Date: 20080404

Docket: IMM-7117-05

Citation: 2008 FC 446

Ottawa, Ontario, April 4, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

DONNA MICHELLE WOODS
JANNIN MONIQUE WOODS
JASMIN KIMORNE NATASHA WOODS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 [Act] for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) dated November 03, 2005, (Decision) wherein the Board determined that the Applicants were not Convention refugees under section 96 of the Act, nor persons in need of protection under section 97 of the Act.

BACKGROUND

[2] The Applicants, Jannin, Jasmin and Donna, are three sisters. They are citizens of St. Vincent. They allege that they fear persecution in Saint Vincent from their brother, Ronald Woods (half brother to Donna), on the basis that he is abusive.

[3] The Applicants say they were physically and sexually abused by Ronald for years. He threatened to kill them on numerous occasions and has attacked them using objects such as stones and a machete. His abusive and threatening behaviour is known to the community, the family, and the authorities in St. Vincent.

[4] The Applicants do not fear any other person in St. Vincent.

[5] At the Board hearing, Donna provided a police report listing three convictions where Ronald was charged and sentenced for assaulting and wounding her. In 1988, Ronald was sentenced to hard labour for two months. In both 1990 and 1991, he was sentenced to one year of hard labour. The Applicants testified that there were other convictions for assaulting them including an attempted rape, which did not appear on the police report. They further testified that two restraining orders were issued by the court ordering Ronald to stay away from the family home, the latest being issued in 1998 upon Ronald’s release from a two-year jail sentence.

[6] According to the Applicants, notwithstanding his convictions, Ronald continued to stalk the family and his abusive behaviour towards them persisted. They further testified that the police were scared of Ronald and he did not obey the restraining orders issued by the courts.

[7] Jannin came to Canada on March 14, 1999; Jasmin arrived soon afterwards on March 28, 1999. In 1992, Donna moved to Trinidad and Tobago until 2001; she returned to St. Vincent briefly, and then came to Canada on October 12, 2001. All three women claimed refugee protection on November 26, 2004.

DECISION UNDER REVIEW

[8] The Board accepted the Applicants' evidence but rejected their claim for refugee status on the basis of state protection, holding that "the claimants…failed to rebut with clear and convincing evidence the presumption that the democratically elected government of St. Vincent is capable of providing protection for it is [sic] citizens and there was no evidence provided that the government is in chaos or disarray and unable to govern" (Decision at page 4). The Board also noted the Applicants' delay in seeking refugee protection, but stated that the determinative issue was the availability of state protection.

[9] The Board noted that there was evidence supporting the allegations "that women do suffer sexual, physical and emotional abuse in St. Vincent as they do in many regions of the world" but

found that there was documentary evidence that the government was “making a serious effort to address the problem” (Decision at page 4).

[10] After stating that the police in St. Vincent had arrested, charged and prosecuted Ronald on several occasions, the Board held that adequate state protection does not require perfect protection, nor protection for all citizens at all times.

[11] The Board further held that compelling reasons did not arise in this case because there was no evidence that the persecution suffered by the Applicants had reached the threshold of being so atrocious or appalling that they were psychologically damaged to the extent that they could not return to St. Vincent. The Board also noted that there was evidence of support and awareness in St. Vincent of the Applicants’ circumstances.

ISSUES

[12] The Applicants raise the following issue:

1. **Was the Board’s finding on state protection unreasonable?**

ARGUMENTS

Applicants' Submissions

[13] The Applicants say the Board imposed an unreasonable burden on them. They rely on *Franklyn v. (Canada) Minister of Citizenship and Immigration*, 2005 FC 1249, [2005] F.C.J. No. 1508 (QL) [*Franklyn*], a recent decision of this Court also involving a claim of domestic violence from St. Vincent. In that case, the Court held that the Board had placed too much emphasis on the fact that St. Vincent was a democratic state and pointed out that, although serious efforts were being made to curb domestic violence, it was not enough to demonstrate that the state has the ability to protect women in the claimants' situation. The Court held in *Franklyn* that it was unreasonable to have expected the claimants to seek further state protection after having been "rebuffed or ignored," and noted as follows at paragraph 23:

> …when, as in this case, past experiences turned out to be ineffective and the country documentation is clearly to the effect that domestic violence is met with insensitivity and inaction by the police, it seems to me that the threshold to establish the incapacity of the state to protect its citizens should be lower.

[14] The Applicants note that, in the present case, there was evidence before the Board that Ronald beat, threatened, stalked and attempted to kill them on numerous occasions. They argue that he has been in and out of jail, yet this has not and will not act as a deterrent. In their words, "he will not stop until he kills us." According to the Applicants, since the Board found their evidence to be credible, the Board was required to accept their "reasonable assessment and their lived experiences that a restraining order would not deter him from continuing to persecute them."

[15] Next, the Applicants argue that the Board considered the documentary evidence selectively and failed to refer to evidence contrary to its findings and that supported their claims. The Applicants note that the Board's analysis of the country conditions documentary evidence was contained entirely in two lines of its Decision, and the Board made reference only to the Domestic Violence Act, 1995 and an IRB Inforequest, VCT 42714.E. According to the Applicants, the Board's analysis did not deal with the contrary information contained in the same document and found in other IRB Inforequests.

[16] The Applicants add that, although the Board is not required to refer to every piece of documentary evidence, it must demonstrate in its reasons that it has read and appreciated the nature of all the evidence before it. In the present case, argue the Applicants, the Board ignored the letter from Mr. Sylvester Raymond-Cadette, a Barrister and Solicitor and former Magistrate in St. Vincent, which confirmed many of the Applicants' assertions, including that Ronald made continuous threats to his family and is a constant threat to the lives of family members who live in St. Vincent. According to the Applicants, the Board rejected their testimony and undertook a selective and minimal reading of the documentary evidence before it. Further, they suggest that the documentary evidence regarding St. Vincent revealed that the government has started to make some small steps, but those steps fall far short of providing actual protection. They argue that, in their particular situation, they received some temporary protection on a few occasions but the state continued to fail them and they continued to face a grave risk.

[17] Next, the Applicants argue that the Board erred in finding they failed to investigate other avenues and did not have information about the services provided by Marion House. The Applicants submit this finding is erroneous and fundamentally flawed for two reasons: first, the Applicants testified they had heard about Marion House and believed that it helped train young people who were out of school (a view, according to the Applicants, supported by the documentary evidence); second, they argue the Board confused the availability and effectiveness of state protection with the provision of counselling and advice. In support of this argument, the Applicant's rely on Justice McKeown's decision in *Cuffy v. Canada (Minister of Citizenship and Immigration)*, (1996), 121 F.T.R. 81 [1996] F.C.J. No. 1316 (QL) [*Cuffy*], where the Board was found to have confused the documentary evidence with respect to the existence of counselling and other resources with the state's ability to provide state protection. The Court in *Cuffy* held that "counselling is no substitute for the absence of police protection" (*Cuffy* at para. 15).

[18] The Applicants go on to suggest that the Board also erred in its assessment of whether the St. Vincent government could provide adequate and effective state protection. In its Decision, the Board noted as follows at pages 4-5:

> …I find that the police in St. Vincent had prosecuted Ronald as he had been arrested, charged and prosecuted on several occasions and the standard for adequate state protection is not perfect protection nor protection for all citizens at all times.

The Applicants submit that the jurisprudence of this Court has established that a willingness to provide state protection to victims of domestic violence is not enough for a finding of adequate state protection. The Applicants rely on this Court's decision in *Bobrock v. (Canada) Minister of*

Citizenship and Immigration, (1994), 85 F.T.R. 13 [1994] F.C.J. No. 1364 (QL), where Justice Tremblay-Lamer held as follows at paragraph 13:

> …even when the state is willing to protect its citizens, a claimant will meet the criteria for refugee status if the protection being offered is ineffective. A state must actually provide protection, and not merely indicate a willingness to help. Where the evidence reveals that a claimant has experienced many incidents of harassment and/or discrimination without being effectively defended by the state, the presumption operates and it can be concluded that the state may be willing but unable to protect the claimant.

[19] The Applicants argue that the Board was not responsive to the reality of their situation. They sought state protection on numerous occasions and, although they were successful in obtaining temporary protection on some of those occasions and Ronald was incarcerated for short periods of time, the reality is that Ronald is "out of control" and his incarcerations do not deter him. It is unrealistic, argue the Applicants, to hold that they should continue to place their lives at risk. In support of this assertion, the Applicants cite the Supreme Court of Canada's decision in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at page 724, 103 D.L.R. (4th) 1 [*Ward* cited to S.C.R.], where the Supreme Court held that "it would seem to defeat the purpose of international protection if a claimant would be required to risk his or her life seeking ineffective protection of a state, merely to demonstrate that ineffectiveness." Thus, according to the Applicants, the Board applied the wrong legal test to state protection and did not address whether the state of St. Vincent can provide *effective* protection to victims of domestic violence.

[20] The Applicants' final submission on this point is that the Board applied too elevated a standard in evaluating state protection. In its reasons, the Board, relying on *Ward*, held as follows at page 4:

> I find that the claimants have failed to rebut with clear and convincing evidence the presumption that the democratically elected government of St. Vincent is capable of providing protection for it is [*sic*] citizens and there was no evidence provided that the government is in chaos or disarray and unable to govern.

[21] The Applicants cite Justice O'Reilly's decision in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 320, [2007] F.C.J. No. 439 (QL) [*Carillo*], where it was held that the presumption of state protection does not mean that there is a higher burden of proof on claimants in cases involving the question of state protection. Rather, the presumption "simply means that, in those cases, claimants must tender reliable evidence on the point or risk failing to meet the definition of a refugee. In other words, the presumption is not a special hurdle that refugee claimants must overcome where the issue of state protection arises – rather, it simply establishes a starting point for analyzing the well-foundedness of a claim" (*Carillo* at para. 15).

[22] The Applicants further note that in *Carillo*, Justice O'Reilly held as follows:

> The words "clear and convincing confirmation" could be interpreted as creating a standard of proof. They are sometimes used to refer to a standard of proof greater than a balance of probabilities and just short of proof beyond a reasonable doubt (see Kenneth S. Brown, ed. *McCormick on Evidence*, 6th ed. (St. Paul, Minn.: Thomson West, 2006 at [s]340)). However, this is rare. In my view, Justice La Forest could not have intended to establish such a unique and elevated standard of proof in relation to state protection without any discussion on the point or any reference to the prior jurisprudence dealing with the burden of proof in refugee cases. In particular, he did not refer to the *Adjei* case…in which the Federal Court of Appeal

> specifically dealt with the burden of proof on refugee claimants in relation to the objective branch of the definition of a refugee.

Respondent's Submissions

[23] The Respondent submits that the Applicants' arguments regarding the issue of state protection amount to a request for a reweighing of the evidence, which is not the role of the Court on judicial review. According to the Respondent, the Applicants have failed to show that the Board's findings were not open to it. Moreover, the Board's findings were factual. Since the Board is best placed to weigh the evidence, both oral and documentary, and assess the merits of the claim, the Board's determination is entitled to deference.

[24] The Respondent argues that it is well established that a refugee claimant must provide clear and convincing proof of a state's inability to protect. Thus, it is not sufficient for a claimant merely to show that a government is not always perfect in its protection of citizens, and it is not an unreasonable burden to require a claimant to seek the protection of their country before seeking surrogate protection elsewhere.

[25] The Respondent relies on the jurisprudence of this Court for the assertion that it is reasonable for the Board to expect claimants to take all reasonable steps to ensure their own protection. The state should be given the opportunity to provide the protection that it has available. The Respondent goes on to note that there was evidence before the Board in this case that Ronald

was charged and sentenced for the violence he committed against the Applicants. Thus, the police in St. Vincent have responded to the Applicants' requests for protection.

[26] The Respondent further argues that the Applicants' position clearly posits an overly stringent standard of state protection that is not commensurate with Federal Court of Appeal jurisprudence. According to the Respondent, that jurisprudence establishes that it is an untenable position to require that a country be able to guarantee protection to all its citizens at all times. Relying on *Ward*, the Respondent argues that state protection does not require perfect protection. In further support of this argument, the Respondent relies on Justice Layden-Stevenson's decision in *Resulaj v. Canada (Minister of Citizenship and Immigration)*, (2006), 53 Imm. L.R. (3d) 229, 2006 FC 269 at para. 20 [*Resulaj*], where she discussed the Supreme Court of Canada's decision in *Ward* and the Federal Court of Appeal's decision in *Canada (Minister of Employment and Immigration v. Villafranca* (1992), 99 D.L.R. (4th) 334, [1992] F.C.J. No. 1189 (QL) leave to appeal dismissed, [1993] S.C.C.A. No. 76:

> Absent a situation of complete breakdown of state apparatus, it is generally presumed that a state is able to protect its citizens. This presumption serves to reinforce the underlying rationale of international protection as a surrogate, coming into play where no alternative remains to the claimant. Refugee claimants must present clear and convincing confirmation of a state's inability to protect them in order to rebut the presumption that states are capable of protecting their citizens: *Ward v. Canada (Minister of Employment and Immigration)*. State protection cannot be held to a standard of perfection but it must be adequate. It is not enough to show that a government has not always been effective in protecting persons in a claimant's particular situation. However, where the state is so weak and its control is so tenuous as to make it a government in name only, it may be justified to claim an inability to obtain state protection: *Canada (Minister of Employment and Immigration) v. Villifranca* [footnotes omitted].

[27] The Respondent argues that it is evident from the transcript and the Applicants' own testimony that the police have consistently responded to the Applicants' request for protection, including prosecuting and incarcerating Ronald for assault on several occasions. The fact that St. Vincent can offer the Applicants state protection, the Respondent argues, is determinative. Thus, given the documentary evidence as well as the response from the police with regard to the Applicants' circumstances, the Board's finding of state protection cannot be characterized as unreasonable.

[28] With respect to the allegation that the Board ignored the letter from Mr. Sylvester Yamond-Cadetter, the Respondent argues that the Board is not obliged to mention every piece of evidence before it; further, the Board accepted that the Applicants' brother made threats to the family on numerous occasions. The Respondent adds that the Board did indeed refer to the letter from Mr. Yamond-Cadetter, as is evidenced in the footnote reference to the letter in the Board's Decision.

[29] The Respondent also submits that the Applicants' arguments pertaining to the Board's comments in relation to the Marion House are without merit. The Respondent suggests it is obvious from the Decision that the Board's mention of Marion House merely recites the fact that the Applicants had no information about that institution. The Board did not rely on the existence of Marion House as a source of protection for the Applicants in St. Vincent. Rather, the Board relied on the protection available from the state itself.

REASONS

1. Was the Board's finding on state protection unreasonable?

Standard of Review

[30] With respect to the standard of review applicable to the Board's determination of state protection, the Applicant submits that the question is one of mixed fact and law reviewable on a standard of reasonableness *simpliciter*. The Respondent submits that the applicable standard is patent unreasonableness, as the Board's findings are factual in nature and so attract the greatest degree of deference.

[31] Recently, in *Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*], the Supreme Court of Canada recognized that, although the reasonableness *simpliciter* and patent unreasonableness standards are theoretically different, the "analytical problems that arise in trying to apply the different standards undercut any conceptual usefulness created by the inherently greater flexibility of having multiple standards of review" (*Dunsmuir* at para. 44). Consequently, the Court held that the two reasonableness standards were to be collapsed into a single form of "reasonableness" review.

[32] The central issue in this case is whether, given the facts established by the Applicants' evidence, which the Board accepted, the presumption of adequate state protection was rebutted. I

regard this as a question of mixed fact and law reviewable on a standard of reasonableness. Following *Dunsmuir*, the analysis of the Board's decision will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process" (*Dunsmuir* at para. 47). If the Decision does not fall "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law," the Decision shall be set aside.

Merits

[33] As regards the Applicants' argument that the Board considered the documentary evidence selectively and failed to refer to evidence contrary to its own findings, the Board noted the following about the country condition documentary evidence in its Decision at page 4:

> There is evidence that supports the claimants' allegations that women do suffer sexual, physical and emotional abuse in St. Vincent as they do in many regions of the world. The documentary evidence is that the government of St. Vincent is making a serious effort to address the problem.

[34] With respect to the Board's comment in the first sentence, the Board makes a general reference to the RPD Information Package and specifically cites section 5 of a United States Department of State Country Report on Human Rights Practices. In support of its finding that "the government is making a serious effort to address the problem," the Board refers to the *Domestic Violence Act, 1995*, and the IRB Response to Information VCT42714.E from May 26, 2004.

[35] It is well established that there exists a presumption that the Board has considered all the evidence before it (*Florea v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No.

598 at para.1 (F.C.A.) (QL)). Thus, the Board is not required to refer to every piece of documentary evidence in its reasons. Further, the fact that the Board has not mentioned some of the documentary evidence that was before it is not fatal to the Decision (*Hassan v. Canada (Minister of Employment and Immigration) (F.C.A.)*, (1992), 147 N.R. 317, [1992] F.C.J. No. 946 (F.C.A.) (QL)). With that said, however, I have to keep in mind the well-known caution articulated by Justice Evans in *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, [1998] F.C.J. No. 1425 (QL), at para. 17:

> …the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence": *Bains v. Canada (Minister of Employment and Immigration)* (1993), 63 F.T.R. 312 (F.C.T.D.). In other words, the agency's burden of explanation increases with the relevance of the evidence in question to the disputed facts. Thus, a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears squarely to contradict the agency's finding of fact. Moreover, when the agency refers in some detail to evidence supporting its finding, but is silent on evidence pointing to the opposite conclusion, it may be easier to infer that the agency overlooked the contradictory evidence when making its finding of fact.

[36] In the context of state protection, the words of Justice Layden-Stevenson in *Castillo v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 56, [2004] F.C.J. No. 43 at para. 9 (QL), are particularly instructive in this case:

> The question of effective state protection was identified as the central issue. Where evidence that relates to a central issue is submitted, the burden of explanation increases for the board when it assigns little or no weight to that evidence or when it prefers specific documentary evidence over other documentary evidence. Here, there is virtually no indication that the RPD considered the applicants' documentary evidence or the submissions of their counsel in relation to the issue of

> state protection. The applicants were entitled to know that the board had not ignored these matters. A general statement that all of the evidence was considered, in the circumstances, does not suffice.

Thus, the burden of explanation increases with the relevance of the evidence to the central issues before the Board.

[37] The Board provided a succinct and narrow Decision in this case. There were no credibility issues and the Board appears to have accepted the Applicants' account of what they had suffered at the hands of Ronald and the unsuccessful attempts by the authorities in St. Vincent to deal with him. The Board also accepted that the evidence showed that women do suffer from sexual, physical and emotional abuse in St. Vincent even though "the government of St. Vincent is making a serious effort to address the problem."

[38] So the claim was rejected on the ground that the Applicants "have failed to rebut with clear and convincing evidence the presumption that the democratically elected government of St. Vincent is capable of providing protection for it is (*sic*) citizens and there was no evidence provided that the government is in chaos or disarray and unable to govern."

[39] The gravamen of the Decision comes down to a mere three lines:

> I find that the police in St. Vincent had prosecuted Ronald as he had been arrested, charged and prosecuted on several occasions and the standard for adequate state protection is not perfect protection nor protection for all citizens at all times.

[40] So the basic rationale for the Decision is that the Applicants had not rebutted with clear and convincing evidence that St. Vincent cannot provide adequate state protection because Ronald, the predator, had actually been arrested, charged and prosecuted "on several occasions." In other words, provided the police arrest, charge and prosecute the predator from time to time (even if this does not deter him) then the presumption of adequate state protection is not rebutted.

[41] I do not believe that this position reflects the law on this issue or is a reasonable response to the evidence put forward by the Applicants in this case.

[42] The Applicants put forward clear and convincing evidence that, notwithstanding the actions of the police in trying to deal with the persistent threat and criminal abuse of their brother, Ronald continued to behave in exactly the same way and, unless he is stopped, he may well kill the Applicants. Whatever the authorities in St. Vincent have done, Ronald has not been deterred and the same risks remain if the Applicants are returned to St. Vincent. The evidence seems clear that women are at risk in St. Vincent and the state has shown that it is unable to protect the Applicants.

[43] In a situation where the Applicants have presented clear and convincing evidence of risk and their credibility is not an issue, as well as clear and convincing evidence that the police and the authorities in St. Vincent cannot protect them from Ronald, the Board must do more than merely fall back on perfunctory formulaic phrases gleaned from the caselaw to the effect that "there was no evidence provided that the government is in chaos or disarray and unable to govern" and that "adequate state protection is not perfect protection nor protection for all of its citizens at all times."

In my view, this is not analysis at all, and it is not reasons that are responsive to the facts of this case. If the laws of Canada require these three women to return to St. Vincent and face more abuse and possible death at the hands of a vicious predator who the state of St. Vincent has shown it cannot deter, then in my view the Board is obliged to explain why the presumption of state protection requires such a result and why the presumption of adequacy has not been overcome in a situation where the state's response has proved to be totally ineffective. In light of the established facts, the Board's task is not an easy one because it may be, for example, that even Canada cannot protect women from the Ronald's of this world. But even in difficult situations the Board has a duty to explain what it is doing, and why, when the consequences of its Decision are so dire.

[44] The Board's bromides may not be inaccurate as general statements of the law, but the Board must confront the facts before it and explain why, for example, arresting, charging and prosecuting Ronald means, for that reason alone (the only justification given) that the presumption of state protection is not rebutted when the evidence is clear and convincing that the actions of the police in this case have not stopped the predatory conduct that the Applicants justifiably fear.

[45] I agree with the Board that St. Vincent does not need to provide perfect protection, but, in my view, the Board provides no evidentiary or jurisprudential explanation as to why, in this case, the fact of some limited action by the police means that the presumption of adequacy remains intact even when the evidence is clear and convincing that such action has not deterred the predator and the Applicants will face exactly the same abuse from the same man if they are returned.

[46] I am not saying that, on the facts before the Board, the Board could not have reached the conclusions it did on why the presumption was not overcome in this case. But all the Board says is that adequate state protection is not perfect protection, nor protection for all citizens at all times. The fact that the police may have arrested, charged and prosecuted Ronald does not, in my view, mean that they are providing adequate protection or that to require more is to ask for perfect protection.

[47] The Board's extremely brief analysis is perfunctory and it fails to confront and deal with the central issue in this case, which is that the Applicants have been subjected to and will, if returned, have to face, a dangerous predator who has not been deterred by the police or the law. He will not stop until someone is killed.

[48] The Respondent says that this is simply an unfortunate situation because no state can protect its female citizens against such predators. However, all the Board provides as reasons for the Applicants' failure to rebut the presumption of adequate state protection is that the police in St. Vincent have in the past, arrested, charged and prosecuted Ronald, and that to expect more is to ask for perfect protection. I believe the Board's treatment of the state protection issue was unreasonable and its reasons inadequate given the evidence before it.

[49] I have reviewed the other submissions of the Applicants and I can find no reviewable error on other grounds. The fact is that the Board's Decision on the principal issue is very brief and its reasons are very narrow. The Decision stands or falls on this central issue.

[50] Regarding the Applicant's argument that the Board ignored the letter from Mr. Raymond-Cadette, the Board's reference to the letter in its reasons at page 5 and footnote 12 indicates that the Board did not ignore the letter. Further, I am not convinced that the Board's reference to the Marion House and the Applicant' lack of knowledge of that institution constitutes a reviewable error. Contrary to the Applicants' suggestion, the Board does not appear to have fundamentally misstated Applicants' testimony, nor confused the availability and effectiveness of state protection with the provision of counselling and advice.

[51] On the central issue, however, as I have discussed above, I believe the Board's Decision is unreasonable and that this matter must be returned for reconsideration.

[52] Counsel are requested to serve and file any submissions with respect to certification of a question of general importance within seven days of receipt of these Reasons for Judgment. Each party will have a further period of three days to serve and file any reply to the submission of the opposite party. Following that, a Judgment will be issued.

"James Russell"

Judge

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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