

Federal Court



Cour fédérale

**Date: 20180611**

**Docket: IMM-5061-17**

**Citation: 2018 FC 609**

[ENGLISH TRANSLATION]

**Montréal, Quebec, June 11, 2018**

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

**BETWEEN:**

**KITEAU NOEL**

**Applicant**

**and**

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

**Respondent**

**JUDGMENT AND REASONS**

**(Judgment delivered from the bench on June 11, 2018)**

[1] An application for judicial review was filed against a decision, dated November 14, 2017, rendered by the Immigration Division (ID) of the Immigration and Refugee Board. The ID issued a deportation order against the applicant, who was found to be a person described in paragraph 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA).

**Serious criminality**

**36** (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

...

(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or

**Grande criminalité**

**36** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :

[...]

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

[2] The applicant is not a permanent resident or a citizen of Canada.

[3] Following an investigation, the applicant's deportation was ordered on November 14, 2017, under paragraph 36(1)(b), on grounds of serious criminality according to the ID, since Canadian law is considered equivalent to American law.

[4] The applicant's record shows that he was convicted of an offence described as "child abuse" in the American state of Florida under article 827.03(1) of the *Florida Statutes*.

[5] These steps were taken after a report was prepared under subsection 44(1) of the IRPA (Report 44) stating that the applicant was inadmissible after having been convicted outside Canada.

[6] According to Report 44, the equivalent offence is set out in subsection 267(b) of the *Criminal Code*, RSC (1985), c. C-46, which is an indictable offence that bears a sentence of 10 years.

[7] Was it reasonable for the ID to base its decision on an unspecified equivalence in Report 44?

[8] The reasonableness standard of review is based on the determination of equivalence between a foreign statute and a federal statute (*Svecz v. Canada (Public Safety and Emergency Preparedness)*, 2016 FC 3; *Abid v. Canada (Citizenship and Immigration)*, 2011 FC 164).

[9] The applicant tried to demonstrate that the Board overstepped its jurisdiction by basing its decision on subsection 44(1) of the IRPA.

[10] The applicant argues that the ID could not base its decision on an equivalence that was not expressly specified in Report 44. That argument was dismissed by this Court (see *Bolanos Blanco v. Canada (Citizenship and Immigration)*, 2010 FC 280; see also, with regard to the principles of the Supreme Court in the reasons in *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, demonstrating when the final outcome would not change the conclusion).

[11] Had the offence been committed in Canada, it would be considered assault with a weapon under subsection 267(a) of the *Criminal Code*, liable to imprisonment for a term not exceeding 10 years.

[12] The applicant was reasonably found to be inadmissible in Canada by the ID under paragraph 36(1)(b) of the IRPA.

**JUDGMENT in file IMM-5061-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question of importance to be certified.

“Michel M. J. Shore”

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Judge

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

**DOCKET:** IMM-5061-17

**STYLE OF CAUSE:** KITEAU NOEL v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** JUNE 11, 2018

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** JUNE 11, 2018

**APPEARANCES:**

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