

Federal Court



Cour fédérale

Date: 20111005

Docket: T-32-11

Citation: 2011 FC 1135

Ottawa, Ontario, October 5, 2011

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

NICOLA DEL VECCHIO

Applicant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nicola Del Vecchio was convicted on charges of conspiracy to distribute narcotics and is currently serving a prison term of 15 years and 8 months in the United States. Mr. Del Vecchio seeks judicial review of a decision of the Minister of Public Safety and Emergency Preparedness refusing his request for a transfer pursuant to section 7 of the *International Transfer of Offenders Act*, S.C. 2004, c. 24 [ITOA]. The transfer would have allowed Mr. Del Vecchio to serve the remainder of his prison sentence in Canada.

[2] Mr. Del Vecchio asserts that in exercising his discretion to refuse the transfer, the Minister erred in failing to consider the treatment accorded to his co-conspirators, some of whom have been permitted to serve portions of their sentences in Canada. Mr. Del Vecchio further argues that the failure of the Correctional Service of Canada (CSC) to address his arguments in the briefing memorandum prepared for the Minister resulted in his having been treated unfairly in relation to his transfer request. Finally, Mr. Del Vecchio argues that the Minister's conclusion that Mr. Del Vecchio's transfer would not achieve the purposes of the *ITOA* was unreasonable.

[3] For the reasons that follow, I have concluded that the Minister decision was indeed unreasonable. As a consequence, Mr. Del Vecchio's application for judicial review will be allowed and his transfer request will be remitted to the Minister for reconsideration.

Background

[4] Mr. Del Vecchio is a Canadian citizen from the Montreal area. He is married and has a 10-year-old son. On October 21, 2000, RCMP Officers arrested Mr. Del Vecchio when he and two co-conspirators arrived at a pre-designated location to receive a shipment of cocaine. Mr. Del Vecchio had previously arranged for the transportation of the cocaine from New Jersey to Montreal.

[5] Mr. Del Vecchio was extradited to the United States, and was subsequently convicted of conspiracy to distribute 30 kilograms of cocaine. On July 17, 2003, Mr. Del Vecchio was sentenced to a prison term of 188 months, to be followed by 5 years of supervised release. In imposing sentence on Mr. Del Vecchio, the trial judge recommended that he be permitted to serve his

sentence in Canada. Mr. Del Vecchio is currently incarcerated at the Low Security Correctional Institution in Allenwood, Pennsylvania.

[6] Mr. Del Vecchio has made four previous transfer requests. The first was refused by the United States Department of Justice. After the American authorities consented to Mr. Del Vecchio's transfer in 2006, subsequent transfer requests were refused by Ministers Day and Van Loan. Mr. Del Vecchio's most recent transfer request was refused by Minister Toews.

[7] After receipt of Mr. Del Vecchio's transfer application, the CSC prepared an assessment of the request which was provided to the Minister for his assistance in considering the request. Unlike previous applications of this nature, the briefing note in this case did not provide a specific recommendation to the Minister as to whether Mr. Del Vecchio's transfer application should be granted or refused.

[8] CSC's assessment did note that Mr. Del Vecchio's co-conspirators had already been transferred to Canada in accordance with the *ITOA*. It concluded that there was no reason to believe that Mr. Del Vecchio's return to Canada would pose a threat to the security of Canada or that he would thereafter commit an act of terrorism. The note also referred to positive community assessments and Mr. Del Vecchio's successful adjustment to incarceration in the U.S. However, the report also observed that Mr. Del Vecchio's offence was linked to a criminal organization of Columbian origin, and that the FBI had received information that Mr. Del Vecchio was affiliated with the Rizzuto crime family.

The Minister's Decision

[9] The Minister explained in his decision that each transfer request is considered according to “the unique facts and circumstances as presented to me in the context of the purposes of the Act and the specific factors enumerated in section 10.”

[10] In specific reference to Mr. Del Vecchio, the Minister considered whether he would, after the transfer, commit a criminal organization offence within the meaning of section 2 of the *Criminal Code*, R.S.C. 1985, c. C-46. The Minister made no express finding on this point, but did note that:

1. Mr. Del Vecchio's offence arose out of a sophisticated operation involving several accomplices and large quantities of cocaine;
2. There was evidence that Mr. Del Vecchio was a senior participant in the drug smuggling operation;
3. If the operation had been successfully completed, individuals and the group involved in the operation would have received material or financial benefit; and
4. There was evidence that Mr. Del Vecchio was linked to a criminal organization within Canada at the time of the offence.

[11] The Minister recognized Mr. Del Vecchio's family ties to Canada and the fact that his mother and brother are in Canada and had expressed their support for his transfer. The Minister further noted that Mr. Del Vecchio was currently in stable emotional health in the U.S. prison. However, the Minister concluded that Mr. Del Vecchio's transfer would not “achieve the purposes of the Act”.

The Legislative Framework

[12] Mr. Del Vecchio's transfer request is governed by the provisions of the *ITOA*. The purpose of the legislation is described in section 3 of the Act, which provides that:

3. The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

3. La présente loi a pour objet de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux.

[13] The term “administration of justice” in section 3 has been interpreted broadly to include public safety and security considerations: *Holmes v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 112, [2011] F.C.J. No. 82, at paras. 8-9.

[14] The *ITOA* does not create or recognize a right of Canadian offenders to return to Canada to serve their sentences, but does create a framework for implementing Canada's international treaty obligations: *Lebon v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 1018, [2011] F.C.J. No. 1261 at para. 33, *Divito v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 39, [2011] F.C.J. No. 100, [“*Divito, FCA*”] at para. 88.

[15] Transfers under the *ITOA* are a discretionary privilege for offenders incarcerated abroad, predicated on Canada undertaking to administer their sentences and assuming the risks and responsibilities of these undertakings: *Kozarov v Canada (Minister of Public Safety and Emergency Preparedness)*, 2007 FC 866, [2007] F.C.J. No. 1132 at para 28.

[16] Section 10 of the *ITOA* identifies factors that the Minister is required to consider in deciding whether to approve a transfer request. It provides that:

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| <p>10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:</p> | <p>10. (1) Le ministre tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien :</p> |
| <p>(a) whether the offender's return to Canada would constitute a threat to the security of Canada;</p> | <p>a) le retour au Canada du délinquant peut constituer une menace pour la sécurité du Canada;</p> |
| <p>(b) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;</p> | <p>b) le délinquant a quitté le Canada ou est demeuré à l'étranger avec l'intention de ne plus considérer le Canada comme le lieu de sa résidence permanente;</p> |
| <p>(c) whether the offender has social or family ties in Canada; and</p> | <p>c) le délinquant a des liens sociaux ou familiaux au Canada;</p> |
| <p>(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.</p> | <p>d) l'entité étrangère ou son système carcéral constitue une menace sérieuse pour la sécurité du délinquant ou ses droits de la personne.</p> |
| <p>(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:</p> | <p>(2) Il tient compte des facteurs ci-après pour décider s'il consent au transfèrement du délinquant canadien ou étranger:</p> |
| <p>(a) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the Criminal Code; and</p> | <p>a) à son avis, le délinquant commettra, après son transfèrement, une infraction de terrorisme ou une infraction d'organisation criminelle, au sens de l'article 2 du Code criminel;</p> |
| <p>(b) whether the offender was previously transferred under this Act or the Transfer of Offenders Act, chapter T-15 of</p> | <p>b) le délinquant a déjà été transféré en vertu de la présente loi ou de la Loi sur le transfèrement des délinquants,</p> |

the Revised Statutes of Canada, 1985, chapitre T-15 des Lois révisées du Canada (1985).

[17] While the Minister may take advice in respect of a transfer request under the *ITOA*, he must make the final decision himself and the decision-making power may not be delegated: *Kozarov*, at para. 24.

[18] The list of factors set out in section 10 of the *ITOA* is not exhaustive: *Holmes* at para.12 and *Lebron* at para. 45. In determining whether a transfer would serve the purposes of the *ITOA*, it is open to the Minister to take into consideration any other factors relevant to those purposes: *Lebron* at para. 66. Section 10 of the *ITOA* simply identifies factors to be weighed by the Minister in a reasonable and transparent way: *Holmes*, at paras. 38-39, *Lebron* at para. 62. The statutory factors must, however, be considered in light of the purposes of the Act: *Tippett v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 814, [2011] F.C.J. No. 1015 at para. 42.

Standard of Review

[19] The parties agree that the substance of the Minister's decision is to be reviewed against the standard of reasonableness: see *Divito, FCA*, at para. 70.

[20] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 47, and *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339 at para. 59.

[21] The Minister is accorded a high degree of discretion under the *ITOA*, with the result that considerable deference is owed to Ministerial decisions regarding transfer requests: see *Duarte v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 602, [2011] F.C.J. No. 805 at para. 12, and *Grant v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 958, [2010] F.C.J. No. 1189 (*Grant #2*) at paras. 20-30.

[22] As Justice Harrington underscored at paragraph 22 of *Divito v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 983, [2009] F.C.J. No. 1158 (“*Divito, FC*”), the question for the Court is not whether it would have been reasonable for the Minister to agree to the transfer, but rather whether it was unreasonable for the Minister to refuse the transfer.

[23] Insofar as Mr. Del Vecchio’s arguments relate to the fairness of the process followed in relation to his request, the task for the Court is to determine whether the process followed satisfied the level of fairness required in all of the circumstances: see *Khosa*, at para. 43.

Was Mr. Del Vecchio Treated Unfairly?

[24] Mr. Del Vecchio’s procedural fairness argument may be briefly disposed of. He submits that the submissions that he made in relation to his transfer request included significant information about his accomplices, including the fact that the transfer of two of his accomplices had been approved. Mr. Del Vecchio also submitted information indicating that his level of culpability was less than that of his co-conspirators, a factor that he says mitigated in favour of the approval of his transfer.

[25] According to Mr. Del Vecchio, CSC's memorandum makes no reference to this information. He argues that, in the circumstances, he should have been afforded the opportunity to comment on the memorandum before CSC forwarded it to the Minister. In support of this application for judicial review, Mr. Del Vecchio has filed an affidavit from a legal assistant in his counsel's office which produces additional documents relating to the accomplices. Mr. Del Vecchio argues that these documents could have been put before the Minister in support of his application, had he been aware of the content of the memorandum.

[26] Section 7 of the *ITOA* allows an offender to make prior representations to the Minister through a written request in which he may address all pertinent factors and circumstances: *Divito FC* at para. 58. It is incumbent on the offender to "put his best foot forward" and to include with his application all of the information that he wishes to have considered by the Minister.

[27] There is authority for the proposition that where CSC provides the Minister with information of which an applicant for a transfer is unaware, the applicant should be given a copy of the CSC memorandum or a fair summary of it: see *Balili v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 396, [2011] F.C.J. No. 521 at para. 14. That is not, however, the situation here. Mr. Del Vecchio was in possession of all of the information in issue, and there is no explanation as to why he could not have provided the Minister with this information at the outset, if he thought it was important.

[28] The fact that some of Mr. Del Vecchio's accomplices had already been transferred to Canada was specifically referred to in the CSC memorandum. In addition, the material before the Minister included Mr. Del Vecchio's submissions as to the relative culpability of the various parties to the conspiracy. The additional information that Mr. Del Vecchio says that he would have provided to the Minister, had he been afforded the opportunity to comment on the CSC report, adds little to the information already before the Minister.

[29] In these circumstances, I am not persuaded that Mr. Del Vecchio was treated unfairly in the processing of his transfer request.

Was the Minister's Decision Unreasonable?

[30] Section 11 of the *ITOA* requires that the Minister provide written reasons if he refuses to consent to a transfer.

[31] The Minister's role is to weigh the factors identified in section 10 of the *ITOA* together with any other factors that he may deem to be relevant in a given case. The Minister must then provide reasons for his decision that conform to the *Dunsmuir* standard of justification, transparency and intelligibility.

[32] The reviewing Court's role is to determine whether the Minister considered the relevant facts and the factors set out in the legislation, and whether he reached a defensible conclusion as to whether a given transfer meets the objectives of the *Act: Divito, (FCA)*, at para. 70, Justice Mainville, concurring. If the reasons address the relevant considerations, it is not for this Court to

second-guess the weight attributed to the various factors by the Minister: *Holmes*, at paras 38-39, 61-63.

[33] In cases where a ministerial decision has a profound impact on an individual, that individual must be informed as to why the Minister reached a particular result, even though the Minister is vested with a broad discretion. That said, the duty to give reasons in this context does not necessarily “require the full analytical force of a Supreme Court of Canada judgment”: *Holmes* at para. 42.

[34] Where, as here, the Minister’s decision is of considerable importance to both Mr. Del Vecchio and to society, in terms of administration of justice, rehabilitation and reintegration, “the substantive purpose and the ‘justification, transparency and intelligibility’ purposes are particularly important”: *Holmes*, at para. 44.

[35] One of the principal arguments advanced by Mr. Del Vecchio in support of his transfer request was that transfers had been approved for two of his accomplices, both of whom, he says, played more important roles than he did in the criminal conspiracy. Mr. Del Vecchio relies on the decision in *Grant v Canada (Minister of Public Safety and Emergency Preparedness)*, [2010] F.C.J. No. 386 [*Grant #1*] in support of his contention that the approval of the transfer of his accomplices was a relevant consideration. As is the case here, the briefing memo in *Grant #1* referred to treatment of the applicant’s co-accused, but the issue was not addressed in the Minister’s decision.

[36] Justice Barnes stated at paragraph 6 of his Order in *Grant #1* that:

There are many questions left unanswered by the Minister's decision ... A reasonable decision would also explain, at least in general terms, why Mr. Grant's two female accomplices were accepted for transfer by the Minister notwithstanding their apparently equivalent culpability. In the absence of such an explanation, the Minister's decision in the case of Mr. Grant looks inconsistent and arbitrary and, therefore, it lacks transparency. There may well be a valid explanation for this differential treatment that is not gender-based, but Mr. Grant should not be left guessing about it. Although Ms. Lawrence appropriately raised the issue of privacy, it is worth noting that personal information concerning these other individuals is contained in the record before the Court and it should not be difficult to provide a justification that does not breach a privacy interest...

[37] The same point may be made here, although it cannot even be said in this case that Mr. Del Vecchio and his accomplices shared “apparently equivalent culpability”.

[38] The information provided to the Minister by Mr. Del Vecchio showed that two of his accomplices were part of a crime family that had been the subject of a 10-year RCMP investigation. The transcript from Mr. Del Vecchio’s sentencing hearing reveals that the alleged “kingpin” of the conspiracy was involved in purchasing 120 kilograms of cocaine (Applicant’s Record, at page 112), whereas Mr. Del Vecchio was convicted of trafficking in 30 kilograms of the same drug. Nevertheless, the transfer of Mr. Del Vecchio’s accomplices (including the female “kingpin”) was approved, and Mr. Del Vecchio’s transfer was refused.

[39] Despite the fact that Mr. Del Vecchio specifically relied on the treatment accorded to his accomplices in support of his transfer request, the Minister’s decision makes no reference to these individuals.

[40] The Minister argues that he had no duty to address this submission, as each transfer request is considered on its own merits, and the treatment accorded to third parties is not a relevant consideration in an application under the *ITOA*. In support of this contention, the Minister relies on the decisions of this Court in *Grant #2*, *Tippett*, and *Dudas v Canada (Minister of Public Safety and Emergency Preparedness)*, 2010 FC 942, [2010] F.C.J. No. 1153.

[41] It appears from a review of Justice Near's reasons in *Grant #2* that the argument before him was that the treatment accorded to Mr. Grant's co-accused created a legitimate expectation that his transfer request would be approved. In this context, Justice Near quite properly observed that:

As an anecdote, the fact that two of Mr. Grant's co-accused transfer requests have been approved may be compelling, but as a matter of law, the doctrine of legitimate expectations is limited to procedural fairness. In *Mount Sinai Hospital v. Quebec (Minister of Health and Social Services)*, [2001] 2 S.C.R. 281, 200 D.L.R. (4th) 193, Justice Ian Binnie affirms that the doctrine of legitimate expectation is limited to procedural relief. [at para. 48]

[42] Justice Near went on to note that there was no information in the record in *Grant #2* as to either the conditions the faced by the co-accused in Costa Rican prisons, or their personal circumstances. He concluded that, *in those circumstances*, it was not reasonable to expect the Minister to refer to these factors as a justification for the outcome of Mr. Grant's application.

[43] In *Dudas*, Justice O'Keefe held that the Minister may lawfully come to his own conclusion in exercising his discretion as to whether to grant a transfer under the *ITOA*. Justice O'Keefe noted that "[t]he fact that a Minister has come to a given conclusion before, does not prevent that same Minister or a different Minister from lawfully changing his or her mind if faced with the same set of

facts at a later date.” While this is undoubtedly true, I do not read *Dudas* to say that information as to the treatment accorded to accomplices could never be relevant in considering a transfer request.

[44] In *Tippett*, Justice Russell specifically examined the differences between Mr. Tippett’s circumstances and those of his accomplice, Mr. Curtis, observing at paragraph 92 of his reasons that there were “evidentiary facts that suggested Mr. Curtis’ case was very different from the Applicant’s case.

[45] This observation led Justice Russell to conclude that:

[N]o explanation was required *on the facts of this case* because, even on its face, the situation of Mr. Curtis was very different from that of the Applicant. As Justice O’Keefe pointed out in *Curtis*, above, at paragraph 16, the evidence related to Mr. Curtis gave rise to separate considerations that were highly material to the two cases. [at para. 93, emphasis added]

[46] As was the case in *Dudas*, Justice Russell did not say that information as to the treatment accorded to accomplices could never be relevant in considering a transfer request.

[47] It is clear that the onus is on the applicant to bring forward relevant information he or she wants the Minister to consider. It is also clear that each transfer request must be determined by the Minister individually on its merits, based upon the evidentiary record before him *Tippett* at para. 72 and 96.

[48] Mr. Del Vecchio acknowledges that the favourable treatment given to his co-conspirators in this case would not be determinative of the outcome of his applications, just as the refusal of a

transfer request made by an accomplice would not be determinative of a different offender's transfer request. Nevertheless, I am of the view that there may be cases, such as the present one, where specific information is put before the Minister with respect to the relative culpability of accomplices or co-accused which requires the Minister to at least address the issue and to determine what, if any, weight should be given to the information before him.

[49] It may be open to the Minister to examine the information provided and to find that the information before him was not sufficient to allow him to make a meaningful assessment of the appropriateness of relative treatment as between offenders, or that it was unreliable. It would also be open to the Minister to decide that there were material differences between cases, such as the fact that, in this case, the alleged kingpin and the other accomplice pleaded guilty, whereas Mr. Del Vecchio went to trial.

[50] There may also be cases where privacy considerations limit the Minister's ability to explain the reasons for differential treatment, especially where health or other personal circumstances favoured the transfer of another offender. However, the Minister's complete silence on the question of relative treatment in this case appears, to quote Justice Barnes, "inconsistent and arbitrary", with the result that the decision therefore lacks the transparency required of a reasonable decision: *Grant #1*, at para. 6.

Mr. Del Vecchio's Future Participation in Organized Crime

[51] One of the factors that the Minister is required to consider in assessing a transfer request is that identified in paragraph 10(2)(a) of the *ITOA*. That is, the Minister is required to consider,

amongst other things, whether the offender will, after the transfer, commit a criminal organization offence within the meaning of section 2 of the *Criminal Code*.

[52] The CSC memorandum refers to Mr. Del Vecchio's past ties to organized crime, but is silent on the question of whether he would commit a criminal organization offence in the future. The CSC memo did indicate that the overall likelihood of Mr. Del Vecchio re-offending was low. As noted earlier, the Minister made no express finding on this point. In addressing whether Mr. Del Vecchio will, after the transfer, commit a criminal organization offence, the Minister simply provided a detailed description of the nature of his past offense.

[53] It is clear from the wording of paragraph 10(2)(a) of the *ITOA* that Parliament did not contemplate a blanket ban on the transfer of individuals convicted of criminal organization offences. Moreover, the Minister's analysis must be forward-looking. Consequently, there must be a meaningful examination of both the offender's past involvement with organized crime and the ongoing ties of the individual to criminal organizations.

[54] The question is thus whether there was sufficient evidence before the Minister so as to allow him to make a good faith finding that Mr. Del Vecchio presented a significant risk of committing a criminal organization offense once transferred to Canada: see *Grant #2*, at para. 38 and *Duarte*, at para. 21.

[55] While no one is able to predict the future with any degree of certainty, the evidence and analysis in this case is lacking.

[56] The Minister's reasons state that "at the time of the offence, [in 2000] Mr. Del Vecchio was linked to a criminal organization within Canada". This is true. However, no consideration appears to have been given to whether, some 10 years later, this was still the case.

[57] Mr. Del Vecchio denies having any ongoing ties with organized crime, stating in his submissions that he wanted nothing more to do with such groups, as they had ruined his life. Moreover, counsel for the respondent conceded that there was *no evidence* in the record to suggest that Mr. Del Vecchio had maintained any connections with organized crime after his arrest in 2000.

[58] In other cases, evidence of ongoing ties to criminal organizations was present (see, for example, *Dudas*, at para. 6, and *Tippett*, at para. 105). Similarly, in *Grant #2*, there was no evidence before the Minister that any ties the applicant might have had with his co-conspirators had been severed. That is not, however, the situation here.

[59] There may also be cases where an offender's relationship to a member of a crime family may support a finding that the offender will, after the transfer, commit a criminal organization offence: see, for example, *Divito FC* at paras. 21 to 24. Once again, there is no suggestion that Mr. Del Vecchio is related to a member of a criminal organization.

[60] There is no question that international drug trafficking constitutes "a very serious crime that one could reasonably conclude required financing, planning and other logistics often associated with organized crime": *Grant #2*, at para. 54.

[61] Moreover, as the Federal Court of Appeal observed at paragraph 56 of *Divito FCA*, it is not irrational for Parliament to empower the Minister to refuse the transfer of an international drug cartel kingpin if it is reasonable to believe that such a transfer would result in attacks on Canadian prison guards or would facilitate the criminal operations of that offender or of his criminal organization. There was, however, no evidence of this nature before the Minister in this case.

[62] The Federal Court of Appeal recognized at paragraph 57 of *Divito FCA* that not all individuals convicted of offences related to organized crime will pose a threat to Canada or to Canadians should they serve their foreign sentences in Canada. Moreover, many cases will fall between these two extremes. According to the Federal Court of Appeal “[t]his is precisely why Parliament has empowered the Minister to decide each individual case on its particular facts, taking into account pertinent circumstances and prescribed factors”.

[63] The Minister must, however, have regard to the evidence before him in deciding whether or not to exercise the discretion vested in him by the *ITOA*. He must also explain his reasoning in coming to the conclusion that a transfer is not warranted in a given case. He did not do so here.

[64] What occurred in this case is akin to the situation facing the Court in *Downey v Canada (Minister of Public Safety)*, [2011] F.C.J. No. 139, where Justice Phelan observed that:

9. ... [I]t is difficult, if not impossible, to discern what the true basis of the Minister's decision is. The Minister ‘notes’ a number of facts but does not tie these notations into relevant conclusions. The description of the crime and its possible impact on society tells one nothing about why a transfer to a Canadian prison is not warranted. This decision lacks logical reasons and does not adhere to the

Dunsmuir v. New Brunswick, 2008 SCC 9, principles of transparency, intelligibility and acceptability.

10. The best that the Court can divine from this recitation of facts is that the Minister believed ... that Downey might commit a criminal organization offence because of his involvement with others, his criminal record and the nature of the offence. Neither the Applicant nor the Court should be forced to speculate on the Minister's reasons to give them some legitimacy.

[65] The same may be said here.

Conclusion

[66] For these reasons, Mr. Del Vecchio's application for judicial review is allowed. His application for transfer is remitted to the Minister for reconsideration.

[67] Following the process followed in *Grant #1*, Mr. Del Vecchio shall have 15 days to file any updated submissions that he wishes to have the Minister consider in relation to his application for transfer. The Minister shall provide Mr. Del Vecchio with a new decision within 60 days of the date of this decision.

JUDGMENT

THIS COURT ADJUDGES that:

1. The application is allowed and the Minister's decision is set aside;
2. Mr. Del Vecchio shall have 15 days to file any updated submissions that he wishes to have the Minister consider in relation to his application for transfer; and
3. The Minister shall provide a new decision with respect to Mr. Del Vecchio's application for transfer within 60 days of the date of this decision.

“Anne Mactavish”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE: NICOLA DEL VECCHIO and MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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REASONS FOR JUDGMENT AND JUDGMENT: MACTAVISH J.

DATED: OCTOBER 5, 2011

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