Federal Court  Cour fédérale

Date: 20110202

Docket: T-1716-09

Citation: 2011 FC 112

Ottawa, Ontario, February 2, 2011

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

PERLEY HOLMES

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] This judicial review is part of five such cases brought to the Court dealing with applications by Canadian citizens, who are prisoners in the United States, to transfer to Canada to serve out the remainder of their U.S. courts' sentence. The original decision by the Minister of Public Safety and Emergency Preparedness (Minister) was the basis for the judicial review.

[2] These cases were also part of a series of cases for which there were applications to the Minister for reconsideration. In some of the instances, the Minister granted the reconsideration and approved the transfer – however, these five cases were cases where, on reconsideration, the transfers were still not approved.

[3] In each reconsideration, the Minister (a new Minister) rendered a new decision and denied the transfer request - sometimes for slightly different reasons. In the normal course, the Respondent would have brought, with likely success, a motion to strike the judicial reviews on the grounds of mootness.

By agreement however, the parties proceed on the basis of the new decisions but for all the grounds and arguments raised in respect to the original decisions.

[4] All five cases raise the question of (a) whether s. 6 of the *Charter* is breached by virtue of the *International Transfer of Offenders Act*, S.C. 2004, c. 21 (Act) because it impedes a citizen's right to enter Canada; (b) whether the Act is saved by s. 1 of the *Charter*; and (c) whether the Minister's decision is reasonable.

[5] As this is a case where the Minister's decision is found to be sustainable, the issue of *Charter* rights is relevant. In those cases where the Minister's decision does not meet the requirements of administrative law, a decision on *Charter* rights is not necessary.

II. LEGISLATIVE FRAMEWORK – *INTERNATIONAL TRANSFER OF OFFENDERS ACT*

[6] The Act is a response, in part, to a series of international agreements and treaties, all directed at permitting a citizen of one country to serve some or all of the sentence imposed by a foreign court in his or her home country.

[7] The Act's Purpose clause sets out three purposes for this legislation: contribution to the administration of justice; the rehabilitation of offenders; and their reintegration into the community.

3. The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.	**3.** La présente loi a pour objet de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux

[8] The Applicants have argued that the term "administration of justice" does not include the concept of public security and safety. To the extent that the Minister relied on public safety and security concepts in refusing the transfer requests, it is argued that the Minister took an irrelevant factor into account because "public safety and security" is a matter separate from administration of justice.

[9] With respect, such a view of "administration of justice" is far too narrow given the context in which those words appear. While the term may not cover the whole panoply of items considered "administration of justice", the term used in the context of persons who have committed crimes (some being violent) would include public safety and security considerations.

[10] Given the Respondent's position which is consistent with the Court's conclusion, it is curious that proposed legislation intends to add "to enhance public safety and security" as a further purpose of the legislation. It is not for the Court to comment on proposed legislation even though it was raised by the parties.

[11] In determining whether to consent to a transfer of a Canadian offender to Canada, the Minister is required to consider the following factors:

10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:	**10.** (1) Le ministre tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :
(*a*) whether the offender's return to Canada would constitute a threat to the security of Canada;	*a*) le retour au Canada du délinquant peut constituer une menace pour la sécurité du Canada;
(*b*) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;	*b*) le délinquant a quitté le Canada ou est demeuré à l'étranger avec l'intention de ne plus considérer le Canada comme le lieu de sa résidence permanente;
(*c*) whether the offender has social or family ties in Canada; and	*c*) le délinquant a des liens sociaux ou familiaux au Canada;
(*d*) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.	*d*) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.

In addition, when considering whether to consent to the transfer of either a Canadian offender or a foreign offender, the Minister must consider two other factors.

10. (2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:	**10.** (2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger :
(*a*) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the *Criminal Code*; and	*a*) à son avis, le délinquant commettra, après son transfèrement, une infraction de terrorisme ou une infraction d'organisation criminelle, au sens de l'article 2 du *Code criminel*;
(*b*) whether the offender was previously transferred under this Act or the *Transfer of Offenders Act*, chapter T-15 of the Revised Statutes of Canada, 1985.	*b*) le délinquant a déjà été transféré en vertu de la présente loi ou de la *Loi sur le transfèrement des délinquants*, chapitre T-15 des Lois révisées du Canada (1985).

[12] There appears to be general agreement that these factors are not exhaustive. The Minister may take into account other factors so long as they are relevant to the purposes of the Act.

[13] With respect to s. 10(2)*(a)* and whether an offender will commit a terrorism offence or criminal organization offence, or, as used in some of the first Ministerial decisions in the cases before the Court, “may” commit that type of offence, Justice Barnes in *Grant v. Canada (Minister of Public Safety and Emergency Preparedness*, [2010] F.C.J. No. 386, made it clear that the use of “may” is not consistent with the legislation. Decisions based upon a consideration that an applicant may commit a terrorism offence or criminal organization offence would be grounds justifying the grant of judicial review.

[14] In some of the new decisions at issue here, the error in using “may” was corrected. The real issue is not the cosmetics of the word but whether the Minister’s discretion was exercised consistent with the certitude of the likelihood of the commission of those offences. The issue is whether it is reasonable to conclude that an applicant will, after transfer, commit those offences.

III. *CHARTER* RIGHTS

[15] The Court has been asked to determine whether the Act offends s. 6 of the *Charter*’s mobility right to enter. The Court must only decide this issue if the Minister’s decision is reasonable. In the present circumstances, as some of the Minister’s decisions are reasonable, the Court must address that issue.

[16] The Applicants have argued that this Court has made inconsistent findings on whether s. 6 is offended by the Act. The Applicants point to *Van Vlymen v. Canada (Solicitor General)*, 2004 FC 1054, in which Justice Russell suggested that s. 6 was engaged by the Act because the Act acted as a restriction on a citizen’s mobility right to enter Canada. As a matter of judicial comity, it was argued that this line of reasoning should have been followed.

[17] However, this Court in *Kozarov v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 866 (Justice Harrington) and *Getkate v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 965 (Justice Kelen), concluded that s. 6 was not so engaged. Justice Harrington distinguished the *Van Vlymen* decision.

[18] The Applicants also argue that this Court in *Curtis v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 943, and *Dudas v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 942, concluded that s. 6 was engaged but that the Act was saved by s. 1 of the *Charter* as a "reasonable limitation" on *Charter* rights.

[19] The Applicants read into some of the decisions far too much. In *Van Vlymen*, above, the Court was dealing with mootness and delay by the Minister in making a decision. The comments with respect to the *Charter* were clearly *obiter*.

[20] In *Curtis*, above, and in *Dudas*, above, the Court's ruling turned on the unreasonableness of the Minister's decision. The Court acknowledged the decisions in *Kozarov*, above, and *Getkate*, above, and concluded simply as an alternative position that even if s. 6 of the *Charter* was engaged, s. 1 saved the Act – a conclusion reached without an articulation of the s. 1 factors.

[21] In *Kozarov*, above, and *Getkate*, above, this Court squarely dealt with the s. 6 issue and concluded that the Act did not offend s. 6. In that respect, I adopt the conclusions of these decisions not simply out of respect for judicial comity but because those decisions are a correct articulation of the law.

[22] In *United States of America v. Cotroni*, [1989] 1 S.C.R. 1469, the Supreme Court, in dealing with the *Extradition Act* where the state effectively ejects one of its citizens to a foreign jurisdiction (thereby engaging s. 6), spoke of one of the principles behind s. 6 being the prevention of banishment and exile. Justice La Forest even addressed the circumstance of Canadian offenders in

foreign incarceration and the suspension of their right to return until after they have served their time.

> An accused may return to Canada following his trial and acquittal or, if he has been convicted, after he has served his sentence. The impact of extradition on the rights of a citizen to remain in Canada appears to me to be of secondary importance. In fact, so far as Canada and the United States are concerned, a person convicted may, in some cases, be permitted to serve his sentence in Canada; see *Transfer of Offenders Act*, S.C. 1977-78, c. 9.
>
> *Cotroni*, above, at para. 20

[23] The mechanics of the Act require three consents to transfer; consent of the accused, consent of the foreign government and consent of the Canadian government. The foreign government will not transfer the person to Canada unless Canada consents. The *Charter* cannot be read as requiring the Canadian government to consent so that the citizen is brought to the Canadian border where he can exercise his *Charter* right to enter.

[24] In considering the applicability of the *Charter*, it is necessary to consider what the applicant/citizen is truly seeking. The request is the very antithesis of mobility rights. The request to transfer is not a request to allow the citizen to come to Canada to exercise those mobility rights; indeed, it is a request to come to Canada to do the very opposite of exercise mobility – to remain imprisoned.

[25] The Applicants are neither seeking to exercise their mobility rights nor are those rights infringed by awaiting the completion of their U.S. sentences at which time they would, either by way of deportation or by their own accord, be entitled to leave the U.S.A. and enter Canada.

[26] The Applicants have, by their own conduct, placed a restriction on their *Charter* rights by being sentenced to prison in the U.S.A. To accept the Applicants' position would be to turn a discretionary remedy to serve time in Canada into a right. There is no provision in the Act nor any factor to be considered under the Act which violates the *Charter*. The listed factors are merely those which must be considered by the Minister.

[27] Since there is no specific provision of the Act to be struck down, then if the Act itself is contrary to the *Charter*, it would be struck down and eliminate any means by which a Canadian prisoner could be transferred to a Canadian prison. This hardly seems to be of assistance to any of the Applicants or to any other Canadian imprisoned in the U.S.A.

[28] Therefore, s. 6 of the *Charter* is not engaged by virtue of an application for Ministerial consent to the transfer of one or more of these Applicants.

[29] Even if s. 6 is infringed, any infringement would be saved by s. 1. In *Cotroni*, above, the Supreme Court noted that extradition was at the edge of infringement in the sense of it being a minor infringement of s. 6. Extradition is a form of exile or banishment.

[30] In the present cases, any infringement of *Charter* rights by virtue of the Act is no more than temporary and thus not as significant as extradition. In that sense, any infringement caused by the Act is even further from the centre of s. 6 mobility principles than is extradition.

[31] Applying the *R. v. Oakes*, [1986] 1 S.C.R. 103 analysis, the Court must examine the objectives served by the limits on s. 6 and the means used to obtain those objectives. The Court concludes, for the reasons below, that any infringement of s. 6 rights is saved by s. 1.

[32] The objectives are pressing and substantial. Canada has an interest in the welfare of its citizens, in their rehabilitation and reintegration but also in ensuring that punishment by countries with whom Canada has relevant treaties is respected. Those interests are reflected in the Act.

[33] The purposes of the Act, being the administration of justice, rehabilitation and reintegration, are addressed and lie at the core of the legislative scheme. The protection of society and the best interests of the Canadian citizen prisoner are balanced in the Act through the factors which the Minister is required to consider.

[34] There is a rational connection between the factors which the Minister must consider and the objectives of the legislation. The Applicants' criticism that s. 10(2)*(a)* (the likelihood of committing a terrorism or organized crime offence) is not rationally connected to the goal of rehabilitation and reintegration is not sustainable.

[35] That particular factor (s. 10(2)*(a)*) addresses both the need to protect society and the utility of attempting to rehabilitate a person who <u>will</u> continue the same kind of conduct that has led to his or her incarceration. The fact that other offences might have fallen into this factor but have not, is not grounds for striking out the legitimacy of inclusion of terrorism and organized crime offences.

[36] The Act, and in particular the factors to be considered, are a minimum impairment of such s. 6 rights as exist in respect of prisoner transfer. The infringement, being at the outer edges of the core *Charter* value to be protected, impacts the assessment of the minimum impairment of the *Charter* right impacted.

[37] The impact, even of s. 10(2)*(a)* of the Act, is minimal. The argument that s. 10(2)*(a)* is a significant impairment ignores the consideration that persons who will (again) engage in these offences undermine the beneficial objectives of the Act.

[38] Further, none of the factors to be considered, including s. 10(2)*(a)*, are determinative of the result. They are simply factors to be weighed by the Minister in a reasonable and transparent way. They do not, in and of themselves, create an infringement of s. 6 and thus their impact *per se* is minimal.

[39] The means and their effects are proportional to the purposes of the Act and to the nature and quality of the *Charter* value impacted. There are no deleterious effects associated with the factors specified under the Act and none of these mandate a refusal to consent to a transfer.

[40] The Applicants' suggestion that once the foreign country consents to a transfer, the Minister is virtually obliged by virtue of s. 6 of the *Charter* to consent to the transfer, ignores the fact that the prisoner has put himself in the position of restricting his freedoms; ignores the goals of rehabilitation by assuming that no other country can rehabilitate a person; ignores the particular individual circumstances of reintegration by assuming that all Canadian citizens have long and deep

connections in Canada and ignores the secondary purposes of the Act in respecting the rule of law in other countries and respecting international relations.

[41] For these reasons, the Court has concluded that even if s. 6 was infringed by the Act, it is saved by s. 1.

IV. STANDARD OF REVIEW

A. *Reasons/Adequacy - Reasonableness*

[42] Where a ministerial decision has profound impact on an applicant, there is a requirement to inform the person of why a particular result is reached. This is so even where a Minister has a broad discretion. Having said that, the duty to give reasons and the adequacy of reasons do not necessarily require the full analytical force of a Supreme Court of Canada judgment.

[43] The Court of Appeal in *Vancouver International Airport Authority v. Public Service Alliance of Canada*, 2010 FCA 158, at paragraphs 16 and 17, set forth the purposes of adequate reasons as follows:

> **16** Where, as here, an administrative decision-maker, acting under a procedural duty to receive and consider full submissions, is adjudicating on a matter of significance, what sort of reasons must it give? From the above authorities, and bearing in mind a number of fundamental principles in the administrative law context, the adequacy of the decision-maker's reasons in situations such as this must be evaluated with four fundamental purposes in mind:
>
> (a) *The substantive purpose*. At least in a minimal way, the substance of the decision must be understood, along with why the administrative decision-maker ruled in the way that it did.

(b) *The procedural purpose*. The parties must be able to decide whether or not to invoke their rights to have the decision reviewed by a supervising court. This is an aspect of procedural fairness in administrative law. If the bases underlying the decision are withheld, a party cannot assess whether the bases give rise to a ground for review.

(c) *The accountability purpose*. There must be enough information about the decision and its bases so that the supervising court can assess, meaningfully, whether the decision-maker met minimum standards of legality. This role of supervising courts is an important aspect of the rule of law and must be respected: *Crevier v. Attorney General of Quebec*, [1981] 2 S.C.R. 220; *Dunsmuir*, *supra* at paragraphs 27 to 31. In cases where the standard of review is reasonableness, the supervising court must assess "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir*, *supra* at paragraph 47. If the supervising court has been prevented from assessing this because too little information has been provided, the reasons are inadequate: see, *e.g.*, *Canadian Association of Broadcasters*, *supra* at paragraph 11.

(d) *The "justification, transparency and intelligibility" purpose*: *Dunsmuir*, *supra* at paragraph 47. This purpose overlaps, to some extent, with the substantive purpose. Justification and intelligibility are present when a basis for a decision has been given, and the basis is understandable, with some discernable rationality and logic. Transparency speaks to the ability of observers to scrutinize and understand what an administrative decision-maker has decided and why. In this case, this would include the parties to the proceeding, the employees whose positions were in issue, and employees, employers, unions and businesses that may face similar issues in the future. Transparency, though, is not just limited to observers who have a specific interest in the decision. The broader public also has an interest in transparency: in this case, the Board is a public institution of government and part of our democratic governance structure.

17 The reasons of administrative decision-makers in situations such as this must fulfil these purposes at a minimum. As courts assess whether these purposes have been fulfilled, there are a number of important principles, established by the authorities, to be kept firmly in mind:

(a) *The relevancy of extraneous material.* The respondent emphasized that information about why an administrative decision-maker ruled in the way that it did can sometimes be found in the record of the case and the surrounding context. I agree. Reasons form part of a broader context. Information that fulfils the above purposes can come from various sources. For example, there may be oral or written reasons of the decision-maker and those reasons may be amplified or clarified by extraneous material, such as notes in the decision-maker's file and other matters in the record. Even where no reasons have been given, extraneous material may suffice when it can be taken to express the basis for the decision. *Baker*, *supra*, provides us with a good example of this, where the Supreme Court found that notes in the administrative file adequately expressed the basis for the decision. See also *Hill v. Hamilton-Wentworth Police Services Board*, [2007] 3 S.C.R. 129 at paragraph 101 for the role of extraneous materials in the assessment of adequacy of reasons.

(b) *The adequacy of reasons is not measured by the pound.* The task is not to count the number of words or weigh the amount of ink spilled on the page. Instead, the task is to ask whether reasons, with an eye to their context and the evidentiary record, satisfy, in a minimal way, the fundamental purposes, above. Often, a handful of well-chosen words can suffice. In this regard, the respondent emphasized that very brief reasons with short-form expressions can be adequate. That is true, as long as the fundamental purposes, above, are met at a minimum. In this regard, the respondent cited the example of the Board sometimes issuing orders without reasons. Whether such orders are adequate depends on the facts of a specific case, but the methodology for assessing adequacy is clear: the preambles, recitals and provisions of the orders, when viewed with an eye to their context and the evidentiary record, must satisfy, in a minimal way, the fundamental purposes, above.

(c) *The relevance of Parliamentary intention and the administrative context.* Judge-made rulings on adequacy of reasons must not be allowed to frustrate Parliament's intention to remit subject-matters to specialized administrative decision-makers. In many cases, Parliament has set out procedures or has given them the power to develop procedures suitable to their specialization, aimed at achieving cost-effective, timely justice. In assessing the adequacy of reasons, courts should make allowances for the "day to day realities" of administrative tribunals, a number of which are staffed by non-lawyers: *Baker, supra* at paragraph 44; *Clifford v. Ontario Municipal Employees Retirement System* (2009), 98 O.R. (3d) 210 at paragraph 27 (C.A.). Allowance should also be given for short-form modes of expression that are rooted in the expertise of the administrative decision-maker. However, these allowances must not be allowed to whittle down the standards too far. Reasons must address fundamental purposes - purposes that, as we have seen, are founded on such fundamental principles as accountability, the rule of law, procedural fairness, and transparency.

(d) *Judicial restraint.* The court's assessment of reasons is aimed only at ensuring that legal minimums are met; it is not an exercise in editorial control or literary criticism. See *Sheppard, supra* at paragraph 26.

[44] In the present case and given the importance of the Minister’s decision to the Applicant and society in terms of administration of justice, rehabilitation and reintegration, the substantive purpose and the “justification, transparency and intelligibility” purposes are particularly important.

[45] Therefore, the Minister’s decision must meet the above standard to meet the “reasonableness” standard of review required by *Dunsmuir v. New Brunswick*, 2008 SCC 9.

[46] The controlling issue in this particular judicial review is whether the Minister’s refusal to consent to the transfer is reasonable. As noted in the discussion on Legislative Framework, the

Minister's discretion is broad and the deference owed to the Minister's assessment of relevant factors is significant.

[47] The normal operation of the handling of these prisoner transfer requests was for the Department (Correctional Service Canada) to prepare a report for the Minister (the report is referred to as an "assessment" through this and the related proceedings). The assessment outlines the Department's views of the facts and provides advice on the relevant factors for the Minister's consideration. The Minister then renders a decision containing the reasons which is served on an applicant under a cover letter from an official in the Department.

V. FACTUAL BACKGROUND

[48] Holmes is approximately 53 years old. He is a Canadian citizen serving a sentence in the U.S.A. of 8 years to be followed by a period of 5 years' supervised release.

[49] Holmes' case had some notoriety as it involved hiking across the border from British Columbia to the U.S.A. with an accomplice and being arrested while resting under a tree. The accomplice escaped back across the border and has not been found.

[50] Between October and November 2006, Holmes was approached by an individual wanting to use his home (which is located close to the border) as part of a smuggling operation for items from the U.S.A. to Canada. He was to be paid $20,000 cash each time the property was so used.

[51] On January 18, 2007, a U.S. Border Patrol agent found a suspicious truck about 1 kilometre inside the U.S.A. border. Following footprints he discovered Holmes and his accomplice. A search of the backpacks found at the site revealed 136 pounds of cocaine. Holmes was convicted of drug importation and sentenced.

[52] In the original departmental 1st assessment forwarded to the Minister for his consideration, officials believed that Holmes had links to organized crime because he was involved in the trafficking of cocaine across the border. Officials also advised that there was no evidence that Holmes was anything other than a courier and that as such, he only posed a limited risk to the community despite the quantity of drugs he was transporting.

[53] In the Minister's 1st refusal decision, the Minister cited his need to consider the interests of Canadians, the national interest and "many different decision making factors …". The Minister stated that these factors were consistent with the legislation which includes but goes beyond the enumerated factors provided by s. 10 of the Act.

[54] The Minister then refers to the Applicant and that, if transferred, he would not have the 5 years' supervised release, and that this important rehabilitation purpose would not be served. He concluded that this consequence would not be in the interests of or consistent with the goal of administration of justice.

[55] In respect of the specific s. 10 factors, the Minister concluded that the Applicant had links to organized crime, and that there was significant planning and financial support behind the criminal

activity. As such, this criminal activity was not acceptable in the general context of the administration of justice nor with s. 10(1)*(a)* and (2)*(a)* of the Act.

[56] The Minister then concludes that for some reasons which rely on the specifically enumerated factors under the Act, and for other reasons which rely on factors consistent with the Act which are available to him as part of his residual decision making authority, the transfer was refused.

[57] In the 2nd assessment, prepared as part of the reconsideration process, Holmes' role was described as that of a mere courier for a criminal organization with no leadership role. The 2nd assessment went on to report numerous positive aspects including rehabilitation, strong family ties, lack of a criminal record and potential for reintegration.

[58] The Minister's 2nd decision is significantly different from the 1st decision (made by a different Minister). There are no longer references to non-enumerated factors and influences which would, in the Court's view, have seriously imperilled the legality of that 1st decision.

[59] In this 2nd decision the Minister focused on the potential for commission of a criminal organization offence. He noted the knowing use of the Applicant's residence for criminal activities, the payment for its use and the smuggling activities conducted. He further noted the amount of drugs smuggled, the participation of an unidentified (presumably by the Applicant) accomplice and the long-term implications on Canadian society had the Applicant been successful.

[60] The Minister, in reaching his negative conclusion on the transfer application, noted the positive aspects of Holmes' situation including the strong family support, lack of criminal record and rehabilitation efforts.

[61] With respect to the reasonableness of the decision, it is evident that the Minister weighed the aspects of administration of justice, such as the nature of the offence, its circumstances and consequences, more heavily than the other purposes of the Act – rehabilitation and reintegration. However, he did not ignore these other purposes. The Applicant's challenge to the Minister's decision is a challenge to the relative weight the Minister gave.

[62] While it is arguable that Holmes appears to be a perfect candidate for transfer given the strong facts of rehabilitation and reintegration, the very essence of deference in this case is to acknowledge that having addressed the relevant considerations, the actual weighing or balancing is for the Minister to conduct. Absent unreasonableness or bad faith or similar such grounds, it is not for the Court to supervise the Minister.

[63] There is nothing unreasonable in the Minister's decision; it takes into consideration the relevant factors and imports no new and unknown factors, and it is intelligible and transparent as to how the Minister came to his conclusion. It therefore meets the requirements of law and should not be disturbed.

VI. CONCLUSION

[64] Therefore, this judicial review will be dismissed without costs; the issues raised are important public policy matters.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs; the issues raised are important public policy matters.

"Michael L. Phelan"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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