

CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Inadmissible Persons

Detention and Release

Motion seeking interlocutory mandatory injunction for immediate release from detention of applicant, children thereof, pending Court's pronouncement on judicial review of decision of Immigration and Refugee Board, Immigration Division (Board) whereby detention of applicant, children continued for further 30 days pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), s. 58 — Applicants on flight when policy for Romanian citizens wishing to travel to Canada changed, enforced — New policy requiring travellers to obtain visa when traveling with non-biometric passport — Removal order issued against applicants — Applicant refusing to leave, arrested — Considered flight risk by Board at detention review — Issues: what is appropriate test for interlocutory mandatory injunction for release of person in detention under Act; whether applicant meeting requirements for interlocutory mandatory injunction ordering release — In order to obtain interlocutory injunction, applicant required to demonstrate serious issue, irreparable harm resulting if injunction not granted, balance of convenience favouring her — However, mandatory interlocutory injunctions treated as exceptions to serious issue factor — Applicant required to demonstrate elevated threshold beyond that of application not being frivolous or vexatious — Supreme Court in *R. v. Canadian Broadcasting Corp*, 2018 SCC 5, [2018] 1 SCR 196 (*CBC*), clarifying that first factor of mandatory injunction test having to show *strong likelihood* that applicant ultimately successful in proving allegations set out in originating notice — Despite *CBC* decision, Court herein of view that exception having to be applied to *CBC decision* when serious issue test applied to mandatory interlocutory injunction for release of person held in detention pursuant to Act — Applicant needing only to demonstrate *prima facie* case or prove likelihood or probability of success on underlying application — Demonstrating strong likelihood of success highly disproportionate in terms of respective legal standards faced by parties, smacking of unfairness to immigrant applicant held in detention — Applicant making probable case that Board's decision maintaining detention likely to be set aside in judicial review application — Procedure before Board maintaining applicant's detention quite perfunctory — Board not alert, sensitive to best interest of children (BIOC), failing to consider probative value of applicant's answers, other considerations — Board likely committing reviewable error by not appropriately considering BIOC as factor supporting applicant's conditional release — Decision makers required to consider an applicant's capacity for flight — Applicant otherwise demonstrating would comply with directions from immigration officers — Clear, persuasive evidence herein of irreparable harm to applicant, children from continuing detention — Balance of convenience favouring their release — Motion granted.

CALIN V. CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) (IMM-3002-18, 2018 FC 731, Annis J., amended reasons for order dated July 30, 2018, 28 pp.)