Federal Court  Cour fédérale

Date: 20150612

Docket: T-2132-13

Citation: 2015 FC 747

Ottawa, Ontario, June 12, 2015

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

NICOLAS CHRISTOPHER JOSEPH TOSTI

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a Canadian citizen currently incarcerated in Ohio who applied for transfer to Canada to serve the remainder of his sentence in Canada. This application for judicial review is of the Minister's decision to deny the Applicant's request for transfer of his sentence pursuant to the *International Transfer of Offenders Act*, SC 2004 c 21 ("ITOA").

[2] The matter was heard in Toronto by video conference with the Applicant being in Youngstown, Ohio and the Respondent's counsel in Ottawa. The Applicant represented himself but he was not allowed to have his legal documentation with him. Despite that disadvantage, he was well prepared and accurate in his memory of what the materials contained so the matter proceeded as scheduled.

[3] For the reasons below, I am granting this application.

I. Facts

[4] As described in his Correctional Service Canada (CSC) file summary and United States Department of Justice Case Summary, the Applicant pled guilty and was sentenced to 10 years, with life supervised release on May 14, 2010 for the offence "Attempt Enticement of a Minor to Engage in Sexual Activity". The projected release date in the United States is February 2018.

[5] The circumstances of the offence are that in May 2009, a United States federal officer posed as a 15 year old girl in an online chat room and received communication from the Applicant. The Applicant asked for pictures of the "girl" and asked her sexually explicit questions. The girl told the Applicant that she was 15; the Applicant sent the girl videos of himself masturbating and asked to meet her at a mall so he could teach her how to have sex. After a phone call with a female federal officer posing as the girl, the two agreed to meet.

[6] The Applicant was arrested at the spot he agreed to meet the girl and admitted to talking online but denied that he was coming to meet her to engage in sexual activity. The Applicant received a three level reduction in his sentence for "Acceptance of Responsibility".

[7] The United States has approved the Applicant's transfer and he has no criminal record in Canada or outstanding charges in the United States. He only pled guilty in 2008 in Illinois for driving while his licence was suspended but with no jail time.

[8] The Applicant is currently in a low security facility in Youngstown, Ohio and his adjustment has been satisfactory with no intervention and no disciplinary charges. He has a job as a hallway porter, has completed health courses and is enrolled in faith-based courses.

[9] The Applicant moved to Illinois to pursue a relationship with his now ex-wife who is significantly older American Citizen with children of her own. The Applicant was in the United States on a K1 fiance visa until the couple married in 2000 and later divorced in 2011. As his now ex wife had children from an existing marriage the couple's plan was to return to Canada once her children were old enough. In 2008, one of her children that was still living at home was under court order not to leave the United States which further frustrated the plan to return to Canada.

[10] The Applicant has younger brother and sister in Canada. The Applicant's sister in Canada stated that his family ties are strong and that they write to each other, however she is only able to provide emotional support. The sister states that her brother was suicidal at the time of the

offence, attempted suicide and is now diagnosed with bipolar disorder. The Applicant's brother has indicated he doesn't want to have a relationship with his brother.

[11] The Applicant was a drug user at a young age and also reported a history of physical, emotional and sexual abuse since age six.

[12] The Memorandum to the Minister from Public Safety Canada does not provide an opinion or recommendation to the Minister but only summarizes the facts and points out the consideration of certain factors. The recommendation only states that the file is complete and ready for the Minister's review as soon as possible.

[13] The Minister considered the Applicant's request for transfer pursuant to the ITOA as it was prior to the May 3, 2012 amendments because the application was made before the amendments came into force. The Minister considered the following factors:

a) The nature and circumstances of the offence the Applicant was charged with;
b) That the Applicant pled guilty and received a three-level reduction to his offence;
c) The psychiatric status of the Applicant as described in the Certified US Case Summary of a Canadian Citizen;
d) The Applicant's home life of physical, sexual and emotional abuse while growing up;
e) The Applicant does not have a criminal record in Canada; the applicant pled guilty to driving with a suspended license in 2008;
f) The Applicant lived in the US since May 2000 and was employed in the US at the time of his arrest;
g) The Applicant is a permanent resident of the United States according to the US Department of Homeland Security, Immigration and Customs Enforcement and that he last visited Canada in 2004. The CSC Community Assessment states that the Applicant's intentions appear to abandon Canada and that his ties are limited;
h) He has his sister's support, but only emotional support and he is not in contact with his brother and father who both live in Canada. The Applicant's mother died in 2003 and he has a daughter in the US living with her mother. The Applicant married a US citizen in 2000 and divorced in 2011;

i. While incarcerated in the US, the Applicant has demonstrated satisfactory institutional adjustment, has not incurred any disciplinary charge and completed a variety of courses.

[14] The Minister found that the Applicant played a significant role in enticing a minor for sexual activity and that he knowingly contacted, questioned, sent videos, phoned and travelled to attempt to engage in sexual activity with a girl who said she was fifteen years old.

[15] The Minister stated that he considered that the Applicant:

- pled guilty;
- received a reduced offence level;
- has been of good conduct;
- but also considered the significant sentence;
- the seriousness of the offence and
- its harm to society;
- that the Applicant has established ties in the US;
- has not maintained ties to Canada;
- the Minister found that the Applicant remained outside Canada with the intent to abandon Canada as his permanent residence.

[16] The Minister found that a transfer would not contribute to the administration of justice, including public safety, in Canada nor to the Applicant's effective reintegration into the community and accordingly did not consent to the transfer to Canada.

II. Standard of Review

[17] The standard of review of the Minister's decision on whether to consent to transfer an inmate pursuant to the ITOA is reasonableness. The decision is discretionary and subject to significant deference (*Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 ("*Divito*")):

> The Minister's discretion to grant or refuse prisoner transfer requests under the ITOA is broad and flexible. A large measure of deference is appropriate in the circumstances, given the complex social and political problems being tackled, such as security and terrorism: *Kamel* (F.C.A.), at paras. 57-59; *Cotroni*, at p. 1489; *Lake v. Canada (Minister of Justice)*, 2008 SCC 23, [2008] 1 S.C.R. 761, at paras. 37-39.
>
> Each individual decision by the Minister must nonetheless respect the governing principles of administrative law and, of course, remains subject to judicial review. Moreover, the Minister's discretion must be exercised with due regard for the s. 6(1) Charter rights at stake: *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395.

[18] The only issue to be decided is whether the Minister's decision was reasonable.

III. Preliminary Issue

[19] The Respondent argued that this judicial review application is moot because the Applicant is open to re-apply for a transfer one year after the date of his initial denial letter, meaning he could have reapplied since November 3, 2013. The Respondent's position is that a reapplication would serve the same purpose as a positive outcome from this judicial review and that because of judicial economy, the Court should exercise its discretion to deny the application.

[20] The test for the doctrine of mootness is set out in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353 ("*Borowski*"). The test in *Borowski* involves a two-step analysis: First whether the "...tangible and concrete dispute has disappeared and the issues have become academic" and second, if question one is in the affirmative, then is it necessary that the court should exercise its discretion to hear the case.

[21] The Respondent is correct that the Applicant could apply again but then he would be subject to the legislation that was brought in after his first application. For this reason the Applicant strongly opposes re-application and argues there is still a live issue as he is still serving his sentence in the United States.

[22] If I follow the Respondent's position and find this matter moot because the Applicant could reapply then it would appear that all transfer cases would be moot. Generally it takes at least one year from the date of the decision until the hearing thus making the option of reapplying available to the inmate. That would insulate the Minister's decisions from ever being reviewed. That being said on some facts the matter may be moot but in this case the legislation was amended since his original application.

[23] I do not find that the tangible and concrete dispute has disappeared and so that no prejudice occurs I will hear the matter.

IV. Analysis

[24] The Minister was provided a memorandum concerning the Applicant's request for a transfer. The memorandum was prepared by CSC and supported by documentation. The Minister is not bound to follow the advice of CSC but the Minister must give reasons so that the Court can understand why the Minister made the decision.

[25] The Applicant pointed out several factual errors in the decision and submits that the Minister's decision was unreasonable because certain facts of his application were misconstrued.

[26] The Applicant alleges the Minister erred when stating he has no relationship with his father in Canada when the basis of his toxic relationship with his father and his attempts to reconcile were ignored. He says that this is very insensitive to use his relationship with his father against him.

[27] He argues his ability to continue social ties with his friends in Canada was destroyed by the practicalities of prison life such as limited phone calls, limited money for stamps, gifts and other restrictions.

[28] The Applicant disputes the Minister's characterization of his relationship with his brother and sister that he says were done in a vacuum without regard to the human aspects of the relationships. He sees an overzealousness of the Minister to read into things such as the reason why he cannot live with his sister is because she is newly married with a small house, not because she does not want him.

[29] He was concerned that the Minister seemed to put a lot of weight on the fact he has a child out of wedlock that lives with the mother in the United States. His evidence was he has little contact with the child. The lack of contact with the child had more permanence once he was imprisoned as he understood he would be deported back to Canada and would have no opportunity to have a relationship with the child. Yet having a child as a result of an affair in the United States seemed to be a factor that the Minister put great weight on proving that he had abandoned Canada.

[30] The Applicant submits that his transfer to Canada actually fulfills the goals of the ITOA regarding public safety, security, rehabilitation, and reintegration and the Minister's position is directly counter to the purpose of the ITOA. The Applicant submits that if he is transferred to Canada, he will access programs on rehabilitation and reintegration and that following release, he would be under the watch of either the parole board or he would be a registered sex offender in Canada. He argues that if he completes his sentence in the United States and then returns to Canada on his release date of February 16, 2018 (as his citizenship is not in question), he will have no reintegration skills and will not be supervised by any agency. The Applicant submissions are that if he is returned to Canada, he will be under greater control, supervision, his criminal record will be in Canada and if he commits any further crime in Canada, will likely have greater penalties.

[31] Further submissions by the Applicant were that the Minister did not consider several mitigating factors in his case, namely that he is in a privately contracted facility in the United States where reintegration programs are not offered to inmates who will be deported. He argues that without rehabilitation programs, he will be at a disadvantage. He will have no vocational or technology skills when he is released. He argues that the United States corrections system has a much higher rate of recidivism compared to the Correctional Service in Canada.

[32] The Supreme Court of Canada described the purpose and background of the ITOA in *Divito*, above, in relation to the constitutionality of section 10 and whether the provisions infringed upon section 6 of the *Charter*. As a matter of international law, Canada does not have the legal authority to require the return of a citizen in jail in another country. Treaties between

the United States and Canada were entered into to allow inmates to serve their sentence in their home country there by promoting the rehabilitation and reintegration closer to their families, in familiar culture, language and custom. Neither the ITOA nor section 6 of the *Charter* create a right for Canadian citizens incarcerated abroad to return to Canada to serve their sentences. However, the Supreme Court of Canada also added that once the foreign jurisdiction consented to transfer, as in this case with Mr. Tosti, the Minister's discretion under section 10 is fully engaged and must be exercised in compliance with *Charter* values (*Doré v Barreau du Québec*, 2012 SCC 12 at para 18).

[33] Section 10 requires the Minister to consider all of the enumerated factors listed. No one factor is paramount and the purposes as listed in section 3 should be at the front of mind when making a decision (*Canada (Public Safety) v Carrera*, 2013 FCA 277 ("*Carrera*")).

[34] Mr. Justice Stratas provided guidance in *Carrera* at paragraph 6, when he said that exalting abandonment above the other sections is not reasonable. Abandonment is a backward looking assessment and can be given significant weight (*Carrera* at para 7) but "… the Minister must still engage in the process of consideration and weighing discussed in the preceding bullet". In that bullet at paragraph 9, he offered the following guidance:

> The Minister must consider and weigh all of the factors under section 10, bearing in mind the purposes of the Act set out in section 3, namely to further "the administration of justice" and "the rehabilitation of offenders and their reintegration into the community' by " enabling offenders and their reintegration in to the community" by " enabling offenders to serve their sentences in the country of which they are citizens or nationals." …."

[35] In *Lau v Canada (Public Safety and Emergency Preparedness*), 2013 FC 1142, aff'd 2015 FCA 28, Madam Justice Kane condensed many of the principles the Minister must consider:

> …
>
> [44] The most recent guidance comes from the Federal Court of Appeal in *LeBon*. In that case, the Minister disagreed with the advice of CSC and was of the opinion that the likelihood that Mr LeBon would commit a criminal organization offence outweighed the positive factors.....
>
> [45] And at para 25, the Court states that:
>
> [w]here, as in the present case, there are factors that support a transfer, the Minister must demonstrate some assessment of the competing factors so as to explain why he refused to consent to a transfer. Without such an assessment, the Minister's decision is neither transparent nor intelligible. Nor does the decision comply with the statutory requirement imposed by subsection 11(2) that the Minister give reasons…

[36] And from *Del Vecchio v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 1135 at para 22:

> As Justice Harrington underscored at paragraph 22 of *Divito v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 983, [2009] FCJ No 1158 ("*Divito*, FC"), the question for the Court is not whether it would have been reasonable for the Minister to agree to the transfer, but <u>rather whether it was unreasonable for the Minister to refuse the transfer</u>
>
> Emphasis added

[37] The Minister stated that the transfer was refused because to do so is not in accordance with the purposes of the ITOA. As stated in section 3, the purpose of the ITOA is to "…enhance public safety and contribute to the administration of justice and the rehabilitation of offenders

and their reintegration into the community…" The Minister's reasons state that the factors weighing against consent were the seriousness and nature of the offence, the Applicant's limited ties to Canada and that it appeared that the Applicant abandoned Canada.

[38] Mr. Justice Martineau found in *Lebon v Canada*, 2012 FC 1500 that the Minister must engage in a true balancing exercise of the competing factors to explain why he refused to consent. Here, the Minister's decision appears to rely on the Community Assessment Report however does not engage with the clearly competing factors outlined in the Memorandum to the Minister and the CSC Summary. In the Summary, it is clearly set out at Section J "Effect of Transfer" if the Applicant is not transferred, he would be deported to Canada in 2018 and "…then not be subject to any supervision requirement or controls and there would be no record in Canada of his foreign conviction". Further, that if the Applicant was transferred, his offence is a "designated offence" and he would be required to register in Canada as a sex offender. The Minister does not engage at all with the contrary position that public safety in Canada may be enhanced by the Applicant's transfer; the Minister obliquely states that a transfer would not contribute to public safety when there is clear evidence of the opposite. The evidence is simply re-stated in the decision but there is no weighing exercise.

[39] Further, neither the CSC Summary nor the Memorandum to the Minister has a statement regarding the existence or lack of rehabilitation programs available to the Applicant in the United States. As this is a stated purpose of the ITOA, and the Applicant himself provided evidence that rehabilitation programs were not available to him because he is an inmate awaiting deportation, the Minister was likewise required to engage with this evidence. It is troubling and an incomplete

assessment because the Applicant's evidence on rehabilitation is not mentioned in the decision, Memorandum or the Summary but is a primary consideration when administering the ITOA.

[40] Each of the errors that the Applicant identified above may be characterized as disagreement with the weight the Minister put on certain factors, so his arguments are to weight, rather than an unreasonable outcome. This is because of the great discretion that the Minister has when assessing an inmate for transfer pursuant to the ITOA. The Minster has discretion no doubt, as outlined in *Divito*, but for a decision to be reasonable, it must be intelligible. With the lack of engagement with competing factors, it is not clear at all how the Minister arrived at his decision and why the strong evidence in favour of a transfer was rejected.

[41] As is stated many times since *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board*), , 2011 SCC 62, reasons do not require every piece of evidence to be recited, but conversely, reasons must allow this Court to understand how the decision was made and whether it falls within the reasonableness spectrum. The reasoning of the decision cannot be assessed in this case because the Minister did not engage with or evaluate important contrary evidence but simply listed it all.

[42] Importantly, some of the Minister's findings are directly contradictory to what is stated in the Memorandum and Summary, namely that the Applicant has not maintained ties to Canada. The Memorandum states that the Applicant's sister says that family ties in Canada remain strong and the CSC Summary at section 5(C), also states the Applicant has family ties in Canada.

[43] I acknowledge the Respondent's argument that the Minister is entitled to make a comprehensive approach to all relevant factors and that the presence or absence of a particular factor is not determinative, but that is not what makes the decision unreasonable; it is the complete lack of engagement with highly relevant factors.

[44] I also agree with the Respondent that the Minister has the discretion to conclude that the Applicant has abandoned Canada when looking backward at what the Applicant did in the past, rather than his intentions for the future but I disagree that the Minister made a fulsome assessment of the evidence by simply reciting factors in favour of transfer. I apply the decision of Mr. Justice Stratas in *Carrera*, above, that if abandonment is present, then the Minister must still engage in the process of consideration and weighing.

[45] For these reasons, the application for judicial review is allowed. The application for transfer is remitted to the Minister for reconsideration.

[46] The Applicant should be accorded 30 days from the date of this order to prepare and file additional submissions if he wishes, before his application is reviewed by the Minister. The review is to take place using the legislation in place at the time the application was originally filed.

[47] Post hearing, the Respondent abandoned their request for costs. The Applicant did not seek costs in his application but did wish to be reimbursed for his filing fees as he currently

makes $29.00 a month from his institutional work. I will award costs in the amount of $250.00 to the Applicant payable by the respondent forthwith.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is granted and the decision quashed and the Applicant's request for transfer shall be reconsidered by the Minister under the legislation that was in force at the time of the original application;

2. The Applicant shall be allowed 30 days from the date of this order to file additional or updated material or submissions if he wishes that is to be considered by the Minister;

3. Costs are awarded in the amount of $250.00 payable to the applicant forthwith.

"Glennys L. McVeigh"

Judge

ANNEX "A"

International Transfer of Offenders Act (S.C. 2004, c. 21)

Purpose

3. The purpose of this Act is to enhance public safety and 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.

Factors — Canadian offenders

10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister may consider the following factors:

(a) whether, in the Minister's opinion, the offender's return to Canada will constitute a threat to the security of Canada;

(b) whether, in the Minister's opinion, the offender's return to Canada will endanger public safety, including

(i) the safety of any person in Canada who is a victim, as defined in subsection 2(1) of the Corrections and Conditional Release Act, of an offence committed by the offender,

(ii) the safety of any member of the offender's family, in the case of an offender who has been convicted of an offence against a family member, or

(iii) the safety of any child, in the case of an offender who has been convicted of a sexual offence involving a child;

(c) whether, in the Minister's opinion, the offender is likely to continue to engage in criminal activity after the transfer;

(d) whether, in the Minister's opinion, the offender left or remained outside Canada with the intention of abandoning Canada as their place of

Objet

3. La présente loi a pour objet de renforcer la sécurité publique et 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.

Facteurs — délinquant canadien

10. (1) Le ministre peut tenir compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :

a) le fait que, à son avis, le retour au Canada du délinquant constituera une menace pour la sécurité du Canada;

b) le fait que, à son avis, le retour au Canada du délinquant mettra en péril la sécurité publique, notamment :

(i) la sécurité de toute personne au Canada qui est victime, au sens du paragraphe 2(1) de la Loi sur le système correctionnel et la mise en liberté sous condition, d'une infraction commise par le délinquant,

(ii) la sécurité d'un membre de la famille du délinquant, dans le cas où celui-ci a été condamné pour une infraction commise contre un membre de sa famille,

(iii) la sécurité d'un enfant, dans le cas où le délinquant a été condamné pour une infraction d'ordre sexuel commise à l'égard d'un enfant;

c) le fait que, à son avis, le délinquant est susceptible, après son transfèrement, de continuer à commettre des activités criminelles;

d) le fait que, à son avis, 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

permanent residence;
(e) whether, in the Minister's opinion, the foreign entity or its prison system presents a serious threat to the offender's security or human rights;
(f) whether the offender has social or family ties in Canada;
(g) the offender's health;
(h) whether the offender has refused to participate in a rehabilitation or reintegration program;
(i) whether the offender has accepted responsibility for the offence for which they have been convicted, including by acknowledging the harm done to victims and to the community;
(j) the manner in which the offender will be supervised, after the transfer, while they are serving their sentence;
(k) whether the offender has cooperated, or has undertaken to cooperate, with a law enforcement agency; or
(l) any other factor that the Minister considers relevant.

Factors — Canadian and foreign offenders

(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister may consider the following factors:
(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
(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.

Additional factor — Canadian young persons

(3) In determining whether to consent to

sa résidence permanente;
e) le fait que, à son avis, l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou les droits attachés à sa personne;
f) le fait que le délinquant a des liens sociaux ou familiaux au Canada;
g) la santé du délinquant;
h) le refus du délinquant de participer à tout programme de réhabilitation ou de réinsertion sociale;
i) le fait que le délinquant a reconnu sa responsabilité par rapport à l'infraction pour laquelle il a été condamné, notamment en reconnaissant le tort qu'il a causé aux victimes et à la société;
j) la manière dont le délinquant sera surveillé, après son transfèrement, pendant qu'il purge sa peine;
k) le fait que le délinquant a coopéré ou s'est engagé à coopérer avec tout organisme chargé de l'application de la loi;
l) tout autre facteur qu'il juge pertinent.

Facteurs — délinquant canadien ou étranger

(2) Il peut tenir compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger :
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) 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).

Facteur supplémentaire : adolescent

(3) Dans le cas du délinquant canadien qui est un adolescent au sens de la Loi sur le système de justice pénale pour

the transfer of a Canadian offender who is a young person within the meaning of the Youth Criminal Justice Act, the Minister and the relevant provincial authority shall consider the best interests of the young person.

Primary consideration — Canadian children

(4) In determining whether to consent to the transfer of a Canadian offender who is a child within the meaning of the Youth Criminal Justice Act, the primary consideration of the Minister and the relevant provincial authority is to be the best interests of the child.

les adolescents, le ministre et l'autorité provinciale compétente tiennent compte de son intérêt pour décider s'ils consentent au transfèrement.

Considération primordiale : enfant

(4) Dans le cas du délinquant canadien qui est un enfant au sens de la Loi sur le système de justice pénale pour les adolescents, son intérêt est la considération primordiale sur laquelle le ministre et l'autorité provinciale compétente se fondent pour décider s'ils consentent au transfèrement.

Canadian Charter of Rights and Freedoms, *Constitution Acts*, 1867 to 1982

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move to and take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a

Liberté de circulation

6. (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.

Liberté d'établissement

(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :

a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;

b) de gagner leur vie dans toute province.

Restriction

(3) Les droits mentionnés au paragraphe (2) sont subordonnés :

a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;

b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.

Programmes de promotion sociale

(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois,

province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2132-13
STYLE OF CAUSE:	NICOLAS CHRISTOPHER JOSEPH TOSTI v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	TORONTO, ONTARIO
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JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	JUNE 12, 2015

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