Date: 20080204

Docket: T-1162-07

Citation: 2008 FC 146

Vancouver, British Columbia, February 4, 2008

PRESENT: Roger R. Lafrenière, Esquire
Prothonotary

BETWEEN:

LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

Applicant

and

HER MAJESTY THE QUEEN
THE ATTORNEY GENERAL OF CANADA
WASYL ODYNSKY

Respondents

REASONS FOR ORDER AND ORDER

[1] The Respondent, Wasyl Odynsky (Odynsky), seeks an order striking out the within application for judicial review on the grounds that the Applicant, the League for Human Rights of B'Nai Brith Canada (B'Nai Brith) lacks standing.

Facts

[2] The facts on this motion may be summarized as follows. On September 24, 1997, the Minister of Citizenship and Immigration (Minister) gave notice to Odynsky that it was her intention

to request that the Governor in Council (GIC) revoke his citizenship. At Odynsky's request, the Attorney General of Canada prepared a Notice of Reference referring the matter of revocation of citizenship to the Federal Court. On March 2, 2001, Mr. Justice Andrew MacKay found that Odynsky obtained citizenship under the *Citizenship Act*, R.S.C. 1952, c. 33 by false representation or by knowingly concealing material circumstances when he was admitted to Canada for permanent residence in 1949. By way of a Report, the Minister recommended to the GIC that Odynsky should cease to be a Canadian citizen as of the date of the Order-in-Council. On May 17, 2007, the GIC issued an Order-in-Council not to revoke Odynsky's citizenship.

[3] On June 22, 2007, B'Nai Brith filed a Notice of Application challenging the decision of the Governor in Council (GIC) not to revoke the citizenship of Odynsky on the grounds that the GIC erred in law and that the decision violated the *Charter of Rights and Freedoms*. B'nai Brith brought a similar application challenging the non-revocation of citizenship of Vladimir Katriuk (Katriuk) one week later in Court File No. T-1191-07.

[4] Following service and filing of B'Nai Brith's affidavit evidence pursuant to Rule 306 of the *Federal Courts Rules* and production of the certified tribunal record, Odynsky brought the present motion for an order striking the application on the grounds that the Applicant lacks standing. He argues that there is no point in putting the parties to the expense of responding to the application and to waste scarce judicial resources when it is plain and obvious that the applicant lacks standing. The Crown Respondents and Katriuk filed written representations and made oral submissions in support of Odynsky's motion. The parties agree that the decision on this motion should also apply to the proceedings in T-1191-07.

Issue

[5] The motion raises the vexing question whether this Court should entertain Odynsky's motion to dismiss the application by way of interlocutory motion or leave the matter for determination by the application judge.

Analysis

[6] An application for judicial review is, by its very nature, meant to be decided summarily. In order to ensure that applications do not get bogged down in procedural quagmires and proceed to hearing expeditiously, this Court generally discourages such motions.

[7] In the case of *Sierra Club of Canada v. Canada (Minister of Finance)* [1999] 2 F.C. 211 (T.D.), Mr. Justice Johns Evans cautioned against a ruling on standing on a motion to strike, especially in the case of an application for judicial review, as the Court may not be in a position to consider all the factors relevant to the ground of discretionary standing, and more particularly the strength of the applicant's case. This does not apply to the case at bar, however, as it appears that a complete evidentiary record is before the Court. Odynsky's affidavit evidence and the certified record have been produced, and the parties have been given ample opportunity to make full argument on the discrete issue of standing. As such, there is no impediment to the Court exercising its discretion to deal with the matter on a preliminary motion.

[8] The Court may intervene prior to the hearing of the application where it can be established that an applicant is not directly affected or has no legitimate interest in the proceeding. However, dismissal of an application by interlocutory motion will only be granted in exceptional cases, where it is shown to be so clearly improper as to be bereft of any possibility of success: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.* (C.A.), [1995] 1 F.C. 588; *Bouchard v. Canada (Minister of National Defence)* (1999) 187 D.L.R. (4th) 314, 255 N.R. 183 (F.C.A.) at paragraph 12; *Syntex (U.S.A.) L.L.C. v. Canada (Minister of Health)* 2002 FCA 289, 292 N.R. 147, 20 C.P.R. (4th) 29 at paragraph 5; *Scheuneman v. Canada (Attorney General)* 2003 FCA 194 at paragraph 7. The fairly high onus rests on the moving party to establish, in a clear and convincing manner, that the applicant lacks standing.

Whether B'Nai Brith is directly affected by the decision

[9] Odynsky submits that it is plain and obvious that B'Nai Brith does not have standing to bring this application since it is not "directly affected" by the decision of the GIC not to revoke Odynsky's citizenship within the meaning of ss. 18.1(1) of the *Federal Courts Act*. B'Nai Brith responds that it has four interests which distinguish it from the public at large. The first interest involves the issue of bringing war criminals to justice. The second is its interest in the Odynsky case as a result of having made numerous submissions to the Government after Justice MacKay's ruling calling for the revocation of Odynsky's citizenship. Third, B'Nai Brith claims that it represents the relatives of victims who perished in labour camp where Odynsky was stationed as a perimeter guards. According to B'Nai Brith, these individuals have a direct interest in these proceedings. Fourth, the B'Nai Brith asserts an interest stemming from the duty of fairness.

[10] For an applicant to be considered "directly affected", the matter at issue must be one which adversely affects its legal rights, imposes legal obligations on it, or prejudicially affects it directly: *Canwest Mediaworks Inc. v. Canada (Minister of Health)*, 2007 FC 752 at para. 13; *Apotex Inc. v. Canada (Governor in Council)*, 2007 FC 232 at para. 20; *Rothmans of Pall Mall Canada Ltd. v. Canada (Ministry of National Revenue)*, [1976] F.C. 500 (C.A.). Although the test of "directly affected" is flexible, it will depend on the circumstances of each case. Consideration must be had to the relationship between the applicant and the challenged decision, the nature of the statutory scheme which gave rise to the decision, and the merits of the complaint.

[11] B'Nai Brith and its members obviously have an interest in the Odynsky case, however the decision whether or not to revoke his citizenship has no direct impact in them. Their legal obligations or rights are not affected in any way by the decision, nor does the decision have a direct prejudicial effect on them. The satisfaction of righting a wrong or upholding a principle does not constitute a personal or direct stake in the outcome of the litigation: *Finlay v. Canada (Minister of Finance)*, [1986] 2.S.C.R. 607, at para 21.

[12] In the circumstances, I conclude that B'Nai Brith is not directly affected by the GIC decision not to revoke the citizenship of Odynsky with the meaning of ss. 18.1(1) of the *Federal Courts Act*.

Whether B'Nai Brith has public interest standing

[13] I now turn to B'Nai Brith's alternative argument that it has public interest standing to bring the application. Once again, on a preliminary motion to strike an application for lack of standing, the onus ultimately rests on the proponent. However, a responding party cannot hide behind the

legal burden in a preliminary motion and ignore the evidentiary or persuasive burden that rests upon it to state its case. The Court cannot be expected to simply trust that an applicant has an arguable case that will be articulated at some point in the future.

[14] The test for public interest standing, as articulated by the Supreme Court of Canada in *Canadian Council of Churches v. Canada (Minister of Employment and Immigration),* [1992] 1 S.C.R. 236 (*Council of Churches*) at paragraph 37, has three elements. First, there must be a serious issue to be tried. Second, the party must have a direct interest or a genuine interest in the matter. Third, there is no other reasonable and effective manner in which to bring this issue to the Court.

[15] The Attorney General of Canada has conceded for the purpose of this motion that B'Nai Brith has satisfied the third element. I agree. However, this factor by itself is not sufficient to grant standing given the conjunctive nature of the test set out in the *Council of Churches* decision.

[16] With respect to the first element of serious issue, the Notice of Application sets out two grounds to challenge the GIC's decision not to revoke Odynsky's citizenship: the decision is wrong in law and it violates the *Charter*. B'Nai Brith elected not to elaborate on its bald assertion of a *Charter* breach. It is difficult to conceive any Charter right that may be engaged or may be raised by a corporation in the circumstances of the GIC decision. In the circumstances, I conclude that the no serious issue is raised in respect of the *Charter*.

[17] On the issue of law, which deals with statutory interpretation of s.10 of the *Citizenship Act*, B'Nai Brith takes that the position that the procedure for revocation of suspected Nazi war criminals

used by the GIC, which includes consideration of a wide range of factors, is not authorized. B'Nai Brith argues that the law allows the GIC to consider only whether citizenship was obtained by false representation or fraud or by knowingly concealing material circumstances. In other words, the GIC has no discretion is determining whether to revoke citizenship.

[18] In my view, no serious issue of law is raised. The Federal Court of Appeal has already determined that the GIC is required to consider personal factors when deciding whether to revoke an individual's citizenship: *Oberland v. Canada (Attorney General)*, 2004 FCA 213. Earlier decisions of the Federal Court of Appeal also confirm that the GIC is not compelled to revoke citizenship after the Court has made a finding of fact that there was misrepresentation, fraud or concealment: *Canada (Secretary of State) v. Luitjens*, [1992] F.C.J. No. 319 (FCA); *Canada (Minister of Citizenship and Immigration) v. Bogutin*, [1998] F.C.J. No. 211 (F.C.).

[19] B'Nai Brith also raises a fairness issue as to whether the Governor in Council is required to provide reasons. One must keep in mind the nature of the process which gave rise to the GIC decision: it is not between Mr. Odynksy and the B'Nai Brith, but rather between Mr. Odynsky and the Minister of Citizenship and Immigration, representing the public interest. Moreover, the purpose for reasons is to enable the parties, particularly the person affected, to make a reasonable decision about further legal proceedings and so that the parties can know the basis of a positive or negative decision directly affecting them: *Baker v M.C.I.*, [1999] S.C.J. No. 39. The raising of a serious issue by a public interest organization must, based on the jurisprudence, be one of public importance, not meddling in a decision affecting an individual.

Conclusion

[20] The moving party has shown that it is plain and obvious that B'Nai Brith could not succeed on the hearing of the application for judicial review as it is not directly affected by the GIC decision, and there is no serious issue to be considered by the application judge. In the circumstances, I consider just and appropriate to exercise my discretion by granting the motion and striking the application.

ORDER

THIS COURT ORDERS that

1. The motion is granted.

2. The application for judicial review is dismissed.

3. Costs of the motion shall be paid by the Applicant to the Respondent, Wasyl Odynsky.

"Roger R. Lafrenière"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1162-07
STYLE OF CAUSE:	League for Human Rights of B'Nai Brith Canada v. Her Majesty the Queen et al.
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DATED:	February 4, 2008

APPEARANCES:

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