

Federal Court



Cour fédérale

Date: 20240502

**Dockets: IMM-8432-22
IMM-5481-23
IMM-5466-23**

Citation: 2024 FC 761

Ottawa, Ontario, May 2, 2024

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

Docket: IMM-8432-22

**JUDE UPALI GNANAPRAGASAM AND
THE CANADIAN COUNCIL FOR REFUGESS**

Applicants

and

**MINISTER OF PUBLIC SAFETY, MINISTER OF
CITIZENSHIP AND IMMIGRATION AND
THE ATTORNEY GENERAL OF CANADA**

Respondents

and

**DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
CANADIAN CIVIL LIBERTIES ASSOCIATION**

Interveners

AND BETWEEN:

Docket: IMM-5481-23

ROMAN SLEPCSIK

Applicant

and

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

Respondents

AND BETWEEN:

Docket: IMM-5466-23

ROMAN SLEPCSIK

Applicant

and

MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

ORDER

UPON reviewing my oral Direction dated April 8, 2024 issued in IMM-8432-22, as set out in Schedule ‘A’, in which the Court thanked counsel for their work regarding the hearing of *Charter* issues concerning consequences flowing from paragraph 108(1)(a) of *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], namely sections 40.1 and 46(1)(c.1) of *IRPA* and section 228(1)(b.1) of the *Immigration and Refugee Protection Regulations*, (SOR/2002-227) [*IRPR*], and endorsed their joint proposal to add the record developed in this case to the records in IMM-5481-23 and IMM-5466-23;

AND UPON the noting in the same Direction the Court directed the parties to continue their discussions and report to the Court later that week if possible, and no later than 15 days, with an agreed proposal dealing with the pending motions to strike and settle the public interest status of the Canadian Council of Refugees [CCR], discontinuance of the Application in this matter (IMM-8432-22), providing agreed upon dates for a rescheduled hearing of the *Charter* issues and merits of IMM-5481-23 and IMM-5466-23 and such other matters as they advise, as terms of a suggested consolidation order, all adhering to the requirements of section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 and section 72 of *IRPA* that these matters move forward without delay;

AND HAVING adjourned the balance of the three and a half days of scheduled hearings (April 8 and continuing April 9, 10 and 11) in what the Court considers its reasonable expectation that these procedural issues would be resolved by Counsel, the Court is now and regrettably driven to conclude that little if anything has been accomplished in the intervening weeks, as demonstrated in correspondence below;

AND UPON considering the written and oral submissions from the parties dealing with the matters canvassed at the opening of the April 8, 2024 hearing referenced above, including correspondence from the individual Applicant and CCR dated April 18, 2024, the interveners Canadian Civil Liberties Association [CCLA] and David Asper Center for Constitutional Rights [Asper Center] dated April 18, 2024, the Respondent Attorney General of Canada dated April 22, 2024, and the Applicant and CCR in reply dated May 1, 2024;

AND UPON considering the written pleadings and proceedings relating to the motion to strike IMM-8432-22 for mootness, and the submissions in respect of the motion to remove CCR

from IMM-8532-22 filed before the hearing on April 8, 2024 (when such issues could have been decided), and having considered what was alleged that day before me and in the written submissions referenced above, and having regard to and relying on the provisions of Rules 3 and 55 of the *Federal Courts Rules*, (SOR/98-196) [*Federal Court Rules*], the Court has concluded in these special circumstances that it should determine the issues in dispute at this time without further delay;

AND UPON considering the Respondent's motion to strike the application for mootness in IMM-8432-22, it is noted the Respondent submits the Applicant's *Charter* challenge to sections 7, 12, 15, and 2(d) of the *Charter* are all moot following the RPD's determination that the Applicant was ceased under 108(1)(e) such that the Applicant in fact and law is not subject to the effects of sections 40.1 (no loss of permanent resident status) and 46(1)(c.1) (no inadmissibility) of *IRPA* or section 228(1)(b.1) (removal) of the *IRPR*. I agree. None of the consequences complained of by the Applicant apply because his refugee status was ceased under paragraph 108(1)(e), and not 108(1)(a) as feared at the time he filed his application for judicial review at which time no cessation order had been made, and when the Respondent was urging the RPD to cease under 108(1)(a). Moreover, I am not satisfied any of the exceptions set out in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 warrant the Court expending resources on hearing his claim. The Court is not aware of any impediment to his application for citizenship. Therefore, the Application in Court file IMM-8432-22 will be struck as moot;

AND UPON not being persuaded that CCR has rights as a party under *IRPA*, or the right under the *Federal Court Rules* or otherwise to confer upon itself party status as of right and thereby avoid the Court's undoubted supervisory jurisdiction and authority to determine whether

and in what manner non-parties may appear before the Court, the Respondent's motion to strike CCR's standing will be granted and CCR struck as a party in IMM-8432-22. Notably, CCR did not seek leave to obtain status in this Court in the alternative, giving the Court no option but to dismiss. The Court issues its order in this respect because the matter was disputed and to ensure the *Federal Courts Rules* and Court's authority to control who appears before the Court is fully respected. The Applicant and Respondent are permitted to file up to 65 pages in their respective memoranda of argument in consolidated IMM-5466-23 and IMM-5481-23. If CCR wishes to participate in the consolidated IMM-5466-23 and IMM-5481-23 it is of course free to seek leave of the Court and with respect should do so as soon as possible. If CCR is granted leave, in the special circumstances of this case and given its history, CCR will be granted leave to file its written submissions together with those of the Applicant in consolidated IMM-5466-23 and IMM-5481-23 as it did in IMM-8432-22.

THIS COURT ORDERS that:

1. IMM-8432-22 is struck and dismissed for mootness.
2. CCR is struck as a party in IMM-8432-22.
3. It is just, efficient and in the interests of justice that IMM-5466-23 and IMM-5481-23 be and the same are hereby ordered consolidated.
4. It is just, efficient and in the interests of justice that the affidavits and further affidavits, transcripts of oral cross-examinations of the affiants as well as the responses to written examinations, all as filed in IMM-8432-22, along with such further material from the record in IMM-8432-22 as desired by the Applicant and or Respondent, be and the same are hereby ordered added to the record in consolidated IMM-5466-23 and IMM-5481-23.

5. The interveners in IMM-8432-22, namely, the Canadian Civil Liberties Association and the David Asper Centre of Constitutional Rights, are hereby granted the same rights as interveners in consolidated IMM-5466-23 and IMM-5481-23 as they had in IMM-8432-22 pursuant to Justice Ahmed's Order and Reasons dated December 20, 2023.
6. The Applicant and Respondent are permitted to file up to 65 pages in their respective memoranda of argument in consolidated IMM-5466-23 and IMM-5481-23.
7. If CCR is granted leave to participate in the consolidated IMM-5466-23 and IMM-5481-23 it may file written submissions together with those of the Applicant in consolidated IMM-5466-23 and IMM-5481-23 substantially as it did in IMM-8432-22.
8. Counsel are directed to file on or before May 15, 2024, an agreed schedule of filings under which all filings will be completed on or before June 1, 2024.
9. All IMM matters stayed pending the determination of IMM-8432-22 are stayed pending the determination of consolidated IMM-5466-23 and IMM-5481-23.
10. The hearing of consolidated IMM-5466-23 and IMM-5481-23 set for June 3, 2024 is vacated, and the Federal Court's Trial JA is requested to determine appropriate dates for a two day hearing of consolidated IMM-5466-23 and IMM-5481-23.

“Henry S. Brown”

Judge