

Date: 20060720

Docket: A-38-06

Citation: 2006 FCA 261

Present: LÉTOURNEAU J.A.

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Appellant

and

DANIEL THAMOTHAREM

Respondent

and

THE CANADIAN COUNCIL FOR REFUGEES

Intervener

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 20, 2006.

REASONS FOR ORDER BY:

LÉTOURNEAU J.A.

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REASONS FOR ORDER

LÉTOURNEAU J.A.

[1] The Immigration and Refugee Board (the Board) seeks leave to intervene in the present appeal from a decision of Blanchard J. of the Federal Court who certified the following questions:

1. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice by unduly interfering with claimants' right to be heard?

2. Has the implementation of Guideline 7 led to fettering of Board Members' discretion?
3. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim?

[2] On appeal, the respondent also argues that Guideline 7 is *ultra vires* the Board Chairperson's jurisdiction.

[3] The Board seeks leave to intervene on all four issues. The respondent opposes the Board's application. The appellant submits that it should be limited and that the Board should not be permitted broad latitude to intervene on central issues relating to the merits of the specific claim. Both the respondent and the appellant agree that the Board's submissions, if authorized, should be confined to the evidence on record.

[4] I have reviewed the extensive material filed: the Motion Record of the Board, the respondent's Motion Record opposing the Board's motion, the appellant's Motion Record and the Board's Reply Written Representations.

[5] I do not intend to address all of the issues raised. I am satisfied that the Board is seeking an authorization to intervene that is too broad, goes beyond the usual parameters of a right to intervene granted to a tribunal, and is duplicative of issues that can adequately be addressed by the parties.

[6] That being said, I am also satisfied that the Board can and should be entitled to bring its perspective on the interrelated issue of *vires* and the unlawful fettering of discretion.

[7] The respondent and the appellant are at odds on the issue of whether the parties should be authorized to file responding Memoranda of Fact and Law if the Board is granted leave to intervene and file submissions.

[8] I note that my colleague Nadon J. did not allow for the filing of responding Memoranda when he granted leave to intervene to the Canadian Council for Refugees. In the circumstances, I see no reason to depart from his ruling and, therefore, no responding Memorandum will be authorized.

[9] Finally, the respondent submits that the affidavit of Paul Aterman in support of the Board's Motion for Leave to Intervene introduces new evidence and contains significant refinements of the previous evidence given by him. The Board claims that, on the contrary, the affidavit is consistent with and cites directly from a prior affidavit of the same affiant.

[10] The affidavit of Paul Aterman dated June 28, 2006 was filed in support of the Board's Motion for Leave to Intervene and its content shall be limited to that purpose. Accordingly, there is no need to authorize cross-examination upon it once a decision is rendered on the motion.

[11] I will allow the Board's Motion seeking Leave to Intervene in this appeal, but under the strict conditions set out in the Order granting leave.

“Gilles Létourneau”

J.A.

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-38-06

STYLE OF CAUSE: THE MINISTER OF CITIZENSHIP AND
IMMIGRATION v. DANIEL THAMOTHAREM
and CANADIAN COUNCIL FOR REFUGEES
(Intervener)

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: LÉTOURNEAU J.A.

DATED: July 20, 2006

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