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2022 FC 1797

Maaleni Ganeswaran, Winoth Ganeswaran, Rejeeth Ganeswaran, Sankeeth Ganeswaran (*Applicants*)

v.

The Minister of Citizenship and Immigration (*Respondent*)

INDEXED AS: GANESWARAN V. CANADA (CITIZENSHIP AND IMMIGRATION)

Federal Court, Sadrehashemi J.—By videoconference, December 13, 2021 and August 16, 2022; Ottawa, December 23, 2022.

Citizenship and Immigration — Status in Canada — Convention Refugees and Persons in Need of Protection — Application to vacate — Abuse of process — Application for judicial review of Immigration and Refugee Board (IRB), Refugee Protection Division (RPD) decision granting respondent's application to vacate applicants' Convention refugee status — Applicants family consisting of mother (principal applicant), her three sons — Principal applicant arrived in Canada approximately 15 years ago with her three sons, then aged 4, 8, 12 years old — Following year, applicants accepted as Convention refugees by RPD — In month following acceptance of their claim, immigration officials discovered that, contrary to applicants' claim, family had not arrived in Canada from Sri Lanka but had instead lived for many years in Switzerland, where all three of minor claimants were born — On June 2, 2008, more than one month after acceptance of applicants' refugee claim, immigration officer indicated their intention to request that positive refugee determination made by IRB for applicants be vacated — Applicants filed application for permanent residence where they indicated which years they had lived in Switzerland, provided Swiss birth certificates for children — No decision was made on that application for permanent residence — Principal applicant not contacted about her refugee status, pending permanent residence application for approximately 10 years — Contact took place when respondent filed its application under Immigration and Refugee Protection Act (Act), s. 109 to vacate applicants' Convention refugee status in April 2018 — RPD found that there was no explanation for respondent's almost ten-year delay — RPD considered this delay inordinate but ultimately found that it could proceed with vacation application because applicants hadn't shown they suffered significant prejudice due to delay — RPD also found that any prejudice applicants experienced not outweighing public interest in proceeding with vacation application — Applicants challenged both RPD's abuse of process finding, vacation determination under Act, s. 109(2) — After judicial review heard in this case, Supreme Court of Canada released its decision in Law Society of Saskatchewan v. Abrametz, which reaffirmed that abuse of process due to administrative delay is question of procedural fairness, noting that decision makers have power to assess allegedly abusive delay — Issue herein was whether it was abuse of process for RPD to proceed with hearing respondent's vacation application given respondent's delay — Abuse of process is broad, flexible concept that applies in various

contexts, including administrative ones — Aims to prevent unfairness by precluding abuse of decision-making process — No allegation that delay in this case caused unfairness in RPD hearing — In Abrametz, it was held that in administrative context, where delay hasn't affected fairness of hearing, three steps determine whether delay amounting to abuse of process: 1. Delay must be inordinate; 2. Delay itself must have caused significant prejudice; 3. When these two requirements are met, court or tribunal should conduct final assessment as to whether abuse of process established — Regarding inordinate delay, in support of its vacation application, respondent relied on essentially same information that it had already known approximately 10 years before, just five weeks after applicants' refugee claim had been accepted — There was no explanation for respondent's failure to act sooner — With respect to significant prejudice, applicants identified family integration in Canada as ground of prejudice caused by respondent's delay in bringing vacation application — That ground established given that respondent's inordinate delay caused significant prejudice to applicants — While risk of loss of status in Canada, deportation was result of principal applicant's serious misrepresentation in her refugee claim, abuse of process analysis must also take into account that prejudice caused by investigation of or proceedings against individual can be exacerbated by inordinate delay — Thus, what was at stake for family (risk of deportation) changed because of respondent's excessive delay — As to whether prejudice was in fact benefit, in present case, benefit, prejudice tied together, directly proportional — Family's integration into Canada was very basis of prejudice they were claiming — Benefit could not be considered in isolation from respondent delay, resulting prejudice — Therefore, applicants established that respondent's inordinate delay resulted in significant prejudice — Concerning abuse of process warranting stay of proceeding, inordinate delay in this case was manifestly unfair to applicants, brought administration of justice into disrepute — Only appropriate remedy to abuse of process herein was to quash vacation decision, not remit it for redetermination — Allowing vacation application to continue would result in more harm to public interest than permanently staying proceedings — Therefore, RPD's decision to vacate applicants' Convention refugee status quashed — Application allowed.

This was an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) granting the respondent's application to vacate the applicants' Convention refugee status. The applicants are a family consisting of a mother and her three sons. Maaleni Ganeswaran, the mother and principal applicant, arrived in Canada approximately 15 years ago with her three sons, who were aged 4, 8, and 12 years old at that time. The following year, the applicants were accepted as Convention refugees by the RPD through an expedited process. In the month following the acceptance of their claim, immigration officials discovered that, contrary to the applicants' claim, the family had not arrived in Canada from Sri Lanka but had instead lived for many years in Switzerland, where all three of the minor claimants were born. On June 2, 2008, just over a month after the acceptance of the applicants' refugee claim, an immigration officer indicated their intention to request that the positive refugee determination made by the IRB for the applicants be vacated. The applicants filed an application for permanent residence where they indicated which years they had lived in Switzerland and provided Swiss birth certificates for the children. No decision was made on that application for permanent residence. Immigration officials did not contact the principal applicant about her refugee status or her pending permanent residence application for approximately 10 years. There was no contact until the respondent filed its application under section 109 of the *Immigration and Refugee Protection Act* (Act) to vacate the applicants' Convention refugee status in April 2018. The RPD found that there was no explanation for the respondent's almost ten-year delay. It considered this delay inordinate but ultimately found that it could proceed with the vacation application because the applicants had not shown they had suffered significant prejudice due to the delay. The RPD also found that any prejudice the applicants experienced did not outweigh the public interest in proceeding with the vacation application.

The applicants had argued that the respondent's delay was prejudicial because of the applicants' integration into Canada during the nearly ten-year delay. There was no other information in the record about any subsequent steps immigration officials took in the applicants' case until April 2018, when the respondent filed the application to vacate the applicants' status at the RPD. There was, however, some evidence in the record about the steps the applicants took with respect to their permanent residence application, which was based on the protected person status they received in

2008. Notwithstanding these steps, there did not appear to be any response to these updates from immigration officials nor were there any notes of any immigration officer since 2008. After the hearing, in addition to its vacation determination, the RPD found that the applicants' identities were also tainted by the misrepresentation and therefore there was no basis to justify refugee protection. On judicial review, the applicants challenged both the RPD's abuse of process finding and its vacation determination under subsection 109(2) of the Act.

After the judicial review was heard in this case, the Supreme Court of Canada released its decision in *Law Society of Saskatchewan v. Abrametz* in which it reaffirmed that an abuse of process due to administrative delay is a question of procedural fairness, noting that "decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay". The parties were provided with an opportunity to make submissions on the relevance of *Abrametz* to the present matter.

The issue on judicial review was whether it was an abuse of process for the RPD to proceed with hearing the respondent's vacation application given the respondent's delay.

Held, the application should be allowed.

It had to be determined whether it was fair for the RPD to proceed with hearing the vacation application given the respondent's delay. Abuse of process is a broad and flexible concept that applies in various contexts, including administrative ones. It aims to prevent unfairness by precluding abuse of the decision-making process. There was no allegation that the delay in this case caused unfairness in the RPD hearing. The Supreme Court of Canada in *Abrametz* held that in the administrative context, where delay has not affected the fairness of the hearing, the following three steps determine whether the delay amounts to an abuse of process: 1. The delay must be inordinate. This is determined on an assessment of the context overall, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case; and 2. The delay itself must have caused significant prejudice; 3. When these two requirements are met, the court or tribunal should conduct a final assessment as to whether abuse of process is established.

With respect to inordinate delay, the non-exhaustive list of contextual factors set out in *Abrametz* for determining whether delay is inordinate were considered in this case: (a) the nature and purpose of the proceedings; (b) the length and causes of the delay; and (c) the complexity of the facts and issues in the case. In support of its vacation application, the respondent relied on essentially the same information that it had already known approximately 10 years before, just five weeks after the applicants' refugee claim had been accepted. There was no explanation for the respondent's failure to act sooner. The misrepresentations in the original refugee claim were conceded either when they were first discovered by immigration officials or very shortly after. Nothing in the circumstances of the case justified the delay. In these circumstances, the respondent's delay was inordinate.

Regarding significant prejudice, before the RPD, the applicants identified, *inter alia*, the family's integration in Canada, including the formative childhood years of the principal applicant's children, during the period of the respondent's delay. The respondent's inordinate delay indeed caused significant prejudice to the applicants. The RPD's determination on this ground of prejudice was difficult to follow because it consisted of a few generalized observations without making direct and specific findings in relation to the family's claim of prejudice. Though this point was argued at the hearing, the RPD Member did not consider the unique impact of the delay on the principal applicant's children, who as minors played no part in the original misrepresentation. There were two key questions that had to be considered in evaluating the applicants' prejudice claim based on family integration in these circumstances: (i) whether this aspect of the prejudice could be said to result directly from the respondent's delay; and (ii) whether the ability to stay in Canada during the delay period was better characterized as a benefit to the family instead of as evidence of significant prejudice. A direct connection between the inordinate delay and the significant prejudice claimed was required. Here, the risk of loss of status in Canada and deportation was a result of the principal applicant's serious misrepresentation in her refugee claim. This risk was not caused by the

respondent's delay. However, in *Abrametz,* the Supreme Court of Canada explained that the abuse of process analysis must also take into account that "prejudice caused by the investigation of or proceedings against an individual can be exacerbated by inordinate delay". Thus, what was at stake for this family (risk of deportation) changed because of the respondent's excessive delay. The next question was whether this sort of prejudice was in fact a benefit and therefore not a basis to argue there had been an abuse of process. Inordinate delay on its own without evidence of significant prejudice is insufficient because (i) it would be tantamount to imposing a judicially created limitation period; and (ii) because in some cases, the delay by itself may be beneficial to the affected party. In this case, the complexity was that the benefit and the prejudice were tied together and directly proportional. The family's integration into Canada was the very basis of the prejudice they were claiming. The more a family becomes integrated in Canada, which could be considered a benefit to them, the greater the prejudice associated with their risk of deportation. The benefits to the family of remaining in Canada cannot be considered in isolation from the impact of the respondent's delay and the resulting prejudice. Each case has to be examined on its own facts. In these circumstances, the inordinate delay resulting in the prejudice complained of by the applicants could not simply be deemed as beneficial to them. Therefore, the applicants established that the respondent's inordinate delay resulted in significant prejudice.

Finally, concerning abuse of process warranting a stay of proceeding, a final assessment was needed to determine whether an abuse of process could be found. The inordinate delay in this case was manifestly unfair to the applicants and brought the administration of justice into disrepute. This case did not involve complex factual or legal issues, given that approximately five weeks after the applicants' claims had been accepted, the respondent had admissions and evidence confirming that there were serious misrepresentations. The respondent did not explain why it did not proceed sooner; there was no evidence provided of any activity on the file for almost 10 years. The respondent brought the administration of justice into disrepute by not proceeding for almost 10 years, while the minor applicants grew up in Canada, and then, based on no new information and without explanation as to the timing, decided to bring an application to vacate their refugee status. It was unacceptable. The only appropriate remedy to the abuse of process in this case was to quash the vacation decision and not remit it for redetermination, which amounted to a stay of proceedings. In determining whether a stay is the appropriate remedy, a balance must be struck between the public interest in a fair administrative process untainted by abuse and the competing public interest in having the complaint decided on its merits. To allow the proceedings to continue would condone the manner in which the applicants' case was handled and permit litigation affecting significant interests, including those of children, to be brought by the respondent at any time, with no explanation for excessive delay. Because of the circumstances in this case, allowing the vacation application to continue would result in more harm to the public interest than permanently staying the proceedings. Therefore, the RPD's decision to vacate the Convention refugee status of the applicants was quashed.

STATUTES AND REGULATIONS CITED

Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 25, 109, 112(2)b.1)(i), 162.

CASES CITED

APPLIED:

Law Society of Saskatchewan v. Abrametz, 2022 SCC 29; *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502; *Canadian Pacific Railway Company v. Canada (Attorney General),* 2018 FCA 69, [2019] 1 F.C.R. 121; *Martineau v. Matsqui Institution*, [1980] 1 S.C.R. 602, 1979 CanLII 184 (SCC); *Canada (Citizenship and Immigration) v. Parekh*, 2010 FC 692, [2012] 1 F.C.R. 169; *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, 1985 CanLII 23 (SCC); *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 S.C.R. 909.

CONSIDERED:

Cerna v. Canada (Citizenship and Immigration), 2021 FC 973; *B006 v. Canada (Citizenship and*

Immigration), 2013 FC 1033, [2015] 1 F.C.R. 241; *Akram v. Canada (Citizenship and Immigration)*, 2021 FC 1024; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653; *Iwekaeze v. Canada (Citizenship and Immigration)*, 2022 FC 814; *R. v. Wong*, 2018 SCC 25, [2018] 1 S.C.R. 696.

REFERRED TO:

Blencoe v. British Columbia (Human Rights Commission), 2000 SCC 44, [2000] 2 S.C.R. 307; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Canadian Association of Refugee Lawyers v. Canada (Immigration, Citizenship and Refugees)*, 2020 FCA 196, [2021] 1 F.C.R. 271; *Naredo v. Canada (Citizenship and Immigration)*, 2022 FC 1543, 91 Imm. L.R. (4th) 186; *Badran v. Canada (Citizenship and Immigration)*, 2022 FC 1292; *Chabanov v. Canada (Citizenship and Immigration)*, 2017 FC 73, 14 Admin. L.R. (6th) 141; *Ismaili v. Canada (Public Safety and Emergency Preparedness),* 2017 FC 427; *Pavicevic v. Canada (Attorney General)*, 2013 FC 997, 440 F.T.R. 45; *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422; *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460; *Canada (Public Safety and Emergency Preparedness) v. Najafi*, 2019 FC 594, [2019] 3 F.C.R. 107; *Kim v. Canada (Citizenship and Immigration)*, 2010 FC 149, [2011] 2 F.C.R. 448; *Sivalingam v. Canada (Citizenship and Immigration)*, 2017 FC 1185; *Mella v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1587, 73 Imm. L.R. (4th) 21.

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Régimbald, Guy. *Canadian Administrative Law*, 3rd ed (Toronto: LexisNexis Canada, 2021).

APPLICATION for judicial review of a decision (*X (Re)*, 2019 CanLII 151065) by the Refugee Protection Division of the Immigration and Refugee Board granting the respondent's application to vacate the applicants' Convention refugee status. Application allowed.

APPEARANCES

Raoul Boulakia for applicants.

Bernard Assan for respondent.

SOLICITORS OF RECORD

Raoul Boulakia, Toronto, for applicants.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment and judgment rendered in English by

SADREHASHEMI J:

I. Overview

[1] The Applicants are a family consisting of a mother and her three sons. Maaleni Ganeswaran, the mother and Principal Applicant, arrived in Canada approximately 15

years ago with her three sons, who were aged 4, 8, and 12 years old at that time. The following year, the Applicants were accepted as Convention refugees by the Refugee Protection Division (RPD) through an expedited process. In the month following the acceptance of their claim, immigration officials discovered that, contrary to the Applicants' claim, the family had not arrived in Canada from Sri Lanka but had instead lived for many years in Switzerland, where all three of the minor claimants were born.

[2] On June 2, 2008, just over a month after the acceptance of the Applicants' refugee claim, an immigration officer indicated their intention to request that "the positive refugee determination made by the IRB [Immigration and Refugee Board] for [the Applicants] be vacated." The Applicants filed an application for permanent residence where they indicated which years they had lived in Switzerland and provided Swiss birth certificates for the children. No decision was made on that application for permanent residence. Immigration officials did not contact Ms. Ganeswaran about her refugee status or her pending permanent residence application for approximately 10 years. There was no contact until the Minister filed its application under section 109 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA) to vacate the Applicants' Convention refugee status in April 2018.

[3] The determinative issue in this judicial review is one of procedural fairness: whether it is an abuse of process for the RPD to proceed with hearing the Minister's vacation application given the Minister's delay.

[4] The RPD found that there was no explanation for the Minister's almost ten-year delay. The RPD considered this delay inordinate but ultimately found that it could proceed with the vacation application because the Applicants had not shown they suffered significant prejudice due to the delay. The RPD also found that any prejudice the Applicants experienced did not outweigh the public interest in proceeding with the vacation application.

[5] The Applicants had argued that the Minister's delay is prejudicial because of the Applicants' integration into Canada during the nearly ten-year delay. I find the RPD's evaluation of that argument perfunctory and difficult to follow. Despite Applicants' counsel raising this argument in their submissions, there was no assessment of the particular prejudice faced by the three Applicants who came as children to Canada, one of whom was still a child at the time of the RPD's assessment. The Minister's egregious delay took place during the formative years of children who had no part in the misrepresentation, and yet would be forced to suffer its consequences after they have integrated into Canada. To proceed in these circumstances, with no explanation for this inordinate delay, would bring the administration of justice in disrepute.

[6] Based on the reasons below, the Applicants' judicial review is granted and the RPD's determination to vacate the Applicants' refugee status is quashed. Given my finding on abuse of process, there is no reason to remit the matter to the RPD.

II. Background and Procedural History

A. *The Applicants' Refugee Claim and Permanent Residence Application*

[7] The Applicants arrived in Canada in July or August 2007. They applied for refugee protection, stating that they had come from Sri Lanka, where the Principal

Applicant and her husband had been persecuted by the LTTE [Liberation Tigers of Tamil Eelam] and the Sri Lankan army because of their profile as Tamils from northern Sri Lanka. The Principal Applicant's refugee narrative set out numerous incidents of mistreatment from the Sri Lankan authorities and the LTTE that took place in Sri Lanka in the years before the Applicants came to Canada. The Applicants filed birth registries for the children showing that they were born in Sri Lanka. The RPD accepted the Applicants' refugee claim on April 29, 2008 through an expedited process, which meant that there was no hearing before a tribunal member at the RPD, though the Applicants were interviewed by a Refugee Protection Officer employed by the RPD.

[8] The next month, on May 28, 2008, the Principal Applicant's husband made his own claim for refugee protection. Shortly after he filed the claim, he was called for an interview with an immigration officer. The officer confronted him with the allegation that he and his family had in fact been living in Switzerland for years before coming to Canada and that their sons were born in Switzerland not Sri Lanka. Immigration officials had evidence from the family's previous temporary resident visa applications for Canada, which included their work and address histories in Switzerland and confirmed the children were born in Switzerland. The incidents of persecution as described in the Applicants' refugee claim narrative could therefore not have happened as recounted given that the Principal Applicant and her husband were not in Sri Lanka, but were in Switzerland during the relevant time period.

[9] On June 2, 2008, a few days after the Principal Applicant's husband made his claim for protection and approximately five weeks after the Applicants' claim for protection had been accepted, an immigration officer wrote an email to a colleague setting out the information immigration officials had obtained about the Applicants' cases, including: the Principal Applicant's husband has a "Swiss booklet: *Auslanderausweis B*" valid until June 2009; the dates that the Principal Applicant's husband lived in Switzerland; and the dates of birth of the children in Switzerland. The immigration officer wrote: "I am also requesting that the positive refugee determination made by the IRB for his wife and children be vacated."

[10] There is no other information in the record about any subsequent steps immigration officials took in the Applicants' case until April 2018, when the Minister filed the application to vacate the Applicants' status at the RPD.

[11] I understand that the Principal Applicant's husband's refugee claim was rejected and he was eventually deported to Sri Lanka in October 2012. The Principal Applicant and her husband later divorced.

[12] There is some evidence in the record about the steps the Applicants took with respect to their permanent residence application, which was based on the protected person status they received in 2008. In 2012, the Principal Applicant amended the permanent residence application to include her husband as a dependent, following the rejection of his own refugee claim. The Principal Applicant provided information in these forms indicating that she was in Switzerland from February 1993 until July 2007, that she had filed a refugee claim in 1993 in Switzerland that was refused, and that her three children were born in Switzerland. There is also confirmation that, prior to coming to Canada, the Applicants were in Switzerland on a "B permit"—a temporary status that was no longer valid. Later, in 2014, the Principal Applicant filed an update to the application for permanent residence indicating that after her husband was deported in

2012 to Sri Lanka, she obtained sole custody of her two minor children and provided the Court Order to that effect. Further, she provided the birth certificates of her children from Switzerland, which state that the children are nationals of Sri Lanka. The Principal Applicant also corrected the children's previously provided birthdates to 29 October 1994, 23 September 1998, and 5 March 2003, which match the birthdates that were already known to Canadian immigration officials in 2008. In August 2017, the Principal Applicant further updated the application by providing a copy of a renewed Sri Lankan passport for herself.

[13] In the record before me, there does not appear to be any response to these updates from immigration officials, nor are there any notes of any immigration officer since 2008. The Principal Applicant indicated in her affidavit filed before the RPD in the vacation proceeding that she "was not informed that the Canada Border Services Agency intended to apply to vacate [the Applicants'] status as Convention refugees until an application to vacate was made in April 2018."

B. *Vacation Proceeding and Judicial Review*

[14] On April 28, 2018, the Minister filed its application to vacate the Applicants' refugee status under section 109 of IRPA.

[15] Subsection 109(1) of IRPA provides that the RPD "may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter." Under subsection 109(2) of IRPA, the RPD may reject the vacation application "if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection."

[16] Prior to the RPD vacation hearing on May 9, 2019, the Applicants' counsel indicated that they intended to argue that the Minister's delay in bringing the application to vacate was an abuse of process that should result in a stay of the vacation proceeding. Applicants' counsel filed an affidavit from the Principal Applicant conceding that she had misrepresented in the original refugee claim. The Principal Applicant also explained the context in which she made the false representations and provided basic information about her and her children's establishment in Canada during the years since immigration officials discovered the misrepresentation.

[17] At the hearing on May 9, 2019, none of the Applicants were called to testify by their counsel, the Minister's Counsel, or the RPD Member. The hearing was limited to counsels' submissions on the abuse of process argument. Following counsels' submissions, the RPD Member set out a schedule for receiving further written submissions on the merits of the vacation application, and specifically on subsection 109(2) which asks whether there was anything remaining from the initial refugee claim that was untainted by the misrepresentation that could justify refugee protection. Applicants' counsel provided written submissions on this issue, arguing that the Applicants' identities as Tamils from northern Sri Lanka were left untainted by the misrepresentations and given the country condition evidence at the time of the original refugee hearing, refugee protection could still be justified under subsection 109(2). Minister's Counsel provided reply submissions, arguing that the Applicants' identities were also tainted by the misrepresentation.

[18] The vacation hearing resumed at the RPD on August 21, 2019. The RPD Member read out their decision finding that though the delay in bringing the application to vacate had been inordinate and was not explained, the Applicants had not established they would face significant prejudice. After hearing further submissions from the Applicants' counsel, the RPD Member also provided their determination on the merits of the vacation application. The RPD Member found that the Applicants' identities were also tainted by the misrepresentation and therefore there was no basis to justify refugee protection. The RPD Member granted the Minister's application to vacate the Applicants' Convention refugee status.

[19] On judicial review, the Applicants challenged both the abuse of process finding and the vacation determination under subsection 109(2) of IRPA. After I heard the judicial review, the Supreme Court of Canada released its decision in *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29 (*Abrametz*). I requested further submissions from the parties on the relevance of the decision to this matter. Both parties provided lengthy submissions on this issue that I have considered in coming to my determination.

III. Issues and Standard of Review

[20] The determinative issue on judicial review is whether it was an abuse of process for the RPD to proceed with hearing the Minister's vacation application given the Minister's delay.

[21] In *Abrametz*, the Supreme Court of Canada reaffirmed that an abuse of process due to administrative delay is a question of procedural fairness, noting that "decision makers have, as a corollary to their duty to act fairly, the power to assess allegedly abusive delay" (*Abrametz*, at paragraph 38, citing *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307 (*Blencoe*), at paragraphs 105–107 and 121; Guy Régimbald, *Canadian Administrative Law*, 3rd ed (Toronto: LexisNexis Canada, 2021), at pages 344–350; Patrice Garant, Philippe Garant & Jérôme Garant, *Droit administratif*, 7th ed (Cowansville, QC: Yvon-Blais, 2017), at pages 766–767).

[22] *Abrametz* concerned abuse of process due to delay in an administrative proceeding where there was a statutory appeal mechanism. In that context, the Supreme Court of Canada held that appellate standards of review apply (*Abrametz*, at paragraph 27). The Court affirmed that, in making this finding, it did not depart from its previous holdings in the context of judicial review and prerogative writs in *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 (*Khosa*) and *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502 (*Khela*) (*Abrametz*, at paragraph 28). Accordingly, I see no basis to depart from the usual standard applicable to questions of procedural fairness on judicial review: correctness or a review that is "'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" (*Canadian Pacific Railway Company v. Canada (Attorney General),* 2018 FCA 69, [2019] 1 F.C.R. 121 (*Canadian Pacific*), at paragraph 54). The question I need to ask is whether the procedure was fair in all the circumstances (*Khosa*, at paragraph 43; *Canadian Pacific*, at paragraph 54; *Canadian Association of Refugee Lawyers v. Canada (Immigration, Citizenship and Refugees)*, 2020 FCA 196, [2021] 1 F.C.R. 271, at paragraph 35).

[23] I acknowledge that there has been some divergence in our Court as to what standard of review applies to this issue, with some adopting the correctness/fairness standard (see *Naredo v. Canada (Citizenship and Immigration)*, 2022 FC 1543, 91 Imm. L.R. (4th) 186, at paragraph 58; *Badran v. Canada (Citizenship and Immigration)*, 2022 FC 1292 (*Badran*), at paragraph 14; *Chabanov v. Canada (Citizenship and Immigration)*, 2017 FC 73, 14 Admin. L.R. (6th) 141, at paragraph 23; *Ismaili v. Canada (Public Safety and Emergency Preparedness)*, 2017 FC 427, at paragraph 7; and *Pavicevic v. Canada (Attorney General)*, 2013 FC 997, 440 F.T.R. 45, at paragraph 29) and others applying a reasonableness standard (see *Cerna v. Canada (Citizenship and Immigration)*, 2021 FC 973 (*Cerna*), at paragraph 27; *B006 v. Canada (Citizenship and Immigration)*, 2013 FC 1033, [2015] 1 F.C.R. 241 (*B006*), at paragraphs 35–36; and *Akram v. Canada (Citizenship and Immigration)*, 2021 FC 1024 (*Akram*), at paragraphs 17–18).

[24] In *Cerna*, this Court applied a reasonableness standard in the context of an abuse of process determination in a cessation proceeding at the RPD, but Justice Ahmed acknowledged that abuse of process as a breach of procedural fairness had not been argued or considered. Prior to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (*Vavilov*), Justice Kane in *B006* noted that the parties agreed that the correctness standard applied to the articulation of the test for abuse of process and that the application of the test to the facts is a question of mixed fact and law, where reasonableness review applied. In *Akram*, like in *Cerna*, Justice Strickland found that whether an abuse of process had occurred could not be characterized as a general question of law of central importance to the legal system as a whole requiring correctness review. Justice Strickland also found, like Justice Kane in *B006*, that the determination as to whether an abuse of process had occurred was a question of mixed fact and law, and while it "is an aspect of procedural fairness," the task on review was to consider the merits of the RPD vacation decision and therefore the presumption of reasonableness in *Vavilov* applied [*Akram*, at paragraph 18].

[25] I do not view an abuse of process determination as one relating to the merits of the vacation decision. Rather, I understand it to be strictly a procedural question of whether the RPD would bring the administration of justice into disrepute by proceeding with the vacation application where there has been delay in bringing the application. The question of whether the Minister met the standard required under section 109 of IRPA to vacate the Applicants' Convention refugee status is a question on the merits, and there is no dispute that it would be subject to a reasonableness standard on judicial review (*Vavilov*, at paragraph 23). That the Court is reviewing the merits of the decision on the basis of its reasonableness does not stop it from also considering whether another aspect of the decision was unfair. As noted by Justice Rennie in *Canadian Pacific*, the Supreme Court of Canada in *Khela* found that:

> … the ability to challenge a decision on the basis that it is unreasonable does not necessarily change the standard of review that applies to other flaws in the decision or in the decision-making process. For instance, the standard for determining whether the decision maker complied with the duty of procedural fairness will continue to be "correctness".
>
> [*Canadian Pacific*, at paragraph 53, citing *Khela*, at paragraph 79.]

[26] I further note that the Supreme Court of Canada in *Abrametz* found [at paragraph 30] that "whether there has been an abuse of process is a question of law." I do not

view this characterization as a reference only to the articulation of the test for determining an abuse of process, but rather about whether an abuse of process had occurred.

[27] In coming to its determination as to whether it would be an abuse of process to proceed with hearing the vacation application, the RPD made findings of fact with respect to delay and prejudice. That there may be deference shown to these findings of fact does not change the standard of review to be applied. As Justice McHaffie recently explained in *Iwekaeze v. Canada (Citizenship and Immigration)*, 2022 FC 814, at paragraph 12:

> Within the procedural fairness approach, deference may be given to a tribunal in its procedural choices: *Canadian Pacific* at paras 41–46. This is also true for any findings of fact that are relevant to the procedural issues. However, this does not change the standard of review as a general matter: *Canadian Pacific* at paras 41–46.

[28] Ultimately, in reviewing the abuse of process determination, I understand that I am charged with determining whether it was fair for the RPD to proceed with hearing the vacation application given the Minister's delay. As Justice Dickson explained in *Martineau v. Matsqui Institution*, [1980] 1 S.C.R. 602, 1979 CanLII 184 (SCC), cited in *Blencoe*, at paragraph 105: "In the final analysis, the simple question to be answered is this: Did the tribunal on the facts of the particular case act fairly toward the person claiming to be aggrieved?"

IV. Analysis

A. *Abuse of Process Due to Delay*

[29] Abuse of process is a broad and flexible concept that applies in various contexts, including administrative ones (*Abrametz*, at paragraphs 34–35). Abuse of process "aims to prevent unfairness by precluding 'abuse of the decision-making process'" (*Abrametz*, at paragraph 36, citing *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422, at paragraph 34 and *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at paragraph 20).

[30] There was no allegation that the delay in this case caused unfairness in the RPD hearing. Like *Abrametz*, at issue is whether there was an abuse of process because "significant prejudice has come about due to inordinate delay" (*Abrametz*, at paragraph 42, citing *Blencoe*, at paragraphs 122 and 132). The Supreme Court of Canada in *Abrametz* held that in the administrative context, where delay has not affected the fairness of the hearing, the following three steps determine whether the delay amounts to an abuse of process (*Abrametz*, at paragraph 101):

> 1. First, the delay must be inordinate. This is determined on an assessment of the context overall, including the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case; and
>
> 2. Second, the delay itself must have caused significant prejudice;
>
> 3. When these two requirements are met, the court or tribunal should conduct a final assessment as to whether abuse of process is established. This will be so when the delay is manifestly unfair to a party to the litigation or in some other way brings the administration of justice into disrepute.

[31] This articulation of the test for establishing an abuse of process where delay did not affect hearing fairness is consistent with the Supreme Court of Canada's earlier decision in *Blencoe* (*Blencoe*, at paragraph 115; *Badran*, at paragraph 33).

(1) Inordinate Delay

[32] The Applicants argued before the RPD that the period of delay is calculated from when immigration officials first recommended that the Minister seek to vacate the Applicants' status in June 2008 to when the Minister filed the application to vacate at the RPD in April 2018. The Applicants argued that the Minister had sufficient information to proceed in 2008 with the vacation application and that there was no new information provided subsequently that affected the Minister's decision to proceed.

[33] At the RPD, Minister's Counsel did not argue that this was the wrong period of delay to consider. Minister's Counsel stated in their submissions at the RPD hearing that they had no specific explanation for this delay, other than that it generally can be busy. No evidence was filed with respect to the Minister's activities on the Applicants' file between 2008 until the vacation application was filed in 2018.

[34] The RPD considered the period of delay as from the June 2008 email indicating that a vacation application would be requested to when the Minister filed the application to vacate at the RPD in April 2018. It found that this period was approximately nine years and ten months. The RPD found that "the Minister has not provided adequate reasons for why it took nine years to bring forward this application" and that "while there is no evidence or allegation that the Minister was acting in bad faith or making some sort of calculated move, I do nonetheless find that a period of approximately nine years does constitute delay that is unacceptable."

[35] I agree with the RPD's assessment of the delay. I reach the same conclusion when considering the delay in relation to the non-exhaustive list of contextual factors set out in *Abrametz* for determining whether delay is inordinate: (a) the nature and purpose of the proceedings; (b) the length and causes of the delay; and (c) the complexity of the facts and issues in the case.

[36] In support of its vacation application, the Minister relied on essentially the same information that it had already known approximately 10 years before, just five weeks after the Applicants' refugee claim had been accepted. There is no explanation for the Minister's failure to act sooner. There is no information provided about the Minister's activities on the file in the intervening years. The misrepresentations in the original refugee claim were conceded either when they were first discovered by immigration officials or very shortly after. Similar to this Court's finding in *Canada (Citizenship and Immigration) v. Parekh*, 2010 FC 692, [2012] 1 F.C.R. 169, at paragraph 56, "nothing in the circumstances of the case justifie[s… the delay.]" In these circumstances, I conclude the Minister's delay is inordinate.

[37] On judicial review, the Respondent does not challenge the RPD's finding about the extent of the Minister's delay. Instead, the Respondent raises a new argument not put forward before the RPD, namely, that the delay the Applicants raise is not one the RPD can address because it was not the RPD's own delay. The Respondent's position is that the only delay the RPD could consider is its own delay in holding a hearing and rendering a decision on the Minister's application. The Respondent says that because

the Applicants were not complaining of the RPD's delay, there was in turn no basis for an abuse of process finding. The Respondent further argues that because the Applicants complain about the Minister's delay and not the RPD's delay, "the abuse of process principles the Supreme Court enunciated in *Blencoe* and reaffirmed in *Abrametz* fall outside the scope of the Applicants' complaint."

[38] I will address this argument to some extent, despite it not being raised before the RPD, because the Respondent suggests that *Abrametz*, a decision rendered after the RPD decision, confirms the Respondent's position. I do not agree.

[39] The Respondent's argument relies on the following statement from *Abrametz*: "When assessing the actual time period of delay, the starting point should be when the administrative decision maker's obligations, as well as the interests of the public and the parties in a timely process are engaged. It should end when the proceeding is completed, including the time taken to render a decision" (*Abrametz*, at paragraph 58).

[40] This statement has to be read in its complete context. It is found at the end of paragraph 58 of *Abrametz* which begins: "The duty to be fair is relevant at all stages of administrative proceedings, including the investigative stage." In *Abrametz*, the investigative stage consisted of the Law Society of Saskatchewan's pre-charge investigation of Mr. Abrametz's financial records. As an administrative body, the Law Society of Saskatchewan was responsible for conducting the investigation, issuing a formal complaint containing the charges, hearing the allegations, and deciding the case brought against Mr. Abrametz.

[41] As noted above, the Supreme Court of Canada emphasized that the concept of abuse of process is a broad and flexible one, which can arise in a multitude of circumstances. I do not see the referenced statement in *Abrametz* as narrowly restricting the application of the abuse of process doctrine in the manner suggested by the Respondent. In my view, paragraph 58 of *Abrametz*, and its confirmation that the investigation phase prior to bringing a specific charge against Mr. Abrametz is included as part of the delay period, supports the Applicants' and the RPD's characterization of the delay in this case.

[42] Unlike the Law Society of Saskatchewan, the RPD does not generally perform an investigative function. It is the Minister who is charged with bringing a vacation application to the RPD under section 109 of IRPA. The Minister is responsible in this scheme for investigating a misrepresentation in a refugee claim and deciding whether to bring an application to vacate to the RPD. The Minister's conduct in investigating a possible misrepresentation is not immune from scrutiny and is subject, like all administrative actors, to the duty of fairness. As stated by Justice Le Dain in the often-cited *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, at page 653, 1985 CanLII 23 (SCC): "there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual".

[43] The RPD has to decide whether it would be an abuse of process for it to hear the Minister's application in light of the inordinate delay in bringing the application. To adopt the Respondent's position would strip an RPD Member of the ability to refuse to hear an application that was brought in an unjust or unfair manner. This is inconsistent with the

RPD's power to control its own proceeding (*Canada (Public Safety and Emergency Preparedness) v. Najafi*, 2019 FC 594, at paragraph 15, citing IRPA, section 162) and with the broad and flexible nature of the doctrine of abuse of process (*Abrametz*, at paragraphs 34–35; *Blencoe*, at paragraph 144).

(2) Significant Prejudice

[44] The Supreme Court of Canada in *Abrametz* reaffirmed that inordinate delay on its own is insufficient to find an abuse of process. Significant prejudice to an individual that is a direct result of the delay is also required (*Abrametz*, at paragraph 67; *Blencoe*, at paragraph 101).

[45] Before the RPD, the Applicants identified two grounds of prejudice caused by the Minister's delay in bringing the vacation application: legislative change and family integration in Canada.

[46] First, the Applicants argued that they were deprived of a procedural safeguard due to a legislative change during the delay period. In 2012, Parliament amended section 25 of IRPA to impose a one-year bar on applications for permanent residence based on humanitarian and compassionate grounds (H & C Application) following a negative refugee determination. The Applicants argued that they could be at risk of removal in that one-year period and that prior to the legislative amendments in 2012 they could have accessed an H & C Application without waiting the one-year period.

[47] I am of the view that the Applicants have not made out significant prejudice on this ground. As noted by the RPD, there is an exception to the one-year bar for applicants whose removal would have an adverse effect on the best interests of a child directly affected (IRPA, paragraph 25(1.21)(b)). Given that at the time of the RPD hearing, one of the Applicants was a child, the prejudice is not clear. Further, as the Applicants now concede, the one-year bar on applying for a Pre-Removal Risk Assessment does not apply to those whose refugee status is vacated (IRPA, subparagraph 112(2)(b.1)(i)).

[48] The second ground identified for prejudice is the family's integration in Canada, including the formative childhood years of the Principal Applicant's children, during the period of the Minister's delay. It is on this basis, family integration, that I find the Minister's inordinate delay has caused significant prejudice to the Applicants.

[49] The Applicants' counsel specifically argued at the RPD that the Principal Applicant's children, who came to Canada at the ages of 4, 8, and 12, faced a unique prejudice because of the delayed vacation proceedings, after having lived their childhood in Canada. At the time that an immigration official stated that a vacation application would be sought, approximately five weeks after the Applicants' claim had been accepted, the children were 5, 9, and 13 years old and had lived in Canada for just over a year. By the time the Minister filed the vacation application, approximately 10 years later, the Principal Applicant's children had spent their formative years in Canada; the children were 15, 19, and 23 years old. The evidence before the RPD was that after years in Canada, the family had settled and integrated here. The Principal Applicant had a permanent full-time job at a car part company. Her youngest son was in a gifted program at a public high school; the middle son was attending a university in Toronto; and the eldest son was working full-time at a bank.

[50] The RPD's determination on this ground of prejudice is difficult to follow because it consists of a few generalized observations without making direct and specific findings in relation to this family's claim of prejudice. It is limited to the following statements:

> Your counsel has submitted that in your case the four of you have now lived in Canada for several years and it is often the case where individuals living, being able to attend work or school in Canada for many years, is not itself necessarily viewed as a prejudice, but in some cases as a benefit to individuals who are able to establish themselves in Canada and enjoy the advantages that come with that.
>
> It is also in some cases beneficial to have a lengthy period of establishment in Canada when it comes to making H and C applications. The benefit of being able to live in Canada, or study, etcetera, for several years does in some respect weigh against any prejudice that might be faced in that regard.

[51] Though argued before them, the RPD Member did not consider the unique impact of the delay on the Principal Applicant's children, who, of course, as minors played no part in the original misrepresentation.

[52] There are two key questions I need to consider in evaluating the Applicants' prejudice claim based on family integration in these circumstances: (i) whether this aspect of the prejudice could be said to result directly from the Minister's delay; and (ii) whether the ability to stay in Canada during the delay period is better characterized as a benefit to the family instead of as evidence of significant prejudice.

[53] A direct connection between the inordinate delay and the significant prejudice claimed is required (*Abrametz*, at paragraph 68; *Blencoe*, at paragraph 133). Here, the risk of loss of status in Canada and deportation is a result of the Principal Applicant's serious misrepresentation in her refugee claim. This risk is not caused by the Minister's delay. However, in *Abrametz,* the Supreme Court of Canada explained that the abuse of process analysis must also take into account that "prejudice caused by the investigation of or proceedings against an individual can be exacerbated by inordinate delay" (*Abrametz*, at paragraph 68). What is at stake for this family has changed because of the Minister's excessive delay: the way the family experiences their risk of deportation, five weeks after a positive determination and after approximately a year in Canada, is of a different nature than their experience of this risk approximately 10 years later, after having integrated into Canadian life and particularly for the children, having grown up in Canada. This new dimension of the prejudice is a result of the Minister's delay.

[54] In *R. v. Wong*, 2018 SCC 25, [2018] 1 S.C.R. 696 (*Wong*), Chief Justice Wagner described the "serious life-changing consequences" facing those who are at risk of deportation after years of living in a country: "They may be forced to leave a country they have called home for decades. They may return to a country where they no longer have any personal connections, or even speak the language, if they emigrated as children. If they have family in Canada, they and their family members face dislocation or permanent separation" (*Wong*, at paragraph 72).

[55] Canadian law recognizes the unique vulnerabilities of children in the way that they experience hardship and persecution, namely that "children may experience greater hardship than adults faced with a comparable situation" (*Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 S.C.R. 909 (*Kanthasamy*), at paragraph 41, citing *Kim v. Canada (Citizenship and Immigration)*, 2010 FC 149, [2011]

2 F.C.R. 448, at paragraph 58). In the same way, where children are impacted by an administrative actor's inordinate delay, their vulnerabilities as children need to be considered in evaluating whether the delay caused significant prejudice. For the Principal Applicant's children, their formative years in Canada, and the connections they developed during those years, cannot be replaced as it is a unique time in their development. The connections made during this time are magnified in significance due to their development in childhood and therefore the risk of deportation imposes a heavier burden (*Kanthasamy*, at paragraph 58; *Sivalingam v. Canada (Citizenship and Immigration)*, 2017 FC 1185, at paragraph 14).

[56] The next question is whether this sort of prejudice is in fact a benefit and therefore not a basis to argue there has been an abuse of process. Inordinate delay on its own without evidence of significant prejudice is insufficient because (i) it would be "tantamount to imposing a judicially created limitation period" (*Abrametz*, at paragraph 67; citing *Blencoe*, at paragraph 101); and (ii) because in some cases, the "delay by itself may be beneficial to the affected party" (*Abrametz*, at paragraph 67). The key takeaway after *Abrametz* remains that even where the delay has been inordinate, the particular circumstances of each case need to be examined before finding an abuse of process.

[57] The particular context here is quite different from the type of prejudice that might be complained of in a professional disciplinary case. *Abrametz* provided the following example of where inordinate delay could be considered a benefit for the affected person: "if the affected party is facing the penalty of disbarment, delay in the administrative process might be welcomed by the affected party, insofar as it enables him or her to continue practicing" (*Abrametz*, at paragraph 67).

[58] At first glance, this analysis could seem as though it would apply equally to the Applicants in this case. The Principal Applicant misrepresented in order to obtain status in Canada and the Minister's delay in proceeding with the vacation application allowed her and her children to remain in Canada. The complexity here is that the benefit and the prejudice are tied together and directly proportional. As explained above, the family's integration into Canada is the very basis of the prejudice they are claiming. The more the family becomes integrated in Canada, which could be considered a benefit to them, the greater the prejudice associated with their risk of deportation. The benefits to the family of remaining in Canada cannot be considered in isolation from the impact of the Minister's delay and the resulting prejudice. Each case has to be examined on its own facts. In these circumstances, the inordinate delay resulting in the prejudice complained of by the Applicants cannot simply be deemed as beneficial to them.

[59] I find that the Applicants have shown that the Minister's inordinate delay has resulted in significant prejudice.

(3) Abuse of Process Warranting a Stay of Proceeding

[60] Once inordinate delay and significant prejudice have been established, a final assessment is needed to determine whether an abuse of process can be found. I need to decide whether the "delay is manifestly unfair to the party to the proceedings or in some other way brings the administration of justice into disrepute" (*Abrametz*, at paragraph 72).

[61] I find the inordinate delay in this case is manifestly unfair to the Applicants and brings the administration of justice into disrepute. This case did not involve complex factual or legal issues, given that approximately five weeks after the Applicants' claims had been accepted, the Minister had admissions and evidence confirming that there were serious misrepresentations. There was also a notation from an immigration officer at that time indicating that a vacation application would be pursued. The Minister has not explained why it did not proceed sooner; there was no evidence provided of any activity on the file for almost 10 years. The Minister brings the administration of justice into disrepute by not proceeding for almost 10 years, while the minor Applicants grew up in Canada, and then, based on no new information and without explanation as to the timing, deciding to bring an application to vacate their refugee status. It is unacceptable. In my view, the only appropriate remedy to the abuse of process in this case is to quash the vacation decision and not remit it for redetermination, which amounts to a stay of proceedings (*Blencoe*, at paragraph 116).

[62] There are special considerations where the remedy sought is a stay of the proceedings: "a stay should be granted only in the 'clearest of cases', when the abuse falls at the high end of the spectrum of seriousness" (*Abrametz*, at paragraph 83, citing *Blencoe*, at paragraph 120). In determining whether a stay is the appropriate remedy, "a balance must be struck between the public interest in a *fair administrative process untainted by abuse* and the competing public interest in having the *complaint decided on its merits*" (*Abrametz*, at paragraph 84). This leads to the question: "would going ahead with the proceeding result in more harm to the public interest than if the proceedings were permanently halted?" (*Abrametz*, at paragraph 85).

[63] In answering this question, I have to consider the nature of the interest at stake in having the proceeding continue. There is a public interest in proceeding with the vacation hearing in order to maintain the integrity of the refugee determination system (*Mella v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1587, 73 Imm. L.R. (4th) 21, at paragraph 30). The misrepresentations made by the Principal Applicant in her refugee claim are serious. At the same time, I have to consider that the Principal Applicant admitted to the misrepresentations long ago, that her three children, who also face the consequences of the vacation application, had no part in the misrepresentations, and that this family has lived with insecure status for the last 15 years.

[64] To allow the proceedings to continue would condone the manner in which the Applicants' case was handled and permit litigation affecting significant interests, including those of children, to be brought by the Minister at any time, with no explanation for excessive delay. In my view, because of the circumstances set out above, allowing the vacation application to continue will result in more harm to the public interest than permanently staying the proceedings.

V. Disposition

[65] The application for judicial review is granted and the RPD's decision to vacate the Convention refugee status of the Applicants is quashed. In these special circumstances, given the nature of the procedural breach and my finding that to continue the vacation proceeding against the Applicants is manifestly unfair and would bring the administration of justice into disrepute, there is no basis to send the matter

back to the RPD for redetermination. Neither party raised a serious question of general importance for certification.

JUDGMENT IN IMM-5408-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;

2. The RPD decision dated August 21, 2019 is quashed and not remitted for redetermination;

3. No serious question of general importance is certified.