

Federal Court



Cour fédérale

Date: 20100302

Docket: IMM-6267-09

Citation: 2010 FC 243

Ottawa, Ontario, March 2, 2010

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Applicant

and

XXXX

Respondent

SUPPLEMENTARY REASONS FOR JUDGMENT AND JUDGMENT

[1] Subsequent to the issuance of my Reasons for Judgment and Judgment dated February 2, 2010, the Respondent has proposed two certified questions involving the interpretation of ss. 58(1)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. The questions proposed are the following:

- (a) In an application pursuant to ss. 58(1)(c) of the *Immigration and Refugee Protection Act*, what degree of deference, if any, is the presiding Member of the Immigration Division required to give to the Minister's suspicion that the person concerned is inadmissible on grounds of security or for violating human or international rights?

- (b) In an application pursuant to ss. 58(1)(c) of the *Immigration and Refugee Protection Act*, what degree of deference, if any, is the presiding Member of the Immigration Division required to give to the Minister's decision on what further investigative steps are needed (or necessary) in their inquiry into a suspicion that the person concerned is inadmissible on grounds of security or for violating human or international rights?

[2] The Applicant opposes the request for certification on the basis of mootness and points out that, since the Court's decision, the Respondent has been released from custody on conditions, albeit that the conditions agreed to by the parties are different than those imposed by the Board.

[3] There is no question that the issue of statutory interpretation raised on this judicial review meets the threshold for certification and would be worthy of consideration by the Court of Appeal. The views of the Court of Appeal concerning the scope of ss. 58 (1)(c) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 would be of value when a case similar to this comes up in the future. Although the Applicant may well be correct that this judicial review is now moot in the face of the Respondent's release from custody, I am still disposed to certify the questions proposed. That is so because mootness is not necessarily a bar to hearing a case on appeal. It seems to me to be more prudent to allow the Court of Appeal to decide the question of mootness than to block an otherwise meritorious appeal on that basis before the issue has been fully argued.

[4] The Applicant has, in the alternative, proposed his own questions for certification. I do not think that there is much to choose from between the two proposals and I will, therefore, certify the questions proposed by the Respondent.

JUDGMENT

THIS COURT ADJUDGES that this application for judicial review is allowed.

THIS COURT FURTHER ADJUDGES that the following questions are certified:

- (a) In an application pursuant to ss. 58(1)(c) of the *Immigration and Refugee Protection Act*, what degree of deference, if any, is the presiding Member of the Immigration Division required to give to the Minister's suspicion that the person concerned is inadmissible on grounds of security or for violating human or international rights?
- (b) In an application pursuant to ss. 58(1)(c) of the *Immigration and Refugee Protection Act*, what degree of deference, if any, is the presiding Member of the Immigration Division required to give to the Minister's decision on what further investigative steps are needed (or necessary) in their inquiry into a suspicion that the person concerned is inadmissible on grounds of security or for violating human or international rights?

“ R. L. Barnes ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-6267-09

STYLE OF CAUSE: MCI v. XXXX

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: January 14, 2010

**SUPPLEMENTARY REASONS
FOR JUDGMENT AND
JUDGMENT:** BARNES J.

DATED: March 2, 2010

APPEARANCES:

Banafsheh Sokhansanj FOR THE APPLICANT

Larry W.O. Smeets FOR THE RESPONDENT

SOLICITORS OF RECORD:

John H. Sims, Q.C. FOR THE APPLICANT
Deputy Attorney General of Canada
Vancouver, BC

Smeets Law Corporation FOR THE RESPONDENT
Vancouver, BC