

Federal Court



Cour fédérale

Date: 20110616

Docket: IMM-2875-10

Citation: 2011 FC 708

Toronto, Ontario, June 16, 2011

PRESENT: The Honourable Justice Johanne Gauthier

BETWEEN:

HAM BYEONG SUN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] The applicant seeks judicial review of the decision of a visa officer who refused his application for a permanent residence visa as a Skilled Worker because the applicant was criminally inadmissible pursuant to paragraph 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The facts of the case are not in dispute. On December 21, 1998, the applicant was convicted of a criminal offence pursuant to article 268 of the Korean Criminal Act, namely, “death and injury

by occupational gross negligence”. The applicant had been driving with a blood-alcohol level of 0.12 percent when he crossed the centre line and collided with a truck, seriously injuring its passengers.

[3] As a result of this conviction, the applicant immediately paid a fine of \$1,500,000.00 KRW (approximately \$1,500.00 CDN). Under Korean law, imprisonment can be commuted to a fine, which was the case here.

[4] Since then, the applicant has had a clean criminal record. In his visa application, the applicant did not request information about rehabilitation nor did he apply for it.¹ In fact, he only did so after the decision-maker had finally dealt with his visa application and had become *functus officio*.

[5] On March 29, 2010, the applicant was advised that his application was refused because it had been determined that if committed in Canada, the offence he was convicted of in Korea would be punishable under subsection 249(3) of the Canadian *Criminal Code*, RSC 1985, c C-46, by a maximum term of imprisonment of at least ten years.

[6] Surprisingly,² the applicant did not argue that he is not a person described in paragraph 36(1)(b) of *IRPA*.³ It is agreed that more than 10 years had elapsed since the applicant’s conviction and the payment of the fine when the officer reviewed the applicant’s application and that the

¹ See discussion about the distinct processes involved.

² Thus, implicit in the applicant’s lack of submissions in respect of paragraph 36(1)(b) of *IRPA* is his acknowledgment that a sentence of 10 years exactly is contemplated by subsection 249(3) of the *Criminal Code* (as it is in s. 36(1)(b)).

applicant met all the conditions set out in paragraph 18(2)(a) of the *Regulations* except for subparagraph 18(2)(a)(i), namely that the offence is punishable in Canada by a maximum term of imprisonment of less than ten years (emprisonnement maximal de moins de dix ans) which is at the centre of the dispute.

[7] In effect, pursuant to subsection 249(3) of the *Criminal Code*, the corresponding offence under Canadian law is punishable by imprisonment for a term not exceeding ten years.⁴

[8] The only issue in this application is whether the term “not exceeding ten years” in the *Criminal Code* falls within the maximum term of “less than 10 years” in section 18 of the *Regulations*.

[9] This is a question of law which normally would attract a standard of correctness, although some legal questions can be subject to a more deferential standard, for example, where a tribunal is interpreting its own statute (*Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51 and 54, *Canada (Superintendent of Bankruptcy) v MacLeod*, 2011 FCA 4 at para 25). However, in this case the standard of review is immaterial since the Court is of the view that the officer’s decision was correct.

[10] Because the concept of rehabilitation from serious criminality is not often discussed in the jurisprudence, it is worth mentioning that paragraph 36(3)(c) of *IRPA* provides for two distinct ways in which a person may overcome criminal inadmissibility arising from offences committed outside

³ All relevant sections of *IRPA* and of the *Immigration and Refugee Protection Regulations*, SOR-2002/227 (the *Regulations*) are attached as Appendix “A”.

Canada – (i) by applying to the Minister for rehabilitation, or (ii) if one falls within a prescribed class deemed to have been rehabilitated.

[11] Although the burden of providing sufficient evidence to enable the appropriate decision-maker to decide whether or not a person has overcome criminal inadmissibility is always on the person seeking to rely on such a remedy, the processes involved are quite different.

[12] If one provides sufficient evidence that one meets the criteria set out in section 18 of the *Regulations* for the “class of persons deemed to have been rehabilitated”, the officer reviewing the visa application must consider the person rehabilitated and evaluate the application on its merits.

[13] If one does not fall within a deemed class, one must provide evidence that one has obtained a ministerial decision that the person is rehabilitated. There is no right to such rehabilitation (distinct from deemed rehabilitation). One must apply for it and satisfy the Minister or his delegate that one has been rehabilitated. A person can make such an application five years after the completion of an imposed sentence (for matters referred to in paragraphs 36(1)(b) and (2)(b) of *IRPA*) or five years after committing an offence (for matters referred to in paragraphs 36(1)(c) and (2)(c) of *IRPA*), as is prescribed by section 17 of the *Regulations*. This process is similar to, but not the same as, that followed by a person convicted of an offence in Canada seeking a pardon from the Minister (paragraph 36(3)(b) of *IRPA*).

⁴ French version: “emprisonnement maximal de dix ans”.

[14] This is clearly explained in the Immigration Canada guide entitled, “Rehabilitation For Persons Who Are Inadmissible to Canada Because of Past Criminal Activity”⁵ at pages 5 and 6.

[15] It is worth noting that Table 1, entitled “Eligibility for Rehabilitation” found at page 6, summarizes the types of offences and length of rehabilitation periods. It clearly spells out that for an offence punishable by a maximum term of imprisonment of ten years or more the deemed rehabilitation does not apply, but the person may apply to the Minister five years from completion of the sentence or commission of the offence as the case may be.

[16] In *Canada (Minister of Citizenship and Immigration) v Kelley*, 2007 FC 82⁶ my colleague, Justice Danièle Tremblay-Lamer, briefly dealt with a similar issue having to construe whether an offence under subsection 264(3) of the *Criminal Code*, which, like subsection 249(3), was punishable for a term “not exceeding ten years”, qualified as serious criminality although this problem arose in the context of applying subsection 68(4) of *IRPA* dealing with the cancellation of stay of execution of a removal order and termination of the right of appeal by operation of law. She held at paragraph 19 that an offence punishable for a term “not exceeding ten years [...] necessarily includes the possibility of a ten-year sentence.”

⁵ Citizenship and Immigration Canada, IMM 5312E, “Rehabilitation For Persons Who Are Inadmissible to Canada Because of Past Criminal Activity”, online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/English/pdf/kits/guides/5312E.PDF>>.

⁶ As is often the case for questions that are somewhat obvious, there appears to be little case law in the criminal jurisdiction dealing with the interpretation of the words “not exceeding ten years”. In *R v Debastien*, [1994] YJ No 136 (QL), Justice Hudson had to determine whether an offence punishable by imprisonment not exceeding ten years was included in the phrase “ten years or more” in another section of the *Criminal Code*. In an exceedingly brief decision, the Court held that a term “not exceeding ten years” is one where the actual ten-year term is available. It was thus included in the section where the term was defined as being “ten years or more”.

[17] The applicant's counsel has tried to distinguish this matter on the basis that the construction was done in a context different than that provided for in subsection 36(3) dealing with rehabilitation which, as a remedy, should be construed more widely. I cannot agree.

[18] In this matter, not only is the Court bound by comity to follow Justice Tremblay-Lamer's interpretation, it is also beyond any doubt in my mind that this interpretation is correct and the only one possible in this case. In coming to that conclusion I have applied the construction principles set out in *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51

[*Medovarski*], at paragraph 8 which call for the contextual approach to statutory interpretation:

The words of this statute, like any other, must be interpreted having regard to the object, text and context of the provision, considered together: E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. In interpreting s. 196 to determine whether it eliminates appeals for permanent residents for whom a stay from an order for removal had been granted, I consider the purpose of the *IRPA* and its transitional provisions, the French and English text of s. 196, the legislative context of s. 196, and the need to interpret the provision to avoid an absurd, illogical or redundant result. Finally, I deal with concerns about unfairness to the appellants caused by the transition to the new *IRPA*.

[19] The general scheme of *IRPA*, particularly in respect to serious criminality is reviewed and discussed in *Medovarski* as well as in *Canada (Minister of Citizenship and Immigration) v Hyde*, 2006 FCA 379 and need not be repeated here. The language of subsection 249(3) of the *Criminal Code* is clear and if there were any ambiguity (which I do not believe there is) it would be totally dissipated by considering the French version which makes it extremely clear that the maximum sentence of ten years is included. Thus, in the present case, the following will apply:

- a. Serious criminality is defined at subsection 36(1) as including offences committed outside of Canada which could have been punishable by a maximum term of at least ten years, meaning ten years or more.
- b. Subsection 249(3) of the *Criminal Code* provides for a term not exceeding ten years, meaning ten years or less.
- c. Pursuant to paragraph 36(3)(c) of *IRPA* and section 18 of the *Regulations*, the benefit of deemed rehabilitation only applies to offences punishable by a maximum of less than ten years, meaning up to 9 years, 364 days.

[20] The applicant's argument based on subsection 27(2) of the *Interpretation Act*, RSC 1985, c I-21, which deals with the computation of a number of days between two events, is simply specious. As noted in *Lopez v Canada (National Parole Board)*, 2001 BCCA 742 at paragraph 19, section 27 simply reflects the long-standing common law rule that in computing time between two events, the law does not count units of time smaller than one day. It simply has no application to the case at bar.

[21] With respect to the analogy applicant's counsel attempted to draw with the provisions of the *Criminal Records Act*, RSC 1985, c C-47 dealing with an application for pardon, there is little need to say much. If indeed an analogy could be made, it would only be with the first type of process discussed above, that is, an application to the Minister for rehabilitation especially considering the criteria to be considered under the above-mentioned *Act*, with respect to pardons, which include subjective elements such as the assessment of surrounding circumstances and is a discretionary measure.

[22] I would normally have dealt with this application by way of a simple order, given that it raised no real issue. My only reason for issuing reasons is that, as mentioned, there appears to be little case law dealing with the rehabilitation section of the *Regulations* and *IRPA* as a whole.

[23] The parties did not suggest any question for certification and the Court agrees that none would meet the test here.

[24] This application is dismissed.

ORDER

THIS COURT ORDERS that this application is dismissed.

“Johanne Gauthier”

Judge

APPENDIX “A”

- *Immigration and Refugee Protection Act, SC 2001, c 27*

Application before entering Canada

11. (1) A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations. The visa or document may be issued if, following an examination, the officer is satisfied that the foreign national is not inadmissible and meets the requirements of this Act.

Serious criminality

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

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;

(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

(c) committing an act outside Canada that is an offence in the place where it was committed and 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.

Visa et documents

11. (1) L'étranger doit, préalablement à son entrée au Canada, demander à l'agent les visa et autres documents requis par règlement. L'agent peut les délivrer sur preuve, à la suite d'un contrôle, que l'étranger n'est pas interdit de territoire et se conforme à la présente loi.

Grande criminalité

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

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;

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;

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Criminality

(2) A foreign national is inadmissible on grounds of criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence;

(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament;

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament; or

(d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

Application

(3) The following provisions govern subsections (1) and (2):

(a) an offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily;

(b) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a pardon has been granted and has not ceased to have effect or been

Criminalité

(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :

a) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits;

b) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions qui ne découlent pas des mêmes faits et qui, commises au Canada, constitueraient des infractions à des lois fédérales;

c) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation;

d) commettre, à son entrée au Canada, une infraction qui constitue une infraction à une loi fédérale précisée par règlement.

Application

(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :

a) l'infraction punissable par mise en accusation ou par procédure sommaire est assimilée à l'infraction punissable par mise en accusation, indépendamment du mode de poursuite effectivement retenu;

b) la déclaration de culpabilité n'emporte pas interdiction de territoire en cas de verdict d'acquittement rendu en dernier ressort ou de réhabilitation — sauf cas de

revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

(c) the matters referred to in paragraphs (1)(b) and (c) and (2)(b) and (c) do not constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;

(d) a determination of whether a permanent resident has committed an act described in paragraph (1)(c) must be based on a balance of probabilities; and

(e) inadmissibility under subsections (1) and (2) may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence for which the permanent resident or foreign national is found guilty under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985 or the *Youth Criminal Justice Act*.

révocation ou de nullité — au titre de la *Loi sur le casier judiciaire*;

c) les faits visés aux alinéas (1)b) ou c) et (2)b) ou c) n'empportent pas interdiction de territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;

d) la preuve du fait visé à l'alinéa (1)c) est, s'agissant du résident permanent, fondée sur la prépondérance des probabilités;

e) l'interdiction de territoire ne peut être fondée sur une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ni sur une infraction dont le résident permanent ou l'étranger est déclaré coupable sous le régime de la *Loi sur les jeunes contrevenants*, chapitre Y-1 des Lois révisées du Canada (1985), ou de la *Loi sur le système de justice pénale pour les adolescents*.

• ***Immigration and Refugee Protection Regulations, SOR/2002-227***

Rehabilitation

18. (1) For the purposes of paragraph 36(3)(c) of the Act, the class of persons deemed to have been rehabilitated is a prescribed class.

Members of the class

(2) The following persons are members of the class of persons deemed to have been rehabilitated:

(a) persons who have been convicted outside Canada of no more than one

Réadaptation

18. (1) Pour l'application de l'alinéa 36(3)c) de la Loi, la catégorie des personnes présumées réadaptées est une catégorie réglementaire.

Qualité

(2) Font partie de la catégorie des personnes présumées réadaptées les personnes suivantes :

a) la personne déclarée coupable, à l'extérieur du Canada, d'au plus une

offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, if all of the following conditions apply, namely,

- (i) the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years,
- (ii) at least 10 years have elapsed since the day after the completion of the imposed sentence,
- (iii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament,

(iv) the person has not been convicted in Canada of any summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(v) the person has not within the last 10 years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(vi) the person has not before the last 10 years been convicted outside Canada of more than one offence that, if committed in Canada, would constitute a summary conviction offence under an Act of Parliament, and

(vii) the person has not committed an act described in paragraph 36(2)(c) of the Act;

infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation si les conditions suivantes sont réunies :

- (i) l'infraction est punissable au Canada d'un emprisonnement maximal de moins de dix ans,
- (ii) au moins dix ans se sont écoulés depuis le moment où la peine imposée a été purgée,
- (iii) la personne n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation,

(iv) elle n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par procédure sommaire dans les dix dernières années ou de plus d'une telle infraction avant les dix dernières années, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(v) elle n'a pas, dans les dix dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(vi) elle n'a pas, avant les dix dernières années, été déclarée coupable, à l'extérieur du Canada, de plus d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par procédure sommaire,

(vii) elle n'a pas commis l'infraction visée à l'alinéa 36(2)c) de la Loi;

(b) persons convicted outside Canada of two or more offences that, if committed in Canada, would constitute summary conviction offences under any Act of Parliament, if all of the following conditions apply, namely,

(i) at least five years have elapsed since the day after the completion of the imposed sentences,
 (ii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament,

(iii) the person has not within the last five years been convicted in Canada of an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(iv) the person has not within the last five years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(v) the person has not before the last five years been convicted in Canada of more than one summary conviction offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(vi) the person has not been convicted of an offence referred to in paragraph 36(2)(b) of the Act that, if committed in Canada, would constitute an indictable offence, and

b) la personne déclarée coupable, à l'extérieur du Canada, de deux infractions ou plus qui, commises au Canada, constitueraient des infractions à une loi fédérale punissables par procédure sommaire si les conditions suivantes sont réunies :

(i) au moins cinq ans se sont écoulés depuis le moment où les peines imposées ont été purgées,

(ii) la personne n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation,

(iii) elle n'a pas, dans les cinq dernières années, été déclarée coupable au Canada d'une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(iv) elle n'a pas, dans les cinq dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(v) elle n'a pas, avant les cinq dernières années, été déclarée coupable au Canada de plus d'une infraction à une loi fédérale punissable par procédure sommaire, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(vi) elle n'a pas été déclarée coupable d'une infraction visée à l'alinéa 36(2)b) de la Loi qui, commise au Canada, constituerait une infraction punissable par mise en accusation,

(vii) the person has not committed an act described in paragraph 36(2)(c) of the Act; and

(c) persons who have committed no more than one act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, if all of the following conditions apply, namely,

(i) the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years,

(ii) at least 10 years have elapsed since the day after the commission of the offence,

(iii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament,

(iv) the person has not been convicted in Canada of any summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(v) the person has not within the last 10 years been convicted outside of Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,

(vi) the person has not before the last 10 years been convicted outside Canada of more than one offence that, if committed in Canada, would constitute

(vii) elle n'a pas commis l'infraction visée à l'alinéa 36(2)c) de la Loi;

c) la personne qui a commis, à l'extérieur du Canada, au plus une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation si les conditions suivantes sont réunies :

(i) l'infraction est punissable au Canada d'un emprisonnement maximal de moins de dix ans,

(ii) au moins dix ans se sont écoulés depuis le moment de la commission de l'infraction,

(iii) la personne n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation,

(iv) elle n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par procédure sommaire dans les dix dernières années ou de plus d'une telle infraction avant les dix dernières années, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(v) elle n'a pas, dans les dix dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,

(vi) elle n'a pas, avant les dix dernières années, été déclarée coupable, à l'extérieur du Canada, de plus d'une infraction qui, commise au Canada,

a summary conviction offence under an Act of Parliament, and

(vii) the person has not been convicted outside of Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

constituerait une infraction à une loi fédérale punissable par procédure sommaire,

(vii) elle n'a pas été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation.

- ***Criminal Code, RSC 1985, c C-46***

Motor Vehicles, Vessels and Aircraft

Véhicules à moteur, bateaux et aéronefs

Dangerous operation of motor vehicles, vessels and aircraft

Conduite dangereuse

249. (1) Every one commits an offence who operates

249. (1) Commet une infraction quiconque conduit, selon le cas :

(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;

a) un véhicule à moteur d'une façon dangereuse pour le public, eu égard aux circonstances, y compris la nature et l'état du lieu, l'utilisation qui en est faite ainsi que l'intensité de la circulation à ce moment ou raisonnablement prévisible dans ce lieu;

(b) a vessel or any water skis, surf-board, water sled or other towed object on or over any of the internal waters of Canada or the territorial sea of Canada, in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of those waters or sea and the use that at the time is or might reasonably be expected to be made of those waters or sea;

b) un bateau ou des skis nautiques, une planche de surf, un aquaplane ou autre objet remorqué sur les eaux intérieures ou la mer territoriale du Canada ou au-dessus de ces eaux ou de cette mer d'une manière dangereuse pour le public, eu égard aux circonstances, y compris la nature et l'état de ces eaux ou de cette mer et l'usage qui, au moment considéré, en est ou pourrait raisonnablement en être fait;

(c) an aircraft in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of that aircraft or the place or air space in or through which the aircraft is operated; or

c) un aéronef d'une façon dangereuse pour le public, eu égard aux circonstances, y compris la nature et l'état de cet aéronef, ou l'endroit ou l'espace dans lequel il est conduit;

(d) railway equipment in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of the equipment or the place in or through which the equipment is operated.

d) du matériel ferroviaire d'une façon dangereuse pour le public, eu égard aux circonstances, y compris la nature et l'état du matériel ou l'endroit dans lequel il est conduit.

Punishment

Peine

(2) Every one who commits an offence under subsection (1)

(2) Quiconque commet une infraction mentionnée au paragraphe (1) est coupable :

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

a) soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans;

(b) is guilty of an offence punishable on summary conviction.

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

Dangerous operation causing bodily harm

Conduite dangereuse causant ainsi des lésions corporelles

(3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) Quiconque commet une infraction mentionnée au paragraphe (1) et cause ainsi des lésions corporelles à une autre personne est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans.

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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2875-10

STYLE OF CAUSE: HAM BYEONG SUN
v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 15, 2011

REASONS FOR ORDER: GAUTHIER J.

DATED: June 16, 2011

APPEARANCES:

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Kareena Wilding

FOR THE RESPONDENT

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