Federal Court  Cour fédérale

Date: 20110713

Docket: IMM-3127-10

Citation: 2011 FC 881

BETWEEN:

LUIGI PASCALE

Applicant

and

THE MINISTER OF CITIZENSHIP & IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

REASONS FOR JUDGMENT

O'KEEFE J.

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) for judicial review of:

- An Opinion of the Minister of Citizenship and Immigration made pursuant to subsection 70(5) of the former *Immigration Act*, RSC 1985, c I-2 (the *Immigration Act*, the former Act) on February 22, 1996 (the danger opinion); and

- A deportation order issued against the applicant on February 26, 1996 by the Immigration Division (the first deportation order); and
- An inadmissibility report made in April 1997 (the first inadmissibility report); and
- A second inadmissibility report made in December 1998 (the second inadmissibility report); and
- A deportation order issued against the applicant on January 20, 1999 by the Immigration Division (the second deportation order).

[2] The applicant requests:

1. An order quashing the danger opinion;
2. An order quashing the first and second deportation orders and a writ of prohibition prohibiting the execution of the order that the applicant be deported;
3. An order to allow the applicant to appeal to the Immigration Appeal Division (IAD) *de novo* based on the circumstances as they exist today;
4. A declaration that a stay of removal is in force pending the final determination of the applicant's appeal to the IAD;
5. A declaration that the applicant is a permanent resident of Canada; and
6. Costs.

Background

[3] Luigi Pascale (the applicant) was born in Italy on March 3, 1959 and became a permanent resident of Canada at age nine. He has four Canadian-born children with his ex-wife.

[4] The applicant incurred an extensive criminal record in Canada, dating from 1976. His record includes convictions for dangerous driving, driving with more than the legal limit of alcohol, theft under $200, break and enter with intent to commit an indictable offence and driving while disqualified. In addition, in 1993, he was convicted of assault against his former spouse.

[5] In 1995, the applicant was convicted of sexual assault, again against his former spouse. The conviction was upheld in the Alberta Court of Appeal and the applicant was incarcerated for 20 months pursuant to this conviction.

[6] On February 22, 1996, a delegate of the Minister of Citizenship and Immigration (the Minister) issued a danger opinion against the applicant.

[7] A deportation order was also issued against the applicant on February 26, 1996 and the applicant was removed from Canada on June 17, 1996. The applicant was denied the right to appeal the deportation order to the IAD due to the danger opinion.

[8] The applicant re-entered Canada on his Italian passport in November 1996 without the approval of the Minister pursuant to section 55 of the *Immigration Act*. He was subsequently charged with re-entering the country without permission.

[9] The applicant unsuccessfully sought a judicial review of the danger opinion in November 1997.

[10] In April 1997, an immigration officer issued the first inadmissibility report against the applicant under paragraph 27(2)(h) of the *Immigration Act*.

[11] The second inadmissibility report was issued in December 1998 under paragraph 27(2)(a) by paragraph 19(1)(c) of the *Immigration Act*.

[12] A second deportation order was issued against the applicant on January 20, 1999.

[13] The applicant's former spouse issued a statutory declaration in June and September 1999 recanting her allegations of sexual assault.

[14] The applicant sought Ministerial review of his conviction for sexual assault under subsection 696.3(3) of the *Criminal Code* RS, 1985, c C-46. In December 2008, the Alberta Court of Appeal quashed the conviction and ordered a new trial. At a *de novo* trial of the sexual assault charge, the Crown called no evidence and the charges were dismissed.

[15] In August 2008, the applicant applied for refugee protection then abandoned his claim. His request for it to be reopened was denied. His subsequent pre-removal risk assessment application was also denied in April 2010.

Decisions Under Review

Danger Opinion (February 1996)

[16] A delegate of the Minister signed off on the danger opinion on February 22, 1996. The delegate concurred with the opinions and assessments of the reviewing officer (the reviewing officer).

[17] The reviewing officer began the danger opinion by listing several charges of which the applicant had been convicted. These were break and enter with intent to commit an indictable offence, assault and sexual assault.

[18] The reviewing officer then noted that the Minister had received several letters including from the applicant's family, the Canadian Crime Prevention Centre and the Lethbridge City Police in support of the applicant's removal.

[19] The reviewing officer found that the applicant's family are "terrified of him" and believe he will continue to abuse them if he remains in Canada. The officer was particularly concerned about the applicant's statements that he is justified in his actions as long as he pays the price by going to jail. The officer found that the likelihood of recidivism in such a case is considered to be high as the applicant accepts no responsibility for his actions and denies wrongdoing by placing the blame on his ex-wife and her family.

[20] The Minister's delegate concluded that the applicant is a danger to the public pursuant to subsection 70(5) of the *Immigration Act*.

First Deportation Order (February 1996)

[21] An officer found that the applicant was a person described in paragraph 27(1)(d) of the *Immigration Act* – a person who has been convicted of an offence for which a term of imprisonment of more than six months has been, or five years or more may be, imposed. The officer ordered that the applicant be deported pursuant to subsection 32(2) of the former Act.

First Inadmissibility Report (April 1997)

[22] An immigration officer found that the applicant is a person described in paragraph 27(2)(h) of the *Immigration Act* – a person who came into Canada contrary to section 55 of the *Immigration Act*. The officer found that the applicant is not a Canadian citizen or permanent resident and that he was removed from Canada in June 1996 and did not have the permission of the Minister to return to Canada.

Second Inadmissibility Report (December 1998)

[23] An immigration officer found the applicant to be a person in Canada who is not a permanent resident and is inadmissible to Canada as a person described in paragraph 27(2)(a) by paragraph 19(1)(c) of the *Immigration Act*.

[24] The officer found that the applicant was removed from Canada on June 17, 1996 and he returned to Canada in November 1996.

[25] The officer also found that the applicant was convicted of assault under section 271 of the *Criminal Code* which carries a maximum penalty of ten years imprisonment.

Second Deportation Order (January 1999)

[26] An officer found that the applicant was a person described in paragraph 27(2)(a) by paragraph 19(1)(c) as well as a person described in paragraph 27(2)(h) of the *Immigration Act* and ordered that he be deported pursuant to subsection 32.1(4) of the former Act.

Issues

[27] The issues are as follows:

1. What is the appropriate standard of review?
2. Is the application *res judicata*?
3. Should the danger opinion be quashed?
4. Should the first deportation order be quashed?
5. Should the second deportation order be quashed?
6. Should this Court declare the applicant a permanent resident?
7. Should this Court declare that the applicant has the right to access the IAD appeal process?

Applicant's Written Submissions

[28] The applicant submits that the danger opinion is no longer valid as the applicant has effectively been acquitted of the sexual assault charge on which the opinion is based. The Alberta Court of Appeal quashed the conviction and ordered a new trial pursuant to subsection 686(2). The applicant submits that the dismissal of the new trial amounts to an acquittal under subsection 570(2) of the *Criminal Code.*

[29] The applicant argues that following an acquittal of the charge of sexual assault, the sexual assault conviction is deemed never to have occurred. As such, the applicant submits that the danger opinion is based on a nullity and should be quashed. The applicant relies on *Smith v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 144 for the proposition that if a conviction is expunged, then the applicant cannot be a person described as inadmissible for serious criminality. Further, paragraph 36(3)(b) of the Act is clear that individuals cannot be found criminally inadmissible for crimes for which they were acquitted.

[30] The applicant contends that there have been a series of cumulative wrongs stemming from the danger opinion. According to the applicant, he lost his permanent residence status when he was deported pursuant to the 1996 deportation order which was based on the now invalid danger opinion. Because the danger opinion is now invalid, the applicant should be declared a permanent resident.

[31] In the alternative, even if the applicant is not declared a permanent resident, he submits that he should be given the opportunity to appeal the 1999 removal order against him to the IAD. Currently, he is prevented from doing so due to subsection 326(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the Regulations) which states that anyone found to be a danger to the public under subsection 70(5) of the *Immigration Act* cannot appeal to the IAD under subsection 64(1) of the Act.

[32] The applicant submits that the danger opinion and resulting deportation orders, the loss of permanent residence and the charge for entering Canada without permission amount to a breach of natural justice given the acquittal of the sexual assault charge on which they are all based.

Respondent's Written Submissions

[33] The respondent submits that the danger opinion and the first deportation order are *res judicata* and moot. The first deportation order was upheld after a dismissed stay application and then executed when the applicant was deported to Italy. Given subsection 319(1) of the Act, the order is no longer in effect. This Court also upheld the danger opinion upon judicial review in 1997 (see *Pascale v Canada (Minister of Citizenship and Immigration)* (1997), 139 FTR 25).

[34] The respondent further argues that the danger opinion is not based solely on the sexual assault and therefore remains factually valid. It was based upon three criminal convictions that the applicant accrued between 1981 and 1994: a break and enter with intent conviction for which the

applicant served 15 months, an October 1993 conviction for assault for which the applicant was sentenced to 18 months probation and the now overturned 1995 sexual assault conviction.

[35] The danger opinion also remains legally valid by operation of the transition scheme established under the Act and its Regulations. Subsection 326(2) of the Regulations was enacted to ensure the continuing effect of the Minister's danger opinion issued under the *Immigration Act*.

[36] The respondent submits that the applicant ceased to be a permanent resident on June 17, 1996 when he was deported to Italy pursuant to the valid 1996 deportation order and pursuant to paragraph 24(1)(b) of the *Immigration* Act. The loss of permanent residence was legally valid and cannot now be restored.

[37] The applicant is barred from appealing the second deportation order because subsection 63(3) of the Act does not provide for removal order appeals by foreign nationals. Despite the 2009 overturning of the sexual assault conviction, the applicant ceases to be a permanent resident and is bound by subsection 63(3).

Analysis and Decision

[38] **Issue 1**

What is the appropriate standard of review?

Where previous jurisprudence has determined the standard of review applicable to a particular issue, the reviewing court may adopt that standard (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at paragraph 57).

[39] It is established that the standard of review of the Minister's danger opinion is reasonableness (see *Randhawa v Canada (Minister of Citizenship and Immigration)*, 2009 FC 310 at paragraph 3; *Kanagasingam v Canada (Minister of Citizenship and Immigration)*, 2009 FC 90 at paragraph 18). Likewise, the deportation and inadmissibility orders challenged by the applicant are also based on issues of mixed fact and law and they too, will be reviewed on the reasonableness standard.

[40] **Issue 2**

Is the application *res judicata*?

The respondent submitted at the leave stage that the danger opinion and the first deportation order are both *res judicata* and moot. The respondents again submitted this in the judicial review.

[41] As both the danger opinion and the first deportation order have already been judicially reviewed by this Court, *res judicata* could have and may have been considered at the leave stage. However, as Mr. Justice Michael Kelen granted leave on November 2, 2010, the matter is now before the Federal Court for judicial review.

[42] The Federal Court of Appeal stated clearly in *Canada (Solicitor General) v Bubla*, [1995] 2 FC 680, [1995] FCJ No 490 (QL)(FCA) at paragraph 16 that no Federal Court judge sits in appeal of another:

> There is no inherent power in one judge to review the merits of a decision of another judge of coordinate jurisdiction. Nor is the decision of a superior court judge open to review in collateral proceedings. While it may be open to the judge who disposes of an application for leave to reconsider the matter himself in certain limited circumstances, it is not open to another judge to sit on appeal from that decision. The hearing of an application for judicial review is not an occasion for hearing an appeal from the decision to grant leave to seek that judicial review. Therefore the learned Trial Judge should have declined to deal with the attack by Bubla's counsel on the validity of the order of MacKay J. granting leave.

[43] Mr. Justice Marc Nadon relied on this decision of the Federal Court of Appeal in *Guzman v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 15. He considered the issue of *res judicata* and found that it was not open to him to dismiss the judicial review application on the grounds of *res judicata* because leave had been granted and the decision of the judge granting leave was final.

[44] Given the direction from the Federal Court of Appeal and following its application by Mr. Justice Nadon in this Court, I find that I am not in a position to consider the submission on *res judicata*.

[45] **Issue 3**

Should the danger opinion be quashed?

The applicant submits that the danger opinion should be quashed because the overturning of the sexual assault conviction removes the factual basis of the opinion.

[46] Madam Justice Eleanor Dawson dealt with a similar issue in *Johnson v Canada (Minister of Citizenship and Immigration)*, 2008 FC 2. In that case, Mr. Johnson was convicted of sexual assault and forcible confinement and his application for permanent residence was denied on the basis that he was inadmissible on account of serious criminality pursuant to paragraph 36(1)(a) of the Act. The convictions were subsequently overturned. Madame Justice Dawson held, at paragraph 24, that the denial of the permanent residence application should be upheld despite the fact that it was based on convictions which were overturned because:

> . . . the officer did not err by refusing Mr. Johnson's application for permanent residence. The convictions were in force when the negative decision was made and they remained in force until set aside on appeal.

Applying Madam Justice Dawson's analysis to the case at bar, the danger opinion remains valid despite the overturning of the conviction for sexual assault on which it is based in part.

[47] Even if I were not to follow the reasoning of *Johnson* above, the danger opinion remains valid without the conviction for sexual assault. The danger opinion was based on three convictions: break and enter with intent, assault and the now overturned sexual assault conviction.

[48] The applicant was considered a danger to the public in Canada and ordered deported under subsection 70(5) of the *Immigration Act* for being a person "described in paragraph 27(1)(d) who

has been convicted of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed."

[49] An examination of the wording of the danger opinion indicates that it was based on more than simply the sexual assault conviction.

[50] The applicant's conviction in 1981 under section 306 of the *Criminal Code*, RS 1970 c C-34 for break and enter with intent to commit an indictable offence, carried a maximum punishment of life imprisonment for breaking and entering of a dwelling house and fourteen years for breaking and entering of a location other than a dwelling house. Both of these maximum sentences mean that the break and enter with intent to commit could have sustained a danger opinion, absent the sexual assault conviction.

[51] The officer was also concerned that the applicant's family is terrified of him and fear continued abuse at his hands. The central aspect of the danger opinion analysis is that the applicant does not take responsibility for his actions and feels justified in the crimes he has committed as he spent time in jail for them. The officer found this particularly concerning and indicative of a high likelihood for recidivism. This was the heart of the danger opinion.

[52] Because of this, I find that the danger opinion remains valid despite the overturning of the sexual assault conviction. Contrary to the applicant's submissions, the danger opinion is not based on a nullity, it is based on two convictions and the determination the applicant had a high likelihood of recidivism.

[53] **Issue 4**

Should the first deportation order be quashed?

The first deportation order is clearly moot. When the applicant was removed from Canada on June 17, 1996, pursuant to the deportation order, the order was executed and no longer in effect. Subsection 319(1) of the Act is unambiguous that only unexecuted removal orders made under the former Act would have continue in force following the enactment of the Act.

[54] **Issue 5**

Should the second deportation order be quashed?

The second deportation order is valid. The order was based on two provisions, paragraph 27(2)(a) by paragraph 19(1)(c) and paragraph 27(2)(h) of the *Immigration Act*.

[55] Concerning paragraph 27(2)(a), the second inadmissibility report discussing this provision, found only that the applicant was convicted for sexual assault.

[56] Again, applying Madam Justice Dawson's reasoning from *Johnson* above, the inadmissibility report or the second deportation order relying on the report should not be quashed despite the overturning of the criminal conviction for sexual assault in December 2008 and the dismissal of the charges in a trial *de novo*.

[57] Moreover, the second deportation order can stand alone on the first inadmissibility report based on the paragraph 27(2)(h) findings. The applicant clearly re-entered Canada in November 1996 without the permission of the Minister contrary to section 55 of the former Act. The first

inadmissibility report based on paragraph 27(2)(h) finds the applicant to be inadmissible to Canada on this basis. The second deportation can stand alone on the paragraph 27(2)(h) findings and should not be quashed for that reason even if the reasoning of *Johnson* above, is not applied.

[58] **Issue 6**

Should this Court declare the applicant a permanent resident?

The applicant ceased to be a permanent resident on June 17, 1996 pursuant to paragraph 24(1)(b) of the former Act. That section stated that:

24. (1) A person ceases to be a permanent resident when . . .	24. (1) Emportent déchéance du statut de résident permanent: . . .
(b) a removal order has been made against that person and the order is not quashed or its execution is not stayed pursuant to subsection 73(1).	b) toute mesure de renvoi n'ayant pas été annulée ou n'ayant pas fait l'objet d'un sursis d'exécution au titre du paragraphe 73(1).

[59] The applicant submits that his permanent residence should be reinstated because of a chain of events that flows from the danger opinion. Because of the danger opinion, the first deportation order was executed and he thus lost his permanent residence.

[60] However, the loss of permanent residence was legal and legitimate at the time and there was no error in the execution of the deportation order.

[61] More importantly, as I have found that the danger opinion remains valid, the applicant's submission that his deportation was based on an illegal danger opinion cannot succeed.

[62] When the applicant re-entered Canada on his Italian passport in November 1996, he entered as a foreign national. This status has not changed since that time.

[63] **Issue 7**

Should this Court declare that the applicant has the right to access the IAD appeal process?

The applicant requests that he be given the right to access the IAD appeal procedures.

[64] Pursuant to the transition scheme of subsection 326(2):

326.(2) A person in respect of whom subsection 70(5) or paragraph 77(3.01)(b) of the former Act applied on the coming into force of this section is a person in respect of whom subsection 64(1) of the Immigration and Refugee Protection Act applies.	326.(2) La personne visée par le paragraphe 70(5) ou l'alinéa 77(3.01)b) de l'ancienne loi à l'entrée en vigueur du présent article est visée par le paragraphe 64(1) de la Loi sur l'immigration et la protection des réfugiés.

[65] Section 64(1) of IRPA states that:

64.(1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.	64.(1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.

[66] As I have already found that the danger opinion and findings under subsection 70(5) remain valid despite the overturned sexual assault conviction, then Regulation 326(2) also remains in effect for the applicant.

[67] Given my findings above, I would dismiss the application for judicial review.

[68] The parties are given one week from the date of this judgment to submit any proposed serious question of general importance for my consideration for certification and three days after that for the parties to respond to any questions.

"John A. O'Keefe"
Judge

Ottawa, Ontario
July 13, 2011

ANNEX

Relevant Statutory Provisions

Immigration Act, RSC 1985, c I-2, s 19

24. (1) A person ceases to be a permanent resident when . . .	24. (1) Emportent déchéance du statut de résident permanent: . . .
(b) a removal order has been made against that person and the order is not quashed or its execution is not stayed pursuant to subsection 73(1).	b) toute mesure de renvoi n'ayant pas été annulée ou n'ayant pas fait l'objet d'un sursis d'exécution au titre du paragraphe 73(1).
27. (1) An immigration officer or a peace officer shall forward a written report to the Deputy Minister setting out the details of any information in the possession of the immigration officer or peace officer indicating that a permanent resident is a person who . . .	27. (1) L'agent d'immigration ou l'agent de la paix doit faire part au sous-ministre, dans un rapport écrit et circonstancié, de renseignements concernant un résident permanent et indiquant que celui-ci, selon le cas: . . .
(d) has been convicted of an offence under any Act of Parliament, other than an offence designated as a contravention under the Contraventions Act, for which a term of imprisonment of more than six months has been, or five years or more may be, imposed;	d) a été déclaré coupable d'une infraction prévue par une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions : (i) soit pour laquelle une peine d'emprisonnement de plus de six mois a été imposée, (ii) soit qui peut être punissable d'un emprisonnement maximal égal ou supérieur à cinq ans;
55. (1) Subject to section 56, where a deportation order is made against a person, the person shall not, after he is removed from or otherwise leaves Canada, come into Canada without the written consent of the Minister unless an appeal from the order has been allowed.	55. (1) Sous réserve de l'article 56, quiconque fait l'objet d'une mesure d'expulsion ne peut plus revenir au Canada sans l'autorisation écrite du ministre, sauf si la mesure est annulée en appel.
. . .	. . .
55.(3) A person against whom a departure	(3) Peuvent revenir au Canada sans

order has been made

(a) who

(i) complies with section 32.01, is issued a certificate of departure under that section and leaves Canada voluntarily before the expiration of the applicable period specified for the purposes of subsection 32.02(1), or

(ii) is removed from Canada before the expiration of that period and has been issued a certificate of departure under section 32.01, or

(b) who is detained before the expiration of the applicable period specified for the purposes of subsection 32.02(1), who is still in detention under this Act at the expiration of that period and who is subsequently removed from Canada,

may, if the person otherwise meets the requirements of this Act and the regulations, return to Canada without the written consent of the Minister.

l'autorisation écrite du ministre, si elles satisfont aux exigences de la présente loi et de ses règlements, les personnes suivantes:

a) celles qui font l'objet d'une mesure d'interdiction de séjour et qui quittent volontairement le Canada ou en sont renvoyées, conformément à l'article 32.01, avant l'expiration de la période réglementaire applicable prévue au paragraphe 32.02(1);

b) celles qui, ayant fait l'objet d'une mesure d'interdiction de séjour, sont en détention avant la date d'expiration de cette période, se trouvent encore en détention en vertu de la présente loi à cette date et sont par la suite renvoyées du Canada.

70.(5) No appeal may be made to the Appeal Division by a person described in subsection (1) or paragraph (2)(a) or (b) against whom a deportation order or conditional deportation order is made where the Minister is of the opinion that the person constitutes a danger to the public in Canada and the person has been determined by an adjudicator to be

(a) a member of an inadmissible class described in paragraph 19(1)(c), (c.1), (c.2) or (d);

(b) a person described in paragraph 27(1)(a.1);or

(c) a person described in paragraph 27(1)(d)

70. (5) Ne peuvent faire appel devant la section d'appel les personnes, visées au paragraphe (1) ou aux alinéas (2)a) ou b), qui, selon la décision d'un arbitre:

a) appartiennent à l'une des catégories non admissibles visées aux alinéas 19(1)c), c.1), c.2) ou d) et, selon le ministre, constituent un danger pour le public au Canada;

b) relèvent du cas visé à l'alinéa 27(1)a.1) et, selon le ministre, constituent un danger pour le public au Canada;

c) relèvent, pour toute infraction punissable

who has been convicted of an offence under any Act of Parliament for which a term of imprisonment of ten years or more may be imposed.	aux termes d'une loi fédérale d'un emprisonnement maximal égal ou supérieur à dix ans, du cas visé à l'alinéa 27(1)d) et, selon le ministre, constituent un danger pour le public au Canada.

Immigration and Refugee Protection Act, SC 2001, c 27

63. . . .	63 . . .
(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.	(2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.
(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.	(3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.
64.(1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.	64.(1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.
(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least two years.	(2) L'interdiction de territoire pour grande criminalité vise l'infraction punie au Canada par un emprisonnement d'au moins deux ans.
72.(1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	72.(1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.

Immigration and Refugee Protection Regulations, SOR/2002-227

326.(1) A claim to be a Convention refugee made by a person described in subparagraph 19(1)(c.1)(i) of the former Act in respect of whom the Minister was of the opinion under subparagraph 46.01(1)(e)(i) of the former Act that the person constitutes a danger to the public in Canada is deemed, if no determination was made by a senior immigration officer under section 45 of the former Act, to be a claim for refugee protection made by a person described in paragraph 101(2)(b) of the Immigration and Refugee Protection Act who is inadmissible and in respect of whom the Minister is of the opinion that the person is a danger to the public.

326.(1) La revendication du statut de réfugié par la personne qui appartient à la catégorie non admissible visée au sous-alinéa 19(1)c.1)(i) de l'ancienne loi et qui constitue, selon le ministre, aux termes du sous-alinéa 46.01(1)e)(i) de cette loi, un danger pour le public au Canada vaut, si aucune décision n'a été prise par l'agent principal en vertu de l'article 45 de cette loi, demande d'asile faite par le demandeur visé à l'alinéa 101(2)b) de la Loi sur l'immigration et la protection des réfugiés, tant du fait de l'interdiction de territoire que du fait de l'avis du ministre visés à cet alinéa.

(2) A person in respect of whom subsection 70(5) or paragraph 77(3.01)(b) of the former Act applied on the coming into force of this section is a person in respect of whom subsection 64(1) of the Immigration and Refugee Protection Act applies.

(2) La personne visée par le paragraphe 70(5) ou l'alinéa 77(3.01)b) de l'ancienne loi à l'entrée en vigueur du présent article est visée par le paragraphe 64(1) de la Loi sur l'immigration et la protection des réfugiés.

(3) A person whose removal on the coming into force of this section was allowed by the application of paragraphs 53(1)(a) to (d) of the former Act is a person referred to in subsection 115(2) of the Immigration and Refugee Protection Act.

(3) La personne dont le renvoi était permis à l'entrée en vigueur du présent article du fait de l'application des alinéas 53(1)a) à d) de l'ancienne loi est visée au paragraphe 115(2) de la Loi sur l'immigration et la protection des réfugiés.

Criminal Code RS 1985, c C-46

570. . . .

570. . . .

(2) Where an accused who is tried under this Part is found not guilty of an offence with which the accused is charged, the judge or provincial court judge, as the case may be, shall immediately acquit the accused in respect of that offence and shall cause an order in Form 37 to be drawn up, and on

(2) Lorsqu'un prévenu qui subit son procès en vertu de la présente partie est déclaré non coupable d'une infraction dont il est inculpé, le juge ou le juge de la cour provinciale, selon le cas, l'acquitte immédiatement de cette infraction et fait rédiger une ordonnance selon la formule 37, et, sur demande, établit et remet

request shall make out and deliver to the accused a certified copy of the order.

au prévenu une copie certifiée de l’ordonnance.

(4) A copy of a conviction in Form 35 or of an order in Form 36 or 37, certified by the judge or by the clerk or other proper officer of the court, or by the provincial court judge, as the case may be, or proved to be a true copy, is, on proof of the identity of the person to whom the conviction or order relates, sufficient evidence in any legal proceedings to prove the conviction of that person or the making of the order against that person or his acquittal, as the case may be, for the offence mentioned in the copy of the conviction or order.

(4) Une copie d’une déclaration de culpabilité selon la formule 35 ou d’une ordonnance selon les formules 36 ou 37, certifiée conforme par le juge ou par le greffier ou autre fonctionnaire compétent du tribunal, ou par le juge de la cour provinciale, selon le cas, ou avérée copie conforme, constitue, sur preuve de l’identité de la personne qu’elle vise, une attestation suffisante, dans toutes procédures judiciaires, pour établir la condamnation de cette personne, l’établissement d’une ordonnance contre elle ou son acquittement, selon le cas, à l’égard de l’infraction visée dans la copie de la déclaration de culpabilité ou de l’ordonnance.

686.(1) On the hearing of an appeal against a conviction or against a verdict that the appellant is unfit to stand trial or not criminally responsible on account of mental disorder, the court of appeal

686.(1) Lors de l’audition d’un appel d’une déclaration de culpabilité ou d’un verdict d’inaptitude à subir son procès ou de non-responsabilité criminelle pour cause de troubles mentaux, la cour d’appel :

(a) may allow the appeal where it is of the opinion that

a) peut admettre l’appel, si elle est d’avis, selon le cas :

(i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,

(i) que le verdict devrait être rejeté pour le motif qu’il est déraisonnable ou ne peut pas s’appuyer sur la preuve,

(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or

(ii) que le jugement du tribunal de première instance devrait être écarté pour le motif qu’il constitue une décision erronée sur une question de droit,

(iii) on any ground there was a miscarriage of justice;

(iii) que, pour un motif quelconque, il y a eu erreur judiciaire;

. . .

. . .

(2) Where a court of appeal allows an appeal under paragraph (1)(a), it shall quash the conviction and

(2) Lorsqu’une cour d’appel admet un appel en vertu de l’alinéa (1)a), elle annule la condamnation et, selon le cas :

(a) direct a judgment or verdict of acquittal to be entered; or

a) ordonne l’inscription d’un jugement ou verdict d’acquittement;

(b) order a new trial.

b) ordonne un nouveau procès.

696.3(3) On an application under this Part, the Minister of Justice may

696.3(3) Le ministre de la Justice peut, à l’égard d’une demande présentée sous le régime de la présente partie :

(a) if the Minister is satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred,

a) s’il est convaincu qu’il y a des motifs raisonnables de conclure qu’une erreur judiciaire s’est probablement produite :

(i) direct, by order in writing, a new trial before any court that the Minister thinks proper or, in the case of a person found to be a dangerous offender or a long-term offender under Part XXIV, a new hearing under that Part, or

(i) prescrire, au moyen d’une ordonnance écrite, un nouveau procès devant tout tribunal qu’il juge approprié ou, dans le cas d’une personne déclarée délinquant dangereux ou délinquant à contrôler en vertu de la partie XXIV, une nouvelle audition en vertu de cette partie,

(ii) refer the matter at any time to the court of appeal for hearing and determination by that court as if it were an appeal by the convicted person or the person found to be a dangerous offender or a long-term offender under Part XXIV, as the case may be; or

(ii) à tout moment, renvoyer la cause devant la cour d’appel pour audition et décision comme s’il s’agissait d’un appel interjeté par la personne déclarée coupable ou par la personne déclarée délinquant dangereux ou délinquant à contrôler en vertu de la partie XXIV, selon le cas;

(b) dismiss the application.

b) rejeter la demande.

FEDERAL COURT

SOLICITORS OF RECORD

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