

Federal Court



Cour fédérale

**Ottawa, July 25, 2017** – A decision was issued today by the Honourable Simon Fothergill of the Federal Court in file IMM-364-15:

**ALVIN JOHN BROWN v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Summary:** The Applicant sought judicial review of a decision of the Immigration Division [ID] of the Immigration and Refugee Board. The ID ordered that he continue to be detained under the *Immigration and Refugee Protection Act* [IRPA] and also found that his continued detention did not contravene the *Canadian Charter of Rights and Freedoms* [Charter]. The Applicant asked the Federal Court to declare that the statutory regime under which he was held is unconstitutional.

Upon review, the Court concluded that before the state can detain people for significant periods of time, it must accord them a fair process. This basic principle has a number of facets. It comprises the right to a hearing. It requires that the hearing be before an independent and impartial decision-maker. It demands a decision based on the facts and the law. It entails the right to know the case put against one, and the right to answer that case. Precisely how these requirements are met will vary with the context, but each of them must be met in substance. In addition, there may be circumstances where immigration detention violates the *Charter* because it has continued for an excessive period of time, there is no reasonable prospect of removal to the detainee's country of citizenship, or the conditions of detention have become intolerable.

The Court then found that the evidence and arguments presented in this application suggest that there may be shortcomings in the manner in which detention reviews are conducted by the ID, but none of these shortcomings are the inevitable consequence of ss 57 and 58 of the *IRPA* and ss 244 to 248 of the *Immigration and Refugee Protection Regulations* [Regulations]. It concluded that properly interpreted and applied, these provisions of the *IRPA* and the *Regulations* comply with the *Charter*.

The application for judicial review was therefore dismissed. However, in light of concerns raised by some of the evidence adduced in this proceeding, the Court's reasons include a restatement of the minimum legal requirements for detention reviews before the ID.

A copy of the judgment can be obtained via the Web site of the Federal Court: [http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc\\_cf\\_en/Index](http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Index)

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