

**Date: 20090310**

**Docket: A-387-08**

**Citation: 2009 FCA 73**

**CORAM: LÉTOURNEAU J.A.  
NADON J.A.  
TRUDEL J.A.**

**BETWEEN:**

**INGEBORG ANNA RICHTER**

**Appellant**

**and**

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

**Respondents**

Heard at Toronto, Ontario, on March 10, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on March 10, 2009.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**TRUDEL J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on March 10, 2009)

**TRUDEL J.A.**

[1] This appeal arises from a decision by Mr. Justice Mosley (the Applications Judge), 2008 FC 806, dated June 26, 2008, who dismissed two applications for judicial review. Those applications related to the decision of an Enforcement Officer (the officer) of the Canada Services Border Agency (CBSA) to prepare an inadmissibility report on the grounds of serious criminality pursuant

to subsection 44(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) (in file IMM-3154-07), and to the decision of a Minister's delegate (the delegate) to refer this report to the Immigration Division on June 18, 2007 for an admissibility hearing pursuant to subsection 44(2) of the Act (in file IMM-3156-07).

[2] The appellant proposed four questions for certification of which only one, somewhat modified for precision, was found to be a serious question of general importance, which would be dispositive of the appeal (*ibid.* at paragraphs 28 and 29). It reads:

Is there a greater duty of fairness required of immigration officers preparing a subsection 44(1) report and the Minister in referring the report when dealing with persons in custody?

[3] In his memorandum, counsel for the respondents sought leave to amend the style of cause in order to remove the Minister of Citizenship and Immigration as a respondent, leaving the Minister of Public Safety and Emergency Preparedness as the sole respondent in this appeal. The amendment will be granted as decisions involving the reporting and referral of reports made under section 44 of the Act come under his authority (*Public Service Rearrangement and Transfer of Duties Act*, R.S.C. 1985, c. P-34; Orders in Council P.C. 2003-2061, 2003-2063 and 2005-0482).

[4] The facts leading to this appeal were aptly summarized by the Applications Judge at paragraphs 2 to 7 of his reasons and need not be repeated.

## **THE FEDERAL COURT DECISION**

[5] The appellant's main grievances about the impugned judgment are premised upon her argument that she was denied procedural fairness throughout the immigration proceedings.

[6] The Applications Judge was satisfied, given the relaxed duty of fairness for section 44 proceedings (*Hernandez v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 429, [2005] F.C.J. No. 533), that the appellant was informed of her right and provided with every opportunity to make submissions but failed to do so adding that “the officer and the [delegate] cannot be faulted for Ms. Richter's failure to take advantage of the procedure outlined to her” (Reasons, at paragraph 18). He also dismissed Ms. Richter’s submission that she was entitled to a greater duty of fairness due to her incarceration.

[7] Finally, the Applications Judge found that the reasons of both the officer and the delegate were adequate and allowed the appellant to understand the basis for the decisions.

[8] In our view, the Applications Judge made no reviewable error and as we agree with his conclusions and substantially adopt his reasoning, we need not add to his reasons.

### **THE CERTIFIED QUESTION**

[9] Since *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, it has been clear that on an appeal this Court is not restricted to answering the question certified by the Applications Judge. Conversely, the Court is not obliged to answer the question certified when it turns out to be inappropriate or not necessary for the disposition of the appeal.

[10] We are of the view that we need not answer the certified question to dispose of the present appeal. In addition, the question is too vague and a proper answer to it is, by necessity, fact-driven. The scope and content of that duty will vary depending on the circumstances of each case.

### **CONCLUSION**

[11] Therefore, this appeal will be dismissed without costs, the certified question will not be answered, and the request to amend the style of cause will be allowed.

"Johanne Trudel"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-387-08

**(APPEAL FROM A JUDGMENT OR ORDER OF THE HONOURABLE JUSTICE MOSLEY DATED JUNE 26, 2008, TRIAL DIVISION, DOCKET NOS. IMM-3154-07 AND IMM-3156-07)**

**STYLE OF CAUSE:** INGEBORG ANNA RICHTER  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION and THE  
MINISTER OF PUBLIC SAFETY  
AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** March 10, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** LÉTOURNEAU, NADON, TRUDEL  
J.J.A.

**DELIVERED FROM THE BENCH BY:** TRUDEL J.A.

**APPEARANCES:**

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