Federal Court Cour fédérale

Date: 20240326

Docket: T-2554-22

Citation: 2024 FC 473

Ottawa, Ontario, March 26, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

T.C.S.T

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, T.C.S.T (the "Applicant"), is seeking a Judicial Review in respect of a decision dated on November 21, 2022, rendered by the Investigator PRD of the *Passport Entitlement and Investigations Division Domestic Network* [PEID], refusing to issue a passport in the Applicant's name (the "Decision"). Pursuant to an earlier confidentiality order of this Court on December 19, 2023, the Applicant is only referred to by his initials.

[2] The refusal to issue the passport was pursuant to section 9(1)(b) of the *Canada Passport Order* [CPO] because the Applicant faced several indictable offences at the time he applied to obtain a passport. However, by the time his application for judicial review was first scheduled to be heard on December 19, 2023, he was found to be guilty of section 271 of the *Criminal Code* [CC], namely sexual assault. He was sentenced to a three year sentence (See *R. v T.C.S.T*, 2023 BCSC 1656 (CanLII) at para 137 [*R v T.C.S.T*]).

[3] The Respondent raised the mootness of the case as a preliminary matter at the hearing that took place on December 19, 2023. On that date, the parties had not filed written arguments on mootness and there was some uncertainty about whether there remained any outstanding criminal charges.

[4] Both parties made further written submissions and confirmed that the Applicant was convicted under section 271 of the CC, and that he was sentenced to a term of imprisonment for three years. The Crown had also stayed the remaining outstanding charges against the Applicant. The hearing was resumed on March 18, 2024 where I asked to hear arguments on both mootness, as it remained outstanding, as well as the underlying judicial review.

II. Summary of Facts

[5] The Applicant was in possession of a valid ten-year Canadian passport that was issued to him in 2017. However, after he could not find it in his belonging, he applied for a new one. By then, he faced criminal charges. On August 26, 2022, together with his passport application, through his counsel, the Applicant made submissions to the PEID. Counsel disclosed the

indictable charges the Applicant faced and submitted that it would be unreasonable for the Minister to refuse to issue the Applicant a passport, that section 9(1)(b) of the CPO violated section 6 of the *Canadian Charter of Rights and Freedoms* [*Charter*], and that he needed to travel internationally for his work as a fortune teller with clients in several Asian countries, and to visit his old and ailing mother.

[6] On September 2, 2022, the PEID provided a procedural fairness letter to the Applicant. They advised that they had undertaken an investigation that may affect the Applicant's entitlement to a passport. This was pursuant to sections 9(1)(b) and 2.1 of the CPO for being charged with committing indictable offences under sections 151, 152, 173(2) and 271 of the CC. These are all sexual offences, and the particulars of which was before the PEID showed that the victim was under the age of sixteen. They also gave the Applicant a deadline of October 3, 2022 to inform them of any information that would contradict or neutralize the indictable sexual offences.

[7] On September 26, 2022, the Applicant made further submissions on not being a flight risk and repeated his earlier submissions on his needs to have a passport and the potential violation of his section 6 *Charter* rights. He did not include any evidence to contradict and neutralize the outstanding indictable offences.

[8] On November 21, 2022, the PEID made a final decision (the "Decision") not to issue the Applicant a passport. This was pursuant to section 9(1)(b) of the CPO and that the conditions described in their letter of September 2, 2022 remained valid, namely that the Applicant

remained charged with committing indictable offences under sections 151, 152, 173(2) and 271 of the CC.

[9] The Applicant argues that the PEID's decision breaches his rights under s. 6(1) of the *Charter*.

[10] The Applicant further argues that the PEID's decision was not reasonable as it barred him from obtaining a passport due to his pending criminal charges – even though he was released on bail and found to not pose a flight or safety risk. In his opinion, the Decision was also unreasonable because it did not provide an intelligible framework for how the decision-maker exercised their discretion.

[11] The Respondent argues that the PEID's decision is reasonable and that the Applicant did not demonstrate that the PEID's decision failed to consider or breached his *Charter* rights.

[12] The Respondent is also of the opinion that there is no merit to the Applicant's constitutional challenge as the Federal Court already held that s. 9(1)(b) CPO's limitation on individual's mobility rights under s. 6 of the *Charter* is reasonable under s. 1 of the *Charter* (*Elangovan v Canada (AG)*, 2020 FC 882; *Almrei v Canada (MCI)*, 2007 FC 1025); see also *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*]).

[13] However, despite the Applicant's sentencing of three year's imprisonment for the offence of sexual assault (*R. v T.C.S.T* at para 137), the Applicant asks the Court to hear and decide the

judicial review application despite its potential mootness and to determine whether section 9(1)(b) of the CPO breach his mobility rights under s. 6 of the *Charter*.

III. Decision

[14] For the reasons set out below, I find the Application to be moot. I also do not believe that this is a situation where the Court's discretion should be exercised to decide on the merits of the Application. The application for judicial review is therefore dismissed.

IV. Legal Issues

[15] Based on the arguments of the parties, these are the issues before this Court:

1) Did the Applicant's conviction and three year sentence render the Application for Judicial Review moot? If so, should the Court exercise its discretion to hear the Application?
2) If the Court decides to hear the Application, does section 9(1)(b) of the CPO unjustifiably infringe the Applicant's rights under section 6 of the *Charter*?
3) If the Court decides to hear the Application, was the Decision reasonable? The Applicant argued that the Decision was not reasonable because of fettering, lack of engagement with his submissions, and/or its failure to appropriately balance the Applicant's section 6 *Charter* rights with CPO's objectives, as required by a trilogy of cases decided by the Supreme Court of Canada, enforcing the framework in *Doré*.

(1) Mootness

(a) *Is the Application for Judicial Review moot?*

[16] The Respondent's mootness argument is largely based on the Applicant's conviction and three year sentence. The Respondent argues that while the Decision to deny the issuance of passport was under s. 9(1)(b) of the CPO – namely that the Applicant stood charged in Canada with the commission of an indictable offence – because of his conviction and sentence, he is now subject to section 9(1)(d). As a result, this court cannot issue any order available on judicial review that would have any concrete effect on the Applicant.

[17] The Respondent further argues that considering that the Applicant is now a federal offender, he falls under the jurisdiction of the *Correctional Service of Canada* [CSC] for the entire duration of his sentence. Pursuant s. 161(b) of the *Corrections and Conditional Release Regulations* [CCRR] an offender who is released on parole must remain in Canada at all times, meaning that there is no live issue regarding the refusal to issue a passport pursuant to s. 9(1)(b) CPO as the PEID decision no longer has an impact on the Applicant.

[18] In its response dated February 16, 2024, the Applicant argued that the case was not moot since he remains without a passport. Alternatively, the Applicant is of the opinion that the Court should exercise its discretion to still hear the case as it involves repetitive *Charter* breaches that have evaded judiciary scrutiny thus far.

[19] Further, relying on *Zhan v Canada (CIC)*, 2010 FC 822 [*Zhan*], the Applicant argued that notwithstanding the stay, the Applicant remained a person charged with one or more indictable

offences. This is because the Court held in *Zhan* that the plain meaning of subsection 579(2) of the CC is that proceedings that have been stayed have been suspended, but not terminated or nullified. It is only after the expiry of one year after the entry of the stay of proceedings that the proceedings are “deemed never to have commenced”, if the proceedings are not reinstated.

[20] In its written submissions sent on February 23, 2024, the Respondent replied to the Applicant’s response by stating that there is no practical remedy for the Applicant as the remedies available to him on this judicial review do not include the issuance of a passport nor an order to force *Immigration, Refugees and Citizenship Canada* [IRCC] to issue him a passport. Therefore, considering that his relief would be for the PEID Decision to be sent for re-determination and that the decision already provides that the Applicant may re-apply for a passport once he is no longer subject to the conditions set out in s. 9(1)(b) CPO, he should simply follow that avenue once his conditions change.

(b) *The Applicable Law – Mootness*

[21] In cases of mootness, the leading decision *Borowski v Canada (Attorney General),* [1989] 1 SCR 342 [*Borowski*], at page 353 states that “a matter is moot when there is no longer a live issue between the parties and an order will have no practical effect.”

[22] There is a two part analysis that the Court must follow when deciding on the mootness of a case. Firstly, the Court must “determine whether the required tangible and concrete dispute has disappeared and the issues have become academic” and, secondly, "if the response to the first

question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case." (*Borowski*, at page 353)

[23] In deciding to exercise its discretion to hear a moot application the Court must consider the following: (1) the presence of an adversarial context; (2) the appropriateness of applying scarce judicial resources; and (3) the Court's sensitivity to its role relative to that of the legislative branch of government. (*Borowski*, at pages 358-362 cited in *Canadian Frontline Nurses v Canada (Attorney General),* 2024 FC 42 (CanLII) at para 125)

[24] The Federal Court of Appeal weighed in on these factors in *Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 14:

> [14] The first factor may support the exercise of the discretion where despite the absence of a concrete dispute, the issues will be fully argued by parties with a stake in the outcome. The second factor includes, where applicable, consideration of whether the case presents a recurring issue, but one that is of short duration or otherwise evasive of court review. The third factor recognizes that the courts' primary task within our constitutional separation of powers is to resolve real disputes. As this Court has stated, "While *Borowski* and cases that apply it do not forbid courts in appropriate circumstances from determining a proceeding after the real dispute has disappeared, this underlying rationale reminds us that the discretion to do so must be exercised prudently and cautiously": *Canada (National Revenue) v. McNally*, 2015 FCA 248 at para. 5.

[25] It's also important to keep in mind that the leading principle behind this analysis is the context of our adversarial system, where both parties have a stake in the outcome of the case, as well as the judicial economy, which requires that a court examine the particular circumstances of a case before deciding if its worthwhile to allocate the already scarce judicial resources to

resolve the moot issue. Finally, the court must always keep in mind the effectiveness or efficacy of judicial intervention when exercising its discretion to hear a moot case. (*Borowski*, at page 344)

[26] As a side-note, I would also like to address an argument made by the parties with respect to Justice Go's decision in *Thorne v Canada (Attorney General)*, 2023 FC 364 [*Thorne*]. In its arguments, the Respondent argued that this case is applicable and that a Court may decline to decide on a decision under the CPO when it no longer has any practical effect on an applicant – even if it raises *Charter* issues – as well as declining to exercise its discretion to hear a moot application notwithstanding findings of a continued adversarial relationship. (see *Thorne*, at paras 22 and 38-41) On its end, the Applicant argued that *Thorne* should be distinguished to the present case as the applicant in that situation was given a passport and was no longer restricted from accessing passport services.

[27] I disagree with the Applicant and agree with the Respondent that what matters is the legal principle. Even though the facts in *Thorne* can be distinguished from this case, the underlining legal principles – which are also found in *Borowski* – are still applicable. In *Thorne,* the Court also dealt with the same constitutional challenge to s. 9 CPO through s. 6 *Charter*, which is an analysis that applies to our situation. The Court also dived into the analysis that should be followed when determining if an application is moot as well as the discretionary power to decide a moot case on the merit. All of these points further confirm the application of *Borowski* and the legal principles behind, which can be of use in the present file.

[28] Furthermore, the Applicant in *Thorne* had the criminal charges against him withdrawn, meaning that he had to unnecessarily face the limits imposed on him by s. 9(1)(b) of the CPO while the charges remained outstanding. Despite this, the Court still declined to decide the application on its merits.

(c) *The Application to the Facts*

[29] The situation at hand can be summarized as follow: on one side, we have the Applicant who claims that the matter is not moot as he has yet to receive the passport he had requested. On the other side, we have the Respondent who claims that the case is moot since the passport was refused to the Applicant due to his pending criminal charges and that he has since been convicted of a crime and is serving a three years sentence, meaning that no order available on judicial review would have concrete effect on the Applicant.

[30] A case is considered moot when "there is no longer a live issue between the parties and an order will have no practical effect." (*Borowski*, at page 353)

[31] In his notice of application, the Applicant sought following reliefs:

a) An order of the court setting aside the Decision.
b) An order that the matter be referred back to a different decision-maker for reconsideration in accordance with such direction as this Honourable Court deems appropriate.
c) A declaration that the Canadian Passport Order is unconstitutional in whole or in part.
d) An order of mandamus requiring the Tribunal to issue a Canadian passport to the applicant, pursuant to s. 18(1)(a) of the Federal Courts Act.
e) A declaration that the applicant is entitled to possess a Canadian passport.
f) The applicant be awarded costs.

g) Such further and other relief counsel may advise and as the Court may permit.

[32] The Applicant is now incarcerated and his sentence is scheduled to end in or around 2026. As submitted by the Respondent, none of the reliefs sought by the Applicant will have a practical effect on his situation. If the matter is referred back to a different decision-maker for reconsideration, the Applicant will fall within the situation of s. 9(d) CPO which would allow PEID to still refuse to issue him a passport. In the situation where he were to receive a passport, it will still have no practical effect on him as he is currently incarcerated and unable to travel. Even in the situation where he is allowed full parole, s. 161(b) CCRR would still ban him from leaving Canada during his entire sentence.

[33] I do not agree with the Applicant that the potential application of s. 579(2) of the CC is determinative to him. Even if s. 9(1)(b) continues to apply to him because of the potential revival of his stayed charges, this would only be concurrent to s. 9(1)(d), which applies unequivocally due his Conviction and for the entire period of his three year sentence. The determinative factor lies with s. 9(1)(d) while 9(1)(b) is concurrent at best. Also, due to the three year sentence, s. 9(1)(d) will outlast the potential application of s. 9(1)(b). This is different than the case in *Zhan* when the stayed charges, and their potential revival under s. 579(2) of the CC, triggered the only applicable legal provision, in that case, section 22(1) of the *Citizenship Act*.

[34] I also note that the Applicant in *Thorne* had also argued that despite the fact that he got his passport, the PEID could still apply s. 9(1)(b) as a result of his prior criminal charges. Therefore, he needed a declaration of constitutional invalidity of the section to remove the bases

for any potential future action that could impact his rights (*Thorne* at para 24). Despite that possibility, the Court viewed the application as moot because the passport was returned. In this case, it is moot because s. 9(1)(d) continues to apply for the entire period of 3 years before the Applicant's circumstances will change. The fact that *Thorne* got his passport was the result of the charges being withdrawn, while the result of the Conviction in this case triggers s. 9(1)(d) overriding s. 9(1)(b), for which this Court cannot offer a practical remedy.

[35] I therefore find that there is no live dispute between the parties that can be potentially remedied by this Court. The Application is therefore moot.

(2) Now the Application is moot, should the Court still hear the Application?

[36] When a case is moot, courts should only consider it where it is in the interests of justice or the public interest to do so (*Thorne* at para 31 and *ES v Joannou*, 2017 ONCA 655 [*ES*] at para 37).

[37] In a moot case, the Court may use its discretionary power to hear the case on the merit. But to be able to do so, the Court must consider three elements (*Borowski*, at pages 358-362 cited in *Canadian Frontline Nurses v Canada (Attorney General),* 2024 FC 42 (CanLII) at para 125):

> (1) the presence of an adversarial context;
>
> (2) the appropriateness of applying scarce judicial resources; and
>
> (3) the Court's sensitivity to its role relative to that of the legislative branch of government.

[38] In *Borowski*, the Supreme Court of Canada explains these three elements as follow:

> A full adversarial context, in which both parties have a full stake in the outcome, is fundamental to our legal system. The second is based on the concern for judicial economy which requires that a court examine the circumstances of a case to determine if it is worthwhile to allocate scarce judicial resources to resolve the moot issue. The third underlying rationale of the mootness doctrine is the need for courts to be sensitive to the effectiveness or efficacy of judicial intervention and demonstrate a measure of awareness of the judiciary's role in our political framework. The Court, in exercising its discretion in an appeal which is moot, should consider the extent to which each of these three basic factors is present. The process is not mechanical. The principles may not all support the same conclusion and the presence of one or two of the factors may be overborne by the absence of the third, and vice versa.
>
> (*Borowski,* at page 345)

(a) *The presence of an adversarial context*

[39] On the first criterion, the Applicant is of the opinion that there is an adversarial context and has put considerable effort to argue it. The Respondent differs. This, in and of itself was found in *Thorne* to be enough to conclude in the existence of and adversarial context between the parties (*Thorne*, at para 38).

[40] Furthermore, as explained in *Borowski*, at pages 358-359, for the first requirement to be satisfied, the parties should have a stake in the outcome, but this can be true even if there is no more live controversy between the parties. For example, if there are collateral consequences of the outcome, the Court may consider that there is the necessary adversarial context.

[41] On this first element, I agree with the Applicant’s representations: the parties remain opposed on the fundamental issues in this case, and have articulated comprehensive positions on

those issues in their respective written submissions and in oral remarks prepared in anticipation of the hearing.

[42] But, as the Respondent raised through its citation of *Thorne* at paragraph 41, the satisfaction of the first prong, in itself is not determinative for the Court to exercise its discretion to hear the moot application.

(b) *The appropriateness to apply scarce judicial resources*

[43] The second criterion can be attributed to judicial economy and should be analyzed as follow (see *Borowski,* at page 345 and *Thorne*, at para 42):

1. Does the decision have practical side effects on the rights of the parties?
2. Is the case capable of repetition and evasive of review?
3. Is the issue raised one of public, social or constitutional interest with broad implications?

[44] Regarding the first point, there would simply be no practical remedy, or side effects, on the rights of the Applicant, as analyzed above.

[45] As for the second point, it is not the first time that the issue of the constitutionality of s. 9(1)(b) CPO has been raised in front of this Court, but as Justice Go mentioned in *Thorne*, at paras 43-45, it cannot be seen as being evasive of review:

> [43] The Applicant did not pursue the first point at the hearing rigorously, although he did emphasize the limited number of judicial review decisions regarding paragraph 9(1)(b) of the CPO. The six cases that have come before this Court are: *Courtemanche*

> *v Canada (Attorney General)*, 2020 FC 649 [*Courtemanche*]; *Elangovan v Canada (Attorney General)*, 2020 FC 882 [*Elangovan*]; *Al Nahawi v Canada (Attorney General)*, 2017 FC 1085; *Haddad v Canada (Attorney General)*, 2017 FC 235 [*Haddad*]; *Lipskaia v Canada (Attorney General)*, 2016 FC 526; *El Shurafa v Canada (Attorney General)*, 2014 FC 789.
>
> [44] I am not persuaded by the Applicant's argument that the Impugned Provisions are evasive of review. Indeed three of the cases cited by the Applicant raised Charter issues in the context of a paragraph 9(1)(b) decision: Haddad; Courtemanche; Elangovan.
>
> [45] Although the Court has yet to consider the constitutionality of paragraph 9(1)(b) of the CPO per se, it has examined whether a decision under the Impugned Provisions was unreasonable because it failed to appropriately balance an applicant's section 6 Charter rights with the CPO's objectives, as required by Doré: see Elangovan at para 2. In Haddad, this issue was raised in the alternative if the Court found no error of law: at para 28.

[46] The Applicant argues that these cases do not deal with the constitutionality of s. 9(1)(b) of the CPO and are distinguished on their facts in a determinative manner. For example, in *Elangovan*, the Court found no evidence of hardship on the Applicant where in this case the Applicant had argued that his inability to get a passport resulted in hardship to his fortune telling business and his inability to visit his ailing family. I disagree, I find that the Applicant's hardship argument here is academic. It is undisputed that the Applicant is a dual citizen and used his Hong Kong passport to travel outside of Canada even when the Canadian authorities had withheld the issuance of a passport. Therefore, there is no reason to believe that he suffered hardship to his business and he was able to visit his ailing family. I also agree with the Respondent that other than a statement and counsel's submissions, the Applicant here had also not filed evidence of his international clients, such as contracts, or on the medical conditions of his ailing family. Therefore, I do not find that the Applicant's allegations of hardship here were either substantiated or remained determinative. Most importantly, in *Elangovan*, the Court engaged

with the arguments on the applicant's *Charter* infringement and found that he had failed to balance his mobility rights under s. 6 of the *Charter*.

[47] The Applicant argued that *Haddad* should not apply because even though it raised *Charter* issues in the context of a paragraph 9(1)(b) of CPO, it predated the Supreme Court of Canada decisions in *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 and *Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31. I disagree that this is determinative or even relevant. Both of these cases adopted the *Doré* framework on *Charter* values, and there is no dispute between the parties that the Applicant here is, or that Mr. Haddad was, a *Charter* right holder. *Courtemanche* equally raised *Charter* issues in the context of a s. 9(1)(b) CPO decision.

[48] The Courts have also found that the CPO provisions limiting the issuance of passport limit the applicant's mobility rights under s. 6 of the *Charter*, but that this is saved by section 1, such as the Federal Court of Appeal in *Kamel*. I disagree with the Applicant the entire legal framework of *Kamel* should be rejected because it dealt with s. 10.1 of CPO, which engages national security or terrorism offences, not those merely facing unsubstantiated charges under s. 9(1)(b). I note that sections 9 through 11 deal with "Refusal of Passports and Revocation". In *Kamel*, the Court acknowledged that decisions under paragraphs section 10.1 infringes section 6 *Charter* rights and therefore must be balanced to not restrict these rights disproportionately in achieving the CPO's objectives (*Kamel* at para 35). In fact, paragraph 35 of *Kamel* was cited in *Elangovan* (at paragraph 18) to also find that decisions under s. 9(1)(b) infringes s. 6 of the

Charter and must be balanced not to restrict the mobility rights disproportionately in achieving CPO's objectives.

[49] Therefore, the Court has on multiple occasions dealt with the reasonableness of a decision when *Charter* issues in the context of a paragraph 9(1)(b) decision were raised: *Haddad*; *Courtemanche*; *Elangovan* and *Kamel*, the latter dealing with the constitutionality of another provision of the CPO, but which can still be of interest in the context of a s. 9(1)(b) analyze, as described above.

[50] Although the Court has yet to consider the constitutionality of paragraph 9(1)(b) of the CPO per se, it has examined whether a decision under the Impugned Provisions was unreasonable because it failed to appropriately balance an applicant's section 6 *Charter* rights with the CPO's objectives, as required by *Doré*: see *Elangovan* at paragraph 2. In *Haddad*, this issue was raised in the alternative if the Court found no error of law: at paragraph 28. Also, I find that the Applicant is speculating to suggest that this Court will not have a reasonable opportunity in the future to revisit the constitutionality of the provision. In fact, *Haddad*, *Courtemanche* and *Elangovan* were all decided on merits and based on the arguments advanced by the parties for the specific facts at hand.

(c) *Public, social or constitutional interest with broad implications*

[51] As for the third and final consideration, namely the broader implications raised by the issue, I find that this criteria is not engaged in this case. Indeed, as stated by the Federal Court of Appeal in *Canadian Union of Public Employees (Air Canada Component) v Air Canada,* 2021

FCA 67 [*CUPE*] at paragraph 7 and confirmed in *Thorne*, at paragraph 49: a "mere jurisprudential interest fails to satisfy the need for a concrete and tangible controversy."

[52] I have found that decisions made under the impugned provisions of the CPO are not evasive of review and that there is no live issue as the Applicant's challenge to obtaining and using a passport under s. 9(1)(d) of CPO will outlast his challenge to s. 9(1)(b).

[53] Many of the arguments raised by the Applicant here, such as the constitutionality of s. 9(1)(b) of CPO, and how the potential delay at Federal Court compared to the criminal court, can often render cases such as this moot, were before my colleague Madam Justice Go in *Thorne*. She has addressed in her decision how it is not enough to question the "uncertainty" and "evasiveness" arising around these issue to allocate the already scarce judicial resources to legal questions (*Thorne*, at paras 47-57). I agree with her and find her logic persuasive.

(d) *The Court's sensitivity to its role relative to that of the legislative branch of government*

[54] This final criterion reminds the Court to not engage in abstract cases, for the sake of "law-making" and "must demonstrate some sensitivity to the effectiveness or efficacy of judicial intervention." (*Borowski*, at page 365). It is not the proper role of the Court to make law in the abstract, a task reserved for the Parliament (*Amgen Canada Inc v Apotex Inc*, 2016 FCA 196 [*Amgen*] at para 16]

[55] In the present case and in light of the analysis of the previous criteria of the application of the Court's discretion to decide on the merits of a moot case, I agree with the Respondent

submissions that for the Court to decide on the merit of this case would go beyond its adjudicative role as it would be like enabling the Court to pronounce itself on the state of the law.

[56] Just like in *Thorne*, even considering the full record and the Applicant's argument that determining the constitutionality of a law falls within the Court's role, the decision would be made in the absence of any factual context considering the absence of any live dispute and evidence of impediment to the Applicant's mobility rights under the *Charter*. (*Thorne*, at paras 62-64).

V. Conclusion

[57] For all the reasons stated above, the application for judicial review is dismissed for mootness. I decline to determine the merits of the Application.

[58] This is an inappropriate case for an order of costs.

JUDGMENT IN T-2554-22

THIS COURT'S JUDGMENT is that

1. The Judicial Review is dismissed.

2. There is no order as to costs.

"Negar Azmudeh"
Judge

APPENDIX

The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 **[Charter]**

Mobility of citizens

6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Liberté de circulation

6 (1) Tout citoyen canadien a le droit de demeurer au Canada, d’y entrer ou d’en sortir.

Liberté d’établissement

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

a) de se déplacer dans tout le pays et d’établir leur résidence dans toute province;

b) de gagner leur vie dans toute province.

Restriction

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d’application générale en vigueur dans une province donnée, s’ils n’établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de l’obtention des services sociaux publics.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n’ont pas pour objet d’interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d’individus défavorisés socialement ou économiquement, si le taux d’emploi dans la province est inférieur à la moyenne nationale.

Canadian Passport Order, SI/81-86 **[CPO]**

2.1 For the purposes of this Order, an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

2.1 Pour l’application du présent décret, est assimilée à un acte criminel l’infraction punissable sur déclaration de culpabilité soit par mise en accusation, soit par procédure

sommaire, indépendamment du mode de poursuite effectivement retenu.

Refusal of Passports and Revocation

9 (1) Without limiting the generality of subsections 4(3) and (4) and for greater certainty, the Minister may refuse to issue a passport to an applicant who

[…]

(b) stands charged in Canada with the commission of an indictable offence;

[…]

(d) is subject to a term of imprisonment in Canada or is forbidden to leave Canada or the territorial jurisdiction of a Canadian court by conditions imposed with respect to

(i) any temporary absence, work release, parole, statutory release or other similar regime of absence or release from a penitentiary or prison or any other place of confinement granted under the Corrections and Conditional Release Act, the Prisons and Reformatories Act or any law made in Canada that contains similar release provisions,

(ii) any alternative measures, judicial interim release, release from custody, conditional sentence order or probation order granted under the Criminal Code or any law made in Canada that contains similar release provisions, or

(iii) any absence without escort from a penitentiary or prison

Refus de délivrance et révocation

9 (1) Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre peut refuser de délivrer un passeport au requérant qui :

[…]

b) est accusé au Canada d'un acte criminel;

[…]

d) est assujetti à une peine d'emprisonnement au Canada ou est frappé d'une interdiction de quitter le Canada ou le ressort d'un tribunal canadien selon les conditions imposées :

(i) à l'égard d'une permission de sortir, d'un placement à l'extérieur, d'une libération conditionnelle ou d'office, ou à l'égard de tout régime similaire d'absences ou de permissions, d'un pénitencier, d'une prison ou de tout autre lieu de détention, accordés sous le régime de la Loi sur le système correctionnel et la mise en liberté sous condition, de la Loi sur les prisons et les maisons de correction ou de toute loi édictée au Canada prévoyant des mesures semblables de mise en liberté,

(ii) à l'égard de toutes mesures de rechange, d'une mise en liberté provisoire par voie judiciaire, d'une mise en liberté ou à l'égard d'une ordonnance

granted under any law made in Canada;
[…]

de sursis ou de probation établie sous le régime du Code criminel ou de toute loi édictée au Canada prévoyant des mesures semblables de mise en liberté,
(iii) dans le cadre d’une permission de sortir sans escorte d’une prison ou d’un pénitencier accordée en vertu de toute loi édictée au Canada;
[…]

10.1 Without limiting the generality of subsections 4(3) and (4) and for greater certainty, the Minister of Public Safety and Emergency Preparedness may decide that a passport is not to be issued or is to be revoked if he or she has reasonable grounds to believe that the decision is necessary to prevent the commission of a terrorism offence, as defined in section 2 of the Criminal Code, or for the national security of Canada or a foreign country or state.

10.1 Sans que soit limitée la généralité des paragraphes 4(3) et (4), il est entendu que le ministre de la Sécurité publique et de la Protection civile peut décider qu’un passeport ne doit pas être délivré ou qu’il doit être révoqué s’il a des motifs raisonnables de croire que cela est nécessaire pour prévenir la commission d’une infraction de terrorisme, au sens de l’article 2 du Code criminel, ou pour la sécurité nationale du Canada ou d’un pays ou État étranger.

Corrections and Conditional Release Act, SC 1992, c 20

Conditions of Release

Definition of releasing authority

133 (1) In this section, releasing authority means
[…]

Conditions of release

(2) Subject to subsection (6), every offender released on parole, statutory release or unescorted temporary absence is subject to the conditions prescribed by the regulations.

Conditions de la mise en liberté

Définition d’autorité compétente

133 (1) Au présent article, autorité compétente s’entend :
[…]

Conditions automatiques

(2) Sous réserve du paragraphe (6), les conditions prévues par règlement sont réputées avoir été imposées dans tous les cas de libération conditionnelle ou d’office ou de permission de sortir sans escorte.

Corrections and Conditional Release Regulations, SOR/92-620 [CCRR]

Conditions of Release

161 (1) For the purposes of subsection 133(2) of the Act, every offender who is released on parole or statutory release is subject to the following conditions, namely, that the offender

[…]

(b) remain at all times in Canada within the territorial boundaries fixed by the parole supervisor;

[…]

Conditions de mise en liberté

161 (1) Pour l'application du paragraphe 133(2) de la Loi, les conditions de mise en liberté qui sont réputées avoir été imposées au délinquant dans tous les cas de libération conditionnelle ou d'office sont les suivantes :

[…]

b) il doit rester à tout moment au Canada, dans les limites territoriales spécifiées par son surveillant;

[…]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2554-22
STYLE OF CAUSE:	T.C.S.T v. MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	MARCH 18, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AZMUDEH J.
DATED:	MARCH 26, 2024

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