SCC File No. 39855

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

BETWEEN:

EARL MASON

APPELLANT
(Appellant)

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT
(Respondent)

AND BETWEEN:

SEIFESLAM DLEIOW

APPELLANT
(Appellant)

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT
(Respondent)

(Continued)

FACTUM OF THE INTERVENER, CANADIAN MUSLIM LAWYERS ASSOCIATION

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada,* S.O.R./2002-156)

MITHOOWANI WALDMAN IMMIGRATION LAW GROUP
101-500 Eglinton Avenue East
Toronto, Ontario M4P 1N3

Naseem Mithoowani
Tel: 416-792-6077
Fax: 416-792-6177
Email: naseem@mwlawgroup.ca

SUPREME ADVOCACY LLP
100- 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: 613-695-8855 Ext: 102
Fax: 613-695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for Counsel for the Proposed Intervener, Canadian Muslim Lawyers Association

BARTEUX LABOUR & EMPLOYMENT LAWYERS INC.
1701 Hollis Street, Suite L106
Halifax, NS B3J 3M8

Hanaa Al Sharief
Tel: 902-536-3112
Fax: 902-377-2234
Email: halsharief@barteauxlawyers.com

Counsel for the Intervener,
Canadian Muslim Lawyers Association

SCC File No. 39855

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

EARL MASON

APPELLANT
(Appellant)

-and-

MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT
(Respondent)

AND BETWEEN:

SEIFESLAM DLEIOW

APPELLANT
(Appellant)

-and-

MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT
(Respondent)

AND:

ATTORNEY GENERAL OF ONTARIO; ATTORNEY GENERAL OF SASKATCHEWAN; CANADIAN COUNCIL FOR REFUGEES; CANADIAN ASSOCIATION OF REFUGEE LAWYERS; SOCIAL PLANNING COUNCIL OF WINNIPEG; CANADIAN MUSLIM LAWYERS ASSOCIATION; UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES; AMNESTY INTERNATIONAL CANADIAN SECTION (ENGLISH SPEAKING); COMMUNITY & LEGAL AID SERVICES PROGRAM; ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES EN DROIT DE L'IMMIGRATION; CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)

INTERVENERS

EDELMANN & COMPANY LAW CORPORATION
905 – 207 West Hastings Street
Vancouver, BC V6B 1H7

Erica Olmstead
Molly Joeck
Aidan C. Campbell
Tel: 604-646-4684
Fax: 604-648-8043
Email: erica@edelmann.ca
molly@edelmann.ca
aidan@edelmann.ca

Counsel for the Appellant, Earl Mason

MICHAEL J. SOBKIN
Barrister & Solicitor
331 Somerset Street West
Ottawa, ON K2P 0J8

Tel: 613-282-1712
Fax: 613-288-2896
Email: msobkin@sympatico.ca

Agent for Counsel for the Appellant, Earl Mason

ROBERT J. KINCAID LAW CORPORATION
705 – 1190 Hornby Street
Vancouver, BC V6Z 2K5

Robert J. Kincaid
Tel: 604-681-6193
Fax: 604-681-1576
Email: rjklaw@telus.net

Counsel for the Appellant, Seifeslam Dleiow

MICHAEL J. SOBKIN
Barrister & Solicitor
331 Somerset Street West
Ottawa, ON K2P 0J8

Tel: 613-282-1712
Fax: 613-288-2896
Email: msobkin@sympatico.ca

Agent for Counsel for the Appellant, Seifeslam Dleiow

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Ontario Regional Office
400 - 120 Adelaide Street West,
Toronto, ON M5H 1T1

Michael H. Morris
Tel: 416-471-4093
Fax: 416-952-4518
Email: michael.morris@justice.gc.ca

BJ Wray
Tel: 604-652-4034
Fax: 604-666-6258
Email: bj.wray@justice.gc.ca

Counsel for the Respondent, Minister of Citizenship and Immigration

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8

Christopher M. Rupar
Tel: 613-941-2351
Fax: 613-954-1920
Email: christopher.rupar@justice.gc.ca

Agent for Counsel for the Respondent, Minister of Citizenship and Immigration

ATTORNEY GENERAL OF ONTARIO
Crown Law Office - Civil Law
720 Bay Street, 8th Floor
Toronto, ON, M7A 2S9

Judie Im
Susan Keenan
Tel: 416-326-3287
Fax: 416-326-4015
Email: judie.im@ontario.ca

Counsel for the Intervener,
Attorney General of Ontario

ATTORNEY GENERAL FOR SASKATCHEWAN
Civil Law Branch, Legal Services Division
900 - 1874 Scarth Street
Regina, SK, S4P 4B3

Johnna Van Parys
Laura Mazenc
Tel: 306-787-6534
Fax: 306-787-0581
Email: johnna.vanparys@gov.sk.ca

Counsel for the Intervener, Attorney General of Saskatchewan
DOWNTOWN LEGAL SERVICES
655 Spadina Avenue
Toronto, ON, M5S 2H9

Prasanna Balasundaram
Barbara Jackman
Asiya Hirji
Tel: 416-934-4535
Fax: 416-934-4536
Email: p.balasundaram@utoronto.ca

Counsel for the Intervener,
Canadian Council for Refugees

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
1300-100 Queen Street
Ottawa, ON, K1P 1J9

Nadia Effendi
Tel: 613-787-3562
Fax: 613-230-8842
Email: neffendi@blg.com

Agent for Counsel for the Intervener,
Attorney General of Ontario

GOWLING WLG (CANADA) LLP
200-160 Elgin Street
Ottawa, ON, K1P 1C3

D. Lynne Watt
Tel: 613-786-8695
Fax: 613-788-3509
Email: lynne.watt@gowlingwlg.com

Agent for Counsel of the Intervener,
Attorney General of Saskatchewan

LANDINGS LLP
1414 - 25 Adelaide St. E
Toronto, ON, M5C 3A1

Jacqueline Swaisland
Anthony Navaneelan
Paul Daly
Jonathan Porter
Tel: 416-363-1696
Fax: 416-352-5295
Email: jswaisland@landingslaw.com

Counsel for the Intervener,
Canadian Association of Refugee Lawyers

FILLMORE RILEY LLP
1700 - 360 Main Street
Winnipeg, MB, R3C 3Z3

Brandon Barnes Trickett
David Thiessen
Tel: 204-957-8300
Fax: 204-954-0300
Email: bbarnes@fillmoreriley.com

Counsel for the Intervener,
Social Planning Council of Winnipeg

GOWLING WLG (CANADA) LLP
200-160 Elgin Street
Ottawa, ON, K1P 1C3

D. Lynne Watt
Tel: 613-786-8695
Fax: 613-788-3509
Email: lynne.watt@gowlingwlg.com

Agent for Counsel of the Intervener,
Social Planning Council of Winnipeg

REFUGEE LAW OFFICE LEGAL AID ONTARIO
20 Dundas Street West
Toronto, ON, M5G 2H1

Aviva Basman
Alyssa Manning
Tel: 416-977-8111 Ext: 7163
Fax: 416-977-5567
Email: basmana@lao.on.ca

Counsel for the Intervener,
United Nations High Commissioner for Refugees

OLTHUIS VAN ERT
66 Lisgar Street
Ottawa, ON, K2P 0C1

Dahlia Shuhaibar
Tel: 613-501-5350
Fax: 613-651-0304
Email: dshuhaibar@ovcounsel.com

Counsel for the Intervener,
Amnesty International Canadian Section
(English Speaking)

COMMUNITY & LEGAL AID SERVICES PROGRAMME
York University
Osgoode Hall Law School Ignat Kaneff Build
4700 Keele Street Toronto, ON, M3J 1P3

Subodh Bharati
Amy Mayor
Tel: 416-736-5029
Fax: 416-736-5564
Email: sbharati@osgoode.yorku.ca

Counsel for the Intervener,
Community & Legal Aid Services Program

CLICHE-RIVARD AVOCATS ET AVOCATES
2330 rue Notre-Dame Ouest, Suite 302
Montréal, QC H3J 1N4

Guillaume Cliche-Rivard
Tel: 514-316-0875
Fax: 514-400-1163
Email: g.cliche.rivard@dmavocats.com

Counsel for the Intervener,
Association québécoise des avocats et avocates en droit de l'immigration

PENDER LITIGATION
1175 - 510 Burrard Street
Vancouver, BC V6C 3A8

France Mahon
Tel: 604-669-6699
Fax: 604-681-0652
Email: fdm@penderlitigation.com

Counsel for the Intervener,
Criminal Lawyers' Association (Ontario)

TABLE OF CONTENTS

PARTS I & II: OVERVIEW AND STATEMENT OF FACTS AND ISSUES

1. The Canadian Muslim Lawyers Association ("CMLA") is a national not-for-profit association of Muslim lawyers from all Canadian provinces and territories. It has over 200 members across Canada, with active chapters in Alberta, Atlantic Canada, British Columbia, Ontario and Quebec.

2. The CMLA takes no position on the facts and does not purport to expand the issues in this appeal.

3. The CMLA intervenes in this appeal to make the following submissions.

4. The actual impact of an impugned legislation, particularly on vulnerable populations, must be considered in the context of the statutory interpretation, including of section 34(1)(e) of the *Immigration and Refugee Protection Act* (the "*IRPA*").[1] This includes assessment of the social context in which the impugned legislation currently operates. Relevant to this analysis is the effect of section 34(1)(e) on vulnerable and marginalized communities.

5. The lived experiences of Muslims in Canada provide telling insight into the manner in which racialized communities are disproportionately affected by the enforcement of inadmissibility provisions contained within the *IRPA*.

6. Broadly interpreting section 34(1)(e) of the *IRPA* will further entrench the disproportionate impact that vulnerable racialized communities experience. Allowing inadmissibility under section 34(1)(e) to include acts of common violence, regardless of criminal conviction, would have a significantly adverse effect on racialized communities that have historically faced over-policing and historic discrimination within the criminal justice system.

7. If the effect resulting from the proposed interpretation of an impugned provision has the potential to result in further inequity, it should not be adopted. The interpretation that would

---

[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, as amended, s.34(1)(e).

result in the least infringement of the rights of marginalized communities should be preferred.

PART III – STATEMENT OF ARGUMENT

a) Statutory interpretation requires assessment of the social context in which the impugned statute operates

8. Statutory interpretation requires an appreciation of how laws operate in practice and not only how they may operate theoretically. This is in line with the modern principle of statutory interpretation which requires the words of an Act to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[2] In the process of identifying Parliament's intention, Courts are to assume that the Legislature is aware of the social context in which legislation operates.[3]

9. As part of that social context, this Court has historically identified when legislation has a disproportionate impact on vulnerable or marginalized communities as relevant to its' interpretation.

10. For instance, in *Moge,* this Court considered that feminization of poverty was an entrenched phenomenon, which in turn informed the social context within which the *Divorce Act* was enacted.[4]

---

[2] *Canada (Minister of Citizenship and Immigration) v Vavilov,* 2019 SCC 65 at para. 117, citing *Re Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21 [*Re Rizzo*], and *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26, both quoting Elmer Driedger, *Construction of Statutes,* 2nd ed (Toronto: Butterworths, 1983) at p. 87.
[3] *Moge v. Moge*, 1992 CanLII 25 (SCC), [1992] 3 SCR 813 at p. 857 [*Moge*].
[4] *Ibid* at p. 853.

11. Similarly, in *Marzetti,* this Court deemed social reality and public policy to be relevant to its interpretation of a provision of the *Bankruptcy and Insolvency Act.*[5]

12. In the very recent case of *Kirkpatrick*, this Court considered how a narrow reading of the sexual assault provisions in the Canadian *Criminal Code* would impact vulnerable communities, including women and gender diverse individuals, and racialized members of those communities.[6]

13. Therefore, in this case, real world consideration requires examination of the lived experiences of those mostly affected by the legislation in question,[7] including the challenges faced by racialized minorities.

b) Racialized communities are disproportionately impacted by the inadmissibility provisions contained within the IRPA

14. In the context of this case*,* when looking at the social context of the law's operation, it is relevant that the Canadian Border Services Agency ("CBSA") is given significant power to enforce the *IRPA*.[8] This includes the power to pursue allegations of inadmissibility against individual permanent residents or refugee claimants in Canada in cases that it – in its *sole* discretion - deems appropriate.[9]

15. In practice, therefore, not every person who might be caught under a particular inadmissibility provision will necessarily face inadmissibility proceedings that may lead to adverse consequences. Only those that the CBSA wishes to pursue allegations of inadmissibility against will.

---

[5] *Marzetti v Marzetti*, 1994 CanLII 50 (SCC), [1994] 2 SCR 765 at pp. 800-801; See also *Sparks v Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82 at paras. 58, 60-61. In *Sparks,* the Nova Scotia Court of Appeal was mindful of the disproportionate effect of the impugned legislation on women and children.

[6] *R. v. Kirkpatrick*, 2022 SCC 33 at para 62 [*Kirkpatrick*].
[7] *Lynch v St. John's (City)*, 2016 NLCA 35 at para. 75.
[8] *IRPA, supra* note 2, s.4(2).
[9] The CBSA exercises this discretion without the benefit of an oversight body.

16. Of concern, given the vast discretion to enforce the *IRPA* afforded to the CBSA, are allegations of racial profiling levied against it.[10] On a very recent and publicly available survey, a quarter of CBSA agents report witnessing a colleague engage in discrimination against a traveler entering Canada, for reasons connected to the traveler's national or ethnic origins.[11]

17. Unsurprisingly, the enforcement of inadmissibility provisions has been carried out disproportionately against racialized populations. The disproportionate impact can be seen starkly when reviewing the case law involving determinations of inadmissibility pursuant to section 34(1)(f) of the *IRPA*.

18. Section 34(1)(f) of the *IRPA* renders persons inadmissible to Canada on security grounds based on their membership in an organization that there are reasonable grounds to believe engages, has engaged or will engage in terrorism.[12]

19. Under this provision, allegations of inadmissibility based on membership in a terrorist organization have extended far beyond rogue organizations that operate outside of the political process. Rather, major political parties from Muslim-majority countries have been singled out as constituting "terrorist organizations" for the purposes of creating inadmissibility for membership pursuant to section 34(1)(f) of the *IRPA*.

20. According to current interpretations of section 34(1)(f), findings have been made that membership in the Bangladesh Nationalist Party (the "BNP") is sufficient to warrant a finding of inadmissibility based on security grounds, on the basis that it can be considered a terrorist group for having organized large scale protests, which are sometimes marred by violence.[13] This interpretation persists despite the recognition of the Immigration Refugee

---

[10] See, for example, National Council of Canadian Muslims, *NCCM Policy Paper: CBSA Oversight Bill,* October 2020, online <https://www.nccm.ca/cbsa-oversight/>

[11] Canada, Canadian Boarder Services Agency, *Evaluation of travellers processing through a GBA+ lens,* July 2022, online <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2022/sec2-eng.html#a2.1.3>

[12] *IRPA, supra* note 2, s.34(1)(f).

[13] *Opu v. Canada (Public Safety and Emergency Preparedness),* 2022 FC 650 [*Opu*]; *Miah v Canada (Public Safety and Emergency Preparedness),* 2020 FC 38 [*Miah*]; *Hossein v Canada*

Board and / or the Court that the BNP is a legitimate and established political party – as the second largest in Bangladesh, it is either in power or in opposition.[14]

21. A similar approach was pursued with Pakistani Muslims who were found to be inadmissible to Canada for being members of the Mohajir Quami Movement ("MQM-A"), also a functioning political party.[15]

22. Recently, membership in the Egyptian Muslim Brotherhood has been found to create inadmissibility to Canada on security grounds, despite the fact that the Canadian government has not listed the political party as a terrorist entity.[16]

23. The expansion of the organizations that constitute terror entities to encompass entrenched and active political parties has almost exclusively been reserved for allegations against Muslims.

24. In the majority of these cases, there is no allegation that the individuals concerned were themselves involved in any acts of wrongdoing. Moreover, their inadmissibility was upheld regardless of whether the person was still a member of such organization, or how much time has passed since the alleged conduct took place.

25. This is but one example of how broad readings of inadmissibility provisions disproportionately affect racialized populations, and how particular groups can find themselves targeted by the CBSA for enforcement. While section 34(1)(e) of the *IRPA* has

---

(Citizenship and Immigration), 2021 FC 91; *Ferdous v Canada (Public Safety and Emergency Preparedness,* 2019 FC 1115; *Khan v. Canada (Citizenship and Immigration)*, 2019 FC 899; *Rahman v. Canada (Public Safety and Emergency Preparedness,* 2019 FC 807; *Saleheen v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 145; *Kamal v. Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480; *A. (S.) v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2017 FC 494; *Gazi v. Canada (Minister of Citizenship and Immigration),* 2017 FC 94.

[14] *Opu, ibid* at para. 13; See also *Khandaker v Canada (Citizenship and Immigration),* 2019 CanLII 90449 (CA IRB) at para. 69; *X (Re),* 2018 CanLII 145572 (CA IRB) at para. 65.

[15] *Naeem v. Canada (Minister of Citizenship & Immigration),* 2010 FC 1069; *Faridi v. Canada (Minister of Citizenship & Immigration),* 2008 FC 761; *Daud v. Canada (Citizenship and Immigration),* 2008 FC 701; *Jalil v. Canada (Minister of Citizenship & Immigration)*, 2007 FC 568; *Kashif Omer v. Canada (Citizenship and Immigration),* 2007 FC 478.

[16] *Elmohamady Elmady v. Canada (Public Safety and Emergency Preparedness),* 2021 FC 1476.

not been widely employed by the CBSA as a ground of inadmissibility to date, there is no reason to believe that it would not similarly be used to disproportionately target racialized individuals.

c) Broadly interpreting section 34(1)(e) of the IRPA will further entrench the disproportionate impact on vulnerable racialized communities

26. A broad reading of the inadmissibility provision in question will provide the CBSA with an equally broad enforcement mandate, in a context where the CBSA already has untrammeled discretion. It is inevitable therefore that stereotyping and profiling can seep into the exercise of discretion afforded when determining whether or not to pursue an inadmissibility finding against a particular person.

27. Racialized people would be particularly vulnerable if the reading of section 34(1)(e) of the *IRPA* was interpreted expansively, to include conduct that might endanger public safety without any conviction, or nexus to serious national security risks.

28. Just as the expansion of terrorism-related inadmissibility provisions has disproportionately affected Muslims, a broad interpretation of section 34(1)(e) of the *IRPA* would have disproportionate impact on racialized communities that are subject to over-policing.

29. This court has already recognized the reality of racialized communities being over-policed in Canada in *Grant*.[17] In that case, this Court acknowledged "[a] growing body of evidence and opinion suggests that visible minorities and marginalized individuals are at particular risk from unjustified 'low visibility' police interventions in their lives."[18]

30. In the more recent case of *Le,* the Court ultimately concluded: "we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities."[19]

---

[17] *R. v. Grant,* 2009 SCC 32 at para. 154.
[18] *Ibid*.
[19] *R. v. Le,* 2019 SCC 34 at para. 97.

31. Historic over-policing of racialized communities leads to greater potential that racialized community members will be caught under an interpretation of 34(1)(e) of the *IRPA* that encompasses all interactions where violence is alleged in criminal proceedings, even those which do not result in a conviction.

32. Moreover, when deciding whether someone's conduct amounts to violence that may be a danger to public safety, the outcome may be informed by the decision maker's personal biases and prejudices towards racialized communities.

33. Although expanding the interpretation of section 34(1)(e) of the *IRPA* to include acts of common violence without any nexus to national security may seem neutral on its face, it will have a disproportionate impact on marginalized communities, resulting in further harm to historically disadvantaged communities.

d) Where ambiguity exists, the interpretation that does not perpetrate inequity against historically disadvantages communities should be adopted

34. Given the profound impact on racialized populations that may follow from differing interpretations of inadmissibility provisions, it follows that this Court should seek to assure itself that its preferred interpretation does not create further inequity.[20]

35. The entrenchment of societal inequity – of which Parliament is presumed to be aware - must be seen to be contrary to Parliament's intent, as opined by the Honorable Justice L'Heureux-Dube in *Moge.*[21]

36. It is well settled that Parliament does not intend absurd consequences.[22] In addition, legislation ought to be interpreted as consistent with the values entrenched in the *Canadian*

---

[20] *Willick v. Willick*, 1994 CanLII 28 (SCC), [1994] 3 S.C.R. 670 [*Willick*].
[21] *Moge, supra* note 4 at pp. 853 & 857.
[22] *Tran v. Canada (Public Safety and Emergency Preparedness),* 2017 SCC 50 at para. 31, citing *Rizzo, supra* note 3 at para. 27.

Charter of Rights and Freedoms, including its principles of equality and freedom from discrimination.[23]

37. In *Kirkpatrick*, this Court specifically rejected an interpretation of a statute that would further inequity of vulnerable groups, including racialized individuals, and deny equality under the law.[24]

38. Rejecting an interpretation of a statute that perpetuates inequity recognizes that the interpretative process is infused with public values.[25]

39. It also accords with the general principal that where a statute removes substantive rights, a narrow interpretation is preferred.[26] This is a well-known rule of statutory interpretation of penal provisions.[27] It has also been used in the immigration context. In *Vavilov*, this Court recognized a need to limit the interpretation of provisions of the *Citizenship Act* which would deny citizenship rights.[28] Given the consequences that flow from a finding of inadmissibility to non-citizens – including the potential for detention and deportation – there is no principled basis upon which to treat the interpretation of these provisions differently.

40. In this case, the interpretation that will result in less infringement of the rights of racialized communities ought to be given preference.

41. Finally, the CMLA submits that it would be unduly restrictive to require, as the Federal Court of Appeal did, that individuals affected by the interpretation of section 34(1)(e) of the *IRPA* bring forward all considerations which may be relevant to the tribunal at first instance

---

[23] *Willick, supra* note 21 at p. 705, citing *Hills v. Canada (Attorney General)*, 1988 CanLII 67 (SCC), [1988] 1 S.C.R. 513 at p. 558, and *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038 at p. 1078.
[24] *Kirkpatrick*, *supra* note 7.
[25] *Canada (Attorney General) v. Consolidated Canadian Contractors Inc.*, 1998 CanLII 9092 (FCA), [1999] 1 FC 209.
[26] *Brossard (Town) v. Quebec Commission des droits de la personne*, 1988 CanLII 7 (SCC), [1988] 2 S.C.R. 279 at p. 307, relying on *Ontario Human Rights Commission v. Borough of Etobicoke*, 1982 CanLII 15 (SCC), [1982] 1 S.C.R. 202, and in *Bhinder v. Canadian National Railway Co.*, 1985 CanLII 19 (SCC), [1985] 2 S.C.R. 561.
[27] *R. v. McIntosh*, 1995 CanLII 124 (SCC), [1995] 1 SCR 686 at p. 702.
[28] *Vavilov, supra* note 3 at para 192.

before they can be considered by a Court.[29] It is too burdensome a requirement for individuals belonging to marginalized communities who wish to raise evidence of how a law disproportionately affects them. Such an approach would perpetuate system inequities.

42. As noted by the Honorable Justice Martin "In the end, a system that can account for the social dynamics which act to impoverish certain members of society over others, or to prevent them from accessing the courtroom and reclaiming their rights, is a fairer system for all."[30]

PARTS IV and V – SUBMISSIONS ON COSTS AND ORDER SOUGHT

43. The CMLA does not seek costs and requests that no costs be ordered against it. The CMLA takes no position on the outcome of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of September 2022.

Per:
Naseem Mithoowani

_____
Naseem Mithoowani

[29] *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para. 74. **[AR Part I, Tab 8, p.84]**
[30] *Michel v. Graydon*, 2020 SCC 24 at para. 101.

PART VI – TABLE OF AUTHORITIES

Authority	Paragraph Reference
A. (S.) v. Canada (Minister of Public Safety and Emergency Preparedness), 2017 FC 494	20
Bell ExpressVu Limited Partnership v. Rex, 2002 SCC 42	8
Bhinder v. Canadian National Railway Co., 1985 CanLII 19 (SCC), [1985] 2 S.C.R. 561	39
Brossard (Town) v. Quebec Commission des droits de la personne, 1988 CanLII 7 (SCC), [1988] 2 S.C.R. 279	39
Canada (Attorney General) v. Consolidated Canadian Contractors Inc., 1998 CanLII 9092 (FCA), [1999] 1 FC 209.	38
Canada (Citizenship and Immigration) v Mason, 2021 FCA 156	41
Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65	8, 39
Daud v. Canada (Citizenship and Immigration), 2008 FC 701	21
Elmohamady Elmady v. Canada (Public Safety and Emergency Preparedness), 2021 FC 1476	22
Faridi v. Canada (Minister of Citizenship & Immigration), 2008 FC 761	21
Ferdous v Canada (Public Safety and Emergency Preparedness, 2019 FC 1115	20
Gazi v. Canada (Minister of Citizenship and Immigration), 2017 FC 94	20
Hills v. Canada (Attorney General), 1988 CanLII 67 (SCC), [1988] 1 S.C.R. 513	36
Hossein v Canada (Citizenship and Immigration), 2021 FC 91	20
Jalil v. Canada (Minister of Citizenship & Immigration), 2007 FC 568	21
Kamal v. Canada (Immigration, Refugees and Citizenship), 2018 FC 480	20
Kashif Omer v. Canada (Citizenship and Immigration), 2007 FC 478	21
Khan v. Canada (Citizenship and Immigration), 2019 FC 899	20
Khandaker v Canada (Citizenship and Immigration), 2019 CanLII 90449 (CA IRB)	20
Lynch v St. John's (City), 2016 NLCA 35	13
Marzetti v Marzetti, 1994 CanLII 50 (SCC), [1994] 2 SCR 765	11
Miah v. Canada (Public Safety and Emergency Preparedness), 2020 FC 38	20
Michel v. Graydon, 2020 SCC 24	42
Moge v. Moge, 1992 CanLII 25 (SCC), [1992] 3 SCR 813	8, 10, 35

Authority	**Paragraph Reference**
Naeem v. Canada (Minister of Citizenship & Immigration), 2010 FC 1069	21
Ontario Human Rights Commission v. Borough of Etobicoke, 1982 CanLII 15 (SCC), [1982] 1 S.C.R. 202	39
Opu v. Canada (Public Safety and Emergency Preparedness), 2022 FC 650	20
R. v. Grant, 2009 SCC 32	29
R. v. Kirkpatrick, 2022 SCC 33	12, 37
R v. Le, 2019 SCC 34	30
R. v. McIntosh, 1995 CanLII 124 (SCC), [1995] 1 SCR 686	39
Rahman v. Canada (Public Safety and Emergency Preparedness, 2019 FC 807	20
Re Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC)	8, 36
Saleheen v. Canada (Public Safety and Emergency Preparedness), 2019 FC 145	20
Slaight Communications Inc. v. Davidson, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038	36
Sparks v Nova Scotia (Assistance Appeal Board), 2017 NSCA 82	11
Tran v. Canada (Public Safety and Emergency Preparedness), 2017 SCC 50	36
Willick v. Willick, 1994 CanLII 28 (SCC), [1994] 3 S.C.R. 670	34, 36
X (Re), 2018 CanLII 145572 (CA IRB)	20
Secondary Sources	**Paragraph Reference**
National Council of Canadian Muslims, "*CBSA Oversight Bill*", October 2020, accessed August 31, 2022, online at: <https://www.nccm.ca/cbsa-oversight/>	16
CBSA, *Evaluation of travellers processing through a GBA+ lens,* accessed August 31, 2022, online at: <https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2022/sec2-eng.html#a2.1.3>	16

Statute, Regulation, Rule, etc.	**Section, Rule, Etc.**
Bankruptcy Act, R.S.C., 1985, c. B-3 *Loi sur la faillite et l'insolvabilité,* L.R.C., 1985, ch. B-3	

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 *Charte canadienne des droits et libertés, partie* 1 de la *Loi constitutionnelle de 1982,* constituant l'annexe B de la *Loi de 1982 sur le Canada* (R-U), 1982, c11	
Citizenship Act, R.S.C. 1985, c. C-29 *Loi sur la citoyenneté*, L.R.C., 1985, ch. C-29	
Criminal Code, R.S.C., 1985, c. C-46 *Code criminel,* L.R.C., 1985, ch. C-46	
Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) *Loi sur le divorce*, L.R.C. 1985, ch. 3 (2e suppl.)	
Employment Support and Income Assistance Act, S.N.S. 2000, c.27	
Immigration and Refugee Protection Act, (S.C. 2001, c. 27) *Loi sur l'immigration et la protection des réfugiés*, (L.C. 2001, ch. 27)	4(2), 34(1) 4(2), 34(1)