

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Judicial review of decision by Minister's delegate (delegate) referring applicant to Immigration and Refugee Board of Canada, Immigration Division (ID) for admissibility hearing pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 44(2) — Applicant arriving in Canada as Somali refugee — Taken into custody by Nova Scotia Department of Community Services (DCS) — DCS granted permanent care, custody of applicant — Applicant compiling youth criminal record over time — Pleading guilty to offences giving rise to inadmissibility proceedings under Act — S.44(1) report finding reasonable grounds to believe that applicant inadmissible under Act, s. 36(1) — Delegate concluding that report well-founded based on negative aspects of case, referring applicant to ID for admissibility hearing — Applicant arguing, inter alia, that delegate required to balance statutory objectives of the Act with applicable *Canadian Charter of Rights and Freedoms* (Charter) values — Arguing that circumstances herein engaging Charter, ss. 2(d), 7, 12, 15, that balancing should have resulted in issuance of warning letter — Main issues whether delegate required to consider Charter, whether delegate's decision inconsistent with international law, Charter — Delegate required to consider Charter implications to applicant — Decision makers having to render decisions in accordance with Charter by considering Charter values themselves — Act incorporating general concept that delegate having to consider, render decisions in accordance with Charter — Having discretion *not* to refer well-founded report to ID in serious criminality cases "triggering" necessity to consider Charter implications — Since Charter protections implicated, reviewing court having to be satisfied that decision reflecting proportionate balance between Charter protections at play, relevant statutory mandate — In applying this analysis herein, clear that there are deficiencies in delegate's decision — No indication that delegate even considering Charter values — Impossible for Court to determine if Charter issues weighed in balance — Charter values cannot be considered in factual vacuum — No evidence in this case that decision maker "alive" to the issues — Delegate providing exhaustive, detailed reasons on other elements of claim, but leaving out significant issue of Charter — Accordingly, decision not justifiable, transparent, intelligible — Same considerations applying whether delegate's decision inconsistent with international law — Decision of delegate set aside, matter remitted for redetermination by different delegate — Application allowed.

ABDI V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (IMM-28-18, 2018 FC 733, McDonald J., judgment dated July 13, 2018, 34 pp.)