Federal Court  Cour fédérale

Date: 20191128

Docket: IMM-3974-18

Citation: 2019 FC 1523

Ottawa, Ontario, November 28, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SIVARAGAVAN SELVASABAPATHIPILLAI

Applicant

And

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The Applicant, who is a citizen of Sri Lanka, seeks to overturn one part of a decision by a Minister's Delegate [the Delegate] approving his Pre-Removal Risk Assessment [PRRA] on a restricted basis [restricted PRRA].

[2] The Applicant arrived in Canada onboard the MV Ocean Lady in October 2009 and made a claim for refugee protection. In January 2010, a Canada Border Services Agency [CBSA] officer found the Applicant was inadmissible to Canada on the grounds of not having a visa and for having engaged in people smuggling contrary to provisions in the *IRPA*.

[3] The CBSA notified the Refugee Protection Division on November 12, 2012 that the applicant was ineligible to make a refugee claim because he was inadmissible on grounds of organized criminality, as set out in paragraph 101(1)(f) of the *IRPA* [the inadmissibility report].

[4] On November 15, 2012, a member of the Immigration Division [ID] determined that the inadmissibility report was well founded, and issued a deportation order against the Applicant. An application to this court for leave and judicial review of the ID decision was denied in May 2013.

[5] In December 2012, the Applicant applied for a PRRA under subsection 112(3) of the *IRPA*. PRRA applications made under subsection 112(3) are to be determined after considering assessments required by paragraphs 172(2)(a) and (b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

[6] In August 2013, a Senior Immigration Officer prepared a written assessment of risk to the Applicant if he is returned to Sri Lanka, based on the factors set out in section 97 of the *IRPA* [Risk Assessment].

[7] In January 2017, the CBSA, as required by subsection 172(2)(b) of the *IRPR*, prepared a written assessment of the Applicant's danger to the security of Canada and the nature and

severity of his past acts on the basis of the factors set out in paragraph 113(d)(i) of the *IRPA* [Danger Opinion].

[8] The Delegate received and considered both the Risk Assessment and the Danger Opinion as required by subsection 172(1) of the *IRPR.*

[9] The Delegate's decision, dated July 25, 2018, stayed the removal of the Applicant due to the risk of cruel and unusual treatment or punishment he would face upon return to Sri Lanka [the Decision]. The Decision also found that the Applicant did not constitute a danger to the security of Canada. In addition, the Decision found that the Applicant's activities on the Ocean Lady were not sufficient to warrant consideration of his removal from Canada.

[10] For the reasons that follow, this application is dismissed.

II. **Relief Sought by the Applicant**

[11] Although he was largely successful in his restricted PRRA, the Applicant brings this application because paragraph 112(3)(a) of the *IRPA* prevents him from applying for permanent residence status. The Minister has informed him that although he is not to be removed because of the Risk Assessment, if circumstances change, he might be found not to be at risk in Sri Lanka. In that event, he could be deported from Canada.

[12] The Applicant seeks an order sending the Danger Opinion back to the Delegate for redetermination by different decision-maker.

[13] The Applicant also seeks an order setting aside the part of the Decision upholding his inadmissibility to Canada, and asks that he be granted Protected Person status under paragraph 114(1)(a) of the *IRPA.*

[14] The Applicant wishes to maintain the finding that he would be at risk if returned to Sri Lanka.

III. **Issues and Standard of Review**

[15] Although they frame the issues somewhat differently, the parties agree that there are two primary issues arising from these facts:

1. Was the inadmissibility finding by the ID unreasonably upheld by the Delegate;
2. Was the inadmissibility finding by the ID *res judicata* and, if so, should the court intervene to prevent an injustice?

[16] Much of the argument with respect to these issues requires consideration of the Supreme Court of Canada decision in *B010 v Canada (Citizenship and Immigration),* 2015 SCC 58 [B010] and the decision of the Federal Court of Appeal in *Tapambwa v Canada (Citizenship and Immigration),* 2019 FCA 34 [*Tapambwa FCA*]. Leave to appeal *Tapambwa FCA* was dismissed on July 11, 2019 by the Supreme Court of Canada in file number 38589.

[17] Although the memoranda of argument were filed by the parties before the release of *Tapambwa FCA,* the decision was addressed at the hearing of this application.

[18] There is no dispute that the standard of review of a restricted PRRA is reasonableness: *Zmari v Canada (Citizenship and Immigration)*, 2016 FC 132 at para 14.

[19] The reasonableness of a decision is determined by examining whether the decision-making process was justifiable, intelligible and transparent, as well as whether it falls within the range of possible, acceptable outcomes defensible on the facts and law. Under the reasonableness standard, this Court owes deference to the expertise of the decision-making tribunal. Deference requires that the Court pay respectful attention to the reasons offered or that could have been offered: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 and 48 [*Dunsmuir*].

[20] If the decision falls within the range of reasonable outcomes, then the fact that a different outcome is possible does not lead to a finding that a decision is unreasonable. When the reasons allow a reviewing court to understand why the tribunal made its decision and permit the court to determine whether the conclusion is within the range of acceptable outcomes, the *Dunsmuir* criteria are met: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at paras 16 and 17.

IV. **Analysis**

[21] For ease of reference, relevant excerpts of the applicable legislation are attached at Appendix A.

A. *The Inadmissibility Finding*

[22] The Applicant argues that the inadmissibility finding by the ID was unreasonably upheld by the Delegate because *B010* changed the law after the ID decision was rendered but before the Delegate reached a decision.

[23] The short answer to this submission is that the facts of the Applicant's case are, in all relevant aspects, the same as those in *Tapambwa FCA*, where the Federal Court of Appeal determined that a PRRA officer has no jurisdiction to reconsider a prior exclusion finding. In this case, the Delegate played the role of the PRRA officer. The jurisdiction of a PRRA officer only encompasses determining whether, on a forward-looking basis, an applicant might face a new risk that was not previously assessed.

[24] In *Tapambwa FCA*, the legal test for complicity in crimes against humanity was changed by the Supreme Court of Canada eight days after Mr. Tapambwa was denied leave to apply for judicial review of a decision by the Refugee Protection Division [RPD]. The RPD had concluded that Mr. Tapambwa and his wife were excluded from refugee protection under s. 98 of the *IRPA*. They were found to be persons described under subsection 112(3) of the *IRPA*. Their PRRA was therefore conducted only on the basis of section. 97 of the *IRPA*.

[25] The Court of Appeal found that the legal foundation for their exclusion was changed between the date of the exclusion finding and the hearing before the PRRA officer. In the Applicant's case, the change in the law occurred after the ID finding and after leave for judicial review was dismissed but before the Delegate's decision was rendered.

[26] The issue in *Tapambwa FCA* was stated by the court as being:

> [W]hether persons who have been excluded from refugee protection under section 98 of the [*IRPA*] on the basis of Article 1F(a) of the United Nations *Convention Relating to the Status of Refugees,* [. . .] for committing crimes against humanity are entitled to have the exclusion finding reconsidered prior to deportation.

[27] In a similar vein, the Applicant states that one of the issues in this application is:

> Does a Minister's Delegate have the authority and obligation to consider an applicant's inadmissibility in the course of their statutory duty to assess the nature and severity of the acts creating the inadmissibility, or is the Minister's Delegate confined to merely endorsing the ID inadmissibility determination.

[28] The Court of Appeal examined the relevant statutory provisions and found that "there is no authority in a PRRA officer to reconsider an exclusion finding": *Tapambwa FCA* at para 41.

[29] Amongst the reasons provided for that conclusion were that Parliament had charged the RPD and the Immigration Appeal Division with responsibility for deciding matters of exclusion and the resulting inadmissibility. Such findings are conclusive and final unless set aside by the Federal Court. A PRRA officer acting under section 96 or 97 is not hearing an appeal or making a fresh determination of the original rejected claim for protection.

[30] The Court of Appeal also noted that inadmissibility findings arise by operation of law. No further adjudication or determination is required once an officer finds that a person falls under one of sections 34 to 42 of the *IRPA.*

[31] On May 29, 2013, leave to judicially review the decision of the ID was denied. At that time, the inadmissibility finding against the Applicant was final: *Tapambwa FCA* at para 59.

[32] I received no persuasive argument from the Applicant that *Tapambwa FCA* should not apply.

[33] The Applicant distinguishes *Tapambwa FCA* by saying that the Court of Appeal found the officer had no jurisdiction to remove an exclusion finding, but the inadmissibility finding could be removed.

[34] That is not an accurate statement. The Court of Appeal referred to the argument made by Mr. Tapambwa that the use of the present tense "is" in paragraph 112(3)(a) of the *IRPA* suggested that a PRRA officer could reconsider a prior determination of inadmissibility. That argument was summarily dismissed on the basis that to allow the PRRA officer to reconsider a prior inadmissibility finding "would usurp the processes set out in the *IRPA*".

[35] I am satisfied that the analysis and logic in Tapambwa *FCA* applies to the inadmissibility finding of the ID in this application. For that reason, I find that the Delegate did not err in upholding the decision made by the ID.

B. *Organized Criminality and Profit Motive*

[36] The Applicant submits that an inadmissibility finding based on organized criminality requires a 'for profit' motive that the Delegate did not consider. Once again, that argument

wrongly assumes that the Delegate could disturb the inadmissibility finding that became final when leave for judicial review was denied. As put in *Tapambwa FCA*, the Applicant is trying to mount a collateral attack on a decision that was denied leave for judicial review: *Tapambwa FCA* at para 119.

[37] There is no requirement that an inadmissibility finding be based on a 'for profit' motive. In *B010*, the Supreme Court clarified the definition of "human smuggling" and the meaning of "derived a material benefit". In neither instance did it require or confine the acts leading to a finding of human smuggling or deriving a material benefit to be those containing only a profit motive. In fact, the Supreme Court repeatedly uses the phrase "to obtain, directly or indirectly, a financial or other material benefit": *B010* at paras 4, 5, 19, 52, 60, 72 and 76.

[38] The Delegate did not fail to consider the basis for the inadmissibility finding. They considered whether the Applicant received a material benefit as articulated in *B010*. The Delegate noted the finding of inadmissibility made by the ID. They noted that the Applicant worked in the engine room, helping to repair the engine when it broke. In return, the Applicant received a reduced fare and better accommodation.

[39] Under subsection 172(1) of the *IRPR*, the Delegate shall consider the assessments – the risk assessment and the danger opinion – and any written response of the Applicant to those assessments – before making a decision to allow or reject the PRRA application.

[40] The Applicant submits that considering the assessments involves determining whether or not the assessments are reasonable.

[41] As already noted, the inadmissibility finding arose by operation of law. The question of reasonableness therefore does not arise with respect to the Applicant's inadmissibility.

[42] The Delegate fully considered the risks to the Applicant of being returned to Sri Lanka and found that he was likely to face personalized risks as identified in section 97 of the *IRPA*.

[43] The Delegate reviewed the assessments and then, as required by paragraphs 113(d)(i) and (ii) of the *IRPA*, assessed the nature and severity of the Applicant's past acts and whether he constituted a danger to the security of Canada.

[44] In considering the assessments, the Delegate determined that the jurisprudence established that when the Applicant's past acts and any danger he posed to the security of Canada were balanced with the risks he would face in Sri Lanka, the threat of harm to Canada must be substantial rather than negligible. Only acts of substantial gravity would meet that high threshold. In finding that the risk to the Applicant outweighed the other factors, the Delegate found that he was not a danger to the security of Canada.

[45] The Delegate noted that the ID found the reduced fare and improved accommodation constituted a material benefit. The ID also found that the activity of the organizers and crew of the *Ocean Lady* was a transnational crime and constituted people smuggling.

[46] The Supreme Court in *B010* said at paragraph 76 that "a migrant who aids in his own illegal entry or the illegal entry of other refugees or asylum-seekers in their collective flight to safety is not inadmissible under s. 37(1)(b)." Examples of the kind of relationships that show

either a collective flight to safety or were not intended to be caught by the legislation included humanitarian and mutual aid between close family members or provided by religious or non-governmental organizations, refugees fleeing in groups and those providing mutual assistance to others in the course of their own illegal entry.

[47] The Applicant did not flee as part of a group. He fled Sri Lanka on his own. With the assistance of a paid Agent, he boarded the Ocean Lady, alone, in Indonesia.

[48] There is information in the record before the Delegate to reasonably support the finding that the Applicant was not part of a collective flight to safety and that he did receive a material benefit:

- before he got on the ship, he only knew one person on it whom he had met in his travels;
- he has never been married and has no children;
- he was the ninth person to board the ship, there were twenty-four people on board when the ship left Indonesia; the rest were picked up during one of two stops at sea;
- he slept in a cabin as opposed to in the lower deck;
- he worked rotating 4-hour shifts in the engine room;
- he stated in an interview that all workers got a reduced fare and he only paid $20,000;
- he was able to move around the ship freely, wherever he wanted.

[49] The Applicant does not fall within any of the exceptions contemplated by the Supreme Court in *B010*. Rather, as the Delegate concluded, the Applicant's behaviour supports a finding that he acted to obtain a material benefit. The Applicant's argument on this point cannot succeed.

C. *Res Judicata and the ID Finding*

[50] The Applicant has submitted that if *res judicata* applies, the court should exercise its discretion not to apply it. He argues that the inadmissibility finding by the ID caused the Decision to be unfair and that must be rectified. More specifically, he says that as he is not entitled to apply for permanent residence, and because the Decision can be re-examined at any time, he has suffered an incurable injustice. He points out that prior to the passage of Bill C-43, he could have applied for humanitarian and compassionate [H&C] consideration of his inadmissibility.

[51] The application of the doctrine of *res judicata* or issue estoppel allows a court to exercise discretion to ensure that no injustice results. It is to be considered on a case-by-case basis taking into account the circumstances to determine whether its application would be unfair or unjust. Its use is flexible, allowing a court to respond to the equities of a particular case: *Penner v Niagara (Regional Police Services Board),* 2013 SCC 19.

[52] The Applicant refers to *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 [*Danyluk*] in which the Supreme Court of Canada reviewed the question of issue estoppel in an administrative law context. It confirmed there are three preconditions to the operation of issue estoppel:

1. that the same question has been decided;
2. that the judicial decision which is said to create the estoppel was final; and,

3. that the parties to the judicial decision or their privies with the same persons as the parties to the proceedings in which the estoppel is raised.

[53] The Applicant conceded in his written materials that the first and third preconditions have been met. He contested whether the decision said to create the estoppel was final.

[54] *Tapambwa FCA* has now settled that question. The inadmissibility finding is final.

[55] Nonetheless, the Applicant argues that even though issue estoppel applies, he urges the Court not to apply it. He asks that in the interest of fairness and justice the inadmissibility finding of the ID be set aside so that it can be re-determined in accordance with the new case law.

[56] The Minister points out that most of the cases relied upon by the Applicant in support of his arguments involved not PRRA determinations but rather decisions by officers or others who were considering H&C factors.

[57] The Minister also draws the Court's attention to the decision by Justice Richard Southcott in the first instance review by this Court of *Tapambwa*, found at 2017 FC 522 [*Tapambwa FC*]. There, Justice Southcott specifically considered submissions on whether issue estoppel applied in the context of a change in the law. At that time, he considered the then recent Federal Court of Appeal decision in *Oberlander v Canada (Attorney General)*, 2016 FCA 52 [*Oberlander*]. Leave to appeal *Oberlander* was dismissed with costs by the Supreme Court of Canada in file number 36949 on July 7, 2016.

[58] On facts essentially similar to the Applicant's, Mr. Oberlander was seeking to have his original finding of war crimes complicity redetermined because of the change in the law brought about in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40. Mr. Tapambwa argued before Justice Southcott that the doctrines of *res judicata* and issue estoppel should not preclude such a reassessment.

[59] Justice Southcott found in *Tapambwa FC* that Mr. Oberlander's submission that the decision-maker should have exercised their discretion not to apply issue estoppel or, at a minimum have considered whether to exercise it, did not turn on the common law doctrine of issue estoppel, but instead on the statutory prohibition set out in subsection 112(3) and section 113 of the *IRPA*.

[60] The statutory provisions relied upon in *Oberlander*, which involved the discretion of the Governor-in-Council, are not present in this application. *Tapambwa FCA* established that the Delegate did not have the discretion to reconsider the inadmissibility finding.

[61] I have not been able to discern any basis upon which the provisions of the *IRPA* ought to be set aside in the exercise of my discretion. I am not persuaded that, even if returned for redetermination, the outcome would be different. I have found that the Delegate and the ID each had reasonable grounds, supported by the underlying record, upon which to arrive at the conclusions they did.

V. **Conclusion**

[62] The standard of review of the Decision is reasonableness. I am satisfied on reviewing and considering the jurisprudence, the underlying record, and the arguments of the parties that, as outlined in this judgment and reasons, the Decision is reasonable in light of the current jurisprudence.

[63] The Decision meets the *Dunsmuir* criteria. It enables the Court to know why the Delegate came to the conclusion they did. The outcome falls within the range of possible, acceptable outcomes that are defensible on the facts and law. The application for judicial review is dismissed.

[64] There is no serious question of general importance for certification.

[65] No costs are awarded.

JUDGMENT in IMM-3974-18

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question is certified.

3. No costs are awarded.

"E. Susan Elliott"
Judge

APPENDIX "A"

Immigration and Refugee Protection Act, S.C. 2001, c. 27

Organized criminality	**Activités de criminalité organisée**
37 (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	37 (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :
…	…
(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or laundering of money or other proceeds of crime.	b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.
Person in need of protection	**Personne à protéger**
97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,	(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins

medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

Ineligibility

101 (1) A claim is ineligible to be referred to the Refugee Protection Division if

…

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).

Irrecevabilité

101 (1) La demande est irrecevable dans les cas suivants :

…

f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) —, grande criminalité ou criminalité organisée.

Application for protection

112 (3) Refugee protection may not be conferred on an applicant who

(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

(d) is named in a certificate referred to in

Demande de protection

112 (3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

d) il est nommé au certificat visé au paragraphe 77(1).

subsection 77(1).

Consideration of application

113 Consideration of an application for protection shall be as follows:

…

(d) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (e)(i) or (ii) — consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada; and

Examen de la demande

113 Il est disposé de la demande comme il suit :

…

d) s'agissant du demandeur visé au paragraphe 112(3) — sauf celui visé au sous-alinéa e)(i) ou (ii) —, sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada;

Effect of decision

114 (1) A decision to allow the application for protection has

(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and

Effet de la décision

114 (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

Immigration and Refugee Protection Regulations, SOR/2002-227

Applicant described in s. 112(3) of the Act

172 (1) Before making a decision to allow or reject the application of an applicant described in subsection 112(3) of the Act, the Minister shall consider the assessments referred to in subsection (2) and any written response of the applicant to the assessments

Demandeur visé au paragraphe 112(3) de la Loi

172 (1) Avant de prendre sa décision accueillant ou rejetant la demande de protection du demandeur visé au paragraphe 112(3) de la Loi, le ministre tient compte des évaluations visées au paragraphe (2) et de

that is received within 15 days after the applicant is given the assessments.

Assessments

(2) The following assessments shall be given to the applicant:

(a) a written assessment on the basis of the factors set out in section 97 of the Act; and

(b) a written assessment on the basis of the factors set out in subparagraph 113(d)(i) or (ii) of the Act, as the case may be.

toute réplique écrite du demandeur à l'égard de ces évaluations, reçue dans les quinze jours suivant la réception de celles-ci.

Évaluations

(2) Les évaluations suivantes sont fournies au demandeur :

a) une évaluation écrite au regard des éléments mentionnés à l'article 97 de la Loi;

b) une évaluation écrite au regard des éléments mentionnés aux sous-alinéas 113d)(i) ou (ii) de la Loi, selon le cas.

FEDERAL COURT

SOLICITORS OF RECORD

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