S.C.C. File No. 35990

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

Between:

JEYAKANNAN KANTHASAMY

Appellant
(Appellant in the Federal Court of Appeal)

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent
(Respondent in the Federal Court of Appeal)

-and-

CANADIAN COUNCIL FOR REFUGEES, JUSTICE FOR CHILDREN AND YOUTH, BARBRA SCHLIFER COMMEMORATIVE CLINIC AND CANADIAN CENTRE FOR VICTIMS OF TORTURE, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, PARKDALE COMMUNITY LEGAL SERVICES

Interveners

FACTUM OF THE INTERVENER

CANADIAN ASSOCIATION OF REFUGEE LAWYERS

Counsel for the Intervener

AUDREY MACKLIN
LAURA BRITTAIN
JOO EUN KIM

Faculty of Law, University of Toronto,
84 Queen's Park, Toronto, Ontario,
Canada M5S 2C4
Tel: 416-946-7493
Fax: 416-946-4028
audrey.macklin@utoronto.ca
brittail@lao.on.ca
kimj@lao.on.ca

Ottawa Agent for the Intervener

Karima Karmali

Integrated Legal Services Office,
Legal Aid Ontario
73 Albert Street, Ground Floor
Ottawa Ontario
K1P 1E3
Tel: 613-238-7931, ext. 59
Fax: 613-238-3410
karmalk@lao.on.ca

ORIGINAL TO:

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0K1

COPIES TO:

Counsel for the Appellant
Barbara Jackman
Jackman Nazami & Associates
526 St. Clair Avenue West, Unit 3
Toronto, Ontario
M6C 1A6
Telephone: (416) 653-9964
FAX: (416) 653-1036
E-mail: barb@bjackman.com

Agent for the Appellant
Michael Bossin
Community Legal Services-Ottawa Carleton
1 Nicholas Street, Suite 422
Ottawa, Ontario
K1N 7B7
Telephone: (613) 241-7008 Ext: 224
FAX: (613) 241-8680
E-mail: bossinm@lao.on.ca

AND TO:

Counsel for the Respondent
Marianne Zoric
Kathryn Hucal
Attorney General of Canada
Suite 3400, Box 36
130 King Street West
Toronto, Ontario
M5X 1K6
Telephone: (416) 954-8046
FAX: (416) 954-8982
E-mail: marianne.zoric@justice.gc.ca

Agent for the Respondent
Christopher M. Rupar
Attorney General of Canada
50 O'Connor Street, Suite 500, Room 557
Ottawa, Ontario
K1A 0H8
Telephone: (613) 670-6290
FAX: (613) 954-1920
E-mail: christopher.rupar@justice.gc.ca

AND TO:

Counsel for the Intervener
Canadian Council for Refugees

David Matas
Richard Goldman
Jamie Liew
Jennifer Stone

225 Vaughan Street
Suite 602
Winnipeg, Manitoba
R3C 1T7
Telephone: (204) 944-1831
FAX: (204) 942-1494
E-mail: dmatas@mts.net

Agent for the Intervener
Canadian Council for Refugees

Jacqueline Bonisteel

Perley-Robertson, Hill & McDougall
1500-340 Albert Street
Ottawa, Ontario
K1R 0A5
Telephone: (613) 566-2845
FAX: (613) 238-8775
E-mail: jbonisteel@perlaw.ca

AND TO:

Counsel for the Intervener
Justice for Children and Youth

Emily Chan
Samira Ahmed

Justice for Children and Youth
1203 - 415 Yonge Street
Toronto, Ontario, M5B 2E7
Telephone: (416) 920-1633
FAX: (416) 920-5855
E-mail: chane@lao.on.ca

Agent for the Intervener
Justice for Children and Youth

Marie-France Major

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, Ontario

K2P 0R3
Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

AND TO:

Counsel for the Intervener
Barbra Schlifer Commemorative Clinic
And Canadian Centre for Victims of Torture

Alyssa Manning
Aviva Basman
Rathika Vasavithasan
Laila Demirdache

Refugee Law Office
20 Dundas Street West, Suite 202
Toronto, Ontario M5G 2H1
Telephone: (416) 977-8111
FAX: (416) 977-5567
E-mail: manninga@lao.on.ca

Community Legal Services-Ottawa Carleton
1 Nicholas Street Suite 422
Ottawa, Ontario, K1N 7B7
Telephone: (613) 241-7008 Ext: 228
FAX: (613) 241-8680
E-mail: demirdl@lao.on.ca

AND TO:

Counsel for Intervener
Parkdale Community Legal Services

Toni Schweitzer
Ronald Poulton

Parkdale Community Legal Services
1266 Queen Street West
Toronto, Ontario
M6K 1L3
Telephone: (416) 531-2411
FAX: (416) 531-0885
E-mail: schweit@lao.on.ca

Agent for Intervener
Parkdale Community Legal Services

Jean Lash

South Ottawa Community Legal Services
406 - 1355 Bank Street
Ottawa, Ontario
K1S 0X2
Telephone: (613) 733-0140
FAX: (613) 733-0401
E-mail: lashj@lao.on.ca

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PARTS I AND II – OVERVIEW, STATEMENT OF FACTS AND OF POSITION

1. The phrase "humanitarian and compassionate" discretion ("H&C") in the *Immigration and Refugee Protection Act* ("IRPA") [1] must be interpreted consistently. The meaning of H&C and the resulting breadth of discretion in s. 25 of IRPA, as distinct from its application in individual cases, should be reviewed on a correctness standard for two reasons:

   a. First, jurisprudence has estabished that correctness is the appropriate standard of review for a question such as the scope of H&C discretion conferred by Parliament; and,

   b. Second, the need for consistency in the interpretation of the words "humanitarian and compassionate" in IRPA militates in favour of a correctness standard.

2. In the alternative, the need for consistency requires a narrow range of reasonable interpretations of the phrase "humanitarian and compassionate."

3. CARL submits that irrespective of the standard of review applied, application of H&C discretion is not properly constrained by the requirement that hardship exceed a certain threshold as recommended by the Minister in Citizenship and Immigration's Inland Processing Manual.[2] Such an approach, which is premised on a notion of "relative hardship," is unduly narrow, incompatible with the requirement to be alert, alive and sensitive to the best interests of a child, and inconsistent with the definition of H&C applied by the Immigration Appeal Division. The scope of this discretion ought to be given a broad interpretation.

PART III – STATEMENT OF ARGUMENT

4. CARL submits that the creation of a broad H&C discretion under IRPA indicates Parliament's intent to preserve a wide and flexible scope for the consideration of the range of individual situations that could not be predicted in advance but which call for exemption from the strict enforcement of IRPA's provisions. The content of this discretion is a question of law, and for the following reasons, it warrants both application of a correctness standard to its definition, and a definition befitting its broad purpose.

A. Section 74(d) of the IRPA displaces the common-law standard of review analysis and directs a standard of correctness for certified questions of statutory interpretation.

5. In *Dunsmuir*, this Court stated that the first step in selecting the proper standard of review

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[1] *Immigration and Refugee Protection Act (IRPA)*, S.C. 2001, c. 27

[2] Citizenship and Immigration Canada, CIC Manual: IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds, Part 5 ("Immigration Manual")

is to "ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question."[3]

6. CARL submits that *Pushpanathan* satisfactorily determined that correctness is the standard of review for a question of law that is the subject of a certified question of general importance under s. 74(d) of *IRPA*.[4] There, this Court addressed a question of law, namely the meaning of the expression "contrary to principles and purposes of the United Nations" under Article 1 F(c) of the Refugee Convention, as incorporated into the *Immigration Act*.[5] In *Pushpanathan*, this Court ruled that s. 83(1) of the *Immigration Act*, (now s. 74(d) of IRPA), "would be incoherent if the standard of review were anything other than correctness."[6] The Federal Court of Appeal in the judgment below affirmed that its own jurisprudence directs the same outcome.[7]

7. CARL submits that the same incoherence would result were the Court to apply a deferential standard of review in the within appeal. The issue in this appeal also involves a question of law, namely the meaning of the expression H&C under s. 25 of the IRPA and, by extension, elsewhere in IRPA where the term is used.[8] The Federal Court certified this question under s. 74(d) of the IRPA as a question of general importance which, in turn, authorized an appeal to the Federal Court of Appeal.[9] Unlike a question of mixed fact and law, or the exercise of discretion in a specific case, resolution of this issue is not "inextricably intertwined with the determination of facts."[10]

8. *Dunsmuir* articulated a common law rule that a question of central importance to the legal system as a whole, and outside the expertise of the decision maker, attracts a standard of review of correctness.[11] The common law may be modified or displaced by statute. CARL submits that s. 74(d) of the IRPA creates a statutory rule that prevails over the common law. As *Pushpanathan* indicated, the criteria under s. 74(d) – "a serious question of general importance" – effectively codify statute-specific factors favouring correctness

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[3] *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 62.
[4] *Pushpanathan v. Canada (Minister of Citizenship and Immigration),* [1998] 1 S.C.R. 982, [1998] S.C.J. No. 46.
[5] *Pushpanathan, ibid,* citing the *Immigration Act*, R.S.C., 1985, c. I-2, s. 2(1) and the Convention Relating to the Status of Refugees, Can. T.S. 1969 No. 6, Art. 1F.
[6] *Pushpanathan, ibid,* at para 43.
[7] *Kanthasamy v. Canada (Minister of Citizenship and Immigration),* 2014 FCA 113, [2014] F.C.J. No. 472, at para. 36
[8] See, for example, IRPA, *supra* note 1 ss. 25(1), 28(2)(c), 65, 67(1)(c), 68(1), 69(2).
[9] *Kanthasamy*, supra note 7, aff'g *Kanthasamy v. Canada (Minister of Citizenship and Immigration),* 2013 FC 802, [2013] F.C.J. No. 848.
[10] *Dunsmuir*, *supra* note 3 at para. 164, Deschamps J.
[11] *Dunsmuir*, *supra* note 3 at para. 51-64.

review.[12] This formulation is somewhat broader than the common law rule. But as this Court observed in *Pushpanathan*, it serves the same purpose in relation to questions of law, which is to identify a question whose generality and importance warrants definitive determination by a court on a correctness standard.[13]

9. While this case is on all points with *Pushpanathan,* it is distinguishable from two other cases which also proceeded by means of a certified question but which nonetheless attracted reasonableness review: *Baker*[14] and *Khosa.*[15] The Court's analysis of H&C discretion in *Baker* examined the decision maker's factual determinations and balancing of factors in relation to Ms. Baker. The issue in the within appeal, however, is not simply whether the decision maker reasonably applied the "relative hardship" definition of H&C discretion to the appellant; it is the correctness of the "relative hardship" interpretation stipulated in the Immigration Manual, [16] which in turn frames the inquiry into the identification of relevant factors and their assessment. Indeed, as CARL submits below at paras. 20-21, the Federal Court has found that the "relative hardship" definition is incompatible with the assessment of the best interests of the child.

10. The present case is also distinguishable from *Khosa.* The certified question in *Khosa*[17] concerned the identification of the standard of review for the *exercise* of H&C discretion in removal order appeals, and the *application* of that standard of review to the particular exercise of H&C discretion by the IAD. The Court in *Khosa* was not asked to rule on the definition of H&C discretion articulated in *Chirwa*.[18] At that time, the so-called *Ribic* factors to be considered in the exercise of H&C discretion in removal order appeals had already been explicitly endorsed by this Court in *Chieu.*[19]

B. Even under the common-law standard of review analysis, the need for consistency in the interpretation of 'humanitarian and compassionate' in the IRPA favours a standard of correctness or, in the alternative, provides important context for a narrow range of deference.

11. In *Dunsmuir*, this Court emphasized that a correctness standard in respect of some

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[12] *Pushapanathan*, *supra* note 4 at para 43.
[13] *Pushapanathan*, *supra* note 4 at para 43.
[14] *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39
[15] *Khosa v. Canada (Minister of Citizenship and Immigration),* 2009 SCC 12, [2009] S.C.J. No. 12 at para 52-58.
[16] *Immigration Manual, supra* note 2
[17] *Khosa v. Canada (Minister of Citizenship and Immigration),* 2007 FCA 24, [2007] F.C.J. No. 139
[18] *Chirwa v. Canada (Minister of Manpower and Immigration),* [1970] I.A.B.D. No. 1; (1970), 4 IAC 338, at para. 27-28.
[19] *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84, at para 77, citing with approval the factors enumerated in *Ribic v. Minister of Citizenship and Immigration*, [1985] I.A.B.D. No. 4, at para. 14.

questions of law "promotes just decisions and avoids inconsistent and unauthorized application of law."[20] Later, the Court explained that "questions of central importance to the legal system as a whole and outside the adjudicator's specialized area of expertise" warrant a correctness standard because their broad impact elevates the importance of consistency.[21] In *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, the majority of this Court responded to Binnie J.'s reasoning that the application of a single reasonableness standard had already begun and would, *de facto*, create a sliding scale of deference. The majority responded that a "review of a question of statutory interpretation is different from a review of the exercise of discretion. Each will be governed by the context."[22]

12. CARL submits that the following factors support the application of a correctness standard of review or, in the alternative, supply the context for a narrow range of reasonable outcomes for the definition of the H&C discretion set out in the Immigration Manual and applied by the immigration officer:

a. the need for consistency in the definition of an identical phrase in the same statute;
b. the inconsistency in the interpretation of H&C between immigration officers and the Immigration Appeal Division ("IAD"), and internal incoherence under s. 25 of IRPA; and
c. the impossibility of affording equal deference to different classes of decision-makers confided with H&C discretion under IRPA.

B.1 The Need to Resolve External Inconsistency

13. As this Court has stated, "[g]iving the same words the same meaning throughout a statute is a basic principle of statutory interpretation;"[23] unless the contrary is clearly indicated, the same word "should be given the same interpretation or meaning whenever it appears in an Act."[24] Consistency in the interpretation of an identical phrase in different provisions of the same statute (or even related statutes) promotes coherence and integrity of the statutory scheme and reduces the appearance of arbitrariness in decision making.[25]

14. IRPA confers H&C discretion on two different actors in three different circumstances: Section 25 of the IRPA confers it on the Minister (who typically delegates to an

[20] *Dunsmuir*, *supra* note 3 at para. 50.
[21] *Dunsmuir*, *supra* note 3 at para. 60.
[22] *Alberta (IPC) v. Alberta Teachers' Association,* 2011 SCC 61, [2011] S.C.J. No. 61*,* at para. 47.
[23] *R. v. Zeolkowski*, [1989] 1 S.C.R. 1378, [1989] S.C.J. No. 50 at para. 19.
[24] *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, [1992] 1 S.C.J. No. 13, at paras. 27-28.
[25] *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 , [2002] 2 S.C.R. 559, at para. 27.

immigration officer) in relation to foreign nationals. Section 28(2)(c) confers it on immigration officers in relation to permanent residents who have not met their residency obligation. Finally, members of the Immigration Appeal Division possess H&C discretion under s. 67(1)(c) and s. 68(1) of the IRPA to IRPA to allow a sponsorship, residency obligation or removal order appeal, or to stay removal of a permanent resident or a Protected Person found inadmissible to Canada.

15. The Immigration Manual applicable to decisions under s. 25 defines H&C discretion as dependent on proof of "unusual and undeserved, or disproportionate hardship."[26] The IAD, by contrast, has adopted an interpretation that inquires into "those facts established by the evidence, which would excite in a reasonable man in a civilized community a desire to relieve the misfortunes of another - so long as these misfortunes 'warrant the granting of special relief' from the effect of the provisions of the *Immigration Act*."[27]

16. CARL submits that the overarching definition of "H&C" should be consistent across the range of statutory provisions where the discretion exists. Only a reviewing Court applying a correctness standard can provide a uniform definition to be applied by these various statutory actors vested with H&C discretion. CARL accepts that the factors relevant to exercising H&C discretion necessarily vary according to the situation of its application. The factors relevant to a visa-overstay application will be different than for a refused spousal sponsorship, or a permanent resident who remains outside Canada for too long[28] or relief from the operation of s. 117(9)(d) of the *Immigration and Refugee Protection Regulations*,[29] or removal on grounds of criminality. But those factors cannot be identified and applied coherently without a uniform understanding of the statutory purpose animating them.

17. CARL submits that the definition of H&C, even at a relatively high level, frames the identification of relevant factors, and orients the decision maker in the factual assessment. The definition of H&C makes a material difference in how discretion is exercised.

18. CARL accepts that relieving hardship is a component of what it means to be both humanitarian and compassionate. However, CARL adopts the submissions of the

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[26] *Immigration Manual, supra* note 2.
[27] *Chirwa, supra* note 18 at para 27.
[28] *IRPA*, *supra* note 1 at s. 28(2)(c).
[29] *Immigration and Refugee Protection Regulations*

Appellant that demonstrate that a definition of H&C that engages in a comparative or relative ranking of hardship (the "relative hardship" definition found in the Immigration Manual)[30] is narrower than the *Chirwa* definition[31] and not mandated by the statute.

B.2 The Need to Resolve Internal Inconsistency

19. CARL further submits that the "unusual and undeserved, or disproportionate hardship" definition of H&C is inconsistent with the only direct judicial pronouncement by this Court on the definition of these words. In *Baker*, this Court held that the best interests of the child is a mandatory relevant consideration in the exercise of H&C discretion.[32] The implication of this ruling is that the definition of H&C consideration must leave space for considering the best of interests of the child.

20. In post-*Baker* decisions, the Federal Court and the Federal Court of Appeal have confirmed that the "relative hardship" definition was not congruent with the judicially mandated requirement to be "alert, alive and sensitive" to the best interests of the child. In *Williams,* Justice Russell characterized it as an error of law for an immigration officer to subordinate the "best interests of the child" within a "relative hardship" definition. [33] He rejected the claim that the matter was one of form and not substance.[34] His reasoning illustrates the practical implications of this error on the exercise of H&C discretion:

> [56]…Rather than being alert, alive and sensitive to Omar's circumstances and viewing the situation from his perspective, as the jurisprudence requires, the Officer has instead concluded that: "I am satisfied that his best interests <u>are being met</u>." And "I am not satisfied that… her son [is] suffering undue and undeserved nor disproportionate hardship" and "I am not satisfied that a removal from the setting […] <u>will have a negative impact on the child to the extent where he would suffer undue and undeserved nor disproportionate hardship.</u>" It may not be an error to use the language of hardship, but the Officer here went one step further and applied hardship as the test for Omar's interests.
>
> …
>
> [64]…there is no hardship threshold, such that if the circumstances of the child reach a certain point on that hardship scale only *then* will a child's best interests be so significantly "negatively impacted" as to warrant positive consideration. The question is <u>*not*</u>: "is the suffering enough that his "best interests" are not being "met"? The question at the initial stage of the assessment is: "what is in the child's best interests?
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> …

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[30] *Immigration Manual, supra* note 2.
[31] *Chirwa, supra* note 18.
[32] *Baker, supra* note 14 at para. 73.
[33] *Williams v. Canada (Minister of Citizenship and Immigration),*2012 FC 166, [2012] F.C.J. No. 184, citing with approval *Hawthorne v. Canada (Minister of Citizenship and Immigration),* 2002 FCA 475, [2002] F.C.J. No. 1687 at para 9, wherein Justice Decary stated that "the concept of 'undeserved hardship' is ill-suited when assessing the hardship on innocent children. Children will rarely, if ever, be deserving of any hardship."
[34] *Williams, ibid* at para. 54.

> [67] … [R]equiring that certain interests not be "met" or that a child "suffer" a certain amount before this factor will weigh in favour of relief, let alone be persuasive in the decision, contradicts well-established principle that officers must be especially alert, alive and sensitive to the impact of the decision from the child's perspective.[35]

21. CARL submits that these passages from *Williams* demonstrate both that the "relative hardship" definition of H&C discretion has not been judicially affirmed, and further, that it conflicts with an "alert, alive and sensitive" assessment of the best interests of a child.

22. CARL submits that the external inconsistency between the IAD definition and the s. 25 definition of H&C, in tandem with the internal incompatibility of the "relative hardship" definition with the best interests of the child, counsel in favour of this Court using the opportunity presented by this appeal to assist decision makers in applying a consistent and coherent definition of H&C that can guide the exercise of discretion under the *IRPA*.

B.3 The Impossibility of Deferring Equally to the Minister and to the IAD

23. Immigration Officers, as delegates of the Minister, and Members of the IAD each apply a different definition of H&C. Both classes of decision maker are charged with interpreting their "home" statute. If the same words must be given the same meaning throughout a statute, it is not possible to defer to both decision-making bodies. A ruling that the "relative hardship" definition is reasonable, predicated on deference to immigration officers and/or the Minister, will necessarily entail the rejection of deference to the Immigration Appeal Division.

24. CARL submits that as between the Minister and his delegates on the one hand, and the IAD on the other, it would be inappropriate to defer to the former instead of the latter. The definition of H&C under s. 25 as "unusual and undeserved, or disproportionate hardship" is stipulated in an Immigration Manual.[36] It was not generated by immigration officers in the course of rendering individual decisions, nor was it the product of external consultation with stakeholders, and nor was it the product of a reasoned decision in an individual case. Despite the non-binding character of the Immigration Manual, the likelihood of any immigration officer applying his or her own autonomous judgement to the interpretation of the definition of H&C is diminished by the assertion in s. 5.10 of the Immigration Manual that the definition provided is more than a mere guideline by virtue of adoption in Federal Court judgments. In light of the *Williams* decision (discussed

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[35] *Williams, ibid* at paras. 56, 64, 67.
[36] *Immigration Manual, supra* note 2.

above at paras. 20-21), CARL submits that this claim is at best, an embellishment and at worst, a fettering of decision-makers' discretion.

25. CARL further submits that this Court has explicitly acknowledged the IAD's expertise in H&C determination.[37] The IAD, unlike the Minister and his delegates, has authority to hear and determine all questions of law and fact, and has the advantage of conducting oral hearings and assessing the evidence presented. The IAD, unlike the Minister and his delegates, is an independent, quasi-adjudicative tribunal, and is constituted as a court of record under s. 174 the IRPA. As such, the IAD develops its own body of jurisprudence. Its decisions are archived and accessible to stakeholders and to other IAD members. In light of the acknowledged expertise of the IAD and in the event of inconsistency, there is no reason to defer to the Minister or his delegates in the interpretation of law.

26. The impossibility of simultaneously deferring to an Immigration Officer and to the IAD is revealed in the context of returning permanent residents who have breached the residency requirement under s. 28(2)(a) of the *IRPA*. These individuals may request H&C consideration by immigration officers to overcome their residency breach, pursuant to s. 28(2)(c) of the *IRPA*. In deciding whether to exercise their H&C discretion under this provision, immigration officers are directed by the Minister to apply the "unusual, undeserved or disproportionate hardship" definition.[38] However, if H&C discretion is refused by an officer, the individual may appeal to the IAD for an exercise of H&C discretion. The IAD, however, will apply the broader *Chirwa* definition of H&C.[39]

C. The definition of 'humanitarian and compassionate' should be broad

27. CARL further submits that the definition of H&C is not reducible to an either/or choice between *Chirwa*[40] or the "relative hardship" definition in the Immigration Manual.[41] This Court can and should craft an interpretation that conforms to principles of legislative purpose and principles of interpretation.

28. CARL submits that H&C discretion confers statutory authority to alleviate the hardship flowing from the enforcement of immigration law on a non-citizen and those in close relationship to that person. The harshness or unfairness of enforcement in a particular

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[37] *Khosa (*SCC), *supra* note 15 at paras. 55-58.
[38] Citizenship and Immigration Canada, CIC Manual: ENF 23 Loss of Permanent Resident Status, Part 7.7.
[39] *Gonsalves v. Canada (Minister of Citizenship and Immigration)*, [2009] I.A.D.D. No. 1000
[40] *Chirwa, supra* note 18.
[41] *Immigration Manual, supra* note 2.

factual context can be assessed on its own terms and in relation to the individual applicant. H&C discretion also confers authority to recognize the positive contribution of a non-citizen to the attainment of the economic, social, political and cultural objectives of immigration policy, even though those contributions have been made by those not otherwise entitled to enter or remain in Canada. Thus, H&C may be animated by an intent to alleviate potential hardship and/or to recognize positive contribution.[42]

29. The choice to exercise H&C discretion emerges from the ethical and empathic engagement with the applicant that *Baker* refers to as "an understanding of others."[43] It requires a decision maker to consider whether a reasonable person, possessed of empathy, a concern for situation-specific fairness, and the discretion to relieve hardship, would be motivated by the particular circumstances of the applicant to do so. This analysis is conducted against a background recognition that maintaining the integrity of the immigration system is constituted both by the enforcement of rules, and exemption from enforcement in appropriate cases. Though the availability of H&C discretion does not generate legal obligation, compassion has formed part of the common law legal order at least since the courts of equity, while "Canada's humanitarian ideals" are referenced in IRPA's own statement of objectives."[44] Furthermore, s. 3(3)(f) of IRPA directs that the statute be construed and applied in a manner consistent with international human rights instruments to which Canada is a signatory. These may provide important resources for construing the meaning of H&C discretion.

30. As this Court noted in *Baker*, H&C discretion is an individualized determination that turns on the particular circumstances of the person or persons affected. This means that, for example, frustration about the immigration system as a whole,[45] or the suffering of the individual relative to others, are extrinsic to the question of whether this applicant's hardship and/or contribution merit H&C consideration. If hardship warranting relief is constrained to the "unusual" or "disproportionate," it leads to the absurd conclusion that an applicant facing homelessness, poverty, and discrimination in a robust democracy such as Germany warrants greater relief than an applicant facing the same hardships in a country of widespread suffering, such as Syria or Haiti. CARL submits that this is not

[42] The Federal Court has recognized that contributions to and integration into the fabric of Canadian community must form part of an analysis of H&C considerations. See, for example, *Lauture et al v. Canada (Minister of Citizenship and Immigration),* 2015 FC 336, [2015] F.C.J. No. 296 at paras. 19-26.
[43] *Baker*, *supra* note 14 at para. 47.
[44] *IRPA, supra* note 1 at s. 3(2)(c).
[45] *Baker*, *supra* note 14 at para. 48.

consistent with IRPA's objectives nor with "plain meaning" understandings of 'humanitarian' or 'compassionate'.[46]

31. CARL submits that in the context of immigration law, hardship flows from the fact that the non-citizen does not possess an unqualified right to enter or remain in Canada, and thus faces involuntary removal from Canada and return to another country. The hardships of removal pertain to uprooting and the potential disruption or severance of personal, familial, economic, social, cultural, and other relationships. The hardships of return pertain to forms of suffering that may occur in the destination country, whether personal, physical, social, political, economic or other. The contributions of a non-citizen relate to the "social, cultural and economic benefits of immigration" identified as an objective of IRPA with respect to immigration.[47]

32. CARL submits that the best interests of the child and the *Ribic* factors,[48] both of which have been approved by this Court, can operate within a definition of H&C discretion that is individualized, that accommodates both assessments of individual hardship and contribution, and that does not subject hardship to a threshold of severity.

33. CARL submits that had Parliament intended to confine and narrow the breadth of H&C discretion under s. 25 of IRPA and under the IAD jurisdiction, it could and would have amended the legislation to do so. Instead, it narrowed access to H&C remedies, without trenching on the breadth of the discretion itself.

34. For these reasons, CARL submits that this Court should reject a definition of H&C discretion that precludes full and fair consideration of the myriad situations that cause an individual to seek H&C relief. This Court should articulate a common standard that can be applied consistently throughout IRPA, and which assesses the individual applicant in light of his or her own unique circumstances.

PART IV AND V– COST SUBMISSIONS AND ORDER REQUESTED

35. CARL seeks no costs and respectfully requests that none be awarded against it.

36. CARL respectfully requests that it be granted leave to make oral argument.

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[46] The Federal Court, while it has not rejected the definition of H&C given in the *Immigration Manual,* has nonetheless rejected a relative hardship analysis that imports the notion that an applicant must establish hardship *greater or different than* others in their country of return, or in similar circumstances. See, for example, *Lauture, supra* note 39 at paras. 29-31.
[47] *IRPA*, *supra* note 1 s. 3(1)(a).
[48] Cited with approval in *Chieu, supra* note 19.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 2nd day of April, 2015.

AUDREY MACKLIN	**LAURA BRITTAIN**	**JOO EUN KIM**

Of Counsel for the Intervener,

Canadian Association of Refugee Lawyers

PART VI – TABLE OF AUTHORITIES

LEGISLATION	CITED AT PARAGRAPH(S)
Immigration and Refugee Protection Act, S.C. 2001 c. 27	1, 4, 6, 7, 8, 9, 12, 14, 22, 25, 26, 29, 31, 33, 34
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CASES (CANADIAN)	CITED AT PARAGRAPH(S)
Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61, [2011] S.C.J. No. 61	11
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Chieu v. Canada (Minister of Citizenship and Immigration), 2002 SCC 3, [2002] 1 S.C.R. 84	10
Chirwa v. Canada (Minister of Manpower and Immigration), [1970] I.A.B.D. No. 1; (1970), 4 IAC 338	10, 15, 18, 26, 27,
Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190	5, 7, 8, 11
Gonsalves v. Canada (Minister of Citizenship and Immigration), [2009] I.A.D.D. No. 1000	26
Hawthorne v. Canada (Minister of Citizenship and Immigration), 2002 FCA 475, [2002] F.C.J. No. 1687	20
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Kanthasamy v. Canada (Minister of Citizenship and Immigration), 2014 FCA 113, [2014] F.C.J. No. 472	7
Kanthasamy v. Canada (Minister of Citizenship and Immigration), 2013 FC 802, [2013] F.C.J. No. 848	7
Khosa v. Canada (Minister of Citizenship and Immigration), 2009 SCC 12, [2009] S.C.J. No. 12	9, 10, 25
Khosa v. Canada (Minister of Citizenship and Immigration), 2007 FCA 24, [2007] F.C.J. No. 139	10
Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982, [1998] S.C.J. No. 46	6, 8, 9
R. v. Zeolkowski,, [1989] 1 S.C.R. 1378, [1989] S.C.J. No. 50	13
Ribic v. Minister of Citizenship and Immigration, [1985] I.A.B.D. No. 4	10, 32
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Williams v. Canada (Minister of Citizenship and Immigration), 2012 FC 166, [2012] F.C.J. No. 184	20, 21, 24

SECONDARY SOURCES	CITED AT PARAGRAPH(S)
Citizenship and Immigration (Canada), Inland Processing Manual, Chapter IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds	3, 12, 15, 18, 24, 27
Citizenship and Immigration Canada, CIC Manual: ENF 23 Loss of Permanent Resident Status, Part 7.7	26

INTERNATIONAL AGREEMENTS	CITED AT PARAGRAPH(S)
Convention Relating to the Status of Refugees, Can. T.S. 1969 No. 6, Art. 1F	6

PART VII – STATUTES AND REGULATIONS

1. Immigration and Refugee Protection Act, S.C. 2001, c. 27

3. (1) The objectives of this Act with respect to immigration are	**3.** (1) En matière d'immigration, la présente loi a pour objet :
(*a*) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;	*a*) de permettre au Canada de retirer de l'immigration le maximum d'avantages sociaux, culturels et économiques;
(*b*) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;	*b*) d'enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;
(*b.1*) to support and assist the development of minority official languages communities in Canada;	*b.1*) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;
(*c*) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;	*c*) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l'immigration;
(*d*) to see that families are reunited in Canada;	*d*) de veiller à la réunification des familles au Canada;
(*e*) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;	*e*) de promouvoir l'intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;
(*f*) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;	*f*) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces;
(*g*) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;	*g*) de faciliter l'entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;
(*h*) to protect public health and safety and to maintain the security of Canadian society;	*h*) de protéger la santé et la sécurité publiques et de garantir la sécurité de la société canadienne;
(*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and	*i*) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;
(*j*) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.	*j*) de veiller, de concert avec les provinces, à

	aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.
(2) The objectives of this Act with respect to refugees are (*a*) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted; (*b*) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement; (*c*) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution; (*d*) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment; (*e*) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings; (*f*) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada; (*g*) to protect the health and safety of Canadians and to maintain the security of Canadian society; and (*h*) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.	(2) S'agissant des réfugiés, la présente loi a pour objet : *a*) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution; *b*) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d'affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller; *c*) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada; *d*) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités; *e*) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain; *f*) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada; *g*) de protéger la santé des Canadiens et de garantir leur sécurité; *h*) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.
(3) This Act is to be construed and applied in a manner that (*a*) furthers the domestic and international	(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet : *a*) de promouvoir les intérêts du Canada sur

interests of Canada; (*b*) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs; (*c*) facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations; (*d*) ensures that decisions taken under this Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada; (*e*) supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and (*f*) complies with international human rights instruments to which Canada is signatory.	les plans intérieur et international; *b*) d'encourager la responsabilisation et la transparence par une meilleure connaissance des programmes d'immigration et de ceux pour les réfugiés; *c*) de faciliter la coopération entre le gouvernement fédéral, les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux; *d*) d'assurer que les décisions prises en vertu de la présente loi sont conformes à la *Charte canadienne des droits et libertés*, notamment en ce qui touche les principes, d'une part, d'égalité et de protection contre la discrimination et, d'autre part, d'égalité du français et de l'anglais à titre de langues officielles du Canada; *e*) de soutenir l'engagement du gouvernement du Canada à favoriser l'épanouissement des minorités francophones et anglophones du Canada; *f*) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25.** (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de ré-sident permanent et qui soit est interdit de terri-toire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le jus-tifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
28. (1) A permanent resident must comply with a residency obligation with respect to ev-	**28.** (1) L'obligation de résidence est applicable à chaque période quinquennale.

ery five-year period. (2) The following provisions govern the residency obligation under subsection (1): […]	(2) Les dispositions suivantes régissent l'obligation de résidence : […]
(*c*) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.	*c*) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inoppo-sable l'inobservation de l'obligation précé-dant le contrôle.
65. In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.	**65.** Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.
67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, (a) the decision appealed is wrong in law or fact or mixed law and fact; (b) a principle of natural justice has not been observed; or (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	**67.** (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : a) la décision attaquée est erronée en droit, en fait ou en droit et en fait; b) il y a eu manquement à un principe de justice naturelle; c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
68. (1) To stay a removal order, the Immigration Appeal Division must be satisfied, tak-ing into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light	**68.** (1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt su- périeur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de me-sures spéciales.

of all the circumstances of the case.	
69. (1) The Immigration Appeal Division shall dismiss an appeal if it does not allow the appeal or stay the removal order, if any.	**69.** (1) L'appel est rejeté s'il n'y est pas fait droit ou si le sursis n'est pas prononcé.
(2) In the case of an appeal by the Minister respecting a permanent resident or a protected person, other than a person referred to in subsection 64(1), if the Immigration Appeal Division is satisfied that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, it may make and may stay the applicable removal order, or dismiss the appeal, despite being satisfied of a matter set out in paragraph 67(1)(*a*) or (*b*).	(2) L'appel du ministre contre un résident permanent ou une personne protégée non visée par le paragraphe 64(1) peut être rejeté ou la mesure de renvoi applicable, assortie d'un sursis, peut être prise, même si les motifs visés aux alinéas 67(1)*a*) ou *b*) sont établis, sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
(3) If the Immigration Appeal Division dismisses an appeal made under subsection 63(4) and the permanent resident is in Canada, it shall make a removal order.	(3) Si elle rejette l'appel formé au titre du paragraphe 63(4), la section prend une mesure de renvoi contre le résident permanent en cause qui se trouve au Canada.
74. Judicial review is subject to the following provisions: (a) the judge who grants leave shall fix the day and place for the hearing of the application; (b) the hearing shall be no sooner than 30 days and no later than 90 days after leave was granted, unless the parties agree to an earlier day; (c) the judge shall dispose of the application without delay and in a summary way; and (d) an appeal to the Federal Court of Appeal may be made only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.	**74.** Les règles suivantes s'appliquent à la de-mande de contrôle judiciaire : a) le juge qui accueille la demande d'autori-sation fixe les date et lieu d'audition de la demande; b) l'audition ne peut être tenue à moins de trente jours — sauf consentement des parties — ni à plus de quatre-vingt-dix jours de la date à laquelle la demande d'autorisation est accueillie; c) le juge statue à bref délai et selon la pro-cédure sommaire; d) le jugement consécutif au contrôle judi-ciaire n'est susceptible d'appel en Cour d'ap-pel fédérale que si le juge certifie que l'af-faire soulève une question grave de portée générale et énonce celle-ci.
174. (1) The Immigration Appeal Division is a court of record and shall have an official	**174.** (1) La Section d'appel de l'immigration est une cour d'archives; elle a un sceau

seal, which shall be judicially noticed. (2) The Immigration Appeal Division has all the powers, rights and privileges vested in a superior court of record with respect to any matter necessary for the exercise of its jurisdiction, including the swearing and examination of witnesses, the production and inspection of documents and the enforcement of its orders.	officiel dont l'authenticité est admise d'office. (2) La Section d'appel a les attributions d'une juridiction supérieure sur toute question relevant de sa compétence et notamment pour la comparution et l'interrogatoire des témoins, la prestation de serment, la production et l'examen des pièces, ainsi que l'exécution de ses décisions.

2. Immigration and Refugee Protection Regulations, SOR/2002-227

117. (9) A foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor if […] (*d*) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non accompanying family member of the sponsor and was not examined.	**117.** (9) Ne sont pas considérées comme appartenant à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes : […] *d*) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.

3. Immigration Act, R.S.C., 1985, c. I-2

83. (1) A judgment of the Federal Court - Trial Division on an application for judicial review with respect to any decision or order made, or any matter arising, under this Act or the rules or regulations there under may be appealed to the Federal Court of Appeal only if the Federal Court - Trial Division has at the time of rendering judgment certified that a serious question of general importance is involved and has stated that question.	**83.** (1) Le jugement de la Section de première instance de la Cour fédérale rendu sur une demande de contrôle judiciaire relative à une décision ou ordonnance rendue, une mesure prise ou toute question soulevée dans le cadre de la présente loi ou de ses textes d'application - règlements ou règles - ne peut être porté en appel devant la Cour d'appel fédérale que si la Section de première instance certifie dans son jugement que l'affaire soulève une question grave de portée générale et énonce celle-ci.

AND TO:

Counsel for Intervener
Parkdale Community Legal Services

Toni Schweitzer
Ronald Poulton

Parkdale Community Legal Services
1266 Queen Street West
Toronto, Ontario
M6K 1L3
Telephone: (416) 531-2411
FAX: (416) 531-0885
E-mail: schweit@lao.on.ca

Agent for Intervener
Parkdale Community Legal Services

Jean Lash

South Ottawa Community Legal Services
406 - 1355 Bank Street
Ottawa, Ontario
K1S 0X2
Telephone: (613) 733-0140
FAX: (613) 733-0401
E-mail: lashj@lao.on.ca

AND TO:

Counsel for the Intervener
Canadian Council for Refugees

David Matas
Richard Goldman
Jamie Liew
Jennifer Stone

225 Vaughan Street
Suite 602
Winnipeg, Manitoba
R3C 1T7
Telephone: (204) 944-1831
FAX: (204) 942-1494
E-mail: dmatas@mts.net

Agent for the Intervener
Canadian Council for Refugees

Jacqueline Bonisteel

Perley-Robertson, Hill & McDougall
1500-340 Albert Street
Ottawa, Ontario
K1R 0A5
Telephone: (613) 566-2845
FAX: (613) 238-8775
E-mail: jbonisteel@perlaw.ca

AND TO:

Counsel for the Intervener
Justice for Children and Youth

Emily Chan
Samira Ahmed

Justice for Children and Youth
1203 - 415 Yonge Street
Toronto, Ontario, M5B 2E7
Telephone: (416) 920-1633
FAX: (416) 920-5855
E-mail: chane@lao.on.ca

Agent for the Intervener
Justice for Children and Youth

Marie-France Major

Supreme Advocacy LLP
100- 340 Gilmour Street
Ottawa, Ontario

K2P 0R3
Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
E-mail: mfmajor@supremeadvocacy.ca

AND TO:

Counsel for the Intervener
Barbra Schlifer Commemorative Clinic
And Canadian Centre for Victims of Torture

Alyssa Manning
Aviva Basman
Rathika Vasavithasan
Laila Demirdache

Refugee Law Office
20 Dundas Street West, Suite 202
Toronto, Ontario M5G 2H1
Telephone: (416) 977-8111
FAX: (416) 977-5567
E-mail: manninga@lao.on.ca

Community Legal Services-Ottawa Carleton
1 Nicholas Street Suite 422
Ottawa, Ontario, K1N 7B7
Telephone: (613) 241-7008 Ext: 228
FAX: (613) 241-8680
E-mail: demirdl@lao.on.ca

ORIGINAL TO:

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0K1

COPIES TO:

Counsel for the Appellant
Barbara Jackman
Jackman Nazami & Associates
526 St. Clair Avenue West, Unit 3
Toronto, Ontario
M6C 1A6
Telephone: (416) 653-9964
FAX: (416) 653-1036
E-mail: barb@bjackman.com

Agent for the Appellant
Michael Bossin
Community Legal Services-Ottawa Carl
1 Nicholas Street, Suite 422
Ottawa, Ontario
K1N 7B7
Telephone: (613) 241-7008 Ext: 224
FAX: (613) 241-8680
E-mail: bossinm@lao.on.ca

AND TO:

Counsel for the Respondent
Marianne Zoric
Kathryn Hucal
Attorney General of Canada
Suite 3400, Box 36
130 King Street West
Toronto, Ontario
M5X 1K6
Telephone: (416) 954-8046
FAX: (416) 954-8982
E-mail: marianne.zoric@justice.gc.ca

Agent for the Respondent
Christopher M. Rupar
Attorney General of Canada
50 O'Connor Street, Suite 500, Room 55
Ottawa, Ontario
K1A 0H8
Telephone: (613) 670-6290
FAX: (613) 954-1920
E-mail: christopher.rupar@justice.gc.ca

S.C.C. File No. 35990

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

Between:

JEYAKANNAN KANTHASAMY

Appellant
(Appellant in the Federal Court of Appeal)

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent
(Respondent in the Federal Court of Appeal)

-and-

CANADIAN COUNCIL FOR REFUGEES, JUSTICE FOR CHILDREN AND YOUTH, BARBRA SCHLIFER COMMEMORATIVE CLINIC AND CANADIAN CENTRE FOR VICTIMS OF TORTURE, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, PARKDALE COMMUNITY LEGAL SERVICES

Interveners

FACTUM OF THE INTERVENER

CANADIAN ASSOCIATION OF REFUGEE LAWYERS

Counsel for the Intervener

AUDREY MACKLIN
LAURA BRITTAIN
JOO EUN KIM

Faculty of Law, University of Toronto,
84 Queen's Park, Toronto, Ontario,
Canada M5S 2C4
Tel: 416-946-7493
Fax: 416-946-4028
audrey.macklin@utoronto.ca
brittail@lao.on.ca
kimj@lao.on.ca

Ottawa Agent for the Intervener

Karima Karmali

Integrated Legal Services Office,
Legal Aid Ontario
73 Albert Street, Ground Floor
Ottawa Ontario
K1P 1E3
Tel: 613-238-7931, ext. 59
Fax: 613-238-3410
karmalk@lao.on.ca