

Federal Court



Cour fédérale

**Date: 20191107**

**Docket: IMM-6550-19**

**Citation: 2019 FC 1398**

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

**Ottawa, Ontario, November 7, 2019**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**DAVID BERTIAUX**

**Respondent**

**ORDER AND REASONS**

[1] The Immigration Division [ID] of the Immigration and Refugee Board released the respondent from detention on a number of conditions.

[2] The Minister of Public Safety and Emergency Preparedness [Minister] is seeking an order to stay the respondent's release.

[3] The Court through Mr. Justice A. Diner suspended the respondent's release pending this hearing before the Court.

[4] Some important history to consider in this case has been disclosed in this file. The respondent, a Belgian citizen, is accused, in his country of origin, of fraud against a number of people totalling 6,437,680 euros.

[5] Because the respondent did not disclose his past to Canadian authorities, they did not know the respondent's history, and they granted him a visa and a work permit.

[6] The respondent arrived in Canada on October 4, 2018.

[7] In addition, as a result of the respondent's dealings with a former employer, he was summoned to court for taking nearly \$30,000 for services that he had never provided.

[8] A Belgian arrest warrant was issued against the respondent following his failure to appear for his court hearing.

[9] Interpol sent an arrest warrant for the respondent to the Canada Border Services Agency.

[10] Two reports were issued under section 44 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[11] The Minister, through a representative, requested that the respondent be kept in detention on the grounds of flight risk and public danger.

[12] Despite his history, the respondent was released by the ID on a \$20,000 bond paid by one of the respondent's co-workers.

[13] The Minister met the tri-partite test set out in *Toth v Canada (Citizenship and Immigration)* (1988), 86 NR 302 (FCA) [*Toth*], to stay the release order.

[14] The serious issue test must be assessed according to the standard set by the Supreme Court of Canada in *Manitoba (AG) v Metropolitan Stores Ltd*, [1987] 1 SCR 110 and *RJR - Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311, namely whether there is a "serious question to be tried" as opposed to a frivolous or vexatious claim. See also *R v Canadian Broadcasting Corporation*, 2018 SCC 5, where a "*prima facie* case" must be established for the serious question raised.

[15] The Court accepts the applicant's position that a high preliminary threshold for the serious issue has been met in this case, supporting the criteria of the *Toth* test.

[16] Moreover, as the Court stated in *Sahin v Canada (Minister of Citizenship and Immigration)*, [1995] 1 FC 214 at para 31:

It seems self-evident that both an applicant and the respondent have an interest in expediting the immigration process when a person is held in detention. There is an obvious public interest in detaining a person who would pose a danger to the public. There is also public interest, although perhaps somewhat less than in the

case of public danger, in detaining a person when there are grounds for believing he or she would not appear for examination, inquiry or removal. This public interest must be weighed against the liberty interest of the individual. In many cases, the most satisfactory course of action will be to detain the individual but expedite the immigration proceedings.

[17] The public interest and the tri-partite test in *Toth* favour the status quo pending a determination on the merits.

**ORDER**

**THIS COURT ORDERS that** the respondent's release be suspended until the application for leave has been considered and, if the application for leave is granted, until the judicial review is completed.

**THIS COURT FURTHER ORDERS that** the grounds for the respondent's continued detention be reviewed every 30 days and that no release order be issued without a Court order.

“Michel M. J. Shore”

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Judge

Certified true translation  
This 21st day of November 2019.

Johanna Kratz, Reviser

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-6550-19

**STYLE OF CAUSE:** THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS v  
DAVID BERTIAUX

**MOTION CONSIDERED BY CONFERENCE CALL ON NOVEMBER 7, 2019,  
BETWEEN OTTAWA, ONTARIO, AND MONTRÉAL, QUEBEC**

**ORDER AND REASONS:** SHORE J.

**DATED:** NOVEMBER 7, 2019

**ORAL AND WRITTEN SUBMISSIONS BY:**

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