IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20150710
Docket: S151147
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Tatiana Gorenshtein and ICN Consulting Ltd.

Petitioners

And

Employment Standards Tribunal, Director of Employment Standards, Maria Tagirova, Anna Baranova

Respondents

Before: The Honourable Mr. Justice Silverman

On judicial review from: Reconsideration Decision of Employment Standards Tribunal, December 16, 2014, (File No.: 2014A/62, BC EST # RD129/14)

Oral Reasons for Judgment

In Chambers

The Petitioners:	Self-represented M. Gorenshtein (assisting with leave of the Court)
Counsel for the Respondent, Employment Standards Tribunal:	J.M. O'Rourke
Counsel for the Respondent, Director of Employment Standards:	M. Alman
Counsel for the Respondents, Tagirova and Baranova:	N. Drolet

Counsel for the Attorney General of British Columbia:	J.M. Walters (via teleconference)
Place and Date of Hearing:	Vancouver, B.C. June 29 and 30, 2015
Place and Date of Judgment:	Vancouver, B.C. July 10, 2015

INTRODUCTION

[1] **THE COURT:** These are oral reasons. If a transcript is ordered, I reserve the right to edit, although that process will not involve a change in the decision or in the reasoning.

[2] The petitioners bring this judicial review proceeding seeking to quash findings and decisions of the Employment Standards Tribunal that the petitioners had contravened ss. 10 and 12 of the *Employment Standards Act*, which in lay terms prohibits a person or company from charging a fee for providing information about potential employment in Canada. In this case, the finding indicated that the petitioners had done that with respect to two persons in Russia who were seeking to immigrate to Canada.

[3] The corporate petitioner, ICN Consulting Inc. ("ICNC"), which was the only respondent against which such findings were made and a financial penalty imposed. However, the personal petitioner was and is a director of ICNC, who is now also responsible for ICNC's financial penalty. Consequently none of the other parties voiced any opposition to her status as a petitioner to bring this matter, and I am satisfied that it is appropriate that she have that status.

[4] She represented herself and ICNC in these proceedings and, while she did well, very well, she suffers from the usual disadvantages that self-represented non-lawyers suffer from, particularly in understanding the obstacles and difficulties imposed by a mandated standard of review.

[5] The two named personal individual respondents are the two persons from Russia about whom I earlier spoke.

[6] At the risk of over simplification, the petitioners operated a business, ICNC, the goal of which was to bring interested persons to Canada to become live-in nannies or caregivers. ICNC argued that it was acting as an immigration consultant, and while it provided information about potential employment, it never charged a fee for that. It only charged a fee for immigration work. The petitioner also noted the

difficulty of understanding exactly where immigration consulting ends and employment consulting begins in the type of business which she is permitted and was then permitted to carry on.

[7] The personal respondents told a very different story. They said that they had paid for employment services and that the petitioner had expressly told them that, at least in part, those payments were for employment consulting.

THE PRIOR DECISIONS

[8] There have been three decisions made in this matter prior to it making it to this Court for judicial review. On May 3, 2012, what is referred to as a "Determination" was issued by the Director of Employment Standards. On April 16 of 2014, an Appeal from that Determination to the Employment Standards Tribunal was heard and dismissed. On December 16, 2014, an Application for Reconsideration was brought by the petitioner to a different member of the Employment Standards Tribunal.

[9] The Determination of May 3, 2012, considered the evidence, accepted the evidence of the two personal respondents where it conflicted with the arguments of the petitioner, and made the findings that led to the contravention of the Act previously noted.

[10] The written reasons of the decision on Appeal notes this about the findings of fact of the Determination:

> 20. The delegate found ICNC had charged a fee to Ms. Baranova and Ms. Tagirova for providing assistance with finding employment and/or information about employers seeking employees. In making this finding, the delegate rejected the contention of ICNC that the services they provided which assisted Ms. Baranova and Ms. Tagirova in obtaining employment had been provided free of charge. The delegate devotes several pages in the Determination to explaining this finding and providing the reasons for it. In finding Ms. Baranova and Ms. Tagirova were owed wages, the delegate made the following finding in respect of each of them:
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> > I find the fees ICNC charged and received from the complainants are deemed to be wages owing. Based on the evidence before me, I can find no reasonable rationale [sic]

> way to separate out or proportion the fee among the permissible immigration services provided and the impermissible paid for employment agency related services.

[11] Paragraph 8 on the Reconsideration Decision says this:

> I adopt the factual summary set out in the Original Decision appreciating that ICNC continues to challenge some of the factual findings in the Determination in its application for reconsideration. Those challenges will be addressed below in the course of addressing ICNC's individual grounds for reconsideration.

[12] The reference in the Reconsideration Decision to the "Original Decision" is a reference to the Appeal Decision.

[13] The Appeal Decision also notes the numerous grounds that were argued before it. In that regard, the Appeal Decision says this:

> 23. ICNC argues the delegate erred in law in several respects and failed to observe principles of natural justice in making the Determination.
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> 24. The errors of law alleged in the appeal include: the constitutional jurisdictional question; the *locus* of the relationship between ICNC and Ms. Baranova and Ms. Tagirova; fabricating evidence and relying on that evidence to make critical findings of fact; misstating the record in making findings of fact; generally misstating the evidence; not disclosing evidence to ICNC; disregarding evidence; making findings of fact without evidence; making findings of fact in the face of contradictory objective evidence; making "distorted" and unreasonable findings of fact, failing to properly address the credibility of the complainants; placing not enough weight on evidence; placing too much weight on evidence; and making findings on "meaningless" evidence.
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> 25. ICNC submits the failure of the delegate to observe principles of natural justice is reflected in: the delegate refusing to deal with the jurisdictional issue at the outset of the process; the delegate holding a new investigation instead of a complaint hearing; the delegate factually approving the complainants' actions in a civil court; the delegate acting in a way that was unfair, ineffective, unreasonable and unclear; and the delegate failing to act as an impartial decision maker. ICNC says these failings demonstrate an actual, or reasonable apprehension of bias.

[14] The Appeal Decision then proceeds to address each of those arguments. That decision is 30 pages in length, at the end of which the Determination is upheld and the Appeal dismissed.

[15] The Application for Reconsideration is, at the risk of oversimplification, a process similar to an application for leave to appeal; in this case, leave to appeal from the Appeal Decision. The decision with respect to the Application for Reconsideration is 12 pages long and, as I have indicated, it refers to the Appeal Decision as the "Original Decision". The last paragraph of the decision on the Application for Reconsideration confirms the decision in the appeal. The second and third last paragraphs (76 and 77) say this:

> 76. Reconsideration under s. 116 of the *Act* is discretionary, and an applicant must meet a well-established test before the Tribunal will reconsider a decision or order. This burden is justified, given the importance of finality, and timely decision-making, in the employment standards appeal context.
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> 77. Having reviewed ICNC's submissions in its application for reconsideration, I find they do not meet the Tribunal's established test for reconsideration. As indicated above, none of ICNC's 15 grounds raises any significant questions of law, fact, principle or procedure flowing from the Original Decision which would warrant reconsideration. I find the Original Decision sufficiently addresses ICNC's arguments on appeal and I find no reviewable error in the analysis and conclusions reached by the Member. Nothing in ICNC's application persuades me the Original Decision was wrongly decided, or raises any significant issue that would warrant reconsideration. Accordingly, the application is denied.

[16] The law is clear that neither the Determination nor the Appeal Decision are the subject of this judicial review. While I may and do consider them for context, I have no jurisdiction to quash them or to change them, even if I think that they are wrongly decided. All that is before me for review is the Reconsideration Decision; that is, the Tribunal decision to deny the petitioners' Application for Reconsideration of the Appeal on its merits. The fact that it is only that decision which is before me is derived from the clear direction from our Court of Appeal in the case of *Yellow Cab Company v. Passenger Transportation Board*, 2014 BCCA 329.

PRINCIPLES OF LAW

[17] There are several basic principles of law which it is appropriate to state at this time. First, this review is required to be on the record only; that is, only on the evidence that was before the Tribunal, except in highly unusual situations. This is

because it is a review of the Tribunal Decision which is before me and it is not a *de novo* hearing.

[18] Second, the petitioners are not, on this judicial review, entitled to raise new arguments that could have been raised before the Tribunal, but were not raised there.

[19] Finally, it is necessary to address the question of what is the appropriate applicable standard of review or standards of review, and I will deal with that after specifying the grounds in the petition where it is alleged errors occurred.

GROUNDS FOR REVIEW

[20] There are 15 grounds noted in the petition as lettered numbers (a) through (o). They are as follows:

> (a) The Director in the Determination erred in law and/or exceeded her jurisdiction in deciding that she had jurisdiction over the complaints of Ms. Tagirova and Ms. Baranova; and the Tribunal made a reviewable error by upholding the Director's decision.
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> (b) The Director in the Determination erred in law and/or exceeded her jurisdiction in deciding that the *ESA* applies to the circumstances of this case; and the Tribunal made a reviewable error by upholding the Director's decision.
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> (c) The Director in the Determination decided that the complainants were entitled to the full amount claimed, including the fee charged by the petitioners for immigration services, which the Director recognized were permissible under the *IRPA*. By doing so, the Director erred in law and/or exceeded her jurisdiction by not allowing the petitioners to charge a fee for services authorized under the *IRPA*; and the Tribunal made a reviewable error by upholding the Director's decision.
>
> (d) The Tribunal made a reviewable error by deciding that the decision by the Provincial Court of British Columbia did not create an estoppel and/or rendered the matter *res judicata.*
>
> (e) The Director in the Determination erred in law and/or breached the rules of natural justice by modifying the complainants' evidence, and then using the modified evidence to support her conclusion that the petitioners had violated s. 10 of the *ESA*; and the Tribunal made a reviewable error by finding that there was no error of law and/or breach of the rules of natural justice in the fact that the Director had modified the complainants' testimonies.
>
> (f) The Director in the Determination erred in law and/or breached the rules of natural justice by modifying Mr. Flann's evidence, and then using the modified evidence to support her conclusion that the petitioners had violated

s. 12 of the *ESA*; and the Tribunal made a reviewable error by finding that there was no error of law and/or breach of the rules of natural justice in the fact that the Director had modified Mr. Flann's evidence.

(g) The Director in the Determination erred in law and/or breached the rules of natural justice by illegitimately compiling Ms. Small's evidence, and then using it to support her conclusion that the petitioners had assisted Ms. Small in recruiting the complainant to be her employee in exchange for a fee; and the Tribunal made a reviewable error by not addressing the fact that the Director illegitimately compiled Ms. Small's evidence.

(h) The Director in the Determination erred in law and/or breached the rules of natural justice by deciding that "the communications between Mr. Flann, ICNC and Ms. Baranova reasonably indicate an understanding or intention that Mr. Flann needed to go through ICNC to complete the employment process and not merely to complete discrete immigration tasks"; and the Tribunal made a reviewable error in not addressing the issue raised by ICNC that it was very unreasonable for the Director to say that communications between Mr. Flann, ICNC and Ms. Baranova reasonably indicated an understanding or intention of Mr. Flann.

(i) The Director in the Determination erred in law and/or breached the rules of natural justice in deciding that the documents irrelevant to the case at bar were the best evidence; and the Tribunal made a reviewable error by endorsing the Director's erroneous application of the "best evidence" rule.

(j) The Director in the Determination erred in law and/or breached the rules of natural justice by finding the complainants "to be very clear, convincing, consistent and reasonable" despite having before her the complainants' conflicting evidence, related directly to the key area of the dispute; and the Tribunal made a reviewable error by endorsing the Director's assessment of the complainants' credibility.

(k) The Tribunal made a reviewable error by deciding that the complainants did not conceal from the Director the fact that they had appointed the petitioner Ms. Gorenshtein to act as their paid immigration representative.

(l) The Director in the Determination erred in law and/or breached the rules of natural justice by deciding, on Ms. Tagirova's request, to abandon a common fact-finding meeting for all the parties; and the Tribunal made a reviewable error by failing to address the fact that the Director decided, on Ms. Tagirova's request, to abandon a common fact-finding meeting for all the parties.

(m) The Director breached the rules of natural justice and failed to act as an impartial decision maker when fourteen months before the second investigation was completed and the Determination was issued, the Director stated in the Provincial Court of British Columbia that the petitioner's case was similar to the case of *PG Nannies and Caregivers*; and the Tribunal made a reviewable error by deciding that the Director did not breach the rules of natural justice, and did not fail to act as an impartial decision maker.

(n) The Director breached the rules of natural justice and failed to act as an impartial decision maker by trying to persuade Ms. Tagirova to appeal the

> decision of the Provincial Court of British Columbia; and the Tribunal made a reviewable error by deciding that the Director did not breach the rules of natural justice, and did not fail to act as an impartial decision maker.
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> (o) The Director breached the rules of natural justice and failed to act as an impartial decision maker by discussing with Ms. Tagirova possible actions towards recovering the payment that Ms. Tagirova had made to the petitioners pursuant to the provincial court order; and the Tribunal made a reviewable error by deciding that the Director did not breach the rules of natural justice, and did not fail to act as an impartial decision maker.

[21] Of the 15 grounds, three of them raise issues and arguments which were not before the Tribunal. These are grounds (g), (n), and (o). I will not consider those on this judicial review for the reasons previously stated, and I will say no more about them. That leaves 12 grounds for consideration.

[22] Grounds (a) and (b) deal with constitutional/jurisdictional questions, which I will address momentarily. All of the remaining grounds deal with some combination of an alleged error in law or fact or mixed law and fact, exercise of jurisdiction, or denial of natural justice and/or procedural unfairness.

STANDARDS OF REVIEW

[23] I turn to the question of what are the applicable standards of review.

[24] Section 110 of the *Employment Standards* Act, R.S.B.C. 1996, c. 113 is the privative clause setting out the Tribunal's exclusive jurisdiction. It says this:

> 110 (1) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 12 and 13 and to make any order permitted to be made.
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> (2) A decision or order of the tribunal on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

[25] Section 103 makes applicable s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c 45.

[26] Section 58 of the *Administrative Tribunals Act* sets out the standard of review where the Tribunal has exclusive jurisdiction. It says this:

> 58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
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> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
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> (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
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> (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
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> (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
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> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
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> (a) is exercised arbitrarily or in bad faith,
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> (b) is exercised for an improper purpose,
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> (c) is based entirely or predominantly on irrelevant factors, or
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> (d) fails to take statutory requirements into account.

[27] It will be noted that s. 58(2)(a) states that where the matter is within the jurisdiction of the Tribunal, the standard of review is patent unreasonableness, where dealing with a question of fact, law, or discretion. Section 58(3) defines when a discretionary decision is patently unreasonable.

[28] The only exception to the patent unreasonableness standard is when the Tribunal Decision falls outside its exclusive jurisdiction.

[29] While s. 58(2)(b) notes that questions of procedural fairness must be decided "having regard to whether, in all the circumstances, the tribunal acted fairly", decisions of this Court have held that the standard is different where one expert Tribunal has exclusive jurisdiction to review the merits of a procedural fairness complaint. In that case, the standard is patent unreasonableness: *International Forest Products Ltd. v. B.C. (Labour Relations Board)*, 2014 BCSC 956, and *Health Sciences Association of B.C. v. Interior Health Authority*, 2015 BCSC 98.

[30] In this case, only two of the 12 remaining grounds apply to matters outside the Tribunal's exclusive jurisdiction. Those are the first two grounds, (a) and (b), that deal with the constitutional jurisdictional issues. The standard of review, therefore, is not patent unreasonableness, rather it is one of correctness, except that deference will be given to findings of fact.

[31] All of the other grounds deal with matters that are within the Tribunal's exclusive jurisdiction and therefore the standard of review is patent unreasonableness. This will include those grounds where claims relating to natural justice and/or procedural fairness is invoked. Having said that, even if the standard under s. 58(2)(b) were the stated "whether, in all of the circumstances, the Tribunal acted fairly", on the facts of this case, I would come to the same conclusion with that standard as when applying the patently unreasonable standard.

THE RECONSIDERATION DECISION

[32] As I turn now to the 12 individual grounds, let me make a general comment about how I will deal with them. I will repeat each ground individually here. For each ground, I will then set out those paragraphs from the Reconsideration Decision which addressed the equivalent ground that was before the Tribunal. My thanks to Ms. O'Rourke, counsel for the Tribunal for assisting in identifying those paragraphs from the Reconsideration Decision that relate to each ground in the Petition.

[33] I turn to the first two grounds where correctness is the standard of review. Counsel for the Attorney General of British Columbia has attended and made submissions.

[34] Grounds (a) and (b) in the Petition say this:

> (a) The Director in the Determination erred in law and/or exceeded her jurisdiction in deciding that she had jurisdiction over the complaints of Ms. Tagirova and Ms. Baranova; and the Tribunal made a reviewable error by upholding the Director's decision.
>
> (b) The Director in the Determination erred in law and/or exceeded her jurisdiction in deciding that the *ESA* applies to the circumstances of this case; and the Tribunal made a reviewable error by upholding the Director's decision.

[35] The Reconsideration Decision addresses the equivalent grounds to ground (a) and (b) as follows:

> 23. It follows that the Court did not intend to make any ruling on the merits of the appeal regarding this issue, but left it to the Tribunal to determine the matter on the referral back. That is precisely what the Member did in the Original Decision. He analyzed the relevant federal and provincial schemes in light of the submissions of the parties. He then concluded that "dual compliance" (compliance with both the federal *IRPA* and the provincial *Act*) was possible: see in particular paragraphs 125 - 130 of the Original Decision.
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> 24. I find no error or basis for reconsideration of this analysis. I agree with the reasoning and conclusion in the Original Decision that the fees ICNC charged the Complainants were prohibited by section 10 of the *Act* and were not shown to be in respect of services mandated by federal immigration legislation.
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> . . .
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> 37. Under this heading, ICNC quotes a passage from the Original Decision at paragraph 122 to the effect that the Member agrees with the Determination that federal immigration legislation does not purport to regulate the business of employment agencies. ICNC then refers to the Citizenship and Immigration Canada website, asserting that the site sets out rules for recruiters in the Live-In Caregivers Program, including rules relating to payment of recruitment fees.
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> 38. ICNC does not explain how this observation provides a basis for reconsideration of the Original Decision. The federal government may, as ICNC asserts, regulate recruiters in the Live-In Caregivers Program to a degree. However, that does not raise a serious question as to the correctness of the conclusion of the Member on the constitutional issues. As noted by the Attorney General of British Columbia in her July 7, 2014, submission (at paragraph 6):
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> > Under constitutional doctrine, the fact that Parliament has legislated in respect of a matter does not lead to the presumption that in so doing it intended to rule out provincial action in respect of the subject . . . The Attorney General submits that the onus was on the Applicants to establish its assertion that the Parliament intended to exclude provincial legislation. The Applicant did not do so. The evidence provided by the Attorney General was to the opposite effect - Parliament's intention, and the intention of the federal government, is that it did not intend to legislate to the exclusion of the province and, in fact, specifically intended for provincial employment legislation to apply.
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> . . .
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> 40. Under this heading, ICNC notes that, at paragraph 126 of the Original Decision, the Member stated there is "no evidence that it is not possible for a person to comply with the *Act* and still provide the immigration services contemplated in the *IRPA* and *IRPR*...." ICNC argues that it is "not clear, how

> ICNC could possibly comply with both the federal and provincial legislative schemes, and carry on with its immigration business if the Delegate has come to the conclusion that ICNC has contravened s. 10 of the *ESA*...."
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> 41. In paragraphs 113 - 139 of the Original Decision, the Member provided an extensive analysis of the relevant federal and provincial legislative schemes before concluding that dual compliance was possible. I agree with and adopt this analysis. Nothing ICNC raises under this heading leads me to conclude the Member failed to provide a required analysis or otherwise committed a reviewable error in reaching this conclusion.
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> 42. ICNC's argument under this heading is premised on the assertion that it charged only for immigration-related services and not for employment-related services, but that was not the finding of the Delegate, and that finding of fact was upheld on appeal. ICNC contravened the *Act* because, as the Delegate found, it charged the Complainants fees for finding them employment.
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> 43. As the Member concluded in the Original Decision, federal immigration legislation does not require or authorize immigration consultants to charge fees to job seekers in order to assist them to find employment.

[36] In paragraph 41, set out above, the Reconsideration Decision adopts the Appeal Decision's analysis with respect to these arguments. For that reason, I will set out here the Appeal Decision paragraphs that are adopted:

> 113. The Tribunal has the authority to deal with constitutional questions concerning "division of powers" arising under sections 91 and 92 of the *CA*. Under those sections, power is distributed to either level of government to make laws in relation to matters enumerated in each. The constitutional question in this appeal is whether sections 10 and 12 of the *Act* apply to ICNC's recruitment services and invokes a consideration of the following provisions of sections 91 and 92:
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> *91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects hereinafter enumerated, that is to say,*
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> . . .
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> *25. Naturalization and Aliens.*
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> . . .

> *92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say,*
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> . . .
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> *10. Local Works and Undertakings other than such as are of the following Classes:*
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> *(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:*
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> . . .
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> *(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or More of the Provinces.*
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> . . .
>
> *13. Property and Civil Rights in the Province.*
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> . . .
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> *16. Generally all Matters of a merely local private Nature in the Province.*

114. I substantially agree with counsel for the AGBC, that the appropriate constitutional analysis begins with an assessment of the "pith and substance" of the impugned legislation, in this case sections 10 and 12 of the *Act*. I also agree that the constitutional validity of those provisions of the *Act* are not in dispute; it is their operability in the face of the provisions of the *IRPA* and *IRPR* that ICNC has identified as central to the constitutional question. To be clear, in this case I find the province has a clear legislative authority to regulate employment and employment agencies under section 92(13) of the *CA*.

115. As suggested by counsel for the AGBC, I do not find it necessary to consider the doctrine of interjurisdictional immunity. That doctrine requires there to be a sufficiently serious encroachment on the exercise of a protected federal power by a provincial statute that *trenches on, and impairs, the protected "core" "of a federal power*. There is no such concern here. Sections 10 and 12 of the *Act* do not, on any analysis, impair the "core" competence of the federal government over immigration, or more particularly, the conditions under which a person may immigrate to Canada under the IRPA.

116. As well, I rely on the reference in *Marine Services International Inc. v. Ryan Estate* ("*Marine Services*"), at para. 50, attributing a comment to Dickson, C.J. in *General Motors of Canada Ltd. v. City National Leasing* [1989] 1 S.C.R. 641, "that the dominant tide of constitutional interpretation,

which favours, where possible, the operation of statutes enacted by both levels of government, militates against interjurisdictional immunity. A broad application of the doctrine is inconsistent with a flexible and pragmatic approach to federalism": see also the comments of McLachlin, C.J. in *COPA, supra*, at para. 45.

117. Nothing in sections 10 and 12 of the *Act* impairs the federal power over immigration. Interjurisdictional immunity does not apply here.

118. The constitutional argument made by ICNC, although not framed in such terms, is consistent with an application of the doctrine of "federal paramountcy", which says that, "when the operational effects of the provincial legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility": *Marines Services*, at para. 65. This notion is central to ICNC's arguments and its reliance on *Mangat*. The concern under this doctrine is not with the validity of the enactments being considered, but whether they are inconsistent. Inconsistency can arise from two forms of conflict: an actual conflict in operation, "where the federal statute says 'yes' and the provincial statute says 'no', or vice versa": *Marine Services*, at para 68; and where provincial law frustrates the purpose of the federal law. As noted by the Court in *Marine Services*:

> The "fact that Parliament has legislated in respect of a matter does not lead to the presumption that in so doing it intended to rule out any possible provincial action in respect of that subject": *Canadian Western Bank*, at para. 74. Courts must not forget the fundamental rule of constitutional interpretation: " . . . [w]hen a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes": *Canadian Western Bank*, at para. 75 . . . The "standard for invalidating provincial legislation on the basis of frustration of federal purpose is high; permissible federal legislation, without more, will not establish that a federal purpose is frustrated when provincial legislation restricts the scope of the federal permission": *COPA*, at para. 66.

119. There are other principles flowing from *Canadian Western Bank* that underlie the doctrine. These are summarized in the submission of counsel for the AGBC.

120. Applying the above to the facts of this case, I do not accept the contention by ICNC that sections 10 and 12 of the *Act* cannot be applied to their business.

121. The burden of demonstrating the federal and provincial laws are in fact incompatible by establishing it is impossible to comply with both laws or that to apply the provincial law would frustrate the purposes of the federal law is on ICNC: *Canadian Western Bank, supra*, at para 75.

122. First, I find ICNC has not established there is any actual conflict between section 91 of the *IRPA*, sections 2 and 13.1(1) of the *IRPR* and

sections 10 and 12 of the *Act*. I cannot equate any function within the scope of *IRPA* and *IRPR* with providing employment recruitment services - finding a job, obtaining a labour contract or securing an offer of employment - for a fee. I agree with the statement in the Determination, that "[f]ederal immigration legislation does not purport to regulate the business of employment agencies. Nor does provincial employment standards legislation regulate ICNC's immigration services": at page R30.

123. ICNC argues the functions of obtaining a work permit, which is issued on an offer of employment, and preparing a positive LMO under the *IRPA* and *IRPR*, are integrally related to the recruitment functions offered to prospective care-givers for a fee.

124. I have read the submissions of all the parties relating to this point. They are extensive. However, I accept the position of all the responding parties on this point that providing immigration services, including the process of obtaining a work permit and preparing an LMO, is distinct, and severable, from functions to which sections 10 and 12 of the *Act* apply. As submitted by counsel for the Director:

> . . . it is entirely possible to provide immigration services without directly or indirectly charging employees fees for helping them find employment or for providing them with information about employers seeking employees, and without operating as an employment agency charging employers fees for helping them to find employees.

125. As indicated above, I find nothing in the provisions of the *IRPA* and *IRPR* upon which ICNC relies that authorizes an immigration representative to operate as a an employment or recruitment agency or to charge a fee for employing or obtaining employment for a person or providing information about employers.

126. There is no evidence that it is not possible for a person to comply with the Act and still provide the immigration services contemplated in the *IRPA* and *IRPR*. The *IRPA* and *IRPR* do not require, or even specifically allow, an "authorized representative" to charge fees for helping a person find employment or provide information about employers seeking live-in caretakers. There is no mention in the *IRPA* and *IRPR* to an "authorized representative" operating an employment or recruitment agency.

127. The inference in the provisions prohibiting an employer from recouping fees they have paid to a third party recruiter is not inconsistent with the requirement in section 10 that a person must not ask for or receive, directly or indirectly, from a person seeking employment, a payment for employing or obtaining employment for that person.

128. Second, I find an application of the requirements of sections 10 and 12 of the *Act* would not "frustrate" the purpose of the *IRPA* and *IRPR*. Having reviewed the provisions of the *IRPA* and *IRPR*, including the statement of purposes in section 3, the appeal submission of ICNC, the submissions of counsel for the AGBC on this point and the reply of ICNC to it, I agree and accept there is no basis, in either the evidence or the language of the *IRPA* and *IRPR*, to conclude Parliament intended to create a "legislative enclave"

around who may assist applicants under the LCP program or what the conditions around that assistance might be. This finding is supported to a large extent in the reply submission of ICNC, which states, at para. 9:

> ICNC submits that even though the purposes of the *ESA* are consistent with the purposes of the *IRPA* in relation to the protection of immigrants, the *ESA* cannot provide a complete and effective administrative structure for granting and enforcing rights to foreign workers, while the *IRPA* can.

129. There is no evidence or authority provided by ICNC to support this very broad and general statement. There is no evidence, for example, that the *IRPA* provides a "complete and effective administrative structure" for granting and enforcing rights relating to terms and conditions of employment - hours of work, wages, annual and statutory holiday pay and overtime - for immigrant workers employed in each of the provinces. The material provided by ICNC to prop up this submission is not relevant to the concerns raised in this case, but addresses the relationship between an employer and a "recruiter", reinforcing the prohibition against an employer seeking to recover recruitment fees from an employee.

130. It follows that I reject the contention by ICNC that the business services being provided in this case were in connection with matters arising from the *IRPA* and *IRPR* and were subject only to federal regulation, or to put it in the context of the *Act*, were not regulated by sections 10 and 12 of the *Act*.

131. The arguments of ICNC seeking to link their recruitment services with the immigration services provided by ICNC are not grounded in any clear language found in the federal legislation and are frequently grounded in submissions that are not rationally justifiable when examined objectively. For example, there is no clear language that establishes operating an employment agency and charging a fee to a person for finding them employment or connecting them with employers as an essential element of, or linked in any way, to preparing a work permit or an LMO under the *IRPA* and *IRPR*.

132. The other constitutional jurisdiction arguments may be addressed briefly.

133. ICNC is not a business within the class of "works and undertakings" included in section 92(10)(a) of the *CA*. That section allocates to Parliament the authority over interprovincial or international shipping lines, railways, canals, telegraphs and other modes of transportation or communication: see *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, 2009 SCC 53, [2009] S.C.R. 407. ICNC does not fit within that class.

134. Section 92(10)(c) does not apply as there is no evidence ICNC has been declared to be a work for the general advantage of Canada or for the advantage of two or more provinces.

135. ICNC argues the *Act* does not apply because Ms. Baranova and Ms. Tagirova entered into contracts with ICNC in Russia, while they resided in Russia and before they came to Canada. I reject this argument for a number of reasons. First, the basis for the involvement of the Director were

> the requirements and prohibitions found in sections 10 and 12 of the *Act.* Those are statutory requirements and prohibitions that exist entirely independent of the contracts signed by Ms. Baranova and Ms. Tagirova. Second, and in any event, even though Ms. Baranova and Ms. Tagirova signed their agreements with ICNC while they were in Russia, it was contemplated those agreements would govern their relationship in the province and, based on ICNC's bringing action on the contract in Provincial Court, were intended to be enforceable in the province. Third, the focus and aim of sections 10 and 12 of the *Act* is to regulate the business of persons who perform activities relating to employment in the province; in such circumstances the *Act* will validly apply to their actions in the province even though their actions may form part of a transaction which originates and ends with a person outside the province: see *Can-Achieve Consultants Ltd.*, BC EST # D463/97, at page 9, and cases cited therein.
>
> 136. Finally, ICNC submits the *Act* does not apply because its business should be viewed as a single, integrated federal undertaking that includes recruiting or offering to recruit prospective employees for a fee.
>
> 137. First, I agree with counsel for the AGBC, that in making this argument ICNC seeks to rely on the concept of "functional integration" which does not apply in these circumstances. The constitutional question here, which has already been raised and considered, is whether sections 10 and 12 of the *Act* can regulate aspects of the business of ICNC.
>
> 138. In any event, "functional integration" is used to decide whether employees of a local company are, by virtue of their relationship with the business or services of a federally regulated company, to be governed by federal, rather than provincial, labour or employment relations: see *Axon Transport, supra* at para. 46. The test in applying this concept is strict; constitutional facts are important. The burden of presenting those facts would be on ICNC in the circumstances and those facts must show the provincial undertaking to be "vital or essential", not just integral, to the federally regulated undertaking. If this were a case for considering "functional integration", I would find ICNC has not met the burden of showing their recruitment services are "vital or essential" to their immigration services.
>
> 139. For all of the above reasons, I dismiss the constitutional jurisdiction arguments.

[37] I now turn to the remaining 10 grounds considered in the Reconsideration Decision.

[38] Ground (c) in the Petition says this:

> (c) The Director in the Determination decided that the complainants were entitled to the full amount claimed, including the fee charged by the petitioners for immigration services, which the Director recognized were permissible under the *IRPA*. By doing so, the Director erred in law and/or exceeded her jurisdiction by not allowing the petitioners to charge a fee for

services authorized under the *IRPA*; and the Tribunal made a reviewable error by upholding the Director's decision.

[39] The Reconsideration Decision addresses the equivalent ground to ground (c) as follows:

> 20. ICNC's submission under this heading consists of a quoted passage from paragraph 62 of *Gorenshtein v. British Columbia (Employment Standards Tribunal)* 2013 BCSC 1499 (the "Judicial Review Decision"). ICNC has provided no further comments which would explain how the quotation supports its allegation under this heading. I find ICNC's bare quotation of a passage from the Judicial Review Decision does not provide a basis for reconsidering the Original Decision.
>
> 21. If ICNC's first ground for review is intended to suggest that the Member did not consider the constitutional issues raised by ICNC in its appeal, a review of the Original Decision refutes this suggestion. In paragraph 38 of the Original Decision the Member refers specifically to ICNC's argument on appeal to the effect that "the provisions of the federal legislation allow ICNC to charge a fee and must prevail over whatever prohibitions are in the *Act* against receiving payment for employing or obtaining employment for a person or providing information about employers". It is clear, therefore, that the Member was alive to the substance of ICNC's argument on this point. The Original Decision then discusses at length, at paragraphs 113-139, the constitutional issues raised by ICNC, including the submission that sections 10 and 12 of the *Act* are incompatible with the federal *Immigration and Refugee Protection Act* ("*IRPA*").
>
> 22. In the Judicial Review Decision, the Court states in paragraph 63, the paragraph immediately following the one ICNC quotes:
>
> > It may ultimately be concluded that the provisions of the *ESA*, which prohibit charging fees to persons seeking employment and those which require licensing of employment agencies, can be reconciled with the provisions of the *IRPA*, which allow authorized immigration consultants to charge fees for immigration related services. However, this conclusion requires an analysis of the relevant federal and provincial legislative schemes and a determination that dual compliance is possible.
>
> 23. It follows that the Court did not intend to make any ruling on the merits of the appeal regarding this issue, but left it to the Tribunal to determine the matter on the referral back. That is precisely what the Member did in the Original Decision. He analyzed the relevant federal and provincial schemes in light of the submissions of the parties. He then concluded that "dual compliance" (compliance with both the federal *IRPA* and the provincial *Act*) was possible: see in particular paragraphs 125 - 130 of the Original Decision.
>
> 24. I find no error or basis for reconsideration of this analysis. I agree with the reasoning and conclusion in the Original Decision that the fees ICNC charged the Complainants were prohibited by section 10 of the *Act* and were

not shown to be in respect of services mandated by federal immigration legislation.

[40] Ground (d) in the Petition says this:

> (d) The Tribunal made a reviewable error by deciding that the decision by the Provincial Court of British Columbia did not create an estoppel and/or rendered the matter *res judicata.*

[41] The Reconsideration Decision addresses the equivalent ground to ground (d) as follows:

> 44. ICNC's submission under this heading consists of a quoted passage from paragraph 68 of the Judicial Review Decision in which the chambers judge made certain comments with respect to a previous decision of the Tribunal in these proceedings - not the Original Decision. ICNC does not state that in its appeal it argued the matters referenced in paragraph 68 of the Judicial Review Decision. In these circumstances, the assertion that the Member gave no consideration to these matters does not provide a basis for reconsideration. A decision-maker cannot be faulted for not considering a matter that was not raised before him or her.
>
> 45. ICNC did raise these issues with the Delegate and she concluded that the Provincial Court decision did not preclude her from continuing her investigation pursuant to the *Act*. As noted, ICNC did not appeal this aspect of the Determination. In these circumstances, it would offend the purposes of promoting the fair treatment of employees, and providing efficient disposition of complaints - purposes that are mandated in section 2 of the *Act* - to permit ICNC to raise these issues at the reconsideration stage of these proceedings.
>
> 46. If I am wrong, and these issues can be raised now, I am of the view that the decision of the Provincial Court referred to in the Judicial Review Decision does not constitute a bar to the subsequent proceedings before the Delegate, for two separate reasons.
>
> 47. In order for a prior judicial decision to create an issue estoppel, or a finding of *res judicata*, the parties to the decision, or their privies, must be the same as in the subsequent proceeding (see *Danyluk v. Ainsworth Technologies Inc.* 2001 SCC 44). Here, the parties in the Provincial Court proceeding were not the same as the parties before the Delegate: neither Baranova nor the Director was a party in the Provincial Court proceeding.
>
> 48. Second, and in any event, it appears from the reasons of the Provincial Court that no notice of a constitutional question was delivered to the Attorney General of British Columbia before the Provincial Court made its decision. As counsel for the Attorney General noted in her submission, a decision has no precedential value where constitutional findings are made in the absence of the requisite constitutional notice (see *Eaton v. Brant County Board of Education* [1997] 1 SCR 241).

[42] Ground (e) in the Petition says this:

> (e) The Director in the Determination erred in law and/or breached the rules of natural justice by modifying the complainants' evidence, and then using the modified evidence to support her conclusion that the petitioners had violated s. 10 of the *ESA*; and the Tribunal made a reviewable error by finding that there was no error of law and/or breach of the rules of natural justice in the fact that the Director had modified the complainants' testimonies.

[43] The Reconsideration Decision addresses the equivalent ground to ground (e) as follows:

> 49. Under this heading, ICNC quotes paragraphs 144 - 148 of the Original Decision and takes issue with the Member's rejection, in those paragraphs, of ICNC's argument that the Delegate mis-stated the evidence of the Complainants in the Determination.
>
> 50. In paragraph 144 of the Original Decision, the Member noted that ICNC submitted the Delegate "fabricated evidence" by finding in the Determination that the Complainants had testified ICNC had indicated the fee included help finding employment in Canada. In paragraph 146, the Member referred to other evidence in the record where the Complainants alleged ICNC had indicated the fee was for finding employment. He also noted other documents which supported the same conclusion. Considering the evidence as a whole, the Member rejected ICNC's argument that the Delegate had fabricated or altered the Complainants' evidence.
>
> 51. The submissions of ICNC under this heading do not persuade me the Member made a reviewable error.
>
> 52. If, as I infer, ICNC is arguing that the Delegate erred in law in stating that the Complainants were told in conversations with a principal of ICNC that fees would be charged for providing help to find employment in Canada, when in reality they were told that in a different conversation, then I am of the view that this raises a distinction without a substantive difference and does not assist ICNC in demonstrating that the Original Decision is flawed. The fact remains that ICNC communicated to the Complainants that fees would be charged for help in finding employment. There is no doubt that was the position taken by the Complainants throughout, and it was open to the Delegate to make a finding that confirmed that assertion. That, in fact, is what the Delegate did.
>
> 53. In any event, as the Member indicated in paragraph 146 of the Original Decision, there was other evidence, apart from the Complainants' testimony, that supported the conclusion that ICNC charged a fee for finding them employment. ICNC's disagreement with the way the Delegate characterized the Complainants' testimony does not provide a basis for reconsidering the Original Decision's conclusion that the Delegate did not err in finding ICNC had breached section 10 when it charged a fee for assisting the Complainants to find employment.

[44] Ground (f) in the Petition says this:

> (f) The Director in the Determination erred in law and/or breached the rules of natural justice by modifying Mr. Flann's evidence, and then using the modified evidence to support her conclusion that the petitioners had violated s. 12 of the *ESA*; and the Tribunal made a reviewable error by finding that there was no error of law and/or breach of the rules of natural justice in the fact that the Director had modified Mr. Flann's evidence.

[45] The Reconsideration Decision addresses the equivalent ground to ground (f) as follows:

> 57. ICNC's submission under this heading states:
>
> > ICNC showed in its appeal and final reply submissions that the Director's Delegate Ms. Walsh modified Mr. Flann's evidence - see ICNC's appeal, para. 89 - 91, and ICNC's final reply, paras. 79 - 83. However, the Tribunal Member Stevenson did not address that point of contention.
>
> 58. Reconsideration is not an opportunity to re-argue the appeal before a different panel of the Tribunal. It is an opportunity to argue why the decision on the appeal should be reconsidered. Here, the only basis for reconsideration of the Original Decision raised is the assertion that the Member "did not address" ICNC's argument that the Delegate "modified Mr. Flann's evidence".
>
> 59. In considering this assertion, I note that decision-makers are not required to expressly address in their decisions every piece of evidence and every argument raised before them. Bearing that in mind, I find the Member sufficiently addressed the numerous issues and allegations ICNC raised with respect to the Delegate's treatment of the evidence and factual findings, including the allegation that the Delegate "modified" witness testimony: see paragraphs 153 - 154 of the Original Decision.
>
> 60. Accordingly, I am not persuaded ICNC's submission under this heading provides a basis for reconsidering the Original Decision. This ground, like other grounds, asserts an error or failing which would not warrant reconsideration of the Original Decision even if it were established. An application for reconsideration must do more than allege failings or flaws in an original decision which in themselves would not raise a serious question as to the correctness or fairness of the decision as a whole. The application must raise, and make a case, that there is a question of fact, law, principle or procedure flowing from the Original Decision that is of sufficient importance to warrant reconsideration.

[46] Ground (g) in the Petition is one of the three grounds which I have already stated raise issues and arguments which were not before the Tribunal. Consequently, I decline to consider it on this judicial review.

[47] Ground (h) in the Petition says this:

> (h) The Director in the Determination erred in law and/or breached the rules of natural justice by deciding that "the communications between Mr. Flann, ICNC and Ms. Baranova reasonably indicate an understanding or intention that Mr. Flann needed to go through ICNC to complete the employment process and not merely to complete discrete immigration tasks"; and the Tribunal made a reviewable error in not addressing the issue raised by ICNC that it was very unreasonable for the Director to say that communications between Mr. Flann, ICNC and Ms. Baranova reasonably indicated an understanding or intention of Mr. Flann.

The Reconsideration Decision addresses the equivalent ground to ground (h) as follows:

> 69. Under this heading, ICNC complains that the Member did not address an issue it says it raised impugning a factual finding in the Determination. Assuming for the purpose of this decision that ICNC did raise this disagreement in its appeal submission and the Member did not expressly address it, I find this does not establish a basis for reconsidering the Original Decision. As noted earlier, it is well-established that an administrative decision-maker is not required to expressly address every piece of evidence and every argument that is presented to him or her. ICNC does not submit the outcome of the case turned on its disagreement with this particular finding of fact, and it is clear on review of the material before me that it did not.
>
> 70. The Member expressly stated in the Original Decision (at paragraphs 153 - 154) that he did not accept ICNC's many challenges to the factual findings of the Delegate, and he gave an explanation for that conclusion. I find ICNC's disagreements with the Delegate's findings of fact were sufficiently addressed by the Member in the Original Decision, and ICNC's submissions under this heading do not provide a basis for reconsideration.

[48] Ground (i) in the Petition says this:

> (i) The Director in the Determination erred in law and/or breached the rules of natural justice in deciding that the documents irrelevant to the case at bar were the best evidence; and the Tribunal made a reviewable error by endorsing the Director's erroneous application of the "best evidence" rule.

[49] The Reconsideration Decision addresses the equivalent ground to ground (i) as follows:

> 54. Under this heading, ICNC argues that receipts submitted by the Complainants and accepted by the Delegate as the best evidence available of the amounts paid by them to ICNC are "irrelevant" in the sense that they do not constitute any evidence, let alone the best evidence, supporting a finding that the Complainants made these payments to ICNC.
>
> 55. ICNC further states: "We insist that the Tribunal look at the documents in question and confirm that these receipts are relevant to the case". ICNC

> does not provide any further submissions explaining how this request provides a basis for reconsidering the Original Decision, and I find it does not.
>
> 56. The bank receipts constituted "some", rather than "no", evidence of the payments made. As such, the Delegate was entitled to rely on them. The weight to be given to the evidence was for the Delegate to decide, and the Member was right to decline to interfere with the Delegate's weighing of the evidence and findings of fact. ICNC's arguments establish no reviewable error of law by either the Delegate or the Member.

[50] Ground (j) in the Petition says this:

> (j) The Director in the Determination erred in law and/or breached the rules of natural justice by finding the complainants "to be very clear, convincing, consistent and reasonable" despite having before her the complainants' conflicting evidence, related directly to the key area of the dispute; and the Tribunal made a reviewable error by endorsing the Director's assessment of the complainants' credibility.

[51] The Reconsideration Decision addresses the equivalent ground to ground (j) as follows:

> 65. ICNC takes issue with a passage in the Original Decision where the Member noted that ICNC challenged the Delegate's assessment of the credibility of the Complainants, and then rejected that challenge. The Member stated that after reviewing the Determination, the material in the record referred to by ICNC, and ICNC's appeal submission, he agreed with the Delegate that any discrepancies advanced by ICNC were "exaggerated, not significant and/or not central to the claim" (Original Decision, paragraph 155).
>
> 66. ICNC takes issue with this finding. I have reviewed ICNC's submissions in that regard and am not persuaded they reveal any reviewable error in the Original Decision relating to the manner in which the Member dealt with this aspect of the appeal.
>
> 67. ICNC repeats its discrepancy arguments with respect to the Complainants' testimony as to a telephone conversation they allegedly had with ICNC's Michael Gorenshtein. However, the finding that the services ICNC provided included employment-related services was not based solely on the Complainants' testimony about this telephone call. It was based on the entirety of the evidence concerning the nature of the services ICNC provided.
>
> 68. In these circumstances, I find no basis to reconsider the Original Decision in ICNC's submission under this heading.

[52] Ground (k) in the Petition says this:

> (k) The Tribunal made a reviewable error by deciding that the complainants did not conceal from the Director the fact that they had appointed the petitioner Ms. Gorenshtein to act as their paid immigration representative.

[53] The Reconsideration Decision addresses the equivalent ground to ground (k) as follows:

> 61. Under this heading, ICNC alleges the Member did not consider its argument that the Complainants "concealed" from the Delegate that they had appointed Tatiana Gorenshtein to act as their immigration representative.
>
> 62. I find, however, that the Member effectively addressed this argument in his acceptance of the factual findings of the Delegate. Those findings make it clear that the Complainants did not "conceal" their relationship with ICNC. Rather, they filed complaints demonstrating that they disagreed with ICNC's position that the fees they were charged were for immigration-related services only.
>
> 63. The Member also effectively addressed this argument when he upheld the Delegate's finding that, contrary to ICNC's claim that the services it charged the Complainants for were immigration-related only, the services ICNC provided and charged for were also for employment-related services.
>
> 64. ICNC also makes what appears to be a new allegation that the Complainants contravened section 40(1)(a) of the *IRPA*. This new allegation provides no basis for reconsideration. Apart from the significant problem that it does not appear to have been raised earlier in these proceedings, the claim of a contravention of the *IRPA* by the Complainants is not a matter I have jurisdiction to decide.

[54] Ground (l) in the Petition says this:

> (l) The Director in the Determination erred in law and/or breached the rules of natural justice by deciding, on Ms. Tagirova's request, to abandon a common fact-finding meeting for all the parties; and the Tribunal made a reviewable error by failing to address the fact that the Director decided, on Ms. Tagirova's request, to abandon a common fact-finding meeting for all the parties.

[55] The Reconsideration Decision addresses the equivalent ground to ground (l) as follows:

> 71. ICNC says it raised this issue in its final reply submission and complains that the Member did not address it. However, final reply is an opportunity to reply to the submissions of the other parties in relation to the appeal, not to raise new issues. When issues are raised for the first time in

> final reply, the other parties have no opportunity to respond to them, creating the potential for unfairness if they are addressed.
>
> 72. In any event, I cannot accede to ICNC's complaint because it does not establish a basis for a conclusion that ICNC was denied a fair hearing. The *Act* gives the Director significant latitude in determining how an investigation will be conducted, and it does not require a common fact-finding meeting.
>
> 73. To the extent ICNC also complains about the length of time the Delegate took to complete her investigation, I agree with the conclusion of the Member that ICNC has not shown "how the length of time taken by the delegate interfered with their opportunity to know the case against them, to present their evidence, and to be heard by an independent decision maker" (Original Decision, paragraph 177).

[56] Ground (m) in the Petition says this:

> (m) The Director breached the rules of natural justice and failed to act as an impartial decision maker when fourteen months before the second investigation was completed and the Determination was issued, the Director stated in the Provincial Court of British Columbia that the petitioner's case was similar to the case of *PG Nannies and Caregivers*; and the Tribunal made a reviewable error by deciding that the Director did not breach the rules of natural justice, and did not fail to act as an impartial decision maker.

[57] The Reconsideration Decision addresses the equivalent ground to ground (m) as follows:

> 74. ICNC's submissions about what counsel for the Director said in Provincial Court were addressed in the Original Decision at paragraphs 181 - 190. I agree with the Member's analysis of these submissions, and in particular his conclusion that there was no basis in the submissions made by ICNC to conclude that counsel's comments established the Director had prejudged the validity of the complaints against ICNC.
>
> 75. I find ICNC's submissions under this heading in its application for reconsideration merely establish that it does not agree with the Member's conclusion on this issue, but do not persuade me that the conclusion, or more importantly the Original Decision as a whole, should be reconsidered.

[58] Ground (n) in the Petition is one of the three grounds which I have already stated raise issues and arguments which were not before the Tribunal. Consequently, I decline to consider it on this judicial review.

[59] Ground (o) in the Petition is one of the three grounds which I have already stated raise issues and arguments which were not before the Tribunal. Consequently, I decline to consider it on this judicial review.

DECISION

[60] With respect to the first two grounds, the constitutional/jurisdictional grounds, I now assess whether the Tribunal Decision was correct in law, that being the applicable standard of review.

[61] I consider the words of the Tribunal in the Reconsideration Decision, including what was adopted from the Appeal Decision. I consider the submissions of counsel for the Attorney General, and those of the petitioners, and the entirety of the record. There is only one right answer: either the Tribunal's decision is correct or it was not. I am satisfied in this case that the decision was correct in law and consequently this review will not succeed on the basis of those grounds.

[62] While it is the ultimate dismissal of the Application for Reconsideration which is under review, and is measured against a standard of patent unreasonableness, s. 58 notes that the same standard of review applies to all findings of fact, law, and discretion. Frequently it is not necessary to assess every finding of fact against that standard of review, but in my view it will be useful to assess each of the grounds against the same standard of patent unreasonableness, and I intend to apply that standard to each of those grounds.

[63] Since I come to the same conclusion with respect to each of them, I can do so collectively. A reading of the precise words of the Tribunal, as they address each of the equivalent grounds, all considered in the context of the Appeal Decision and the entire record, and the submissions of counsel and Ms. Gorenshtein, lead me to conclude that none of those findings is patently unreasonable, when I apply that standard using the statutory meaning of the phrase in s. 58(3), and also using it in the sense that our Courts have defined it as meaning "clearly irrational": *Canwood International Inc. v. Bork*, 2012 BCSC 578, *Spirit Ridge Resort Holdings Ltd. v.*

British Columbia (Employment Standards Tribunal), 2014 BCSC 2059 and *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 (aff'd 2009 BCCA 229).

[64] It is impossible to say that the analysis in the Reconsideration Decision, with respect to any of the grounds, when considered separately from the others, was "clearly irrational" and was patently unreasonable.

[65] When the analysis of those grounds are considered together and in the context of the balance of the Reconsideration Decision, the Appeal Decision, the entire record, and all the submissions, I am satisfied that the ultimate decision of the Tribunal to dismiss the petitioners' Application for Reconsideration was not patently unreasonable.

[66] It follows, therefore, that this application for judicial review must be and is dismissed.

[SUBMISSIONS ON COSTS]

[67] THE COURT: All right, thanks, Ms. Gorenshtein. I think it is appropriate that you will pay the costs of the two personal respondents. With respect to the other respondents, they and the petitioners will bear their own costs.

"Silverman J."

The Honourable Mr. Justice Silverman