Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

IMM-1046-96

Between:

DOUGLAS TOYNE COOK GILLESPIE,

Applicant,

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION,

Respondent.

REASONS FOR ORDER

ROTHSTEIN J.

This is a judicial review of a public danger opinion issued in respect of the applicant under subsection 70(5) of the *Immigration Act*. The decision of the Federal Court of Appeal in *The Minister of Citizenship and Immigration v. Williams* court file A-855-96 essentially disposes of this case. However, I will briefly deal with the arguments made.

The applicant alleges that the danger opinion is perverse because it fails to take account of the applicant's time in Canada, the presence of the applicant's children and grandchildren here, that the applicant had been allowed bail in respect of his criminal proceedings, that his offence while serious occurred when he was under the influence of drugs and alcohol, that only one offence was involved, that it was not an offence involving the public as it was the applicant's wife who was the victim, and that there was a failure to balance the factors favourable to the applicant with the seriousness of his offence.

The applicant had been convicted of impaired driving, driving while disqualified, sexual assault with a weapon and attempting to overcome resistance to the commission of an offence. There is also an indication in the record that the applicant may have been convicted of uttering threats but was given an absolute discharge. As well there is reference to other offences that the applicant committed many years ago. The sexual assault with a weapon offence is described in the material as follows:

> On 1993.02.18 Betty Gillespie went to her husband's apartment where he was drinking, he had only been released from Detox about 10 days earlier and was on prescription medication for depression. Shortly after her arrival the subject became verbally abusive, pushed his wife and grabbed her hair. He brought two butcher's knives into the room and held one to her throat stating "I am going to kill you, you fucking bitch". The threats continued with him putting a knife to her throat.
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> Some hours later Gillespie took his wife, forcibly as he had a knife in his jacket which he showed periodically, to a local Hotel where they remained until about 02.00 hours, they returned to the subject's apartment, where the threats continued. Gillespie forcibly removed his wife's clothes then had forced sexual intercourse with her. He then wrapped a towel around her neck, tightening it until she began choking and repeated this several times.
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> Betty Gillespie was able to escape later that morning when the subject fell asleep and called the police when she got home. She was taken to the HSC where she was examined and found to have bruises on her neck, shoulders, arms, wrists and legs.

The seriousness of the offence is obvious. Before the Minister's delegate were letters of support for the applicant, and information about his family and about his being afforded bail in his criminal proceedings. Also included were observations that the applicant had problematic relationships with family violence that appears to have worsened over the years. As to the argument that sexual assault with a weapon was only against his wife and not the public, counsel rightly did not pursue this point and I can only say, apart from the applicant's wife being a member of the public, any attempted minimization of an offence because it is against a spouse is unacceptable.

Applicant's counsel suggests there was not a proper balancing of factors but that is not born out by the material and the recommendations before the Minister's delegate. Those recommendations observe that in the absence of a guarantee that the applicant will never again mix alcohol and drugs there is a risk that he will re-offend. The applicant says there is no guarantee about anyone and that the

standard is unreasonable and further that the test is unacceptable risk and not just risk. The evidence is replete with references to the applicant's alcohol and drug problems and the fact that he has had a history of substance abuse, involvement in treatment programs but without any great degree of success in continued sobriety. There is clearly a basis for concern and it cannot be said that the recommendation is unreasonable. Further, it is implicit in the issuance of a danger opinion that the Minister finds the risk that the applicant will re-offend to be unacceptable.

The applicant then says that he was not provided with the Ministerial Opinion Report in this case. This report summarizes the detailed material. Counsel is not able to point out any information that was not in the material given to the applicant. In *Williams* the Ministerial Opinion Report also was not provided but this was not critical because this report only summarized the information that the applicant did have and about which he was able to express his view. The same is true here.

Next the applicant says that in the circumstances here the issuance of the danger opinion constitutes cruel and unusual treatment contrary to section 12 of the *Charter of Rights and Freedoms*. The argument appears to be that the process was slipshod and that it would be cruel and unusual treatment to deport a person in view of the unsatisfactory nature of the process. However, I have not been persuaded that the process was slipshod, and, even if it was, these are procedural fairness issues. I fail to see any connection between issuance of a danger opinion and cruel and unusual treatment as the term is used in section 12 of the *Charter of Rights and Freedoms*.

Finally the applicant says the Minister should not issue a danger opinion where the applicant is in jail and where there is no urgency which would justify depriving the applicant of an appeal to the Appeal Division. Nothing in subsection 70(5) of the *Immigration Act* precludes the issuance of a danger opinion when an applicant is in jail. Nor is there any criteria which would render urgency a condition precedent to the issuance of the danger opinion. No authority has been submitted to any different effect.

The judicial review is dismissed. At the request of the applicant's counsel an order will not be issued until seven days following the date of these reasons to allow the parties to submit a question for certification.

M.E. Rothstein
Judge

Halifax, Nova Scotia

August 20, 1997

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: IMM-1046-96

STYLE OF CAUSE: DOUGLAS TOYNE COOK GILLESPIE v. MCI

PLACE OF HEARING: WINNIIPEG, MANITOBA

DATE OF HEARING: AUGUST 14, 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE ROTHSTEIN

DATED: AUGUST 20, 1997

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