2026

Immigration, Refugee and Citizenship Law Moot

Concours de plaidoirie en droit de l'immigration, des réfugiés et de la citoyenneté

OFFICIAL PROBLEM

REVISED ENGLISH VERSION

Concours de Plaidoirie IRC Law Moot

The Immigration, Refugee and Citizenship Law Moot's 2026 Official Problem is prepared by the members of the Moot's Content Committee:

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Concours de Plaidoirie
IRC
Law Moot

2026 IMMIGRATION, REFUGEE, AND CITIZENSHIP LAW MOOT - OFFICIAL PROBLEM

The following are the decision and reasons of the Immigration, Refugees and Citizenship Canada ("IRCC") Immigration Officer, in which the Applicant was found to be inadmissible pursuant to s. 36(2)(c) of the *Immigration and Refugee Protection Act* ("*IRPA"*) due to a finding that the Applicant had committed an act outside Canada that would constitute would constitute an indictable offence if committed in Canada. The decision of the IRCC officer was subsequently overturned by the Hon. Justice Tkacheva of the Federal Court, the judgment for which is also set out below.

In this moot, both the IRCC Officer and Federal Court have jurisdiction over the issues raised in their respective decisions. The standard of review adopted by the Federal Court is not the subject of an appeal to the Crown Court of Canada. Please do not make arguments challenging issues of jurisdiction, the standard of review, or the sufficiency of reasons.

The Crown Court is a fictional court established to hear immigration, refugee, and citizenship appeals from the Federal Court. No decision of any Canadian court, including the Supreme Court of Canada, is binding on the Crown Court of Canada; however, Canadian jurisprudence can and should be used in the appeal facta to argue respective positions. In accordance with Rule 9 of the Official Rules, Canadian jurisprudence is persuasive in the Crown Court of Canada in accordance with the established hierarchy of those courts.

All the issues raised in the reasons given by the administrative decision-maker and Federal Court should be addressed by counsel for the Appellant or Respondent in their submissions. Counsel may advance arguments not referenced in the reasons in their submissions, but only if they relate to the issues identified in the previous decisions.

To appeal to the Crown Court of Canada, Justice Tkacheva certified the following questions:

1. In the immigration context, can informer privilege be pierced where the privileged information cannot be obtained through any other source and there is no other reasonable way for the Applicant to respond to the inadmissibility allegation?

2. Is it reasonable to interpret s.36(2)(c) of the IRPA as including acts committed outside of Canada when those acts were the subject of a criminal charge in the foreign jurisdiction but did not result in a conviction, especially where the foreign jurisdiction is a strong democracy with a functioning court system?

Whether these questions were properly certified **is not** a subject of an appeal to the Crown Court.

Pursuant to Rule 10 of the Official Rules, mooters may request clarification on points that are unclear in the Official Problem and that reasonably need to be clarified in order to submit a proper argument. Such requests must be made by email to **info@ilm-cpdi.ca** and be received **by midnight EST on Friday, November 28, 2025** and include a max. 250 word explanation as to why a clarification is necessary.

Citizenship and Immigration Canada Citoyenneté et Immigration Canada

Date: 2024/09/19

UCI: 11-0123-4567
Application no. EE890441E9

Bob Bennett
London, UK
Bobbbbb_Bennnnnettttt@gmail.com

Dear Bob Bennett,

This letter refers to your application for permanent residence under the Federal Skilled Worker Class. After careful and thorough consideration of all aspects of your application, I have determined that you do not meet the requirements for permanent residence.

Your application is refused because:

There are reasonable grounds to believe that you are a person described in section 36(2)(c) of the *Immigration and Refugee Protection Act.* As a foreign national who has committed an act outside Canada that is an offence in the place where it was committed and, if committed in Canada, would constitute an indictable offence under an Act of Parliament, I find that you are inadmissible to Canada and your permanent residence application denied.

Thank you for the interest you have shown in Canada. I understand that this negative decision will disappoint you, but your application has been refused.

Sincerely

Immigration Officer EZ1980R
Visa Office, London, UK
Immigration, Refugees and Citizenship Canada

*****OFFICER REVIEW*****

General	I have reviewed the application and documents on file. Application denied. I find there are reasonable grounds to believe the PA is inadmissible under IRPA s.36(2)(c). Reviewed submissions and evidence of client. Client alleges breach of procedural fairness for failure to provide the source of the information and full disclosure. As previously determined, informer privilege applies to source of information, any communication, and investigation materials. Procedural fairness letter sufficiently explains basis of alleged inadmissibility. I do not find that any further disclosure was required. Client argues that he has no criminal convictions or history of alcohol abuse and that he has never assaulted anyone. Points to evidence of no convictions from UK police. Lack of convictions does not prove that alleged events did not occur. A36(2)(c) is broad; nothing in it states that it cannot apply to criminal acts that led to charges that were withdrawn. IRPA is focused on public safety. In any event, as explained below, Client has evaded justice in UK by intimidating witness. Client argues that the assault was fabricated and the complainant did not appear at trial because he did not want to perjure himself. The Author states that the complainant did not appear because the Client intimidated him. I note the Author's account of the assault matches the details in the court record, including date, location, and victim, which bolsters her credibility. By contrast, I note that the Client did not disclose his withdrawn charge in his PR application even though the forms ask to list "any charge or conviction". I draw an adverse credibility finding against the Client for this reason and reject his explanation. Based on the court record and the information from the Author, I find reasonable grounds to believe that the Client committed the assault and is therefore inadmissible under A36(2)(c). Application is rejected. Client and counsel sent negative decision letter by email.	EZ1980R 2024/09/19 12:31 PM

Client information received	Client information received. Doc 1: Report from UK police indicating no convictions, outstanding charges, or cautions issued. Doc 2: Court record setting out allegations of common assault and indicating the charge was withdrawn since no witnesses attended to testify. Doc 3: Letter from Client's doctor indicating no medical history of alcohol abuse. Doc 4: Submission letter from Client. Client states charge was fabricated by former wife's cousin as part of acrimonious child custody proceeding between himself and wife. Client states that wife's cousin refused to perjure himself and did not appear for trial. Client states A36(2)(c) finding not appropriate where criminal charge was laid and did not result in conviction. Client states outcomes of the UK justice system should be respected by Canada. Client renews request to know who provided this information to IRCC and for full disclosure of all relevant materials.	EZ1980R 2024/09/18 08:47 AM
General	Letter sent. Client advised that no further information will be disclosed, as the information is privileged, but the extension of time is granted. B/F 30 days	EZ1980R 2024/08/20 10:26 AM
Client enquiry	Client enquiry received, requesting to know the source of the information and a copy of all the information related to the allegation in the PFL and requesting an extension of time of 30 days.	EZ1980R 2024/08/19 3:38 PM
General	PFL issued to Client on 12/08/24 PFL: Client advised re concerns of criminal inadmissibility pursuant to IRPA s.36(2)(c): Commission of an act outside Canada that is an offence where it was committed and would constitute an indictable offence in Canada. Client advised that IRCC has received information that he assaulted Trevor Peters on March 20, 2023 in Hammersmith, London, while intoxicated. This would amount to common assault under s.39 of the Criminal Justice Act 1988 (UK) which would constitute assault under s. 266 of the Criminal Code (Canada), which is an indictable offence, pursuant to s.36(3)(a) of the IRPA. Information received that Client intimidated witness to avoid prosecution for this offence. Client given 15 days to reply.	EZ1980R 2024/08/12 07:31 AM

Adm/Security	Investigation opened. Contacted author of email by telephone. Left voicemail as no response, explaining that I was an IRCC Officer following up on a tip from the CBSA Border Watch website, and advising that information collected could be used in an investigation. Author asked to provide specific details of alleged assaults committed by Client. Author asked to return call or else to email London.immigration.general-l'immigration.générale.Londres@canada.gc.ca with any further information or supporting documents or photographs. Email received from Author 45 minutes later: Hello, You have asked me to provide some details of times when I have seen Bob being violent. One time, two years ago, a group of us were all out for dinner at a bar and he had too many drinks. He started harassing other people at the bar around us, punched someone, and then the bartender made us leave. A couple of police officers came up to us and stopped him. They warned him about public intoxication but let him go with a caution and didn't charge him, I think. In another incident, Bob was actually arrested and charged with assaulting my [redacted], Trevor Peters, when we were in a pub called the Blue Anchor in Hammersmith. That happened on March 20, 2023. But the charges were dropped because my [redacted] was too scared of Bob to testify. When he was drunk, Bob [redacted]. This happened a lot. Immigration needs to know the kind of person that Bob is and who they are letting into Canada. I hate to be doing this behind his back but I did not know any other way to get this information to you without putting myself at risk. Thank you, [redacted] No documents attached to email.	EZ1980R 2024/07/26 1:17 PM
Adm/Security	Informer privilege applies to this communication based on statements found on CBSA Border Watch website re: expectation of confidentiality – not to be disclosed to client	EZ1980R 2024/07/12 10:22 AM

Client information received	Received information through CBSA Border Watch website. Border Watch website indicates "The information provided is confidential. The information contained in the form you have completed will be as well. You are not required to give your name or phone number unless you choose to do so". The French version indicates that "L'information fournie demeure confidentielle. L'information contenue dans le formulaire que vous aurez rempli le sera également. Vous n'êtes pas tenu de donner votre nom ou votre numéro de téléphone, à moins que vous ne choisissiez de le faire". Hello. My name is [redacted]. I know Bob Bennett because [redacted]. I think Canadian immigration needs to know that Bob is not a good person. He drinks a lot. I have seen him drunk in public and being violent around other people, including beating up people. I know this is confidential, I don't want this getting back to him. I don't know how he would react or what he would do if he found out that I reported him. You can call me if you want more details. My number is [redacted].	EZ1980R 2024/07/12 09:31 AM
General	Right of Permanent Resident Fee request sent; RPRF paid on 2024/05/15	EZ1980R 2024/05/15 12:36 PM
General	Medical examination instructions sent; medical examination completed 2024/04/29	EZ1980R 2024/04/29 2:12 PM
General	Security, criminality clearance passed	EZ1980R 2024/04/22 12:36 PM
Client enquiry	Applicant requesting to remove spouse as an non-accompanying dependent on the application. Doc 1: Divorce certificate included indicating divorce finalized on 2024/02/15. Spouse removed from application; no longer dependent family member.	EZ1980R 2024/02/22 12:06 PM
General	ROUTINE FILE REVIEW Application for FSW received on 2023/11/05; client processing, initial screening: meets points requirement – 70 points, pending next stage processing. UK citizen.	EZ1980R 2023/11/15 08:47 AM

Federal Court  Cour fédérale

Date: 20251117

Docket: IMM-11983-25

Citation: 2025 FC 97450

Ottawa, Ontario, November 12, 2025

PRESENT: The Honourable Justice Eliza Tkacheva

BETWEEN

BOB BENNETT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

1. This is an application for judicial review of the decision of an Immigration Officer (the "Officer"), in which the Officer found the Applicant to be inadmissible to Canada under s.36(2)(c) of the *Immigration and Refugee Protection Act* ("IRPA") and, for that reason, denied his application for permanent residence under the Federal Skilled Worker Class.

2. For the reasons that follow, I have come to the conclusion that this judicial review must succeed. The Officer erred in applying informer privilege and the Applicant's right to

procedural fairness was breached. The decision must therefore be set aside. Further, while it is not necessary to consider the substantive reasonableness of the decision given my conclusion on procedural fairness, I find that the Officer erred in concluding that s.36(2)(c) includes in its scope alleged criminal wrongdoing that was the subject of a criminal process overseas which terminated in the Applicant's favour. The Officer failed to consider basic principles of statutory interpretation which suggests this interpretation to be unreasonable. Furthermore, even if evidence of such criminal wrongdoing could be considered, the Officer's analysis in respect of that evidence was flawed and cannot be sustained.

II. Background Facts, Issues, and Standard of Review

3. The general background of this case is not in dispute. The Applicant is a citizen of the United Kingdom. In November 2023, he submitted an application for permanent residence under the Federal Skilled Worker class.

4. The application was processed in the usual course until sometime in July of 2024, when an anonymous "poison pen" email was submitted to the Canadian Border Services Agency's ("CBSA") Border Watch website. This email made serious allegations against the Applicant related to alcohol abuse and ensuing public intoxication and violence. The poison pen email was passed on by CBSA to the IRCC Officer who was handling the Applicant's permanent residence application. Based on the circumstances in which it was obtained, the IRCC Officer concluded that informant privilege applied to the poison pen email.

5. Following the initial email, IRCC opened its investigation, and made some efforts to reach out to the Informant to obtain further information. After leaving a voice mail for the Informant, IRCC received a responding email with some further information, but no supporting documents. It does not appear that IRCC made further efforts to pursue the investigation with the Informant after this email.

6. Neither email was produced to the Applicant, but he was given a "procedural fairness" letter

setting out the principal allegation made by the Informant: that the Applicant had assaulted Trevor Peters on March 20, 2023, in Hammersmith, London, while intoxicated, an act which would amount to common assault under s.39 of the *Criminal Justice Act 1988* (UK) and would constitute assault under s. 266 of the *Criminal Code* (Canada). Importantly, however, the procedural fairness letter did not identify the source of the allegations and it did not provide all of the allegations made by the Informant.

7. The Applicant requested full disclosure of all information related to the allegation and the identity of the Informant but was advised that IRCC considered all of these materials to be protected by informant privilege. The Applicant made submissions in response to the allegation. He also provided police and court records showing he had no criminal convictions and medical evidence showing no history of alcohol abuse. However, the Officer found this insufficient to rebut the concerns. The Officer refused the application and found the Applicant inadmissible under s.36(2)(c) of the IRPA. That is the decision under review before me.

8. The Applicant has identified the following four reviewable errors that he argues the Officer committed in rejecting his permanent residence application:

   (A) The Officer improperly attached informer privilege to both emails received from the Informant;

   (B) Even if informer privilege applied, procedural fairness required the disclosure of the Informant's identity;

   (C) The Officer unreasonably interpreted the scope of s.36(2)(c) of the IRPA; and,

   (D) The Officer's factual conclusions under s.36(2)(c) were unreasonable.

9. The parties agree that the applicable standard of review is that of reasonableness on the merits of the decision – issues (C) and (D) – and that procedural fairness is reviewable on the functional equivalent of a correctness standard – issue (B): *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69. With respect to issue (A), the parties' arguments about whether informer privilege applies turns largely on the facts and

not the law and so reasonableness remains the standard of review.

III. Analysis

(A) *Did informer privilege properly attach to both emails received from the Informant?*

10. The first error alleged by the Applicant is that the Officer erred in concluding that both poison pen emails were protected by informer privilege. For the reasons stated below, I find that the Officer's approach to informer privilege was over-inclusive.

11. Informer privilege is a common law rule that prohibits the disclosure of an informer's identity in public or in court, including all information which might tend to identify the informer. As a class privilege, informer privilege is not determined on a case-by-case basis. It exists where an officer, in the course of an investigation, guarantees confidentiality to a prospective informer in exchange for information: *Canada (Citizenship and Immigration) v. Hanjra*, 2018 FC 207 at para 22. The principle of informer privilege protects against disclosure of information such as the poison pen letter in the interests of encouraging the public to report incidents of fraud: *Enache v. Canada (Citizenship and Immigration)*, 2019 FC 182 at para. 20. The test for application of this privilege is, first, that the informer provided information to an investigating authority and, second, that the informer provided the information under an express or implied guarantee of protection and confidentiality (*Hanjra* at para 26).

12. In the present case, I find that, even if I accept that informer privilege would apply to the initial email communication from the Informant, it would not apply to the subsequent email that the Informant sent to the Immigration Officer. The promise of confidentiality was made by CBSA for information submitted through the Border Watch webpage. Prior to sending the second email, the Informant knew that they were now dealing with IRCC (not CBSA) and accepted that any information provided would be part of an investigation into the Applicant's PR application. Moreover, they also knew they were emailing a general IRCC

email account. In these circumstances, there was no explicit or implicit assurance that this information would be treated as confidential.

13. The Respondent argues that all of the Informant's interactions with IRCC followed from her tip through the Border Watch webpage and were therefore protected by the initial informant privilege. For the reasons stated above, I disagree; there was a fundamental change in circumstances in which the first and second emails were received. The Respondent also argues that the phrase "any information provided would be part of an investigation into the Applicant's PR application" was too vague to make clear to the Informant that the information they provided would no longer be treated as confidential. I am not persuaded by this. If the Informant was genuinely confused by the Officer's phrasing – the meaning of which appears clear to me – the Informant could have asked for further clarification from the Officer before sending the second email. The Informant did not do so.

14. Based on the above, the Officer erred in attaching informer privilege to the second email received by the Informant. Since this was the basis on which the Officer refused to disclose the full content of the second email to the Applicant, this rendered the proceeding to be unfair.

(B) ***Did procedural fairness require the disclosure of the Informant's identity:***

15. The second error alleged by the Applicant is that, even if informant privilege did apply to both emails, procedural fairness required that he know the identity of the Informant in order to properly respond to the allegations made against him.

16. The law is well settled that that Applicants must be made aware of the "case to meet": *Chawla v. Canada (Citizenship and Immigration)*, 2014 FC 434 at para 15. Information known by an officer must be made available to the applicant prior to the decision being made. Further, Applicants are entitled to a meaningful opportunity to respond to any concerns arising from adverse information: *Islam v. Canada (Citizenship and*

Immigration), 2016 FC 913 at para. 21. This principle is particularly engaged where, as here, the Applicant is facing serious consequences, such as a finding of inadmissibility: *Ge v. Canada (Citizenship and Immigration)*, 2017 FC 594 at para 28.

17. These principles of fairness, however, are in tension with informer privilege which prohibits the disclosure of an informer's identity including all information which might tend to identify the informer. What should a court do in a case where knowing the identity of the informant is essential to knowing the case to meet?

18. I note that much of the caselaw surrounding informer privilege is drawn from the criminal law. In that context, informer privilege can be pierced in exceptional cases where the privileged information cannot be obtained through any other source and there is no other way for the accused to raise a reasonable doubt as to their guilt – the so-called "innocence-at-stake" exception: *R. v. Brassington*, 2018 SCC 37 at para. 36. The Respondent argues that an inadmissibility allegation is not a criminal prosecution and the Applicant's innocence is not at stake; as such, *Brassington* has no application. The Respondent further cautions "that criminal law principles should not necessarily be transferred to matters of immigration law and policy": *JBL v. Canada (Citizenship and Immigration)*, 2021 FC 487 at para. 30. While I agree, I also find the Respondent cannot pick and choose which elements of informer privilege it wants to import from the criminal law. If the privilege carries over from criminal law to immigration law, so to must the established exceptions to that privilege in some form. Given this, I find the informant privilege can be pierced in the inadmissibility context where the privileged information cannot be obtained through any other source and there is no other reasonable way for the Applicant to respond to the inadmissibility allegation.

19. In the present case, the Officer's decision about whether the alleged assault took place turned largely on credibility. The Officer's central finding in this regard is that she disbelieved the Applicant when he said the complainant in the charge failed to attend court because he did not want to perjure himself and, instead, believed the Informant that the

actual reason the complainant did not appear was because he was intimidated by the Applicant.

20. Based on the evidence the Officer chose to disclose to the Applicant, I do not see how the Applicant could have reasonably challenged the credibility of the Informant without knowing their identity. Since the Informant's only evidence as to the reason the complainant did not appear was their own statement, the credibility of that statement turned entirely on who the Informant was and whether they could be trusted. The Applicant has suggested on judicial review that the Informant is his former spouse who is disgruntled over an acrimonious divorce and custody proceeding. While the Respondent says this is rank speculation, I disagree. If the Informant was the Applicant's former spouse, the circumstances on its face could suggest a strong motive for her to fabricate the allegations found in the emails. This underscores my previous conclusion that the Applicant needed to know the identity of the Informant in order to properly respond. The Respondent argues that the Applicant could have challenged the credibility of the Informant through other means with knowing their identity, such as by getting a letter from his former wife's cousin saying that he had not been intimidated. Again, I disagree. The Respondent's proposal is untenable as it would effectively require the former's spouse's cousin to admit he had filed a false police report, something he is highly unlikely to have agreed to do.

21. Given the above, I believe that procedural fairness required the disclosure of the identity of the anonymous source in order for the Applicant to know and respond to the case to be met. Informer privilege must give way where it amounts to a real denial of fairness. The Officer erred in not disclosing the identity of the Informant.

(C) ***Did the Officer reasonably interpret the scope of s.36(2)(c)?***

22. Turning to the next ground advanced by the Applicant: did the Officer apply s. 36(2)(c) in an overly broad, and thus, unreasonable, manner?

23. Section 36 of the *IRPA* defines cases of inadmissibility on grounds of "serious criminality" and "criminality." Subsection 36(2) of the *IRPA* identifies three grounds of inadmissibility for criminality. The provision which concerns us here is s.36(2)(c), which provides that a foreign national will be inadmissible for committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

24. In the present case, the Applicant concedes that the acts alleged – if committed – would amount to common assault under s. 39 of the *Criminal Justice Act 1988* (UK) and would constitute assault under s. 266 of the *Criminal Code* (Canada). But he asserts that a proper interpretation of s. 36(2)(c) must take s. 36(2)(b) into account. Namely, he argues that where a criminal process was commenced, allegations of criminal wrongdoing abroad are governed by s. 36(2)(b) and require a conviction. The Applicant further argues that s. 36(2)(c) should be limited to allegations of criminal wrongdoing abroad where there was no criminal process; the country has a weak judicial system; or the person intentionally thwarted the country's justice system such as by fleeing the jurisdiction.

25. I agree with the Applicant. If a person can be found inadmissible under s. 36(2)(c) for committing an act abroad even when they have faced a criminal process and avoided a conviction, what is the role of s. 36(2)(b) in the statutory scheme? The existence of s.36(2)(b) is a strong indication that Parliament intended to treat the outcome of a foreign criminal process, where one took place, as being determinative: *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 2 at para. 107. The foreign jurisdiction in this case is a strong democracy with a functioning court system similar to our own. This bolsters the case that Parliament likely intended to defer to the outcome of that justice system where the criminal charge terminated in the Applicant's favour – instead of re-litigating the case in Canada's immigration system. The Respondent argues that s.36(2)(c) is written in a large and liberal manner with not even a hint of the restrictions that the Applicant suggests. But the words of the statute are the beginning not the end of the interpretive analysis. Here, the statutory context – especially s.36(2)(b) – was equally important. The Officer did not

engage with the meaning of the provision in its context, and the reasons fail to engage with the purpose of the section. This oversight undermines the reasonableness of the decision.

26. On a final note, I also disagree with the Officer's conclusion that the Applicant "intimidated" the witness; there is no factual basis for that finding in the record. Just because the complainant was scared of the Applicant does not mean the Applicant intimidated him. To the extent that the Officer relied on this fact to bring the alleged wrongdoing into the scope of s. 36(2), she further erred.

(D) ***Were the Officer's factual conclusions under s.36(2)(c) unreasonable?***

27. The mere fact a person was charged with an offence is not, in and of itself, evidence that the person committed that offence. Instead, the facts supporting such a finding must be based on credible and trustworthy evidence such as witness statements, police reports, and court records. Moreover, the decision-maker's findings must be the product of an independent review on that evidence and not based on the simple fact that charges have been brought against this individual: *Canada (Citizenship and Immigration) v. Solmaz*, 2020 FCA 126, at para 115.

28. In the present case, the Officer did have the benefit of a court report provided by the Applicant himself which set out the allegations of the assault. But whether or not the allegations in the report were credible or trustworthy turned on whether the Officer believed the Applicant that the complainant perjured himself in making the allegations, or whether the Officer believed the Informant that the complainant was too afraid of the Applicant to testify.

29. The Respondent argues that the Applicant's failure to disclose the existence of the charge in his application forms provided an entirely reasonable basis for the Officer to discount his credibility and reject his version of events. Combined with the low standard of proof in inadmissibility proceedings – reasonable grounds to believe – the Court statement and the

Informant's email were sufficient to make out the s.36(2)(c) allegation: *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114. The Respondent argues that reasons in this context are not meant to be encyclopedic and the Officer provided sufficient explanation of her thought process, analysis, and conclusion.

30. What concerns me is that the Officer appears to have overlooked the potential reasons to discount the credibility of the Informant. For instance, the Informant stated that the Applicant had previously been cautioned by police but the Applicant's evidence refuted this. The Informant also characterized the Applicant as having as having a history of abusing alcohol but, once again, the Applicant's evidence refuted this. The Respondent argues that the Officer did not rely on either of these portions of the Informant's evidence; they were not disclosed to the Applicant; and they did not form part of the case to meet. Be that as it may, these contradictions were apparent on the face of the evidence that the Officer had before her. Notwithstanding the low standard of proof and acknowledging that the duty to provide reasons in these circumstances is modest, I do not see how the Officer could have reasonably ignored these contradictions in accepting the Informant's evidence and concluding the s.36(2)(c) allegation had been made out.

31. For this reason, I find the Officer's reasoning to be unreasonable.

IV. Test for Certification and Certification of Question

32. The Respondent proposes the following questions for certification:

> In the immigration context, can informer privilege be pierced where the privileged information cannot be obtained through any other source and there is no other reasonable way for the Applicant to respond to the inadmissibility allegation?
>
> Is it reasonable to interpret s.36(2)(c) of the IRPA as including acts committed outside of Canada when those acts were the subject of a criminal charge in the foreign

jurisdiction but did not result in a conviction, especially where the foreign jurisdiction is a strong democracy with a functioning court system?

33. Pursuant to s. 74(d) of the *IRPA*, I am prepared to certify these questions as each is a legal issue that arises from the facts of the case (*Sran v. Canada (Minister of Citizenship and Immigration)*, 2018 FCA 16 at para. 16), is dispositive of the appeal (*Varela v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at para. 28 and 32) and transcends the case at hand such that it lends itself to an answer of general application (*Kunkel v. Canada (Minister of Citizenship and Immigration)*, 2009 FCA 347 at paragraph 9).

THIS COURT'S JUDGMENT is:

1. The application for judicial review is granted.
2. The decision of the Officer is set aside and the matter is remitted for redetermination.
3. The following questions are certified under subsection 74(d) of the *IRPA*:

> In the immigration context, can informer privilege be pierced where the privileged information cannot be obtained through any other source and there is no other reasonable way for the Applicant to respond to the inadmissibility allegation?
>
> Is it reasonable to interpret s.36(2)(c) of the IRPA as including acts committed outside of Canada when those acts were the subject of a criminal charge in the foreign jurisdiction but did not result in a conviction, especially where the foreign jurisdiction is a strong democracy with a functioning court system?

4. There is no order as to costs.

Appendix "A": inadmissibility provisions at issue

DIVISION 4

INADMISSIBILITY

Rules of interpretation

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred are occurring or may occur.

[…]

Criminality

36 (2) A foreign national is inadmissible on grounds of criminality for

[…]

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

SECTION 4

INTERDICTIONS DE TERRITOIRE

Interprétation

33. Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

[…]

Criminalité

36 (2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :

[…]

(c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction sous le régime d'une loi fédérale punissable par mise en accusation.