was present throughout. He was able to question her and make submissions. The question of whether to issue the summons was addressed twice, being the initial ruling and the request for reconsideration. At the conclusion of the evidence, the ID again considered the question of whether the testimony of the employers was required and found it was not necessary. The ID made no negative credibility findings except on Nelly's state of mind, so there is no testimony the employers could have given to affect its credibility findings.

[29] In my view there was no procedural unfairness. The rule 33(2) factors were fully considered and determined. Nelly was able to put forward her views and evidence fully and the ID considered all her testimony. Reasons, both oral and written, were given by the ID to explain the original ruling and the reconsideration. The ID did not err in the rulings.

IV. **THE MERITS OF THE DECISION**

A. *Breach of Fiduciary Duty by the Employers and Vulnerability of Nelly*

[30] The argument that Nelly was a vulnerable person and that the employers owed her a fiduciary duty was put forward as the cornerstone of Nelly's case. The argument is that by breaching the fiduciary duty these employers owed to Nelly, they caused the misrepresentation in her application for permanent residence. Counsel relies on the facts of this case to place Nelly within a narrow band of cases that have considered lack of *mens rea* as an answer to a misrepresentation under ss 40(1). Relying on Mr. Justice O'Reilly's decision in *Baro v Canada (Citizenship and Immigration)*, 2007 FC 1299 [Baro], counsel says that Nelly had an honest and reasonably held belief that, as David was a lawyer, the scheme he concocted was not in contravention of the *IRPA*.

[31] Counsel for Nelly submitted that the ID did not even consider the fiduciary duty defence although the case law was brought to his attention. I disagree. While the ID did not use the words "fiduciary duty", it clearly and fully addressed the employment relationship and its impact on Nelly. At paragraph 63 of the Decision, the ID explicitly rejects the fiduciary duty argument:

> From the evidence before me, I do not find that Ms. Cedana's case meets the very narrow legal exception regarding subjective knowledge. Ms. Cedana was aware that she was with-holding and

> misrepresenting the truth. [Shirel] did not submit fraudulent documents and statements unbeknownst to Ms. Cedana.

[32] The ID considered whether Nelly had an honest and reasonably held belief that should place her in the exceptional category mentioned in *Baro*. The ID found that Nelly's testimony that she relied on David's statements lacked credibility and was unreasonable in the circumstances. The basis for that conclusion was fully laid out from paragraph 42 to paragraph 62 of the Decision. The ID reviewed the nature of the employment relationship. Amongst the reasons given by the ID for rejecting Nelly's alleged belief were her history with David and Shirel, her prior employment in various countries, her education (two years training as a midwife) and her knowledge of the live-in caregiver program requirements. The ID found that a reasonable approach for Nelly to have taken would have been to seek advice about the arrangement from immigration counsel or immigration officials or even from the caregiver placement agency. Nelly did not seek any such advice or confirmation of the legality of the arrangement.

[33] The ID found Nelly's acceptance of the arrangement was not based on David's statements. Nelly's problem arose when she could have taken the other live-in caregiver job but chose to stay with David and Shirel. In answer to a question by the ID as to why she did not take the other live-in position, Nelly gave three reasons: (1) she had fallen in love with the children; (2) she did not want to have to wait for her new work permit; and (3) a delay to the work permit would delay her ability to apply for the permanent residence she wanted so she could bring her daughter to Canada.

[34] The argument that Nelly was a vulnerable person in the employment relationship was also fully considered. The ID determined that Nelly was the author of her own misfortune. It

specifically noted that although the employer offered the illegal route to immigration, Nelly chose that route rather than take the new caregiving job. To me, Nelly's testimony that she stayed with David and Shirel because taking the new position would have delayed her eventual application for permanent residence reaffirms the reasonableness of the ID's voluntariness findings. She had an alternative but chose not to pursue it.

[35] The ID also did not accept the premise that the employers caused Nelly's misrepresentation. Nelly completed her own permanent residence application. At that time, she withheld information about her work as a housecleaner. She stated in her application and at her interview with the immigration officer that she worked as a full-time nanny. The ID found this was done even though "the majority of her workday was conducted in other people's homes and those people paid her for her services."

[36] If Nelly had truly believed the arrangement with David and Shirel was legal and did not contravene the terms of her work permit, there was no reason for her to withhold the information that she was cleaning other people's house and not acting as a fulltime caregiver. When Nelly chose not to accurately report her work arrangements she was, as the ID said, the author of her own misfortune.

B. *Psychological Report*

[37] Nelly submitted to the ID a report prepared by Dr. Celeste Thirlwell, with whom she met on February 28, 2015. Dr. Thirlwell outlined Nelly's history of coming to Canada and her work experiences while here, including not being paid overtime and going back to work because of the children. Four of the five pages in the report summarize, in essence, Nelly's evidence that was subsequently given to the ID. In her report, Dr. Thirlwell found that Nelly comes from a

culture of obedience to employers. Her decision not to take the new position but to remain with Shirel and David in the new arrangement was found to be "based on Nelly's disadvantaged immigration situation and her attachment to the children". She also concluded that "[e]specially since David is a lawyer, Nelly trusted him and his assurances that, from a legal and immigration perspective, everything was fine. . . .Nelly was not aware at the time that the arrangement would jeopardize her future status in Canada."

[38] The evidence before the ID contradicts Dr. Thirlwell's opinion of Nelly's personal knowledge of her misrepresentation. Whether Nelly believed the working arrangement was illegal or not, there is ample evidence to support the ID's findings that she knew Shirel and David were not her only employers and she knew she did not work full time for them. She confirmed to the immigration officer that she was still working at several other locations, cleaning houses. When the officer asked Nelly whether she worked without authorization the answer was "Yeah, I'm so sorry for telling a lie." She also confirmed she was still working without authorization and that the documents she submitted were fraudulent and then she asked for help. She concluded the interview by saying "Madame, I know I did things that are not acceptable Madame please help me this is for my daughter. . . I know this is very serious please give me a chance. . . ".

[39] The ID gave no more weight to Dr. Thirlwell's report than it did to Nelly's own testimony. In other words, despite the urging of Nelly's counsel to the contrary, the ID found the report did not corroborate Nelly's story. It simply repeated Nelly's own story. The ID found that the final assessment in the report reiterated counsel's submissions about vulnerability and exploitation and Nelly's personal belief as expressed to Dr. Thirlwell.

[40] I am of the view that this was a reasonable conclusion for the ID to draw based on all the evidence. No psychological testing of Nelly was performed by Dr. Thirlwell. Based only on Nelly's story, Dr. Thirlwell said that in her professional opinion, "Nelly is a victim of exploitation". She also concluded that "[i]n Nelly's mind she was not misrepresenting her employment history as she was serving as their live-in caregiver on the directions of [David] and [Shirel]". I note however that this latter conclusion is a matter of mixed fact and law which Dr. Thirlwell was not qualified to assess. Nor does it appear that Nelly's story was tested or probed in any way before the conclusion was drawn.

C. *Conclusion*

[41] Neither the ID nor this Court sanctions or excuses in any way the actions of Shirel and David in this saga. I am mindful that they did not testify and so neither the ID nor this Court has had the opportunity to hear their side of the story, but from the evidence in the court file, their behaviour was shocking. Given their professions and considering that they are role models to their three young children, it is extremely disheartening behaviour. But while they came up with the scheme and created the false employment documents, it was Nelly herself who chose to use those documents to support her application. The bad behaviour of the employers does not excuse Nelly's own actions.

[42] The ID found that Nelly was complicitous and not as vulnerable as counsel submits and there was sufficient evidence to support this finding. Nelly had previously become fed up with her employers and left them. She returned because of the children. After she was fired, she found a new position but accepted David and Shirel's scheme not because she had to, but because of the bathroom arrangements, the children and the extra time it would take to obtain a

new work permit. By her own admission at the ID hearing and to the immigration officer, Nelly's desire not to have the delay of applying for another work permit was a driving force behind her actions. That alone indicates a degree of *mens rea* behind the misrepresentations.

[43] The jurisprudence in this area supports the finding by the ID. Under ss 40(1)(a), a finding of inadmissibility requires a misrepresentation, made either directly or indirectly. The case law upon which Nelly relies starts with *Baro* at paragraph 15, where Mr. Justice O'Reilly found that while even an innocent failure to provide material information can result in a finding of inadmissibility there is an exception if an applicant can show "that they honestly and reasonably believed that they were not withholding material information."

[44] Madam Justice Strickland in *Goburdhun v Canada (Citizenship and Immigration)*, 2013 FC 971 at paragraph 28, enumerated ten principles arising from the jurisprudence under s 40. The principles most relevant to Nelly's situation are:

> 1. The objective of section 40 is to deter misrepresentation and maintain the integrity of the immigration process. To accomplish this, the onus is placed on the Applicant to ensure the completeness and accuracy of their application (*Jiang v Canada (Minister of Citizenship and Immigration*), 2011 FC 942 at para 35);
>
> 2. An applicant has a duty of candour to provide complete, honest and truthful information in every manner when applying for entry into Canada (*Bodine v Canada (Minister of Citizenship and Immigration*), 2008 FC 848 at para 41);
>
> 3. The exception . . . is narrow and applies only to truly extraordinary circumstances where an applicant honestly and reasonably believed that they were not misrepresenting a material fact and knowledge of the misrepresentation was beyond the applicant's control (*Medel v Canada*, [1990] FCJ No 318 (CA)(QL)).
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> [Full citations added]

[45] Nelly completed her own application form so it was not beyond her control to ensure it was complete and accurate. It was reasonable for the ID to conclude that she was withholding

information. She admitted as much to the ID and at her interview after she was confronted with the anonymous tip letter. She then apologized and asked for help. Unfortunately for Nelly, by then, the damage was done. Even if one could find that Nelly honestly believed the financial arrangement with her employers was legal, which the ID reasonably found implausible, the real issue is whether Nelly believed, based on what the employers told her, that the house-cleaning work she was doing for other people qualified as live-in caregiver work for the employers and did not need to be disclosed.

[46] It was reasonable for the ID to find that the failure of the employers to pay Nelly for overtime and their general mistreatment or exploitation of her did not result in Nelly's misrepresentations. The ID considered Nelly's life experience at the age of 41, her work experience abroad as a nanny and her actions in Canada. It found that Nelly could have taken the new live-in caregiver position but she chose not to. She could also have disclosed her cleaning work on her permanent residence application but she hid it. Her motives were to bring her daughter to Canada. Her method was to keep working for an employer who abused her rather than wait a few extra months for a new work permit. Nelly took a gamble that, as other live-in caregivers had succeeded in gaining permanent residency with this sort of arrangement, she would too. It was a poor decision that, with hindsight, she must sincerely regret.

[47] The findings and conclusions drawn by the ID are clearly explained and substantiated with reference to the evidence. The hearing was not procedurally unfair to Nelly in any way. The reasons for the Decision are intelligible, transparent and justified. The Decision that Nelly misrepresented and withheld material facts that could have induced an error in the administration of the *IRPA* falls within the range of possible, acceptable outcomes and it is

defensible on the facts and law. The decision-making process and the outcome fall squarely within the criteria established in paragraph 47 of *Dunsmuir*. As such, the Decision is reasonable.

[48] The application is dismissed. Neither party put forward a serious question of general importance for certification and I find none exists on these facts.

[49] On a final note, at the conclusion of the hearing of this matter I asked counsel for the Minister whether a referral of this matter had been made to the Royal Canadian Mounted Police, Canada Revenue Agency, Law Society of Upper Canada or Ontario College of Teachers. At the time, counsel did not have that information available.

[50] On the evidence before me I cannot say, nor is it my place to say, whether David or Shirel committed any offence or violated any professional rules governing them. But I do believe it would shake public confidence in the administration of Canada's immigration system if the Minister had Nelly removed from Canada but did not refer this matter to the appropriate bodies for investigation of her employers' conduct. The consequences for violating Canada's immigration laws should not fall solely upon those who lack Canadian citizenship while professionals occupying positions of trust are spared any scrutiny of their actions.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is dismissed.

2. No serious question of general importance is certified.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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