S.C.C. File No. 33981

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

APPELLANT
(Respondent)

- and -

DOWNTOWN EASTSIDE SEX WORKERS UNITED
AGAINST VIOLENCE SOCIETY and SHERYL KISELBACH

RESPONDENTS
(Appellants)

-and-

ATTORNEY GENERAL OF ONTARIO, COMMUNITY LEGAL ASSISTANCE SOCIETY, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, ECOJUSTICE CANADA, COALITION OF WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND (WEST COAST LEAF), JUSTICE FOR CHILDREN AND YOUTH AND ARCH DISABILITY LAW CENTRE, CONSEIL SCOLAIRE FRANCOPHONE DE LA COLOMBIE-BRITANNIQUE, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN CIVIL LIBERTIES ASSOCIATION, CANADIAN ASSOCIATION OF REFUGEE LAWYERS AND CANADIAN COUNCIL FOR REFUGEES, CANADIAN HIV/AIDS LEGAL NETWORK, HIV & AIDS LEGAL CLINIC ONTARIO AND POSITIVE LIVING SOCIETY OF BRITISH COLUMBIA

INTERVENERS

FACTUM OF THE INTERVENERS,
THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS AND CANADIAN COUNCIL FOR REFUGEES
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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OVERVIEW

1. The purpose of public interest standing is to prevent the immunization of legislation from challenge, in order to ensure that that public is not subject to unconstitutional laws. The current test for public interest standing can adequately protect the public's interest in constitutional legislation and government action, if properly understood and applied.

2. A proper application of the test entails an assessment of whether a potential private litigant is a reasonable and effective way to bring an issue before the courts. The Canadian Association of Refugee Lawyers (CARL) and the Canadian Council for Refugees (CCR) submit that when determining whether a private litigant can reasonably and effectively bring forward a challenge, the following factors are relevant: whether the private litigant faces a significant risk of an ongoing rights violation in order to bring a constitutional challenge; the nature of the proceedings; and the resources and expertise of the private litigant in comparison with the proposed public interest litigant.

PART I – STATEMENT OF FACTS

3. CARL and CCR accept the facts as set out in Part I of the Respondents' factum.

PART II – STATEMENT OF POSITION

4. CARL and CCR take the position that the Court of Appeal did not misinterpret or unjustifiably relax the requirement that public interest standing should only be granted if there is no other reasonable or effective manner to bring the issue to court. The criteria of reasonable and effective must be interpreted and applied in a liberal manner which promotes access to justice and ensures timely review of the constitutionality of government action and legislation.

5. CARL and CCR take no position with respect to the Appellant's second question.

PART III – STATEMENT OF ARGUMENT

i. The Underlying Principles and Purpose of Public Interest Standing

6. The purpose of public interest standing is to prevent the immunization of legislation from challenge.[1] This purpose is rooted in the public's right to constitutional government and the courts' role in preserving and enforcing the rights enshrined in the *Canadian Charter of Rights and Freedoms*.[2]

7. Prior to the enactment of the *Charter,* a predominant consideration in granting standing was the public's right to constitutional behaviour by Parliament. Specifically, in *Thorson v. Attorney General of Canada*, this Court held:

> In my opinion, standing of a federal taxpayer seeking to challenge the constitutionality of legislation is a matter particularly appropriate for the exercise of judicial discretion. … It is not the alleged waste of public funds alone that will support standing but rather the right of the citizenry to constitutional behaviour by Parliament where the issue in such behaviour is justiciable as a legal question.[3]

8. Following the enactment of the *Charter,* this Court recognized that the *Charter* entrenched the public's fundamental right to government in accordance with the law. Therefore, "[b]y its terms the Charter indicates that a generous and liberal approach should be taken to the issue of standing. If that were not done, Charter rights might be unenforced and Charter freedoms shackled".[4] When applying the test for public interest standing, courts should be guided by these underlying principles.

ii. What Constitutes a Reasonable and Effective Litigant?

9. CARL and CCR submit that the current test for public interest standing adequately protects the public's interest in constitutional legislation and government action when the criteria of reasonableness and effectiveness are properly understood and applied. CARL and CCR submit that the mere availability of a potential private litigant does not mean that the private litigant is a reasonable and effective means of bringing forward litigation. The test for public

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[1] *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236 at para. 36 [*Canadian Council of Churches*], [Intervener's Book of Authorities ("BoA"), Tab 4].
[2] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].
[3] *Thorson v. Attorney General of Canada* [1975] 1 S.C.R. 138 at pp. 161, 163, [BoA, Tab 8].
[4] *Canadian Council of Churches, supra* at para. 31 [BoA, Tab 4].

interest standing requires that courts go on to assess whether potential private litigants could reasonably and effectively bring forward litigation.

10. *Chaoulli v. Quebec (A.G.)* provides a good example of the generous and liberal approach to public interest standing.[5] In *Chaoulli*, two Quebec residents, Chaoulli and Zeliotis, sought a declaration that the prohibition on private health insurance found in the *Health Insurance Act* and the *Hospital Insurance Act* violated s.7 of the *Charter* and s.1 of the *Quebec Charter of Human Rights and Freedoms*. The Court granted public interest standing, even though there was a group of persons directly affected by the legislation who could have initiated litigation. In deciding that Chaoulli and Zeliotis had standing, Justice Deschamps found:

> Clearly, a challenge based on a charter, whether it be the *Canadian Charter* or the *Quebec Charter*, must have an actual basis in fact: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441. However, the question is not whether the appellants are able to show that they are personally affected by an infringement. The issues in the instant case are of public interest and the test from *Minister of Justice of Canada v. Borowski*, [1981] 2 S.C.R. 575, applies. The issue must be serious, the claimants must be directly affected or have a genuine interest as citizens and there must be no other effective means available to them.[6]

11. In agreeing that Chaoulli and Zeliotis had standing, Justices Binnie and LeBel held that it would not be reasonable to expect ill patients to initiate complex constitutional litigation:

> From a practical point of view, while individual patients could be expected to bring their own cases to court if they wished to do so, it would be unreasonable to expect a seriously ailing person to bring a systemic challenge to the whole health plan, as was done here. The material, physical and emotional resources of individuals who are ill, and quite possibly dying, are likely to be focussed on their own circumstances.[7]

12. The generous and liberal approach adopted in this case correctly recognizes that preventing the immunization of legislation from challenge encompasses the public's interest in constitutional legislation and government action. This application of the test recognizes that in some circumstances, a private litigant may be available, but not reasonable or effective.

13. The present case represents an important opportunity for this Court to reiterate the importance of public interest standing and the need for a generous and liberal approach to what

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[5] *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791 [*Chaoulli*], [BoA, Tab 5].
[6] *Ibid.* at para. 35 [BoA, Tab 5].
[7] *Ibid.* at para. 189 [BoA, Tab 5].

constitutes a reasonable and effective litigant. CARL and CCR submit that the following considerations are relevant when determining whether a private litigant can reasonably and effectively bring forward a challenge:

A. Whether there is a high risk that the private litigant will suffer an ongoing rights violation in order to initiate litigation;

B. The nature of the proceedings; and

C. The resources and expertise of the private litigant in comparison with the public interest litigant.

A. Whether there is a high risk that a private litigant will suffer an ongoing rights violation in order to initiate litigation

14. A narrow test emphasizing the availability of a private litigant often requires claimants to wait until rights violations have already occurred before initiating litigation. Yet, as this Court found in *Vriend v Alberta*, requiring litigants to "wait until someone is discriminated against […] would not only be wasteful of judicial resources, but also unfair in that it would impose burdens of delay, cost and personal vulnerability to discrimination for the individuals involved in those eventual cases".[8]

15. In *Canadian Council of Churches*, this Court denied public interest standing to an advocacy organization, finding that private litigants were already challenging the immigration legislation at issue. Importantly, this Court also concluded that these private litigants would not be subjected to a rights violation in order to bring the challenge.[9] However, there will undoubtedly be other circumstances where refugees or migrants will have to undergo a violation of their rights in order to bring forward a claim. For example, Bill C-4 is currently before Parliament and provides for 12 months of mandatory detention without review in certain circumstances.[10] It is neither reasonable nor effective to require individuals to suffer significant rights violations such as unlawful detention to bring forward a claim as a private litigant, where there is an appropriate public interest litigant that can bring forward the claim. The fact that detention is an automatic consequence of the operation of the statute may be sufficient to establish a factual record on which to base a constitutional challenge.

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[8] *Vriend v. Alberta*, [1998] 1 S.C.R. 493 at para. 47, [BoA, Tab 10].
[9] *Canadian Council of Churches, supra* at para. 41 [BoA, Tab 4].
[10] Bill C-4, *An Act to Amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act and the Marine Transportation Security Act*, 1st Sess., 42st Parl., 2011, cl. 10(2) and 12 [BoA, Tab 12].

16. The harm inflicted by rights violations such as unlawful detention can be severe. Studies have shown that the effects of detention on asylum seekers include high levels of emotional distress, chronic depression, post-traumatic stress disorder, anxiety, suicidal ideation, and symptoms of psychosis. Children are frequently detained under immigration law[11], and are particularly vulnerable to the negative effects of detention. The effects of detention on refugee children include severe symptoms of mutism, refusal to eat and drink, sleep disturbances, nightmares, and impaired cognitive development, as well as the mental health impacts that also experienced by adults. These impacts have been shown to occur even where the period of detention is less than two months. Furthermore, detention often results in family separation, as fathers are kept in a separate men's section.[12]

17. If Bill C-4 is passed, appropriate use of public interest standing could result in an effective challenge to the detention provisions contained in the Bill. Vulnerable refugee claimants would not be required to experience prolonged family separation and the severe mental and physical health impacts of detention in order to bring the challenge.

18. In *Canadian Council for Refugees v. Canada*, Justice Phelan found that it would be unreasonable to require potential refugee claimants to expose themselves to a high risk of harm in order to bring an issue before the courts. The issue in that case was the validity of a regulation that allowed immigration officials to refuse to consider the asylum claim of a person who came to Canada through the United States.

> It would be pointless to force a claimant in the U.S. to approach Canada, and then be sent back to U.S. custody in order to prove that this would in fact happen. Given other findings by this Court as to the operation of the U.S. system, that individual could be exposed to the very harm at issue before the Court.[13]

19. The Federal Court of Appeal's approach to public interest standing on the appeal in the same case, *Canadian Council for Refugees v. Canada* illustrates the problems that flow from a

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[11] In 2008, an average of 77 children were held in immigration detention each month. When the MV Sun Sea, a ship carrying 492 Tamil refugee claimants arrived in Canada in August, 2010, 49 children and their mothers were detained. Some families were detained for up to seven months. See: Rachel Kronick, Cecile Rousseau, and Janet Cleveland, "Mandatory detention of refugee children: A public health issue?" (2011) 18:8 *Paediatric Child Health*, 65 [Kronick *et al*.], [BoA, Tab 13].

[12] *Ibid.* See also Katy Robjant, Rita Hassan and Cornelius Katona, "Mental health implications of detaining asylum seekers: systematic review" (2009) 194 The British Journal of Psychiatry, pp. 306-312, [BoA, Tab 14].

[13] *Canadian Council for Refugees v. Canada*, 2007 FC 1262 at para. 48, [BoA, Tab 2]. While Justice Phelan's judgment was overturned on appeal, this point was not specifically addressed by the Federal Court of Appeal.

narrow application of the test.[14] The Federal Court of Appeal concluded that public interest standing was not appropriate to assess the alleged *Charter* breaches, as individual refugees could present themselves at the border. Those caught by the regulations at issue could challenge their removal back to the U.S. on *Charter* grounds.[15] By focusing on the potential availability of a private litigant, the Federal Court of Appeal did not consider that vulnerable refugee claimants faced a significant risk of having to undergo a rights violation such as detention or deportation to a risk of persecution.

20. CCR and CARL submit that the possibility of an interim deprivation of one's rights must be considered when assessing whether a potential private litigant could initiate litigation. All people subject to Canadian jurisdiction have a right to constitutional government, and a right not to be subject to arbitrary violations of their *Charter* rights. Thus, requiring a litigant to suffer a severe rights violation in order to initiate litigation may be unreasonable.

B. The nature of the proceedings

21. CCR and CARL submit that the nature of the decision making process must also be considered when determining whether a private litigant is a reasonable or effective alternative. The majority of proceedings relating to refugees and migrants occur at administrative tribunals. The administrative law context includes unique constraints which may affect the ability of private litigants to reasonably and effectively bring forward constitutional challenges. Specific considerations include the jurisdiction of the administrative decision making body, short time limits, limited access to judicial review by a court, and the potential for issues to become moot.

22. Administrative tribunals have limited jurisdiction. They cannot issue general declarations of invalidity. A determination that a legislative provision is constitutionality invalid only applies to the parties at the hearing.[16] In addition, numerous claims alleging the same violation heard before different members may result in inconsistent rulings. The effectiveness and efficiency of challenges made directly to administrative decision makers is thus limited.

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[14] *Canadian Council for Refugees v. Canada*, 2008 FCA 229, [BoA, Tab 3].
[15] *Ibid.* at paras. 101-102.
[16] *Alberta (A.G.) v. United Food and Commercial Workers Union, Local No. 401*, 2010 ABQB 777 at paras. 31-41, 48-49, [BoA, Tab 1].

23. Generally speaking, refugees and migrants may only have recourse to the courts once they have obtained a final decision on their claim.[17] Under the *Immigration and Refugee Protection Act*, recourse to the courts can only occur through judicial review, which has its own set of limitations.[18] In most cases, applications for judicial review must be brought within 15 days of receiving the decision.[19] Applications are subject to a leave requirement where no reasons are required.[20] Recent statistical research suggests that the leave requirement may not be applied consistently by Federal Court judges. [21]

24. If leave is granted, the right to appeal the decision is limited. A decision may only be appealed to the Federal Court of Appeal if the Federal Court judge issuing the original decision certifies a question.[22] In the interim, Federal Court judges are making determinations on the same legal questions. This can lead to inconsistent jurisprudence.

25. Challenging the constitutionality of a provision through judicial review of an administrative decision is a lengthy process. During this time refugees and migrants may be experiencing ongoing rights violations. A constitutional challenge must be brought in a timely manner in order to be reasonable and effective.

26. Another barrier that can arise from the administrative law context is that cases can become moot before private litigants are able to pursue a legal challenge. Migrants and refugees must wait until a decision has occurred before initiating litigation. If the decision concerns their removal from Canada, they may be removed from Canada before being able to initiate litigation. If litigation has been initiated, in many cases the issue will become moot once the litigant is removed from Canada. In this situation, the government action can be immunized from challenge.

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[17] See for example: *Victoria v Canada (M.P.S.E.P.)* 2011 FC 1392 at paras. 2, 33-41, [BoA, Tab 9].
[18] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, at s.72 [*IRPA*].
[19] *Ibid.*
[20] *Ibid.*
[21] This research suggests that there is a large divergence among individual Federal Court judges in how often they grant leave to commence an application for judicial review, with some judges granting leave in less than two percent of cases, and others granting leave in sixty percent of cases. See Cristin Schmitz, "'Massive Difference' in refugee cases", *The Lawyers Weekly* (16 December 2011) online: The Lawyer's Weekly, <http://www.lawyersweekly.ca/index.php?section=article&articleid=1559>, [BoA, Tab 15].
[22] *IRPA*, *supra*, at s.74(d).

27. The Inter-American Commission on Human Rights recognized the risk that mootness could result in a policy being immunized from challenge in their recent decision, *John Doe et al. v. Canada*, concerning Canada's "direct back" policy.[23] Under this policy, some refugee claimants arriving in Canada from the United States were given dates for a refugee eligibility determination interview and were returned to the U.S., without any consideration of their claims, to wait for their interview date.[24] The Commission found that the policy violated the John Does' right to seek recourse before a Court before being returned to the U.S., and that claimants were being directed back to the U.S. before being able to file an urgent stay of removal.[25] Once returned to the U.S., the Commission found that the case would become moot, as the courts would be unable to order the return of that individual to Canada.[26]

C. The resources and expertise of the private litigant in comparison with the public interest litigant

28. Public interest litigants may have the capacity to bring forward certain types of claims more effectively than vulnerable private litigants. By drawing on their members, an organization like the CCR may be able to put together a more substantive factual record than any single private litigant. By drawing on the expertise of the academic community and experienced practitioners, organizations like CARL may be able to advance more comprehensive legal arguments than an individual practitioner.

29. The expertise and effectiveness of public interest groups was recognized by Abella J.A. in her dissent in *Corporation of the Canadian Civil Liberties Association v. Attorney General of Canada:*

> Moreover, in my view, C.C.L.A. is the most effective litigant to raise the issues in an informed and comprehensive way. C.C.L.A. and its General Counsel, A. Alan Borovoy, have devoted years of institutional and professional energy to ensuring that under the rubric of "threats to national security", covert surveillance is not a ruse for intelligence-gathering into lawful, constitutionally protected activities. No person or organization

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[23] *John Doe et al. v. Canada,* (2011), Inter-Am. Comm. H.R. No. 24/11, Case 12.586, OEA/Ser.L/V/II.141/ doc. 29. ["*John Doe"*], [BoA, Tab 11].
[24] *Ibid.* at para. 2.
[25] *Ibid.* at paras. 80-81 and 116, 117. The Court also found that the policy violated the John Does' right to seek asylum, and the right to protection from possible chain *refoulement* (para. 128).
[26] *Ibid.* at paras. 80, 81.

> has greater expertise in the area or is better able to elucidate the relevant issues for the court.[27]

30. Justices of this Court have also recognized that it may be a more effective use of scarce judicial resources to allow public interest groups to bring forward claims. As L'Heureux-Dubé and McLachlin JJ. wrote in *Hy and Zel's Inc. v. Ontario (Attorney General):*

> In fact, granting the appellants standing actually reinforces one of the objectives of the rules of standing, that is, prevention of a multiplicity of suits, as the numerous outstanding charges against the appellants under the Act which presently constitute a burden on the administration of justice could be disposed of by a ruling on the constitutional validity of the Act.[28]

31. As discussed above, in *Chaoulli*, Justices Binnie and LeBel found that the personal circumstances of directly affected persons may hinder their ability to reasonably and effectively bring an issue before the courts. CARL and CCR submit that personal circumstances are relevant to the analysis. In the case of refugees, persons deported from Canada or in detention in Canada are likely to be focused on securing their own personal safety. Migrants and refugees may also face barriers such as cultural dislocation, emotional trauma, poverty, language barriers, and lack of knowledge about the Canadian legal system, their individual rights, and the potential risk of detention and deportation.

32. Furthermore, it is extremely difficult for individuals outside of Canada to initiate litigation in Canada relating to the reasons for their removal. Public interest groups can play an important role in facilitating access to justice when migrants have been removed from Canada.

33. In *Canadian Council of Churches*, the Court noted that public interest litigants are not precluded from intervening in *Charter* litigation brought by private litigants.[29] However, the role of an intervener is limited. The intervener does not draft the application for leave and judicial review or the statement of claim. The intervener does not create the evidentiary record and must seek permission from the court if they wish to file fresh evidence. In certain circumstances limiting the group to intervener status may not be an adequate alternative.

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[27] *The Corporation of the Canadian Civil Liberties Association v. Attorney General of Canada*, 40 O.R. (3d) 489 at para. 105, [BoA, Tab 7]; *Canadian Council of Refugees v. Canada*, 2007 FC 1262 at para. 51, [BoA, Tab 2].
[28] *Hy and Zel's Inc. v. Ontario (Attorney General)*, [1993] 3 S.C.R. 675 at para. 84, [BoA, Tab 6].
[29] *Canadian Council of Churches, supra,* at para. 43 [BoA, Tab 4].

34. In sum, public interest litigants may be more effective at bringing forward complex litigation, where they have more resources and expertise than vulnerable private litigants. This is a relevant factor that should be considered when determining whether there is a reasonable and effective means of bringing forward a constitutional issue.

CONCLUSION

35. The test for public interest standing must be applied generously and liberally. Specifically, the third branch of the test must not be applied in a formulaic manner solely focusing on the availability of a potential group of private litigants. A proper analysis must assess whether those private litigants are a reasonable and effective manner to bring the issue before the courts. If the criteria of reasonable and effective are given a full contextual analysis, the current test for public interest standing can serve its purpose of ensuring no law or government action is immunized from challenge.

PART IV – COST SUBMISSIONS

36. CARL and CCR do not seek costs, and respectfully submit that no order of costs should made against them.

PART V – ORDER SOUGHT

37. CARL and CCR respectfully requests: (1) that they be granted the right to make oral submissions at the hearing of this appeal; and (2) that the appeal be dismissed.

All of which is respectfully submitted this 5th day of January, 2012, by:

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PART VI – TABLE OF AUTHORITIES

Canadian Jurisprudence	**Cited at paragraph (s)**
Alberta (A.G.) v. United Food and Commercial Workers Union, Local No. 401 2010 ABQB 777	22
Canadian Council for Refugees v. Canada, 2007 FC 1262	18
Canadian Council for Refugees v. Canada, 2008 FCA 229	19
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Chaoulli v. Quebec (Attorney General), [2005] 1 S.C.R. 791	10, 11
Hy and Zel's Inc. v. Ontario (Attorney General), [1993] 3 S.C.R. 675	30
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Thorson v. Attorney General of Canada [1975] 1 S.C.R. 138	8
Victoria v. Canada (M.P.S.E.P.) 2011 FC 1392	23
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International Jurisprudence	**Cited at paragraphs(s)**
John Doe et al. v. Canada, (2011), Inter-Am. Comm. H.R. No. 24/11, Case 12.586, OEA/Ser.L/V/II.141/doc. 29.	27

Other Sources	**Cited at paragraph(s)**
Bill C-4, *An Act to Amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act and the Marine Transportation Security Act*, 1st sess., 41st Parl., 2011	15
Kronick, Rachel, Cecile Rousseau, and Janet Cleveland, "Mandatory detention of refugee children: A public health issue?" (2011) 18:8 *Paediatric Child Health*, 65	16

Robjant, Katy, Rita Hassan and Cornelius Katona, "Mental health implications of detaining asylum seekers: systematic review" (2009) 194 The British Journal of Psychiatry 306.	16
Schmitz, Cristin, "'Massive Difference' in refugee cases", *The Lawyers Weekly* (16 December 2011) online: The Lawyers Weekly, <http://www.lawyersweekly.ca/index.php?section=article&articleid=1559>	23

PART VII – STATUTES AND REGULATIONS

Immigration and Refugee Protection Act, S.C. 2001, c. 27	*Loi sur l'immigration et la protection des réfugiés*, L.C. 2001, ch. 27
Application for judicial review	Demande d'autorisation
72. (1) Judicial review by the Federal Court with respect to any matter — a decision, determination or order made, a measure taken or a question raised — under this Act is commenced by making an application for leave to the Court.	**72.** (1) Le contrôle judiciaire par la Cour fédérale de toute mesure — décision, ordonnance, question ou affaire — prise dans le cadre de la présente loi est subordonné au dépôt d'une demande d'autorisation.
Application (2) The following provisions govern an application under subsection (1):	Application (2) Les dispositions suivantes s'appliquent à la demande d'autorisation :
(*a*) the application may not be made until any right of appeal that may be provided by this Act is exhausted;	*a*) elle ne peut être présentée tant que les voies d'appel ne sont pas épuisées;
(*b*) subject to paragraph 169(*f*), notice of the application shall be served on the other party and the application shall be filed in the Registry of the Federal Court ("the Court") within 15 days, in the case of a matter arising in Canada, or within 60 days, in the case of a matter arising outside Canada, after the day on which the applicant is notified of or otherwise becomes aware of the matter;	*b*) elle doit être signifiée à l'autre partie puis déposée au greffe de la Cour fédérale — la Cour — dans les quinze ou soixante jours, selon que la mesure attaquée a été rendue au Canada ou non, suivant, sous réserve de l'alinéa 169*f*), la date où le demandeur en est avisé ou en a eu connaissance;
(*c*) a judge of the Court may, for special reasons, allow an extended time for filing and serving the application or notice;	*c*) le délai peut toutefois être prorogé, pour motifs valables, par un juge de la Cour;
(*d*) a judge of the Court shall dispose of the application without delay and in a summary way and, unless a judge of the Court directs otherwise, without personal appearance; and	*d*) il est statué sur la demande à bref délai et selon la procédure sommaire et, sauf autorisation d'un juge de la Cour, sans comparution en personne;
(*e*) no appeal lies from the decision of the	*e*) le jugement sur la demande et toute décision interlocutoire ne sont pas susceptibles d'appel.

Court with respect to the application or with respect to an interlocutory judgment.	
Judicial review 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.	Demande de contrôle judiciaire **74.** Les règles suivantes s'appliquent à la demande de contrôle judiciaire : *a*) le juge qui accueille la demande d'autorisation 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 procédure sommaire; *d*) le jugement consécutif au contrôle judiciaire n'est susceptible d'appel en Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci.

S.C.C. File No. 33981

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

THE ATTORNEY GENERAL OF CANADA
APPELLANT
(Respondent)

- and -

DOWNTOWN EASTSIDE SEX WORKERS UNITED AGAINST VIOLENCE SOCIETY and SHERYL KISELBACH
RESPONDENTS
(Appellants)

-and-

ATTORNEY GENERAL OF ONTARIO, COMMUNITY LEGAL ASSISTANCE SOCIETY, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, ECOJUSTICE CANADA, COALITION OF WEST COAST WOMEN'S LEGAL EDUCATION AND ACTION FUND (WEST COAST LEAF), JUSTICE FOR CHILDREN AND YOUTH AND ARCH DISABILITY LAW CENTRE, CONSEIL SCOLAIRE FRANCOPHONE DE LA COLOMBIE-BRITANNIQUE, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN CIVIL LIBERTIES ASSOCIATION, CANADIAN ASSOCIATION OF REFUGEE LAWYERS AND CANADIAN COUNCIL FOR REFUGEES, CANADIAN HIV/AIDS LEGAL NETWORK, HIV & AIDS LEGAL CLINIC ONTARIO AND POSITIVE LIVING SOCIETY OF BRITISH COLUMBIA
INTERVENERS

FACTUM OF THE INTERVENERS, THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS AND CANADIAN COUNCIL FOR REFUGEES

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)
