Federal Court Cour fédérale

Date: 20120502

Docket: T-680-11

Citation: 2012 FC 505

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, May 2, 2012

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

RICHARD TIMM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] In 1995, after a trial by judge and jury, Mr. Timm was convicted of the first degree murders of his adoptive parents. The Quebec Court of Appeal dismissed his appeal from the verdict: see [1998] RJQ 3000, [1998] JQ No 3168 (QL). However, Mr. Justice Fish, who was later appointed to the Supreme Court of Canada, dissented. He would have allowed the appeal and ordered a new trial. The fact that Mr. Justice Fish dissented did not mean that Mr. Timm was entitled to a new trial. It simply meant that he could appeal as of right to the Supreme Court on any question of law on which

the judge had dissented, and, in fact, that is what he did: see section 691 of the *Criminal Code*. However, his final appeal to the Supreme Court was also dismissed "substantially for the reasons of the majority of the Court of Appeal of Quebec" ([1999] 3 SCR 666, [1999] SCJ No 65 (QL)).

[2] In 2001, Mr. Timm wrote to the Honourable Anne McLellan, the then-Minister of Justice. He filed an application for the mercy of the Crown, alleging specifically that his conviction was the result of a miscarriage of justice. He did not claim that he was innocent. In fact, he admitted participating in the murders, but that statement was not introduced into evidence. He contended that the police fabricated some of the evidence to obtain a conviction and concealed other evidence that, according to him, could have revealed this fabrication of evidence. At issue were the sawed-off shotgun, which killed the deceased, the hacksaw that was (or was not) used to saw the barrel, the adhesive tape found on the shotgun and the photos of various pieces of adhesive tape.

[3] The Minister needed a great deal of time to issue a decision in Mr. Timm's case. Indeed, a final decision was not issued until October 21, 2010. It is neither necessary nor appropriate to review the reasons for this delay, reasons that were raised in other proceedings before this Court. In point of fact, Mr. Timm commenced proceedings in at least ten different files, some of which are still active.

[4] This is an application for judicial review of the decision by the Criminal Conviction Review Group (CCRG) dated October 21, 2010, in which it provided no comfort to Mr. Timm.

[5] In addition to the miscarriage of justice that led to his conviction, Mr. Timm challenges the process by which the current Minister of Justice, the Honourable Rob Nicholson, determined that

there had not been a miscarriage of justice. He alleges that the persons appointed to investigate and advise the Minister not only breached their duty but also deliberately withheld relevant information from the Minister, all of which infringed his rights, particularly his rights under the *Canadian Charter of Rights and Freedoms*. Among the various arguments he puts forward, some are sufficient in themselves, and others are interconnected. To better understand the case, I will first review the process by which convicted persons could seek mercy from the Crown at the time, as was provided in the *Criminal Code*, and I will then begin an analysis of the specific facts of this case.

MISCARRIAGE OF JUSTICE

[6] When Mr. Timm wrote to the Minister in 2001, the relevant provision in the *Criminal Code* was section 690, which governed applications for the mercy of the Crown submitted by persons who had been convicted in proceedings by indictment or who had been sentenced to preventive detention. The Minister of Justice could direct a new trial or refer the matter to the court of appeal for hearing and determination, or refer to the court of appeal, for its opinion, any question on which the Minister desired the assistance of that court.

[7] There was no procedure set out in the *Criminal Code*, and there were no regulations establishing the procedure to follow.

[8] Consequently, in 2002, section 690 was repealed and replaced by sections 696.1 and following. In addition, the *Regulations Respecting Applications for Ministerial Review—Miscarriages of Justice* were enacted.

[9] The wording of section 696.1 is somewhat different from that of section 690. Section 696.1 refers to a miscarriage of justice rather than the mercy of the Crown. However, mercy under section 690 was primarily granted in the context of miscarriages of justice, and thus there were no substantive changes. However, there is now a formal procedure that replaces the *ad hoc* procedure adopted under section 690: see the initial consultation paper entitled "Addressing Miscarriages of Justice: Reform Possibilities for Section 690 of the *Criminal Code*", published in 1998 by authority of the Minister of Justice.

[10] Under subsection 696.2(3), the Minister may delegate the conduct of an investigation in regard to an application for review to any member in good standing of the bar of a province or to a retired judge.

[11] Under section 696.3, "if the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred", the Minister may direct a new trial or refer the matter to the court of appeal, as mentioned earlier. If the Minister is not satisfied that a miscarriage of justice occurred, the Minister may dismiss the application for review.

[12] Although the Minister's decision is final and not subject to appeal, it has long been established that such decisions are subject to judicial review under sections 18 and following of the *Federal Courts Act*. Section 696.4 plays a crucial role in this judicial review. That section provides as follows:

696.4 In making a decision under subsection 696.3(3), the Minister of Justice shall take into account all matters that the Minister considers	696.4 Lorsqu'il rend sa décision en vertu du paragraphe 696.3(3), the Minister de la Justice prend en compte tous les éléments qu'il

relevant, including

(*a*) whether the application is supported by new matters of significance that were not considered by the courts or previously considered by the Minister in an application in relation to the same conviction or finding under Part XXIV;

(*b*) the relevance and reliability of information that is presented in connection with the application; and

(*c*) the fact that an application under this Part is not intended to serve as a further appeal and any remedy available on such an application is an extraordinary remedy.

estime se rapporter à la demande, notamment:

a) la question de savoir si la demande repose sur de nouvelles questions importantes qui n'ont pas été étudiées par les tribunaux ou prises en considération par the Minister dans une demande précédente concernant la même condamnation ou la déclaration en vertu de la partie XXIV;

b) la pertinence et la fiabilité des renseignements présentés relativement à la demande;

c) le fait que la demande présentée sous le régime de la présente partie ne doit pas tenir lieu d'appel ultérieur et les mesures de redressement prévues sont des recours extraordinaires.

[13] Under the *Regulations*, the Minister conducts a preliminary assessment of the application. After the preliminary assessment has been completed, the Minister must decide whether to conduct an investigation in respect of the application. The Minister commences an investigation if the Minister determines that a miscarriage of justice likely occurred. The Minister does not conduct an investigation if the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred and that there is an urgent need for a decision to be made for humanitarian reasons or to avoid a blatant continued prejudice to the applicant.

[14] Last, the Minister does not conduct an investigation if the Minister is satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred.

[15] If the Minister does not conduct an investigation because the Minister is satisfied that there is no reasonable basis to conclude that a miscarriage of justice likely occurred, the Minister informs the applicant who has one year to provide further information. If the applicant fails to provide further information, the Minister informs the applicant in writing that no investigation will be conducted.

[16] To give effect to these provisions of the *Criminal Code* and the Regulations adopted thereunder, a specialized group was formed within the Department of Justice, the Criminal Conviction Review Group (CCRG). A member of this group along with a person appointed by the Minister conduct the preliminary assessment referred to above. In addition, the Minister sends the preliminary assessment to a jurist for review and comments.

MR. TIMM'S ASSESSMENT

[17] In Mr. Timm's case, the preliminary assessment was conducted by Isabel J. Schurman, the Minister's representative, and Kerry Scullion, General Counsel and Director of the CCRG. In their 23-page report, they concluded:

> [TRANSLATION]
> In short, there is no reasonable basis to conclude that the applicant's conviction could have resulted from a miscarriage of justice.

[18] On October 22, 2009, the Honourable Rob Nicholson, Minister of Justice, personally wrote to Mr. Timm. He explained that he was involved at this stage of the review process because his special advisor on miscarriages of justice was Bernard Grenier (a former Provincial Court judge). However, Mr. Grenier was married to Ms. Schurman, who had been appointed by a previous minister to conduct the preliminary assessment. Consequently, in order to avoid any appearance of conflict of interest, he had sought the opinion of the Honourable Jean-Marc Labrosse, a retired Ontario Court of Appeal judge, rather than Mr. Grenier's. He ended his letter by indicating to Mr. Timm that, for the reasons set out in the preliminary assessment, his application would not proceed to the investigation stage but that under the Regulations he had one year to provide further information.

[19] Although Mr. Timm in fact wrote to the Minister within the one-year time period, he did so to obtain a copy of Mr. Justice Labrosse's opinion rather than to provide further information. On October 21, 2010, the CCRG wrote to Mr. Timm to advise him that the one-year period had expired and that since he had not provided further information his file would be closed.

[20] Mr. Timm filed an application for judicial review of the Minister's decision dated October 22, 2009, but was unsuccessful. The Court dismissed his application on the basis that the decision was not final and could not therefore be the subject of a judicial review. Mr. Timm asked the Minister to provide him with Mr. Justice Labrosse's opinion, which was not given to him because it was protected by solicitor-client privilege. He eventually obtained a copy by filing an access to information request, perhaps because Mr. Justice Labrosse had not described himself as a lawyer or judge in his opinion. Mr. Timm also filed an application for judicial review of the opinion. However, his application was dismissed because the opinion was not a reviewable decision.

[21] Last, the Court extended the time for filing an application for judicial review of the October 21, 2010, decision which, essentially, includes the preliminary assessment.

[22] In *Thatcher v Canada (Minister of Justice)*, [1997] 1 FC 289, 120 FTR 116, Mr. Justice Rothstein, now a Supreme Court of Canada judge, dealt with the former section 690 of the *Criminal Code*, which codified and delegated to the Minister of Justice the sovereign's discretion in respect of one aspect of the royal prerogative of mercy. He maintained that this function was a purely discretionary act and noted that there was no statutory provision directing the Minister as to the manner in which the Minister should exercise his or her discretion. Although the Minister must act fairly, he found that this duty of fairness is less than that applicable to judicial proceedings. The Minister must act in good faith and conduct a meaningful review, provided that the application is not futile or vexatious. Specifically, he said that there is no general right of disclosure to everything considered by the Minister or his officials.

[23] However, it is important to keep in mind that this decision was issued before the Supreme Court's decision in *Canada (Director of Investigation and Research, Competition Act) v Southam Inc*, [1997] 1 SCR 748, 209 NR 20. The *Southam* case added the reasonableness *simpliciter* standard to the other two, i.e. correctness and patent unreasonableness, which were applicable on a judicial review at that time. A purely discretionary decision was reviewed against the standard of patent unreasonableness: see *Maple Lodge Farms Ltd v Canada*, [1982] 2 SCR 2, 44 NR 354.

[24] Later, in *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, the Supreme Court eliminated the patent unreasonableness standard.

[25] Since the *Dunsmuir* decision, the Federal Court of Appeal applied the reasonableness standard to sections 696.1 and following of the *Criminal Code* in *Daoulov v Canada (Attorney General)*, 2009 FCA 12, 388 NR 54.

[26] Mr. Justice Blais, now Chief Justice, stated at paragraphs 4 and 11:

> 4 In accordance with the above section, when making a decision on the appellant's application to have his conviction reviewed, the Minister has the obligation to take into account all matters that the Minister considers relevant.
>
> . . .
>
> 11 In my opinion, the trial judge was correct to conclude that the standard of review applicable to the decision of the Minister's delegate was reasonableness.

[27] Therefore, the standard of review is reasonableness. However, the Minister has a broad discretion in exercising his or her functions. In *Syndicat des employés de production du Québec et de l'Acadie v Canada (Canadian Human Rights Commission)*, Mr. Justice Sopinka adopted Lord Denning's statement, at page 19 of his decision in *Selvarajan v Race Relations Board*, [1976] 1 All ER 12:

> In recent years we have had to consider the procedure of many bodies who are required to make an investigation and form an opinion. . . In all these cases it has been held that the investigating body is under a duty to act fairly; but that which fairness requires depends on the nature of the investigation and the consequences which it may have on persons affected by it. The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance

> only. Moreover it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report.

[28] Although the process followed and the steps taken by the Minister in this case were completely appropriate, his decision to accept the preliminary assessment may, however, be considered unreasonable if, without any fault on his part, the authors of the report did not provide him with relevant information.

DISCUSSION

[29] Two of Mr. Timm's complaints about the process followed are distinct and may be easily disposed of.

[30] Relying on the *Thatcher* decision, above, he contends that the Minister should have provided him with a summary of the preliminary investigation so that he could comment on it. That is what was done in *Thatcher*. However, as is apparent from that decision, there were no Regulations in effect at the time to establish the procedure to follow, and the practice at that time was to send a summary. That practice is now formalized, and the Minister automatically gave Mr. Timm a year to make comments and provide further information, which he did not do. Instead, Mr. Timm complained that the Minister had to send him a copy of Mr. Justice Labrosse's opinion. However, opinions or advice protected by solicitor-client privilege need not be disclosed; this is a fundamental principle of our legal system and is well established in the jurisprudence, including the *Thatcher* case.

[31] Mr. Timm also complains that Mr. Justice Labrosse characterized the situation incorrectly by indicating to the Minister that some evidence was admitted at trial when it had not been. Mr. Justice Labrosse wrote to Minister Nicholson in English. The paragraph in question is the following::

> In summary, there is the evidence that Mr. Labrecque gave at trial, the report of Mr. Monette, the report of the RCMP and the report of Mr. Ablenas. . . .

[32] Mr. Timm interpreted this sentence as meaning that Mr. Ablenas' report had been submitted at trial whereas the report was not prepared until years later. However, that is not at all what Mr. Justice Labrosse said. In the preceding paragraphs of his opinion, he clearly wrote that Mr. Ablenas' report was dated November 19, 2008, a number of years after the trial.

[33] The crux of Mr. Timm's application for judicial review is the allegation that the authors of the preliminary assessment report, Ms. Schurman and Mr. Scullion, acted maliciously by deliberately withholding new information from the Minister, which led him to make a decision based on erroneous facts. The relevant paragraph at the basis of this allegation is at the beginning of the preliminary assessment report:

> [TRANSLATION]
> Prior to discussing the merits (or lack thereof) of the application, it is important to point out that, in preparing this report, counsel representing the CCRG and the Minister's representative examined information from the documents or activities listed below in numerical order:

[34] Following this paragraph, the authors listed 25 documents, including a report written by Fred J. Ablenas from Pyrotech BEI, an expert retained by Mr. Timm to study the photos of the

adhesive tape. Mr. Ablenas' report was appended to a letter entitled [TRANSLATION] "Application for Review of a Conviction by the Federal Minister of Justice under section 690 of the Criminal Code", dated January 29, 2009. This letter is not part of the documents listed. In his letter, Mr. Timm presented mainly legal arguments and also appended a sworn information of Detective Sergeant André Martel of the Brossard police; investigation reports on the hacksaw and on the search of his apartment, including two reports written by Detective Sergeant Pierre Morasse; a monitoring report of the exhibits dealing with the hacksaw and three pieces of metal found on the floor of his apartment; and an expert assessment request.

[35] The people appointed by the Minister to prepare a report for the Minister are not required to send each and every document to him or her. That is settled law in the case of reports prepared by Canadian Human Rights Commission investigators : see *Clark v Canada (Attorney General)*, 2007 FC 9, 305 FTR 1; *Niaki v Canada (Attorney General)*, 2006 FC 1104, 297 FTR 262; *Canadian Broadcasting Corp. v Paul*, 2001 FCA 93, 274 NR 47; *Canada (Human Rights Commission) v Pathak*, [1995] 2 FC 455, 180 NR 152 (FCA); *Slattery v Canada (Human Rights Commission)*, [1994] 2 FC 574, 73 FTR 161, aff'd by 205 NR 383, [1996] FCJ No 385 (QL); and *Syndicat des employés de production du Québec et de l'Acadie*, above. In this case, the question is whether the authors of the preliminary assessment report reasonably addressed the issues of the photos, the adhesive tape, the barrel and the saw that Mr. Timm raised in his letter of January 29, 2009. In my opinion, they did.

[36] In that letter, Mr. Timm alleged first that the Crown did not send him in advance various photos of the adhesive tape taken by its expert, Bernard Labrecque, who prepared a report based on them and testified at trial that the pieces of adhesive tape around the murder weapon came from a

roll of tape found among Mr. Timm's personal effects at his mother-in-law's home. On the one hand, he argued that since these photos had not been introduced into evidence and the defence only found about them at trial, they constituted fresh evidence that could result in the Minister ordering a new trial. On the other hand, he indicated that Mr. Ablenas' independent analysis of the photos subsequent to the trial revealed that the adhesive tape on the murder weapon was different from the tape that came from the roll of tape seized at his mother-in-law's.

[37] It is clear from reviewing the preliminary assessment report that these photos were taken into account. At pages 9 and 16 of their report, Ms. Schurman and Mr. Scullion stated that when Mr. Labrecque disclosed the existence of the photos during his testimony, both parties were taken by surprise; neither party knew that the expert had taken these photos. Moreover, although the photos were not introduced into evidence, the export's report was, and no objection was raised when it was filed: see pages 9 and 10 of the report. It is also apparent from page 9 of the report that the defence did not move to dismiss or request an adjournment of the trial in order to analyze and review the photos once it found out about them. It appears that the defence left it to the Court to determine their admissibility. Ms. Schurman and Mr. Scullion wrote:

> [TRANSLATION]
> When the defence refused to agree that the photos should be admitted into evidence but did not make a definitive argument about their admissibility, the trial judge simply decided not to admit them because they had not been given to the defence prior to trial.

At page 16 of the report, the authors of the preliminary assessment report suggested that it was a question of defence strategy.

[38] At pages 16 and 17 of their report, Ms. Schurman and Mr. Scullion also referred to a letter from Mr. Timm, dated May 6, 2002, in which he stated that he had asked the defence to submit expert evidence to the Court of Appeal or the Supreme Court, but that his counsel had not done so because of professional error or incompetence. However, the authors of the report indicated that the defence asked the Court of Appeal to consider the photos as fresh evidence, but it determined that the argument was without merit.

[39] Mr. Justice Labrosse's opinion confirmed the information in the report. In his view, neither the Crown nor the defence knew that the photos existed before Mr. Labrecque testified, and since they had not been disclosed beforehand to the defence, the trial judge ruled them inadmissible. After the trial and in the course of this review, these photos were sent to Mr. Timm, who then gave them to Charles Monette, an expert in photography. According to Mr. Monette's report, the pieces of tape on the weapon did not come from the roll of tape found at the home of Mr. Timm's mother-in-law. However, the opinion also revealed that, based on the report by the Royal Canadian Mounted Police (which I will return to later), Mr. Monette's findings were incorrect and showed a lack of competence: see paragraphs 8-10 of his opinion. In fact, in Mr. Justice Labrosse's opinion, these photos could have strengthened the Crown's position at trial: see paragraph 15 of the opinion.

[40] The findings of the expert, Fred J. Ablenas, also appeared in the preliminary assessment report. Ms. Schurman and Mr. Scullion noted at page 21 of their report that his findings did not contradict Mr. Labrecque's testimony. Rather, Mr. Ablenas stated that he was unable to carry out the chemical analysis necessary for him to conclude that the adhesive tape wound around the weapon came from the roll of tape found at the home of Mr. Timm's mother-in-law; this was because of the analyses previously conducted on the tape. With respect to Mr. Ablenas' comment

that the form of the tape's tears on the weapon was different from that on the roll of tape, the authors suggested that the Royal Canadian Mounted Police dealt with the same issue when they re-examined the photos as well as the roll and the pieces of adhesive tape, at the CCRG's request: see pages 20 and 21 of the report. The results of this re-examination, which were communicated to Mr. Timm before Mr. Ablenas wrote his report, [TRANSLATION] "clearly show that the roll of tape filed as an exhibit at the applicant's trial is the same roll of tape that appears on all the photos". According to what is stated at page 10 of the report, the difference between the textures of the tape that is seen in the photos can be explained by different lighting, different cameras and different exposures.

[41] Mr. Justice Labrosse's findings on Mr. Ablenas' report were identical to Ms. Schurman and Mr. Scullion's findings. In his view, Mr. Ablenas did not contradict Mr. Labrecque's testimony, but it was impossible for him to conclude that the adhesive tape wound around the murder weapon came from the roll of tape in question: see paragraphs 10 and 11 of his opinion.

[42] Mr. Timm next alleges that the police hid the hacksaw, which was apparently used to saw off the barrel of the shotgun, and three pieces of metal found in his apartment. He refers to two investigation reports signed by Detective Sergeant Pierre Morasse, which stated that, following their analyses, the police laboratory experts concluded that [TRANSLATION] "all the tests were negative", i.e. there was no connection between the hacksaw and the murder weapon. According to Mr. Timm, this evidence was not provided to the defence and was essential to establishing his innocence.

[43] Ms. Schurman and Mr. Scullion dealt with this issue in detail in their preliminary assessment report. According to them, at page 14 of the report, Mr. Robert Gaulin, the Crown's

expert, testified at trial that he was unable to establish a connection between the saw and the shotgun or between the pieces of metal and the shotgun. He also stated that there was no way to determine when the shotgun had been sawed off. In addition, Detective Sergeant Martel testified that the tests on the saw, the pieces of metal and the shotgun were negative. Consequently, the trial judge instructed the jury on the issue of the saw and said that it was impossible to establish a connection between the pieces of metal and the murder weapon: see page 15 of the report. Given these findings and, as the authors stated [TRANSLATION], "[t]he reasons why the applicant argues that the evidence linked to the saw was not provided to the defence are not clear . . . What is clear is that the evidence linked to the saw probably could not have prejudiced the applicant at trial . . . If anything, this evidence is exculpatory . . .".

[44] At paragraph 15 of his opinion, Mr. Justice Labrosse also referred to the issue of the saw that supposedly disappeared. He stated that this issue had been fully argued at trial and at the Court of Appeal and that it was not relevant to the conviction.

[45] Last, Mr. Timm claimed in his letter that the roll of tape was seized illegally and that the police made false statements to obtain a conviction. In the words of Ms. Schurman and Mr. Scullion, Mr. Timm [TRANSLATION] "states, *inter alia*, that the police officer in charge of the investigation replaced the roll of tape with a roll from a Canadian Tire store so that the tape would match the tape found on the murder weapon."

[46] The preliminary assessment report dealt with these allegations. At pages 19, 20 and 22, it stated that they were made at trial and at the Court of Appeal. The allegation that the police replaced the tape was dismissed as implausible unless the Crown's expert who testified about the

configuration of the pieces of tape also participated in the supposed widespread conspiracy against Mr. Timm; there is no evidence of this: see page 10 of the report. Elsewhere in their report, at pages 18 and 19, Ms. Schurman and Mr. Scullion stated that there were a number of irregularities in the police officers' behaviour in Mr. Timm's case but that the Crown did not try to introduce into evidence the incriminating statements that had been obtained. Also, given that the CCRG is not required to limit itself to the evidence admitted at trial, they indicated that this review uncovered a large amount of incriminating evidence that had not been adduced at trial, including Mr. Timm's admissions that he himself had ordered the murder of his parents, admissions that were subsequently confirmed by wiretap evidence. He also admitted that the murder weapon was a .22 calibre sawed-off shotgun, a month before the police found it.

[47] Similarly, at paragraph 15 of his opinion, Mr. Justice Labrosse referred to the allegations of conspiracy and fabrication of evidence, stating that these issues were raised at trial and at the Court of Appeal. At paragraph 18, he also noted the incriminating evidence listed by the majority of the Court of Appeal. He found that these allegations did not demonstrate that a miscarriage of justice had occurred: see paragraphs 16 and 24 of his opinion.

[48] Although Mr. Timm does not share the CCRG's opinion on the assessment and the interpretation of the evidence and attempts to present his own analysis, he has not demonstrated that the preliminary assessment completed by Ms. Schurman and Mr. Scullion was unreasonable. It is helpful to note that the CCRG has special expertise in determining whether a miscarriage of justice has occurred and that it consists of lawyers and retired judges specifically appointed by the Minister because of their particular training and experience. They assist the Minister in reviewing criminal

convictions by reviewing the applications, conducting investigations and making recommendations to the Minister. Accordingly, their decisions should be afforded considerable deference.

[49] The reasonableness standard requires that courts show deference to the decisions and opinions of decision-makers on issues that are squarely within their expertise. Mr. Timm is asking the Court to substitute its assessment of the evidence for Ms. Schurman and Mr. Scullion's assessment, which is not the role of a judge on judicial review. Even if I disagreed with them on the assessment of the evidence, which is not the case, I am guided by Mr. Justice Iacobucci's statements in the *Southam* decision, above, at paragraph 80:

> I wish to observe, by way of concluding my discussion of this issue, that a reviewer, and even one who has embarked upon review on a standard of reasonableness *simpliciter*, will often be tempted to find some way to intervene when the reviewer him- or herself would have come to a conclusion opposite to the tribunal's. Appellate courts must resist such temptations. My statement that I might not have come to the same conclusion as the Tribunal should not be taken as an invitation to appellate courts to intervene in cases such as this one but rather as a caution against such intervention and a call for restraint. Judicial restraint is needed if a cohesive, rational, and, I believe, sensible system of judicial review is to be fashioned.

[50] For these reasons, the application for judicial review will be dismissed with costs.

ORDER

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed with costs.

"Sean Harrington"

Judge

Certified true translation
Mary Jo Egan, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	
STYLE OF CAUSE:	RICHARD TIMMS v AGC
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APPEARANCES:

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Jacques Savary	FOR THE RESPONDENT

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