Federal Court  Cour fédérale

Date: 20201112

Docket: T-1327-20

Citation: 2020 FC 1053

Toronto, Ontario, November 12, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

EFRAIN OSWALDO FLORES MONSANTO

Applicant

and

MINISTER OF HEALTH and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

ORDER AND REASONS

[1] The applicant is a Canadian citizen who re-entered the country on Monday, November 2, 2020 after spending a day in the United States for his job. On arrival at the border, an officer of the Canada Border Services Agency ("CBSA") refused to exempt him from the requirement to quarantine for 14 days under an emergency order made under the *Quarantine Act*, SC 2005, c 20 due to the COVID-19 pandemic. He is required to quarantine until November 17, 2020.

[2] On Thursday, November 5, the applicant filed an application for judicial review of the CBSA officer's decision not to exempt him from the quarantine requirements.

[3] On Friday, November 6, the applicant filed an urgent motion in this Court for an interlocutory stay or injunction, seeking to end the ongoing effect of the quarantine order applied to him on November 2. On the morning of Monday, November 9, the respondents filed responding written representations. The Court heard oral submissions that afternoon.

[4] For the following reasons, the applicant's motion for an interlocutory injunction or stay is dismissed.

I. **Background and Events Leading to This Motion**

A. ***Quarantine Requirements***

[5] The *Quarantine Act* empowers the Governor in Council (i.e. the Federal Cabinet) to make emergency orders. Section 58 enables the Governor in Council to make an order prohibiting entry into Canada, or imposing conditions on entry into Canada, on a class of persons who have been in a foreign country. The Governor in Council may do so if it is of the opinion that:

> (a) there is an outbreak of a communicable disease in the foreign country;
>
> (b) the introduction or spread of the disease would pose an imminent and severe risk to public health in Canada;
>
> (c) the entry of members of that class of persons into Canada may introduce or contribute to the spread of the communicable disease in Canada; and

> (d) no reasonable alternatives to prevent the introduction or spread of the disease are available.

[6] Commencing in February 2020, the Governor in Council passed a series of Orders in Council ("OICs") in relation to the outbreak of the coronavirus disease 2019 ("COVID-19"). Amongst them is a series of OICs entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation*).

[7] The Governor in Council issued the first OIC of that title on March 25, 2020. The OIC is now in its seventh iteration dated October 30, 2020.

[8] The *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation*), No. 7, PC 2020-0840, (the "Order") provides in its recitals:

> Whereas the Governor in Council is of the opinion, based on the declaration of a pandemic by the World Health Organization, that there is an outbreak of a communicable disease, namely coronavirus disease 2019 (COVID-19), in the majority of foreign countries;
>
> Whereas the Governor in Council is of the opinion that the introduction or spread of the disease would pose an imminent and severe risk to public health in Canada;
>
> Whereas the Governor in Council is of the opinion that the entry of persons into Canada who have recently been in a foreign country may introduce or contribute to the spread of the disease in Canada;
>
> And whereas the Governor in Council is of the opinion that no reasonable alternatives to prevent the introduction or spread of the disease are available;
>
> Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Health, pursuant to section 58 of the *Quarantine Act*, makes the annexed *Minimizing the Risk*

> *of Exposure to COVID-19 in Canada Order (Mandatory Isolation), No. 7*.

[9] The Order contains the following definitions:

> ***quarantine*** means the separation of persons in such a manner as to prevent the possible spread of disease.
>
> ***signs and symptoms of COVID-19*** include a fever and a cough or a fever and difficulty breathing.

[10] The Order provides as follows at paragraph 3(1)(a):

> **3 (1)** Any person who enters Canada and who does not have signs and symptoms of COVID-19 must
>
> > **(a)** quarantine themselves without delay in accordance with instructions provided by a screening officer or a quarantine officer and remain in quarantine until the expiry of the 14-day period that begins on the day on which the person enters Canada;

[11] In section 6, the Order provides for a number of exceptions to the mandatory quarantine in paragraph 3(1)(a). Paragraphs 6(m) and 6(n) provide that paragraph 3(1)(a) does not apply to:

> **(m)** a habitual resident of an integrated trans-border community that exists on both sides of the Canada-United States border who enters Canada within the boundaries of that community, if entering Canada is necessary for carrying out an everyday function within that community;
>
> **(n)** a person who enters Canada to return to their habitual place of residence in Canada after carrying out an everyday function that, due to geographical constraints, necessarily involves entering the United States; […]

[12] The Governor in Council added these two exceptions at the same time, on April 14, 2020, by PC 2020-260 entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation*), No. 2.

[13] An Explanatory Note prepared by the Public Heath Agency of Canada that accompanied the Order stated that the then-new Order allowed exemptions from the mandatory isolation Order for persons that "must cross the border to access goods and services, given the geography of their transborder community": Canada Gazette, Part I, Vol 154, No 17 (April 25, 2020).

B. ***The Applicant's November 1-2 Trip to the United States***

[14] The applicant is employed by Rebel News Network Ltd., a Canadian online news outlet. His title is Head of Video, a position he has held for just over a month. He has worked for the company for three and a half years.

[15] In his affidavit sworn on November 5, 2020, the applicant described his duties as managing all of the video content produced by Rebel News. Because it is an online news platform, his role producing video content is "significant". He testified that he oversees all of its video editorials, web editorials and social media departments, and directly supervises the production and postproduction of video content for the website and the company's YouTube channel. The role involves a lot of on-location production work. His work has required him to travel to the United States when there is a relevant story to cover, usually travelling with a reporter. He estimated in his affidavit that in the past, he had travelled to the United States approximately once a year on behalf of the company. He testified in his affidavit that he did not

travel to the United States between March 2020 and October 30, 2020, during the COVID-19 border restrictions.

[16] Part of the applicant's job was planning and producing taped segments of video journalism related to the Presidential election in the United States that occurred on November 3, 2020, including the campaigns.

[17] On November 1, 2020, he and a reporter colleague travelled to Traverse City, Michigan. They attended a campaign event for the United States election. The applicant was the video producer and was responsible for capturing video and managing the equipment, while his colleague gathered news content and appeared on camera.

[18] Prior to travelling, he and his colleague sought professional advice with respect to the order restrictions that would apply on their return to Canada. Although that advice was not disclosed in his affidavit, it stated that he believed that their travel was exempt from the quarantine requirements due to the exemption now found in paragraph 6(n) of the *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation*), No. 7.

[19] The following evening, November 2, they returned to Canada at the Blue Water Bridge, crossing from Michigan to Sarnia, Ontario.

[20] Prior to their return, the CEO of their employer provided them with a copy of a signed letter (on Rebel News letterhead) dated November 2, 2020, explaining the purpose of their visit and that they were exempt from quarantine. That letter stated in part:

> Please be advised that Rebel News assigned [the applicant and his colleague] to travel to Traverse City, Michigan to attend and report on a US presidential campaign event. They entered the United States on the evening of November 1, 2020 in furtherance of their every day job functions and duties with the assignment of attending and reporting on the campaign event held at the Cherry Capital Airport at 5 PM EST. Accordingly, they are exempt from the obligation to quarantine pursuant to Order in Council #18 (Section 6).

[21] When they arrived at the border, the applicant and his colleague spoke to two officers in turn. They informed the first officer that they were not required to quarantine because they had travelled briefly across the border in the everyday course of their work, which in this case required travel into the United States. They presented the letter from the CEO claiming that an exception applied. The first officer advised them that no exemption applied.

[22] The applicant and his colleague asked to speak to someone more senior. They spoke to a second officer. They again presented the CEO's letter. The second officer confirmed that the 14-day quarantine period applied and explained that they could incur severe penalties by failing to quarantine as ordered.

[23] The applicant testified that he proceeded into Canada and went home. Since then, he has remained in self-isolation and quarantine. He believes that the officers were wrong to deny him the exception in paragraph 6(n). He characterized his current status as a form of house arrest,

noting that he only travelled on November 1 based on the belief that he would not have to quarantine based on the exception in paragraph 6(n).

[24] The applicant testified that he cannot effectively do his job from home or while under quarantine. If he must remain in quarantine for the entire 14-day period, he will be unable to provide his services on location during some of the most important news stories and reporting opportunities of this year. He testified that this will have a "severe negative impact" on his employer's programming and "harm the staff's ability to properly cover the US election with the detail and professionalism [the] audience has come to expect".

II. **Proceedings in this Court**

[25] In his judicial review application dated November 5, 2020, the applicant requested an order setting aside "a decision of an unnamed officer of the [CBSA] refusing to exempt the Applicant, a Canadian citizen, from the requirement to quarantine for 14-days upon re-entering Canada under the Quarantine Act and the applicable Order in Council (PC Number 2020-0840, *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation)*, No. 7)". The judicial review application requested that the question of the applicant's need to quarantine be re-determined by a different decision-maker.

[26] On November 6, 2020, the applicant filed this urgent motion for an "Order staying the ongoing effect of the quarantine order issued to the [a]pplicant on November 2, 2020". The applicant's written representations, filed concurrently, stated that the applicant moved for an "injunction and/or stay order" ending his quarantine.

[27] On November 9, 2020, the respondents filed responding written representations. The Court held an oral hearing the same day by videoconference.

III. **Jurisdiction of the Court**

[28] The respondents submitted that the Court has no jurisdiction to make the Order required by the applicant. They contend that the applicant cannot get the relief he seeks by way of interlocutory motion.

[29] The applicant brought this motion as incidental relief to his application for judicial review. The applicant relies upon the *Federal Courts Act*, RSC 1985, c F-7, s. 18.2 and s. 44 to ground this Court's jurisdiction to issue the requested stay or injunction. Section 18.2 provides that the Court may make interim orders pending an application for judicial review:

> 18.2 On an application for judicial review, the Federal Court may make any interim orders that it considers appropriate pending the final disposition of the application.

[30] Subsection 18(1) provides that the Federal Court has "exclusive original jurisdiction (a) to grant a … writ of *certiorari* … against any federal board, commission or other tribunal." It was not disputed that a decision of an officer of the CBSA is a decision of a "federal board, commission or other tribunal" in subs. 2(1) of the *Federal Courts Act*.

[31] Section 44 of the *Federal Courts Act* provides as follows:

> 44 In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a mandamus, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to

> the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.

[32] The applicant also referred to Rule 373 of the *Federal Courts Rules*, SOR/98-106, which provides that on motion, a judge may grant an interlocutory injunction.

[33] In my view, because the applicant has applied for judicial review to this Court, the proper statutory provision that applies here is s. 18.2, not s. 44.

[34] The issue raised by the respondents does not affect the test applied to the proposed stay or injunction under s. 18.2. Both parties agree that it is based on the three-stage approach set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311.

[35] Instead, the respondents submitted that the Court has no jurisdiction to make the Order requested on an interlocutory basis. That is because, according to the respondents, the "essential character" of the applicant's motion when "read holistically and practically without fastening onto matters of form" is either in the nature of a prohibition order or certiorari, citing *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 FCR 557, at paras 49-50, 102, 105. The respondents contend that in reality, the applicant seeks a prohibition order because the Order requested would prohibit any continued enforcement of the quarantine order while it is still valid. Alternatively, they argue that the applicant's proposed order is in the nature of *certiorari* because terminating the quarantine is no different from quashing the quarantine order. Whether it is truly prohibition or *certiorari*, the respondents

submit that neither one can be obtained on an interlocutory motion under section 18.1 and 18.2, citing *Kellapatha v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 739; *Wasylynuk v Canada (Royal Canadian Mounted Police)*, 2020 FC 962, at paras 66-71; *Clifton v Hartley Bay Village Council*, 2005 FC 1594.

[36] I do not agree that this Court lacks jurisdiction to grant the applicant the requested remedy on this urgent interlocutory motion.

[37] First, the cases cited by the respondents do not apply directly to the present case. The issue in *JP Morgan Asset Management* was not whether an interlocutory Order could be obtained under s. 18.2 because its essential character was a request for a final order on judicial review under subs. 18(1). The issue was the essential character of the applicant's judicial review proceeding and whether it could or should not proceed because of a requirement or ability for the applicant to challenge its assessment in the Tax Court under applicable legislation. Stratas JA held in part that if the essential character of the relief sought is something that the Tax Court was empowered to do (setting aside or vacating the tax assessment), the application for judicial review must be struck (at paras 93, 111-112).

[38] The other cases cited do not concern prohibition or *certiorari*. In *Kellapatha*, Fothergill J. concluded that *mandamus* cannot be granted on an interlocutory motion (at paras 17, 20). He followed the decision of Tremblay-Lamer J. who reached the same conclusion in *Clifton v Hartley Bay Village Council*. In *Wasylynuk*, I was inclined to agree that *mandamus* should not be granted on an interlocutory basis, both in principle and considering that a respondent can be

ordered to take positive action by an interim or interlocutory mandatory order: at para 69. I left open the possibility that in the right circumstances, an order for *mandamus* could be ordered on an interlocutory basis if the nature of the public duty were inherently "interlocutory": at para 71.

[39] The question in this case is whether, by parity of reasoning from the cases above, the essential character of the present motion is not a stay or injunction, but is in fact an interlocutory request for prohibition or *certiorari* that can only be granted on a judicial review application.

[40] In my view, the present motion does not seek an Order in the nature of prohibition as it does not seek to prevent a decision-maker from taking or completing any action. The CBSA's decision has been made. The officer has nothing more to do that may be prohibited under paragraph 18(1)(a) of the *Federal Courts Act*.

[41] There is more force in the respondents' argument about *certiorari*. The present interlocutory motion is effectively seeking to stop the effect of the officer's decision, something that looks like an interlocutory writ of *certiorari* that could otherwise only be granted on judicial review. The respondents maintain that the objective of an interlocutory stay or injunction is to maintain the *status quo*. Speaking about *mandamus* in *Kellapatha*, Fothergill J. observed that the "purpose of an interlocutory motion is to preserve or restore the *status quo*, not to give the applicant his remedy" (at para 20). And, as s. 18.2 itself states, the Court may make an interim order "pending the final disposition of the application" for judicial review. Here, the CBSA officer's decision requires the applicant to quarantine until the expiry of 14 days on November 17, 2020, assuming the applicant shows no signs or symptoms of COVID-19 (if he does, the

quarantine period continues). If the motion to stay the officer's decision is successful, the practical reality is that the applicant would no longer be required to quarantine in his home. Legally of course, the officer's decision would not be set aside – it would be stayed pending the disposition of the judicial review. But it is equally clear that the application would never proceed, because the applicant has already obtained the remedy he seeks – to be released from quarantine. A similar analysis presumably applies if the motion is characterized as seeking an injunction restraining the application of the OIC, and specifically, restraining the application of the mandatory quarantine period imposed on anyone who enters Canada and does not show signs or symptoms of COVID-19, under paragraph 3(1)(*a*). Granting the injunction effectively terminates the quarantine, which is functionally equivalent to setting aside the officer's decision.

[42] In the end, however, these concerns are not fatal to the applicant's motion in this case. First, a critical purpose of an interlocutory injunction is to prevent irreparable harm that will occur between the motion and the disposition of the matter on its merits: see e.g., *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34, [2017] 1 SCR 824 (Abella J.), at paras 24, 34, and 40-41. The applicant claims that such harm is occurring. To borrow from the Supreme Court in *RJR-MacDonald*, this is the kind of motion "when the rights which the applicant seeks to protect can [in this case, must] be exercised immediately, or not at all": at p. 338. To give effect to the respondents' argument would potentially leave justifiably aggrieved applicants without any prospect of an effective interim or interlocutory remedy under s. 18.2 as a matter of law or principle, rather than as a matter of evidence and justice. If an applicant can demonstrate to the Court that she or he has been the subject of an unlawful order or decision that causes irreparable

harm quickly, or for only a very short period of time, why should that applicant be left without recourse *as a matter of law*? In my view, a deserving applicant should not be left out in the cold.

[43] Second, it is not overly unusual that an interlocutory injunction mirrors the final disposition of the underlying proceeding. A soon-to-be defendant or respondent will often do something that causes harm or irreparable harm to a soon-to-be plaintiff or applicant unless it is stopped by court order. The ultimate remedy requested by the plaintiff or applicant is a permanent injunction, and sometimes damages, based on the eventual determination of the parties' respective rights. If the plaintiff or applicant loses at an eventual trial or application, the defendant or respondent can proceed to do what it was enjoined from doing (and in some cases, will receive compensation for any losses in the meantime due to the plaintiff's undertaking in damages). An application for judicial review is to be "heard and determined without delay and in a summary way": *Federal Courts Act*, subs. 18.4(1).

[44] Third, the Supreme Court expressly recognised in *RJR-MacDonald* that the interlocutory injunction application may in effect amount to a final determination of the action (at p. 338). When it does, the remedy is not that the court does not have jurisdiction to issue the injunction. Instead, the Court conducts a "more extensive review of the merits" at the first stage of the tripartite test (at p. 339). The injunction does not issue without more certainty that the applicant will emerge victorious in the end.

[45] Fourth, this Court does not grant an interlocutory injunction or stay just for the asking. The bar in this Court is high, not only when considering the merits at stage one of the *RJR-*

MacDonald test but also at stages two and three. At stage one, not only does the Court engage in a more extensive review of the merits, it does so when there is a judicial review pending by applying the standards set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. In most cases, that standard is the deferential reasonableness standard, not correctness. At stage two, the requirements established by the Federal Court of Appeal for clear and convincing proof of irreparable harm are high (as discussed below). At stage three, an applicant will often be faced with demonstrating that the harm he or she will suffer outweighs the harm to the public interest that is so often present in motions for relief pending the final disposition of an application for judicial review under s. 18.2. That is often no easy feat.

[46] Lastly, I am comfortable that the applicant is properly seeking a stay or injunction and has not "dressed up" a different cause of action as judicial review or attempted to disguise a judicial review as a motion for interlocutory relief. The motion for a stay or injunction is legally different from the underlying judicial review.

[47] For these reasons, I am satisfied that the Court is not precluded from granting the remedy requested in these specific and urgent circumstances. The Court has jurisdiction to issue an injunction or to stay on this motion under s. 18.2 of the *Federal Courts Act*.

IV. **The Motion for an Interlocutory Injunction or Stay**

[48] On an application for an interlocutory injunction, this Court applies a three-stage framework to determine whether it is just and equitable to issue the injunction. The Supreme Court of Canada described the usual approach in *RJR-MacDonald*. The Court considers whether: (i) on a preliminary assessment of the merits of the applicant's case, there is a serious issue to be tried (in the sense that the applicant's claim is not frivolous or vexatious); (ii) the applicant would suffer irreparable harm if the injunction is not granted; and (iii) the balance of convenience favours granting or denying the injunction, based on an assessment of which party would suffer greater harm from the granting or refusal of the injunction, pending a decision on the merits. The fundamental question is always whether it is "just and equitable in all the circumstances" to grant the injunction: see *Google*, at para 25; *RJR-MacDonald*, at p. 334; *R v Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 SCR 196, at para 15; *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 (Mactavish, JA), at paras 13-14.

[49] The *RJR-MacDonald* framework also applies to stays: *Arctic Cat Inc. v Bombardier Recreational Products Inc.*, 2020 FCA 116 (Rivoalen JA), at para 10; *Newbould v Canada (Attorney General)*, 2017 FCA 106, [2018] 1 FCR 590 (Pelletier JA), at paras 14 and 20; *Toronto Real Estate Board v Commissioner of Competition*, 2016 FCA 204 (Gleason, JA), at para 11; *United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 (Layden-Stevenson JA), at para 4; *Unilin Beheer B.V. v Triforest Inc.*, 2017 FC 76 (Gascon, J), at para 101.

[50] The three stages in the *RJR-MacDonald* framework are conjunctive, meaning that an applicant must satisfy all elements in order to be entitled to relief: *Air Passengers Rights*, at para 15. They are also flexible and interrelated. They are not watertight compartments. Each one relates to the others and each focuses the court on factors that inform its overall exercise of the court's discretion in a particular case. As an example, demonstrated strength on the merits at stage one may affect the court's consideration of irreparable harm and the balance of (in)convenience: see *RJR-MacDonald*, at p. 339; *Attorney General of British Columbia v Attorney General of Alberta*, 2019 FC 1195 (Grammond, J), at paras 97 and 173-179; *Toronto (City) v A.G. Ontario*, 2018 ONCA 761, at para 10; *Livent Inc. v Deloitte & Touche*, 2016 ONCA 395 (Strathy CJO), at para 5; *Unilin Beheer B.V.*, at para 102 and the cases cited there; *British Columbia (Attorney General) v Wale* (1986), 9 BCLR (2d) 333 (CA), *per* McLachlin, JA, at pp. 346-47, aff'd [1991] 1 SCR 62.

A. ***Stage One: Assessment of the Merits***

[51] The first stage of the *RJR-MacDonald* framework involves a preliminary assessment of the strength of the merits of the applicant's claims.

[52] At least three different standards have evolved to assess the strength of the merits, which are applied in different circumstances. Typically, the standard is low – it requires a serious issue to be tried, meaning that the claim must not be frivolous or vexatious: *RJR-MacDonald*, at p. 337.

[53] A different, higher standard applies to a request for an interlocutory mandatory order. The applicant must show a strong *prima facie* case: *CBC*, at paras 13-15; *Air Passengers Rights*, at para 19.

[54] In addition, the jurisprudence of the Federal Courts has applied an middle, "elevated" standard in some circumstances: see e.g. *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, [2010] 2 FCR 311 (Nadon, JA), at paras 66-67; *Wang v Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 682 (TD) (Pelletier, J) at para 11; *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 880 (Gascon, J), at paras 66, 79-80).

[55] The Supreme Court in *RJR-MacDonald* itself recognized exceptions to the usual "serious issue to be tried" standard. One exception is if a decision on the interlocutory injunction would, in effect, amount to a final determination of the underlying proceeding in which the injunction application is commenced: at pp. 338-39. In that circumstance, a "more extensive examination of the merits" is required. However, as Gascon J. noted in *Okojie*, the Supreme Court did not articulate what legal standard is to be applied during that more extensive examination of the merits: at paras 77-87.

[56] In my view, it is clear that if the motion for an interlocutory injunction will effectively determine the underlying judicial review application – as it does here – the Court must take a close look at the merits and be satisfied, at minimum, that the applicant is likely to prevail. In some cases, Canadian courts have applied a higher standard – that there is a "strong likelihood that the appeal will succeed": see *Toronto (City) v A.G. Ontario*, 2018 ONCA 761, at para 10); or a strong *prima facie* case (*Awashish v. Conseil des Atikamekw d'Opitciwan*, 2019 FC 1131 (Grammond, J.) at paras 18-20; *Orpheus Medica v Deep Biologics Inc.*, 2020 ONSC 4974 (Papageorgiou, J), at para 17. In other recent cases, courts have articulated a higher standard with different words, such as a "strong chance of success" (*Black et al v City of Toronto*, 2020 ONSC

6398 (Schabas, J.) at para 41, equating it to a strong *prima facie* case); or a "strong arguable case" (*Taseko Mines Limited v Tsilhqot'in National Government,* 2019 BCSC 1507 (Matthews, J), at paras 5-6, 32-33).

[57] As will be clear from the reasons set out below, I do not have to determine whether the proper legal standard to apply on this motion is that the applicant is likely to prevail (an elevated standard), or has established a strong *prima facie* case on the merits. Either way, an assessment of the strength of the merits must be a significant factor in the outcome of this motion. As I will explain, I conclude the applicant has not demonstrated that he is likely to succeed on the judicial review of the CBSA officer's decision.

[58] When the underlying application is for judicial review, the Court must consider the merits of the underlying judicial review. In other words, the Court assesses the strength of the applicant's case on the pending judicial review, applying the reasonableness standard in *Vavilov.* See *Corona c Canada (Immigration, Réfugiés et Citoyenneté*), 2020 FC 269 (Pentney, J.), at paras 15, 25-29; *Martell v Canada (Attorney General),* 2019 FC 737 (Roussel, J.) at paras 27-40, 35; *Robinson v Canada (Attorney General),* 2019 FC 876 (Gascon, J) at paras 62 and 69-76.

[59] On this motion, the applicant's position is that the CBSA officer incorrectly determined that the applicant did not fall within the exemption in paragraph 6(n). He submitted that the exception did apply to him when he returned to Canada on November 2, 2020. He was returning to his residence in Canada after carrying out an everyday function of his work as a video journalist which, because of the location and nature of the story being covered, necessitated entry

into the United States. He carried the letter dated November 2, 2020 from his employer to this effect, and explained these reasons to the officer, but nonetheless was still required to quarantine.

[60] The applicant also submitted that the exception in paragraph 6(n) was not discretionary. On a proper interpretation of the exception, persons returning to Canada that fall under a listed exception in section 6 are not covered by the requirement to quarantine in paragraph 3(1)(a). The applicant submitted that the officer made an error of law in their interpretation of the exception and its application to the applicant and that the officer was obliged to interpret the statute correctly. This error of law forms the primary ground in the underlying application for judicial review.

[61] The applicant's written submissions go further, arguing "any interpretation that refused to grant the exemption" to the applicant was "an error of law or a bald misapplication" of the Order to the applicant's circumstances.

[62] In the applicant's view, the exception in paragraph 6(n) is comprised of three requirements: (i) that the traveller is returning to their habitual residence in Canada; (ii) that the traveller is returning after carrying out an everyday function in the United States; and (iii) that carrying out the everyday function required travel to the United States due to "geographical constraints".

[63] The respondents counter that there is no serious issue raised by the applicant. They submit that he has failed to demonstrate that there is anything unreasonable about him being

required to quarantine for 14 days after travelling to the United States. The applicant did not advise the officer of any information that would reasonably have led the officer to find the applicant was carrying out an everyday function that, due to geographical constraints, necessarily involves entering the United States.

[64] Specifically, the respondents submit that the applicant has not suggested that he is a person who must cross the border to access goods and services due to the geography of a transborder community. In the respondents' view, this is the explanation given for paragraph 6(n) (and paragraph 6(m)) in the Explanatory Note that accompanied the enactment of the two exceptions, described above. The applicant's evidence is that he lives in Mississauga. The exception in paragraph 6(n) of the order therefore has no application.

[65] For the following reasons, I agree substantially with the respondents.

[66] First, some brief notes on *Vavilov* reasonableness review are apposite. The hallmarks of reasonableness are justification, transparency and intelligibility. The focus of reasonableness review is on the decision actually made by the decision maker, including both the reasoning process (i.e. the rationale for the decision) that led to the decision and the outcome: *Vavilov*, at paras 83, 86. However, reviewing courts "should not ask how they themselves would have resolved an issue and should focus on whether the application has demonstrated that the decision is unreasonable": *Vavilov*, para 75 and 83. A reasonable decision is one that is (a) based on an internally coherent and a rational chain of analysis and (b) justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at para 85.

[67] The Supreme Court in *Vavilov* provided guidance to reviewing courts concerning their interpretation of the governing statutory scheme (at paras 108-114) and guidance with respect to the principles of statutory interpretation (at paras 115-124). Matters of statutory interpretation are evaluated on a reasonableness standard: para 115.

[68] In the present case, there are no reasons provided by the officer. The Supreme Court in *Vavilov* addressed that circumstance at paragraphs 136-138, concluding that the analysis will usually focus on the outcome rather than the decision maker's reasoning process.

[69] Second, modern principles of statutory interpretation (described in *Vavilov*, at para 117-118) apply to the interpretation of an Order in Council: *Amaratunga v Northwest Atlantic Fisheries Organization*, 2013 SCC 66, [2013] 3 SCR 866, at para 36.

[70] Third, published explanations such as a regulatory impact statement associated with a regulation, or an Explanatory Note published with an Order in Council, may be used to assist in understanding the regulation or OIC in question: see for example, *Merck Frosst Canada & Co v Apotex Inc.* 2011 FCA 329, at para 45; *Bigstone Cree Nation v Nova Gas Transmission Ltd.*, 2018 FCA 89, at paras 20, 67-68.

[71] I will set out the exception in paragraphs 6(m) and 6(n) again, for ease of reference. They provide that paragraph 3(1)(a) does not apply to:

> **(m)** a habitual resident of an integrated trans-border community that exists on both sides of the Canada-United States border who enters Canada within the boundaries of that community, if entering

> Canada is necessary for carrying out an everyday function within that community;
>
> **(n)** a person who enters Canada if the entry is necessary to return to their habitual place of residence in Canada after carrying out an everyday function that, due to geographical constraints, must involve entering the United States.

[72] Applying the legal principles and standards above in the present case, I am not persuaded that the applicant will likely prevail in attempting to show that the officer's decision was unreasonable on judicial review. I am unable to conclude that the applicant is likely to succeed in persuading the Court that the officer's presumed legal interpretation of paragraph 6(n) is unreasonable, or that the outcome is unreasonable on the facts in the record.

[73] Given the guidance of the Supreme Court in *Vavilov*, the absence of reasons from the decision-maker in this case and the urgency with which this motion was argued and determined, I will not provide a definitive interpretation of the exception in paragraph 6(n). Nevertheless, it is necessary to provide reasons for my conclusion that the applicant's application for judicial review will likely not succeed and in doing so, to refer to the interpretation of paragraph 6(n).

[74] The parties agree that paragraph 3(1)(a) applied to the applicant, who was returning to Canada from the United States on November 2 without signs or symptoms of COVID-19. That part of the officer's decision is not in dispute. The real issues are the interpretation of the exception in paragraph 6(n) and whether it applies to the applicant. I note that the officer's decision on the latter is a question of mixed law and fact to which this Court is bound to afford deference.

[75] On its face, paragraph 6(n) concerns a return to Canada after a person carries out an everyday function "that, *due to geographical constraints, necessarily involves* entering the United States" [emphasis added]. The Explanatory Note prepared by the Public Heath Agency of Canada accompanying the passage of the Order described exceptions added, which must refer to paragraphs 6(m) and 6(n), as applying to persons that "must cross the border to access goods and services, given the geography of their transborder community". The applicant's circumstances clearly do not fall within that description.

[76] The applicant contends that he falls within the exception in paragraph 6(n) because it is an everyday part of his function as an employee to take and produce video of events. It was his employer's decision to send the applicant across the border as a part of his everyday functions as a video producer. The event was in Michigan, necessitating a visit to the United States.

[77] However, there are other express exceptions in paragraph 6 of the Order that relate to persons or classes of person whose employment activities require them to cross the Canada/United States border: see paragraphs 6(a) (an aviation crew member); 6(e) (a person or any person in a class of persons whom the Chief Public Health Officer determines will provide an essential service); 6(g) (a person permitted to work in Canada as a provider of emergency services); 6(h) (a person who enters Canada for the purpose of providing medical care or transporting essential medical equipment); 6(k) (a licensed health care professional with proof of employment in Canada); and 6(l) (a captain, deckhand, or other person supporting commercial or research-related fishing activities). The applicant was unable to raise any of those exceptions on this motion or with the CBSA officer on November 2.

[78] The language of the exception in paragraph 6(n) does not, on its face, suggest that it applies to the everyday functions of any resident of Canada in the course of their employment. Given the other express exceptions in section 6 and how they are determined (e.g. by public health officials), if the Governor in Council had intended to enact a generalized exception to the 14-day quarantine period applicable to all ordinary employment functions carried out by all Canadians, and regardless of the location of their habitual residence in Canada, one would expect clearer language to be used.

[79] In this particular case, it was not a part of the applicant's everyday function to produce video *in the United States*. This is the first time that he crossed the border as part of his employment since March 2020. In his affidavit on this motion, he stated he had only travelled to the United States for work about once a year since commencing his employment. While it is not clear whether those facts were before the CBSA officer, they are in his affidavit and are consistent with a reasonable decision by the officer. In effect, the decision to cross the border into the United States for this event appears to have been a business choice, rather than a necessity, and one that to the applicant was unique during this pandemic. While the applicant's affidavit mentioned that other employees had crossed the border and returned to Canada without quarantining for 14 days, he did not provide particulars. I find that this evidence is not material to the analysis.

[80] I also observe that the applicant's proposed interpretation of paragraph 6(n) appears to inject an element of individual discretion or subjectivity into the determination of who must quarantine. The applicant would interpret the exception to allow any habitual resident of Canada

to cross into the United States for any ordinary, “everyday” function and return without being subject to the 14-day quarantine, so long as the person or her/his employer considers it necessary that (s)he go to the United States to carry out that ordinary, everyday function.

[81] In the context of an emergency order under the *Quarantine Act*, it is hard to accept that the Governor in Council intended to permit any habitual resident of Canada to cross and return without quarantine because they or their employer believes it is necessary for them to do so. Take an extreme example: shopping is an ordinary, everyday function for many Canadians. The applicant’s interpretation seems to permit a habitual resident of Mississauga who cannot find a specific winter jacket, or particular brand of barbeque sauce, that (s)he wants to purchase at stores in Canada, to cross the border to purchase it in Buffalo, New York and then return into Canada without quarantine. That scenario seems rather unlikely to constitute an exception to the mandatory quarantine requirements in an emergency Order under the *Quarantine Act*.

[82] Similarly, it is difficult to accept that the discretionary decision of an employer that it is necessary to send an employee to the United States (here, one time only) as part of their everyday employment functions can be a determinative factor in the application of the exception in paragraph 6(n) as to whether a person must quarantine or not.

[83] I sum, I conclude on the submissions and evidence on this motion that the applicant is not likely to succeed in convincing the Court on judicial review that the officer’s decision was unreasonable.

B. ***Stage Two: Irreparable Harm to the Applicant***

[84] Proof of irreparable harm is critical to success on an application for an interlocutory injunction. As the Supreme Court held in *Google*, there is “no equity in ordering an interlocutory injunction which has no realistic prospect of preventing irreparable harm”: at para 41. On this issue, the applicant must “convince the court”: *CBC*, at para 12.

[85] “Irreparable” harm is harm that cannot be compensated or remediated by money damages, or otherwise cured, for example because one party cannot collect damages from the other: *RJR-MacDonald*, at p. 341. It is the nature or quality of the harm – not its magnitude – that must be “irreparable” in the second stage of the analysis.

[86] The Federal Court of Appeal requires that the applicant adduce “clear and non-speculative” evidence of irreparable harm: see, for example, *Air Passengers Rights*, at para 28. In *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112, Stratas JA stated at paragraph 24 that "… the moving party must demonstrate in a detailed and concrete way that it will suffer real, definite, unavoidable harm – not hypothetical and speculative harm – that cannot be repaired later." See also *Canada (Attorney General) v Oshkosh Defense Canada Inc.*, 2018 FCA 102, at para 25; *Western Oilfield Equipment Rentals Ltd. v M-I LLC*, 2020 FCA 3 (Nadon, JA), at paras 11-12; *Tearlab Corporation v I-Med Pharma Inc.*, 2017 FCA 8, at para 4 (A.F. Scott, JA); *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126, at paras 14-16 (Stratas, JA); *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255, at para 31 (Stratas, JA); and generally, *F.H. v McDougall*, 2008 SCC 53, [2008] 3 SCR 41, at para 45.

[87] The Federal Court of Appeal has also held that an applicant must show that the alleged irreparable harm will be suffered – not that it may occur or even, in some decisions, that it is "likely" to occur: *United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200, at para 7 (Layden-Stevenson, JA); *Glooscap*, at para 31; *Arctic Cat*, at para 20.

[88] The applicant relies on two kinds of irreparable harm. The first relates to the deprivation of his liberty. As noted above, he submitted that he is at home "under conditions analogous to house arrest" due to the allegedly unlawful decision of the CBSA officer. His confinement, which he submitted was imposed through a misinterpretation of the law, cannot be repaired and is therefore irreparable harm.

[89] The respondents argued that the alleged harm is not irreparable because it could have been avoided. The applicant could have obtained an opinion from public health authorities about whether the exception in paragraph 6(n) would apply to him. The applicant responded that he sought professional advice before entering the United States and believed he would be able to return without quarantining.

[90] The issue of whether the harm was avoidable is at least arguable. Authorities and analysis relating to avoidable harm may be found in *Wasylynuk*, at paras 152-164. However, given my conclusions on stages one and three, I do not need to analyse that issue here. For the purposes of this motion, I will assume that the deprivation of liberty during the quarantine period is harm of an irreparable nature that is ongoing until the end of that quarantine (assuming it ends on November 17 and the applicant does not develop symptoms of COVID-19 during that period).

[91] The second form of irreparable harm alleged by the applicant concerns the effect on his employer. The applicant submits that his employer will suffer economic harm as a result of his quarantine. His work duties required his physical presence both at the company's offices in Toronto as well as frequent attendance on location for video production. His evidence is that he cannot perform the essentials of his employment while in quarantine. The loss of his organization and production skills will reduce the quantity and quality of the video reporting his employer is able to produce.

[92] As a matter of law at the second stage of the *RJR-MacDonald* framework, irreparable harm must be suffered by the applicant. A moving party cannot rely upon irreparable harm caused to a third party: *RJR-MacDonald*, at p. 341*b* (referring to the applicants' "own interests"); *Chinese Business Chamber of Canada v Canada*, 2006 FCA 178, at paras 6-7; *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255, at paras 29, 33-34; *Arctic Cat v Bombardier Recreational Products Inc.*, 2020 FCA 116, at para 32; *Air Passenger Rights v Canada (Transportation Agency)*, 2020 FCA 92, at para 30. The sole exception established by the Federal Court of Appeal relates to charities and has no application here: *Arctic Cat*, at para 32.

[93] However, considerations relating to potential harm to third parties may properly be taken into account under the third branch of the test: *Chinese Business Chamber*, at paras 6-7; *Glooscap*, at para 29. I will therefore do so below.

[94] I turn now to the third stage of the analysis.

C. ***Stage Three: Balance of (In)convenience***

[95] The third stage of the *RJR-MacDonald* framework is an assessment of which party would suffer greater harm from the granting or refusal of the stay or injunction, pending a decision on the merits.

[96] In this case, the competing harms and interests to be balanced may be conveniently assessed under three headings: (i) harm to the applicant and his employer; and (ii) additional or incremental burden on the respondents if the requested order is granted; (iii) harm to the public interest and specifically, risks to public safety. In assessing the third consideration, I will return to the strength of the merits of the applicant's case.

[97] I will address each heading in turn.

(a) *Harm to the Applicant and his Employer*

[98] The liberty interest identified by the applicant, as part of the harm he will experience if he remains in quarantine, is a significant interest. While the applicant made no submissions with respect to a violation of his liberty rights under s. 7 of the *Canadian Charter of Rights and Freedoms*, I accept that loss of liberty even for a short period is a factor of considerable force in the assessment of balance of convenience.

[99] It is at this stage that we may consider harm to the applicant's employer. The evidence on this issue has been set out above. The applicant characterized the harm as economic harm, but it

also relates to the quality of programming made available to audiences. He also submitted that this harm is heightened at this time because of the importance to Rebel New of its coverage of the recent US election and its aftermath.

[100] I find the evidence related to this factor to be less than clear and compelling. The evidence does not disclose, beyond mere statements by the applicant, the extent to which or precisely how his absence until November 17 will materially affect his employer's ability to offer quality programming for audiences. The applicant's affidavit also does not expressly state that no one else can do his job on a temporary basis. He did not explain in detail why he could not do at least some of his work from home. On the evidence in the record, I am not persuaded that the harm occasioned by the applicant's temporary absence as a video producer on location, or his temporary absence of the Head of Video in the studio or managing others, constitutes significant harm to his employer for the purposes of the balance of convenience on this motion.

[101] I note that neither party may any submissions, nor was there any evidence, about the role of the news media or of this particular employer's website, in this country, and what harms news outlets may incur by not having journalist or production staff able to cover stories on location.

(b) *Additional Burden on the Respondents*

[102] The applicant submits that the proposed order does not impose any additional or incremental burdens on the respondent to take any positive steps. The injunction or stay would simply require the respondents to cease enforcement of paragraph 3(1)(a) of the OIC, on the grounds that the applicant qualifies for the exemption in paragraph 6(n).

[103] The respondents did not contest this specific point. While there may be some modest requirement to take steps to remove the applicant from a list of persons subject to quarantine under paragraph 3(1)(a) of the OIC, I agree that on the evidence here, the proposed stay or injunction do not impose much additional burden on the respondents to take steps or to spend money.

(c) *Harm to the Public Interest, Including Risk to Public Safety*

[104] The applicant recognizes the respondents' joint interest in protecting the public by enacting emergency measures to prevent the spread of COVID-19. However, he submits that an injunction or stay would cause little or no harm to the public interest, because the applicant would continue to monitor for symptoms, maintain social distance and wear protective equipment in public (as instructed by the officers at the border using printed materials). On this view, the applicant contends that he poses no significant, additional risk to public health if he is allowed to end his quarantine while maintaining all the other measures.

[105] The applicant also submits that a lawful and correct application of the exceptions in the OIC in fact upholds the public interest. On this view, granting this motion will protect the public interest by avoiding overly onerous, inefficient and broad quarantine mandates. The public interest, according to the applicant, is advanced by having the OIC properly interpreted and enforced.

[106] The respondents submit that the onus to demonstrate that there will be no harm to the public interest is on the applicant. The respondents submit that only in exceptional cases will the

individual's interest, which on the evidence is likely to suffer irreparable harm, outweigh the public interest, citing *Dugonitsh v Canada (Minister of Employment and Immigration)*, [1992] FCJ No. 320, at para 15 (Mackay, J.). The individual will usually not meet the onus if a public authority is charged with the duty of promoting or protecting the public interest and there is some indication that the impugned action was undertaken pursuant to that responsibility: *Ahousaht First Nation v Minister of Fisheries and Oceans*, 2019 FC 1116 (Gascon, J.), at paras 124-127.

[107] The respondents disagree that it is sufficient for the applicant to continue to take precautions against the spread of the virus, including monitoring for symptoms, maintaining social distancing and wearing protective equipment in public. They submit that if these precautions were good enough to protect the Canadian public from the risks arising from people who have recently been in the United States and returned to Canada, there would be no need for anyone returning from the United States to quarantine for 14 days. In the context of a global pandemic, any harm to the applicant by being required to quarantine until November 17 does not outweigh the harm to the Canadian public.

[108] For the reasons below, I agree substantially with the respondents on this issue. In my view, this consideration weighs heavily against granting the requested stay or injunction.

[109] It is important not to lose sight of the nature of the public interest at stake in this motion. The Governor in Council has made a clear and unequivocal statement of the public interest by invoking the *Quarantine Act* and by making the Order entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation)*, No. 7. The Governor in Council has

determined that an emergency order be made under the *Quarantine Act* due to a pandemic declared by the World Health Organization. In order to do so, the Governor in Council has come to the opinion that the requirements of s. 58 of the *Quarantine Act* exist. As noted at the outset of these reasons, those requirements include an outbreak of a communicable disease; an "imminent and severe risk to public health in Canada", recognition that the entry of persons into Canada who have recently been in a foreign country may contribute to the spread of the disease in Canada, and that no reasonable alternatives to prevent the spread of the disease are available. As the recitals to the Order expressly state, the Governor in Council has come to each of these conclusions and indeed, has done so on seven separate occasions between February and October 30, 2020, in passing the series of OICs that dictate restrictions on transborder travelers and are directly relevant to this motion.

[110] The contents of the OIC are also of significance in assessing the public interest. The OIC distinguishes between requirements imposed on asymptomatic persons and requirements imposed on persons who have signs and symptoms of COVID-19, or reasonable grounds to suspect that they have such assigned symptoms: see subss. 3(1) and 3(2). Asymptomatic persons are not just required to take the masking, social distancing and other precautions proposed by the applicant if he is successful in obtaining a state or injunction. Even asymptomatic persons are required to quarantine for 14 days, under paragraph 3(1)(a). That requirement is a cogent signal about the nature and severity of the risk to public health of the spread of COVID-19. Further, if persons are required to quarantine under paragraph 3(1)(a) and are unable to do so without coming into contact with "vulnerable persons" as defined in the OIC, the person may have to travel to a separate quarantine facility until the expiry of the 14-day period: see s. 4.

[111] The requirement to quarantine in paragraph 3(1)(a) is not absolute. Not only are there exceptions in s. 6, but there are other circumstances in which paragraph 3(1)(a) does not apply, including for medical emergencies (s. 7) and when there are compassionate grounds (as determined under s. 7.1). The existence of exceptions to paragraph 3(1)(a) does not detract from the clear and demonstrable public interest in effective quarantining to prevent the spread of COVID-19 in Canada.

[112] In assessing the balance of convenience and the harm to the public interest, the Court must consider that the Governor in Council has established a rule under paragraph 3(1)(a) of the Order that asymptomatic persons entering Canada must quarantine for 14 days. As the definition of "quarantine" provides, the Governor in Council's decision is that returning persons be separated "in such a manner as to prevent the *possible* spread of disease" [emphasis added].

[113] In that context, it is my view that the harm to the public interest is not to be measured principally in this case by assessing the extent of the risk that the applicant will infect another person, based on his evidence that he is cautious and has always taken precautions to protect himself and others from COVID-19. Rather, it must be measured with reference to the broader public interest at stake, in which the Governor in Council has determined that all Canadians crossing the US/ Canadian border must fulfil a mandatory 14-day quarantine, even if they are asymptomatic, with the exception of certain specified persons or classes of persons that (in general) are essential to the response to the pandemic or to the continued functioning of the country, or that have no alternative but to cross the border due to their location.

[114] That said, even if this factor were to turn on the individualized risk of harm that the applicant might pose to others, the applicant's evidence in the record falls short. The applicant expressly submitted that he "poses no significant, additional risk to public health if he were allowed to end his quarantine while maintaining all other [precautionary] measures". However, there is no medical evidence (one way or the other) in the record related to whether the applicant has COVID-19, or whether he is or is not asymptomatic but carries the virus or is positive for the disease. In addition, there is no evidence concerning the nature of possible exposures to the virus when the applicant was in the United States. His affidavit did not describe the election event(s) he attended and what he did while attending, his proximity to others, or whether persons there were practising social distancing or taking other precautions to prevent the spread of the virus. The applicant also did not testify about other places of possible risk, such as restaurants or other public places that he visited while in Michigan. In my view, the applicant's statements that he takes appropriate precautions are not sufficient in this context to show that he is not a risk to spread the virus following his overnight trip to the United States.

[115] It is at this point that I return to the strength of the merits of the applicant's case. I have already stated that the applicant is not likely to prevail on the merits of his judicial review, if that application were ever heard by the Court. That assessment, together with the factors in this section of these reasons, leads me to conclude that the harm to the public interest is a factor that weighs heavily against granting the order requested by the applicant.

[116] As a final point in this section, I note that the respondents' written representations provided a link to a video on the Rebel News website. The video apparently depicts the

Presidential election event attended by the applicant and his colleague in Michigan. The link was not provided in an affidavit, although the applicant did not dispute its authenticity. More importantly, neither party adduced evidence to explain or comment upon contents of the video, nor did either party to show it at the hearing to enable both sides to make submissions. In the absence of such evidence or specific submissions from both parties about its content, I did not review the video.

[117] For these reasons, and weighing each of the factors above, I conclude that the balance of convenience decidedly favours the respondents' position.

D. ***Just and Equitable in the Circumstances?***

[118] Stepping back and considering all the circumstances, including that the applicant is not likely to succeed on the merits of his application for judicial review, the harm to his liberty interest, and the various considerations assessed above in the balance of (in)convenience, I conclude that in the exercise of the Court's discretion, it is just and equitable not to issue a stay or an interlocutory injunction, based on the evidence and submissions on this motion.

V. **Disposition**

[119] The applicant's motion is dismissed. The respondents did not seek costs and so no costs are ordered.

[120] Lastly, I thank and compliment the parties' counsel on this motion, and their respective office staff, for the timeliness and quality of their written and oral submissions on such an urgent matter.

ORDER in T-1327-20

THIS COURT ORDERS that:

1. The applicant's motion for a stay or interlocutory injunction is dismissed.

2. There is no order as to costs.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Rylee Raeburn-Gibson	FOR THE APPLICANT
Gregory George Leila Jawando	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Rylee Raeburn-Gibson Mamann, Sandaluk & Kingwell, LLP	FOR THE APPLICANT
Gregory George Leila Jawando Attorney General of Canada	FOR THE RESPONDENTS