Federal Court  Cour fédérale

Date: 20231220

Docket: IMM-8432-22

Citation: 2023 FC 1735

Ottawa, Ontario, December 20, 2023

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JUDE UPALI GNANAPRAGASAM
THE CANADIAN COUNCIL FOR REFUGEES

Applicants

and

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA

Respondents

ORDER AND REASONS

I. Overview

[1] Three parties (the "Proposed Interveners") seek an order pursuant to Rules 109 and 369 of the *Federal Courts Rules*, SOR/98-106 (the "Rules") to be granted leave to intervene in the

underlying matter of *Gnanapragasam et al v Minister of Public Safety and Emergency Preparedness et al*.

[2] The Proposed Interveners submit that they will make different and useful submissions on the legal issues raised by the parties and have a genuine interest in the matter before the Court. They maintain it is in the interests of justice that their intervention be permitted. The Applicants do not object to their intervention.

[3] For the reasons that follow, I find that two of the three Proposed Interveners meet the criteria for leave to intervene. This motion is granted in part.

II. **Facts**

A. *Background*

[4] The Applicants maintain in their underlying application for judicial review that the automatic loss of permanent residence following cessation determinations under sections 40.1 and 46(1)(c.1) of the *Immigration and Refugee Protection Act*, SC 2001 c 21 ("*IRPA*") and related provisions is contrary to sections 2(d), 7, 12, and 15 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 ("*Charter*").

B. *The Canadian Civil Liberties Association*

[5] The Canadian Civil Liberties Association ("CCLA") is a non-profit, non-governmental advocacy organization. They have been granted intervener status in many *Charter* cases across different Canadian courts. They maintain they have a long track record of contributing, in particular, to jurisprudence on section 7 of the *Charter*, including in cases dealing with section 7's application in immigration and refugee law.

C. *The Coalition of Canadian Legal Clinics*

[6] The Coalition of Canadian Clinics ("Coalition") is a group of legal clinics spanning various provinces: the Inter-Clinic Working Group and the Newcomer Legal Clinic in Ontario; the Immigration and Refugee Legal Clinic in British Columbia; the Halifax Refugee Clinic in Nova Scotia; the Madhu Verma Migrant Rights Centre in New Brunswick; and the Refugee Centre in Québec. These clinics all provide immigration and refugee legal services, as well as poverty law services, often aiding those with fewer financial means.

D. *The David Asper Centre for Constitutional Rights*

[7] The David Asper Centre for Constitutional Rights ("Asper Centre") is a part of the University of Toronto's Faculty of Law and is engaged in advocacy, research, and education on constitutional and human rights, as well as access to justice. They have appeared across Canadian courts as an intervener in constitutional matters.

III. **Issue and Statutory Framework**

[8] The sole issue in this motion is whether the Proposed Interveners should be granted leave to intervene in the underlying application pursuant to Rule 109(1) of the Rules.

[9] Rule 109 provides:

Leave to intervene	**Autorisation d'intervenir**
109 (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.	**109 (1)** La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.
Contents of notice of motion	**Avis de requête**
(2) Notice of a motion under subsection (1) shall	**(2)** L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir :
(a) set out the full name and address of the proposed intervener and of any solicitor acting for the proposed intervener; and	**a)** précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;
(b) describe how the proposed intervener wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.	**b)** explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.
Directions	**Directives de la Cour**
(3) In granting a motion under subsection (1), the Court shall give directions regarding	**(3)** La Cour assortit l'autorisation d'intervenir de directives concernant :
(a) the service of documents; and	**a)** la signification de documents;
(b) the role of the intervener, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervener.	**b)** le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.

IV. **Analysis**

[10] The Proposed Interveners submit that they meet the criteria for being granted leave to intervene in the underlying application. I agree that two of them do.

[11] The test for intervention under Rule 109 was provided by Justice Stratas of the Federal Court of Appeal, and is as follows:

> I. The proposed intervener will make different and useful submissions, insights and perspectives that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues. To determine usefulness, four questions need to be asked:
>
> (a) What issues have the parties raised?
>
> (b) What does the proposed intervener intend to submit concerning those issues?
>
> (c) Are the proposed intervener's submissions doomed to fail?
>
> (d) Will the proposed intervener's arguable submissions assist the determination of the actual, real issues in the proceeding?
>
> II. The proposed intervener must have a genuine interest in the matter before the Court such that the Court can be assured that the proposed intervener has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court;
>
> III. It is in the interests of justice that intervention be permitted
>
> (*Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 13 ("*CCR FCA*") at para 6 (affirmed in *Chelsea (Municipality) v Canada (Attorney General),* 2023 FCA 179 at para 9)).

[12] The "interests of justice" component of this test includes (but is not limited to) the following considerations:

- Is the intervention consistent with the imperatives in Rule 3? For example, will the orderly progression or the schedule for the proceedings be unduly disrupted?

- Has the matter assumed such a public, important and complex dimension that the Court needs to be exposed to perspectives beyond those offered by the particular parties before the Court?
- Has the proposed intervener been involved in earlier proceedings in the matter? For example, if the Federal Court acceptably rules that a particular party should be admitted as an intervener, that ruling will be persuasive in this Court.
- Will the addition of multiple interveners create the reality or an appearance of an "inequality of arms" or imbalance on one side? (*CCR FCA* at para 9).

[13] The test for intervention is applied "flexibly," with the relative weight accorded to each requirement and the "rigour with which they are to be applied" able to vary in each case (*CCR FCA* at para 7). The usefulness of a proposed intervener's submissions, however, is a central part of the test for granting leave to intervene (*Canada (Attorney General) v Kattenburg*, 2020 FCA 164 ("*Kattenburg*") at para 8).

A. *The CCLA*

[14] The CCLA maintains that they meet the test for leave to intervene. The CCLA submits that they offer a different and useful perspective on the issue of the alleged breach of section 7 of the *Charter*, especially in arguing how recent Supreme Court of Canada jurisprudence has changed section 7's relationship to immigration and refugee proceedings (citing *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17). Additionally, the CCLA maintains that they have genuine interest in this matter and that it would be in the interests of justice to permit intervention.

[15] The Respondents submit that the CCLA will not provide useful nor helpful submissions, as their submissions can be provided by the Applicants, run contrary to well-established jurisprudence, or have already been answered. The Respondents maintain that the CCLA has not demonstrated genuine interest, as only 12 out of their 337 interventions involved immigration law issues and none of them dealt with cessation provisions.

[16] I agree with the CCLA. The Applicants and Respondents in this matter disagree on whether section 7 of the *Charter* is engaged in cessation proceedings and whether the cessation scheme breaches the principles of fundamental justice. These are therefore "live issues," for the purposes of this motion. The CCLA provides submissions on these issues in light of a recent decision from the Supreme Court of Canada, with specific focus on the role of "safety valves" in curing otherwise constitutionally defective laws under section 7 of the *Charter*. These submissions are not, in Justice Stratas's words, seeking to "add food to the table" (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 174 at para 55). I do not accept the Respondents' allegations that their submissions in this regard are either against well-established jurisprudence or already answered. That question remains for the application judge to decide.

[17] Furthermore, the CCLA has established that they have a genuine interest in this matter. I accept that they have experience in intervening and arguing section 7 of the *Charter* cases before Canadian courts. The Respondents' contention that the CCLA's proportion of immigration to non-immigration cases shows a lack of genuine interest must fail. Following this logic, a party who has argued hundreds of immigration law cases could not have a genuine interest as an

intervener, if they had argued thousands of other non-immigration cases. I find this logic lacking.

[18] Moreover, the CCLA's submissions demonstrate that they do not seek to unduly consume court time or resources, and are not taking a position on the outcome of the application. I accept that the CCLA as intervener does not create an "inequality of arms," especially given the Respondents' position on the issue of safety valves. I disagree with the Respondents that the Canadian Council for Refugees ("CCR"), should they be granted public interest standing, will provide a perspective will be able to supplant the CCLA (or any of the Proposed Interveners). In this motion, this Court does not know what the CCR intends to argue. This Court does know what the CCLA intends to argue. The Court can thus rule only on the former for this motion. As such, I am of the view that it is in the interests of justice that the CCLA be granted leave to intervene.

B. *The Coalition*

[19] The Coalition maintains that they meet the test for leave to intervene. They submit that they intend to make submissions concerning the severe consequences for ceased individuals when they lose their permanent residence vis-à-vis their disentitlement from governmental programs and the barriers these individuals face to accessing legal options to regain status. They maintain their submissions are not doomed to fail, will assist the Court by providing a "concrete context" for the *Charter* claims, and that they have genuine interest in the matter and that granting intervention is in the interests of justice.

[20] The Respondents submit that the Coalition's submissions are neither useful nor helpful, as the impact of disentitlement from government programs is both irrelevant and without evidentiary support. The Respondents submit that the Coalition has not demonstrated a genuine interest in this matter, the evidence being silent on their actual work on cessation or post-cessation cases.

[21] Having reviewed the materials, I agree with Respondents. First, however, I find the evidence establishes that the Coalition has a genuine interest in this matter. The clinics forming the Coalition serve individuals who may be or have been affected by cessation and its ensuing consequences. I find their expertise in assisting a wide variety of clients in refugee matters demonstrates the Coalition has the knowledge, skills, and resources to assist the Court in this matter. I thus do not accept the Respondent's submission that the Coalition has not demonstrated that they aid ceased individuals. Additionally, in my view there is no evidence suggesting their intervention will create an inequality of arms, especially in light of the Coalition's offer to provide brief submissions well before the hearing of this matter. In my view, the Coalition's intervention is in the interests of justice and they are granted leave to intervene.

[22] But I agree with the Respondents that the Coalition will have to produce new evidence to substantiate their submissions. I am bound by Justice Stratas's teachings that the Court must be wary of interveners making arguments that upon issues requiring fresh evidence (*Kattenburg* at para 9; *Right to Life Association of Toronto and Area v Canada (Employment, Workforce and Labour)*, 2022 FCA 67 ("*Right to Life*") at para 13). The Respondents correctly note that there is no information on the record about how the legislative frameworks the Coalition seeks to discuss

materially work and how they impact the Coalition's clients and/or other individuals. The Coalition maintains that they are providing references to law as it stands, and submit, "these are statements of fact." I find it curious that they then claim they "will not introduce new evidence." I agree with the Respondents that but for impermissibly adducing new evidence about these frameworks and their operation upon individuals (especially with regard to accessing safety valves), the Coalition's arguments are "doomed to fail" in light of the arguments that the Applicants and Respondents have put forth on this issue.

[23] I find that the Coalition is either providing only factual context—which is prohibited—or they are adding issues to this application; namely, whether losing permanent residence status disentitles an individual from certain provincial programs. This latter option runs counter to the requirement that "interveners must take the parties' issues as they find them" (*Right to Life* at para 14). Owing to the centrality of the usefulness a proposed intervener's submissions (*Kattenburg* at para 8), I find that the nature of the Coalition's submissions are such that they ought not to be granted leave to intervene in this matter.

C. *The Asper Centre*

[24] The Asper Centre submits they meet the test for leave to intervene. The Asper Centre submits that they will provide different and useful submissions on section 12 of the *Charter*, focussing the Court's attention on the alleged section 12 breach through the lens of human dignity and gross disproportionality as found in *R v Boudreault*, 2018 SCC 58 ("*Boudreault*"). They maintain they have an interest in this outcome through their interest in advancing access to

constitutional justice for vulnerable groups, and that the interests of justice favour granting leave to intervene.

[25] The Respondents submit that the Asper Centre's submissions are neither useful nor necessary, given the Applicants' submissions on section 12. The Respondents submit that the proposed submissions on *Boudreault* will not likely be helpful. The Respondents maintain that the Asper Centre has failed to establish a genuine interest, having no expertise in immigration and refugee law issues and having only a fraction of their interventions before the Supreme Court being on immigration and refugee law.

[26] I agree with the Asper Centre. I am of the view that the Asper Centre provides different and useful submissions. Both the Applicants and the Respondents make submissions about the proper analysis to be followed in establishing a breach of section 12 in these circumstances. The Asper Centre's submissions focus on the gross disproportionality in section 12 under *Boudreault*. The Asper Centre's submissions could assist the Court in the determination of section 12's application and scope in these proceedings. I disagree with the Respondents that the Asper Centre's submissions could simply be provided by the Applicants and that the Asper Centre's submissions are doomed to fail. The Asper Centre is, in my view, providing a different view from the Applicants. Contrary to the Respondents' position, there is no evidence that the Applicants can or ought to be saddled with making every possible argument on this issue. I agree with the Asper Centre that the Applicants' ability to make these submissions is not germane to this analysis. Providing a different perspective on a live issue is one reason why

intervener status exists. In addition, I find that the Asper Centre's perspective on the issues raised by the parties could be valuable to the Court, whether the Court accepts them or not.

[27] Furthermore, I find the Asper Centre has demonstrated they have a genuine interest in this matter. The evidence establishes they have experience in constitutional litigation, including their willingness and sufficiency of resources to intervene in constitutional cases across different courts. I find it noteworthy for this analysis that they have intervened in *Charter* cases involving migrants. For the same reasons as above, I do not accept the Respondent's submissions that having worked on only two interventions before the Supreme Court of Canada on immigration and refugee law matters is insufficient to establish a genuine interest.

[28] Moreover, I do not find that their intervention would disrupt these proceedings nor that an "inequality of arms" would be made out by adding the Asper Centre to this litigation. Accepting the Asper Centre and the other two interveners' perspectives to be considered by the Court does not create an imbalance against three large, sophisticated governmental agencies as Respondents. I agree with the Asper Centre that the Court's role of "discerning and applying the relevant legal principles to the facts before it does not amount to a tallying of points on one side versus another." The Proposed Interveners given leave through this motion will provide different perspectives on live issues. The Respondents will respond. The Court will decide whose positions are accepted. As I do not find that any of the Proposed Interveners given leave through this motion are taking a position on the outcome of the application, nor seek to add new evidence or issues to this matter, I find that it is in the interests of justice that the Asper Centre be added to this proceeding as an intervener.

V. **Conclusion**

[29] This motion is granted in part without costs. The CCLA and the Asper Centre are granted leave to intervene on this matter.

ORDER in IMM-8432-22

THIS COURT ORDERS that:

1. This motion is granted in part without costs.

2. The CCLA is granted leave to intervene on the following terms:

   (a) The CCLA may serve and file a memorandum of fact and law, not to exceed 20 pages, within 20 days of this Order;

   (b) The CCLA's memorandum of fact and law shall not raise any new issues;

   (c) The Respondents may serve and file a memorandum of fact and law in response to the CCLA's memorandum of fact and law within 15 days of service, not to exceed 20 pages;

   (d) The CCLA shall not add to the evidentiary record, nor conduct cross-examination;

   (e) The CCLA shall be entitled to service of all materials filed in Court, including the Certified Tribunal Record;

   (f) The duration of oral submissions by the CCLA at the hearing of the application shall not exceed 30 minutes; and

   (g) The CCLA shall not seek costs in the application, nor have costs awarded against it.

3. The Asper Centre is granted leave to intervene on the following terms:

   (a) The Asper Centre may serve and file a memorandum of fact and law, not to exceed 15 pages, within 20 days of this Order;

(b) The Asper Centre's memorandum of fact and law shall not raise any new issues;

(c) The Respondents may serve and file a memorandum of fact and law in response to the Asper Centre's memorandum of fact and law within 15 days of service, not to exceed 15 pages;

(d) The Asper Centre shall not add to the evidentiary record, nor conduct cross-examination;

(e) The Asper Centre shall be entitled to service of all materials filed in Court, including the Certified Tribunal Record;

(f) The duration of oral submissions by the Asper Centre at the hearing of the application shall not exceed 15 minutes; and

(g) The Asper Centre shall not seek costs in the application, nor have costs awarded against it.

"Shirzad A."

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8432-22
STYLE OF CAUSE:	JUDE UPALI GNANAPRAGASAM AND THE CANADIAN COUNCIL FOR REFUGEES v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS, MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE ATTORNEY GENERAL OF CANADA

MOTION IN WRITING PURSUANT TO RULES 109 AND 369

ORDER AND REASONS:	AHMED J.
DATED:	DEECEMBER 20, 2023

APPEARANCES:

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