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Court No. 23813

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

BETWEEN

KWONG HUNG CHAN

Appellant (Claimant)

AND

THE MINISTER OF EMPLOYMENT AND IMMIGRATION

Respondent

AND

CANADIAN COUNCIL FOR REFUGEES

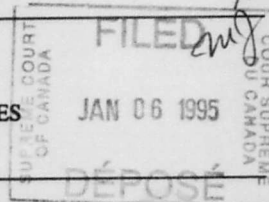
Intervener

AND

IMMIGRATION AND REFUGEE BOARD

Intervener

FACTUM OF THE INTERVENER,
CANADIAN COUNCIL FOR REFUGEES



RONALD SHACTER
Barrister and Solicitor
Parkdale Community Legal Services
165 Dufferin Street
Toronto, Ontario
M6K 1Y9

Tel. (416) 531-2411
Fax (416) 531-0885

Solicitor for the Intervener,
Canadian Council for Refugees

GOWLING, STRATHY & HENDERSON
Barristers and Solicitors
2600 - 160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel. (613) 232-1781
Fax (613) 563-9869

Ottawa Agents for Counsel
for the Intervener, Canadian
Council for Refugees

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M6K 1Y9

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Barristers and Solicitors
2600 - 160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel. (613) 232-1781
Fax (613) 563-9869

Ottawa Agents for Counsel
for the Intervener, Canadian
Council for Refugees

79
102

ROD HOLLOWAY, ESQ.
Legal Services Society
300 - 1140 West Pender Street
Vancouver, B.C.
V6E 4G1

Tel. (604) 660-4600
Fax (604) 775-0888

Counsel for the Appellant

MR. JOHN C. TAIT, Q.C.
Attorney General of Canada
Per: MS. DEIRDRE A. RICE
Vancouver Regional Office
Department of Justice
P.O. Box 1118
Vancouver, B.C.
V6E 3P9

Tel. (604) 666-2061
Fax (604) 775-5942

Counsel for the Respondent

GOWLING, STRATHY & HENDERSON
Barristers and Solicitors
2600 - 160 Elgin Street
Ottawa, Ontario
K1P 1C3

Ottawa Agents for Counsel for
the Intervener, Immigration and
Refugee Board

GOWLING, STRATHY & HENDERSON
Barristers and Solicitors
2600 - 160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel. (613) 232-1781
Fax (613) 563-9869

Ottawa Agents for Counsel
for the Appellant

MR. JOHN C. TAIT, Q.C.
Attorney General of Canada
Department of Justice
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Tel. (613) 941-1866
Fax (613) 957-8381

Ottawa Agent for Counsel
for the Respondent

INDEX

	Page No.
PART I - Statement of Facts	1-2
PART II - Points in Issue	2
PART III The Law:	
- Persecution and State Policy	2-8
- Political Opinion	8-11
- The Interpretation of Membership in a Particular Social Group	11-16
PART IV - Nature of Order Sought	16-17
PART V - List of Cases and Authorities	18-19

2. The C.C.R. adopts the statements of the appellant concerning the facts of the present case and the decisions of the Immigration and Refugee Board and the Federal Court of Appeal.

Appellant's Factum, paragraphs 1 through 14

10

PART II - Points in Issue

3. This intervention addresses the interpretation given by the majority of the Federal Court of Appeal relating to a) persecution, b) political opinion and c) "membership in a particular social group" found in s. 2(1) of the Immigration Act, 1976 as part of the definition of Convention refugee. It also addresses the application of the definition of these terms in this decision.

20

PART III - The Law

The Interpretation of Persecution

4. It is submitted that the majority decision of the Federal Court of Appeal in the present case relating to persecution is inconsistent with international law and the jurisprudence of this Honourable Court.

30

5. Domestic legislation such as the Immigration Act and in particular the definition of Convention refugee found therein is presumed to conform to international law and Canada's treaty obligations arising from it:

40

6. Thus,

...the legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.

Driedger on the Construction of Statutes, Ruth Sullivan, 3rd ed. (Toronto: Butterworths, 1994), at 330

Persecution: The Human Rights Perspective v. The End Justifies the Means

10 7. All three justices in Cheung and two of the three in Chan (Mr. Justice Heald and Mr. Justice Mahoney in dissent) found forced sterilization of parents who violated the Chinese population control policy to be persecution. However, the majority in Chan held that forced sterilization was a justifiable sanction for the breach of the valid state objective of population control.

Cheung v. M.E.I. [1993] 2 F.C. 314 at 323, 324, 325 (F.C.A.)

20 Chan v. M.E.I. (1993), 20 Imm. L.R. (2d) 181 at 186, 187, 195, 208, 210, 211 and 212 (F.C.A.)

20 8. This Honourable Court cited with approval the Cheung case in interpreting the notion of persecution, defining it as a breach of basic human rights which is "sustained or systemic." The Court arrived at this interpretation by identifying the intention of the drafters of the Convention Relating to the Status of Refugees as being the promotion of fundamental human rights without discrimination. The preamble of the Convention was examined in this process.

30 Ward v. Attorney General of Canada (1993), 20 Imm. L.R. (2d) 85 at 117, 118 (S.C.C.)

9. In dealing with the issue of state complicity as part of the definition of Convention refugee this Honourable Court in the same decision relied on the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

40 Ward, supra paragraph 9, at 103

10. This Handbook defines persecution in terms of "serious violations of human rights" and threats "to life or freedom." It also suggests that prosecution may amount to persecution where a law breaches accepted human rights standards. It refers to the principles found in international human rights instruments such as the International Covenants on Human Rights

which may appropriately be used as a "yardstick" in determining whether a law is persecutory.

Handbook, *supra* paragraph 9, sections 51, 56, 57, 59, 60

11. It was held in Cheung that punishment such as forced sterilization even under a law of
10 general application that is a) completely disproportionate to the objective of the law or b) a
violation of internationally recognized standards of human rights may constitute persecution.
Forced sterilization of women was found to be persecution, being a serious violation of the
basic right to security of the person and an example of "cruel, inhuman and degrading
treatment." The Court also held that the intent of the punishment need not be persecution.
Thus legal authority promoting a valid state policy such as population control cannot validate
20 such treatment.

Cheung, *supra* paragraph 7

Alfred v. M.E.I., unreported, Court file IMM-1466-93, April 7, 1994, at 5
(F.C.T.D.)

12. This Honourable Court considered the holding in Cheung that forced sterilization was
a violation of the fundamental right of reproductive control. The Cheung decision referred to
30 the Eve case which found such treatment if non-therapeutic and imposed on a mentally
retarded adult to be a serious intrusion on an individual's basic rights.

Ward, *supra* paragraph 8 at 119

E. (Mrs.) v. Eve [1986] 2 S.C.R. 388 at 431, 434

13. It has also been held that in the case of powerful mind-altering drugs a competent
adult's right to refuse medical treatment is protected by Section 7 of the Charter of Rights
and Freedoms and is not saved by Section 1. The forcible injection of such drugs was seen
40 to be one of the most intrusive medical procedures existing and a violation of the right to
security of the person.

Fleming v. Reid (1991), 4 O.R. (3d) 74 at 85, 87, 88, 91, 95, 96 (Ont. C.A.)

14. Besides finding various medical procedures to be a violation of basic human rights, in the refugee context as persecution and in other situations as a violation of the Charter, the courts have begun to point to Canadian international legal obligations. Thus in the case of a refugee claimant from Sri Lanka who had been physically mistreated by the police the International Covenant on Civil and Political Rights (I.C.C.P.R.) was considered. This instrument, ratified by Canada, prohibits cruel, inhuman or degrading punishment even in times of an officially proclaimed public emergency: the mistreatment in question was seen to be persecution.

Alfred, *supra* paragraph 11, at 5

I.C.C.P.R., articles 4 and 7, as found in Collection of International Instruments Concerning Refugees, 2nd ed. (Geneva: Office of the United Nations High Commissioner for Refugees, 1979), at 104-113

W. Schabas, International Human Rights Law and the Canadian Charter (Toronto: Carswell, 1991), at 166

15. The Federal Court of Appeal in Cheung found that forced sterilization of women who violated the Chinese population control policy was "cruel, inhuman and degrading treatment." Because the I.C.C.P.R. contains this same wording as the Universal Declaration of Human Rights referred to in Cheung, it is submitted that it is logical to conclude that involuntary sterilization in China may also properly be categorized as "cruel, inhuman and degrading treatment" and thus persecution, being in violation of Canada's international legal obligations pursuant to this Covenant.

Cheung, *supra* paragraph 7

16. This conclusion is consistent both with the approach taken by this Honourable Court in Ward in its interpretation of the meaning of persecution as well as the presumption that Canadian legislation conforms with international law including treaty obligations and the principles enshrined therein.

17. Similarly, in the U.S. it has been argued that reproductive self-determination is an internationally protected human right.

18. Reference has been made to the U.N. Human Rights Committee's interpretation of the I.C.C.P.R. (Article 23 (2)) which prohibits compulsion to achieve family planning policies:

10 [T]he right to found a family implies, in principle, the possibility to procreate and live together. When State parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory.

United Nations Human Rights Committee, General Comments, CCPR/C/21/Rev. 1/Add. 2 (1990), emphasis added, as found in The Center for Reproductive Law and Policy, submission dated September 13, 1993 to the U.S. Department of Justice, at 7

20 19. The following has also been noted:

The right to reproductive self-determination has also been recognized in the Convention on the Elimination of All Forms of Discrimination Against Women (the "Women's Convention"). G.A. Res. 34 U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/RES/34/180 (1979). This Convention, ratified in whole or in part by 118 nations, guarantees to men and women the right and ability to control reproduction and creates a strong legal basis for the obligation of state parties to address issues of reproductive health. Article 16 codifies the specific right to reproductive choice in terms of the right to conceive a child and the right to control if and when to conceive a child.

30 Finally it has been argued that the principles enshrined in the Proclamation of Teheran (U.N. Doc. A/Conf. 32/41 (1968)) which recognizes at Article 16 that "parents have a basic human right to determine freely and responsibly the number and spacing of their children" constitute customary international legal norms.

The Center for Reproductive Law and Policy, supra paragraph 18, at 4, 5, 6, 7, 8, 9 and 10

40 20. The recent caselaw of the Federal Court reflects both trends of analysis: that which allows the "end to justify the means" despite any resulting violation of basic human rights and that which examines the nature of the methods used by the state and finds them to be persecutory if they breach such rights.

21. The Federal Court of Appeal has with the exception of Chan adopted the latter approach which, it is submitted, is consistent with international law and the jurisprudence of this Honourable Court.

10 22. For example, the Court of Appeal has adopted the holding in Cheung that a law of general application may be persecutory and that one must examine both the intent and principal effect of such legislation.

Zolfagharkhani v. M.E.I. (1993), 20 Imm. L.R. (2d) 1 at 9, 10 (F.C.A.)

20 23. That Court in another case examined the means used by the state to enforce a valid state policy and considered them to be persecutory. While no reference was made to the I.C.C.P.R., the Court's finding was consistent with the view that there exist certain inalienable basic human rights (Articles 4 and 7). According to Mr. Justice Linden:

30 While the appellant had twice been arrested in Colombo in 1989 by the police and subjected to beating and detention, the panel held that these arrests were part of the Sri Lankan government's "perfectly legitimate investigations into criminal and/or terrorist authorities" by Tamil organizations. In my view, beatings of suspects can never be considered "perfectly legitimate investigations," however dangerous the suspects are thought to be...the state of emergency in Sri Lanka cannot justify the arbitrary arrest and detention as well as beating and torture of an innocent civilian at the hands of the very government from whom the claimant is supposed to be seeking safety...

Thirunavukkarasu v. M.E.I. (1993), 22 Imm. L.R. (2d) 241 at 247, 248 (F.C.A.)

24. In contrast are three decisions of the Trial Division where physical mistreatment by the authorities against the claimants was justified in terms of the state's right to take law enforcement measures aimed at the protection of the public.

40 Jebanayagam v. M.E.I., unreported, Court file IMM-5156-93, September 30, 1994, at 8 (F.C.T.D.)

Mewugiah v. M.E.I. (1993), 63 F.T.R. 230 at 231 (F.C.T.D.)

Brar v. M.E.I., unreported, Court file IMM-292-93, October 15, 1993, at 2 (F.C.T.D.)

25. The following was stated by Mr. Justice Muldoon:

Canada is not Sri Lanka. It would be presumptuous to apply and to purport to exact Canadian criteria of police conduct in Sri Lanka. If rough treatment by the Colombo police, acting on suspicions planted by those very folk whom they treat roughly, were to confer convention refugee status, a large number of Tamils could expect to be granted such status in Canada - a wholesale migration of population, but not really refugees (sic). Terrorists, in any country - so long as one is certain of the terrorist's identity as such - must be checked and suppressed in the name and security of innocent peace-loving persons whom terrorists put savagely at risk...

Jebanayagam, *supra* paragraph 24

26. To summarize, it is submitted that the finding of the majority of the Court of Appeal in Chan regarding the overriding nature of valid state policy with respect to acts of persecution or violations of basic human rights is anomalous when considered in relation to the previous and subsequent jurisprudence of that Court as well as the Ward decision of this Honourable Court. The latter referred to the centrality of the protection of fundamental human rights in the interpretation of Convention refugee. In addition Canada's international legal obligations require this focus.

Political Opinion

27. The majority in Chan rejected the ground of political opinion as a possible basis for his claim. According to Mr. Justice Heald:

In this case, I do not think that the evidence supports a finding that the local Chinese authorities believe that acceptance of the one child policy is integral to their *authority* and hence a breach of that policy will not be perceived as a challenge to their authority to govern. In conclusion, there is no evidence that the treatment in issue is motivated by anything other than *the breach of the one child policy*.

Chan, *supra* paragraph 7, at 195, 207

28. However, it is submitted that evidence was presented to the effect that the Chinese government did believe that conforming to the one child policy was integral to their authority:

10 In response to the growing uncertainty about the effectiveness of local family planning efforts, the prospects for eradicating traditional values about childrearing, and the likelihood of achieving the population targets in the Seventh Five-Year Plan, the central authorities launched a new policy initiative. In May 1986 they adopted and disseminated a new set of guidelines called Party Central Committee Document No. 13, which was said to clarify the provisions of Document No. 7 of April 1984...

In September two other direct quotations from Document No. 13 appeared in the national family planning journal:

20 Document No. 13 states that "Party committees and governments at all levels must attach importance to supervising departments of health, civil affairs, planning, finance, medicine, industry, and commerce, labor unions, Communist Youth Leagues, and women's associations and [must] take family planning work as one of their important tasks. They must furnish the necessary manpower, materials, and technical skills to reach the population control targets stipulated in the Seventh Five-Year Plan together with family planning departments." This requires that we take more initiative and perform the services well.

30 Document No. 13 states that "those areas and units which are trailing behind must adopt effective measures to catch up in their family planning work."

Case on Appeal, Volume 1, Exhibit 7, pp. 131, 132, emphasis added, excerpts from J.S. Aird, Slaughter of the Innocents: Coercive Birth Control in China (Washington: AEI Press, 1990)

40 29. Family planning in China is thus ultimately under state control:

Individual and family decisions about bearing children are regulated by the State, with rewards for those who cooperate with, and severe sanctions against those who deviate from, official guidelines. The central Government sets an annual nationwide goal for the number of authorized births, apportioned down to the local level and, ultimately, to each work unit...

Case on Appeal, Volume 1, Exhibit 7, p. 153, excerpt from U.S. Department of State, Country Reports on Human Rights Practices for 1990, report on China (Washington: U.S. Government, 1991)

10 30. An analogous case to Chan is that of Mr. Guo Chun Di, a Chinese citizen who made a claim for political asylum in the U.S. He was found to have established prima facie eligibility for asylum based on political opinion. The Chinese authorities had ordered his wife to be sterilized after the birth of their first child. After she escaped from their village residence in order to avoid such an operation the authorities demanded that Mr. Guo be sterilized at a local hospital. He then fled the village for the same reason as his wife and subsequently learned that government officials destroyed part of the house where he had lived with his wife.

20 Guo Chun Di v. Carroll and Milhollan, CV 93-1377-A, U.S. District Court for the Eastern District of Virginia, at 2, 3 and 34, January 14, 1994, per T.S. Ellis, U.S. District Judge

31. The following was held by the Court:

30 As the right to procreate, and therefore petitioner's expression of this right, is a fundamental right analogous to other fundamental rights that may support an asylum claim based on "persecution on the basis of political opinion," petitioner's opposition to the PRC's population control policies constitutes a "political opinion" within the meaning of § 1101(a)(42)(A)...

...an individual's views in opposition to a government's official policy on population control and family planning, especially when such policies involve coerced sterilization and abortion, are "political" within the meaning of 8 U.S.C. § 1101(a)(42)(A)...

40 There can be no question that petitioner has made an "overt manifestation" of his opposition to the PRC's "one couple one child" policy, and that petitioner has been persecuted for expressing this opposition. Petitioner and his wife openly expressed their opposition to the PRC's population control policies by refusing to comply with sterilization orders and by fleeing from their home village after receiving government sterilization notices...

Guo v. Carroll and Milhollan, *supra* paragraph 30, at 29, 30, 31 and 32

32. Similarly, it has been asserted that those violating the coercive Chinese population control policy should be seen as being subject to persecution on account of imputed political opinion:

10 There is substantial evidence that violation of the PRC coercive population control policy is regarded as an ideological crime, and that the harsh punitive and/or enforcement measures taken to enforce the policies are motivated at least in part by the desire to punish or deter political dissent. "To refuse to control fertility or to encourage others to refuse is sometimes treated as a crime against the state...Most married people of reproductive age in China must control their fertility to avoid being guilty of an ideological offense in the eyes of the government. Those who would rather not practice birth control find that they must do so, or at least pretend to, in order to avoid political reprisals." Judith Banister, *China's Changing Population 200* (Stanford 1987) (hereinafter "Banister").

20 INS Brief in Matter of Chu and Matter of Tsun, A 71 824 281 and A 71 824 320, at 19, 20, 28

33. It is submitted that this analysis is consistent with the notion of political opinion as adopted by this Honourable Court in Ward and which accepted Goodwin-Gill's definition as "any opinion on any matter in which the machinery of state, government, and policy may be engaged":

30 ...the political opinion at issue need not have been expressed outright. In many cases, the claimant is not even given the opportunity to articulate his or her beliefs, but these can be perceived from his or her actions. In such situations, the political opinion that constitutes the basis for the claimant's well-founded fear of persecution is said to be imputed to the claimant. The absence of expression in words may make it more difficult for the claimant to establish the relationship between that opinion and the feared persecution, but it does not preclude protection of the claimant.

40 Ward, *supra* paragraph 7, at 127

Membership in a Particular Social Group

34. It is submitted that the interpretation given to this term in Chan is unduly restrictive. This Honourable Court in Ward reviewed the relevant caselaw and doctrine concerning the interpretation of this ground for claiming refugee status: it rejected the view that "any

association bound by some common thread is included" and held that such interpretation must be guided by the objective of protecting basic human rights without discrimination. The Court found that the tests for determining whether a particular social group existed in a given situation and which were suggested in Matter of Acosta, Mayers and Cheung provided "a good working rule to achieve this result." One must fear persecution not for what one was doing but for what one "was in an immutable or fundamental way."

Ward, *supra* paragraph 7, at 116, 117, 118 and 121

35. The majority in Chan rejected the claim on the ground of membership in a particular social group, that of parents in China with more than one child who disagree with the government's sterilization policy, or in the words of Mr. Justice Heald with forced sterilization. The particular social group categories listed in Ward were examined. The majority found that the group proposed by counsel for Chan is not defined by an innate or unchangeable characteristic as a choice is involved in having children: the characteristic "makes a group of individuals what they are. It must exist independently of what they fight for..." The group cannot be "defined solely by the fact that its members face a particular form of persecutory treatment," or "merely by virtue of their common victimization as the objects of persecution." The majority also held that the group proposed by counsel for Chan was lacking a voluntary association by its members for reasons so fundamental to their dignity that they should not be required to abandon the association: the members must consciously decide to associate with one another and not merely choose to have a second child. The fear must derive from what the claimant was (a parent) in a fundamental way and not from what she or he did (violated a valid law).

Chan, *supra* paragraph 7, at 189, 190, 191, 192, 201, 205, 206

36. It is submitted that Mr. Justice Mahoney, dissenting in Chan, correctly identified the appellant's particular social group as being not, as Chan's counsel asserted, "parents in China with more than one child who do not agree with the government's sterilization policy" but rather "married men in China whose wives are faced with forced sterilization because they have had more than one child and who agree to be sterilized in place of the forced

sterilization of their wives." He referred to Cheung's particular social group as being "women in China who have had [more than] one child and are faced with forced sterilization because of this."

Chan, *supra* paragraph 7, at 219, 220

10 37. However, it is submitted that the definition of the latter group has been slightly
modified by the Ward decision of this Honourable Court wherein gender was found to be an
example of a particular social group based on an immutable characteristic. Thus women in
China who have had more than one child in violation of the population control policy might
be the more appropriate particular social group in Cheung, thus deleting "faced with forced
sterilization." Ms. Cheung was subject to persecution (forced sterilization) because of her
20 membership in this particular social group. It is submitted that the same reasoning may be
applied with reference to Trinidadian women subject to wife abuse, whom it was held in
Mayers may constitute a particular social group. It is submitted that the group would be
more accurately defined as Trinidadian women. Ms. Mayers was subject to persecution
because of her gender. Otherwise a circular type of reasoning results: Mayers feared
persecution because she is a Trinidadian woman subject to persecution. Being subject to
wife abuse or forced sterilization refers to the standard of proof as set out in Adjei to
30 establish a reasonable possibility of persecution or the well-foundedness of the fear and does
not belong in the analysis of the identification of the appropriate particular social group.

Ward, *supra* paragraph 8, at 121, 122

Cheung, *supra* paragraph 7, at 320, 321

Adjei v. M.E.I. (1989), 7 Imm. L.R. (2d) 169 at 172 (F.C.A.)

M.E.I. v. Mayers [1993] 1 F.C. 154 at 168, 169 (F.C.A.)

40 38. It is submitted that the underlying rationale in Mayers and Cheung for including the
persecution feared in the definition of particular social group was to prevent this category
from becoming too broad. However, the size of the group is not a relevant consideration:

...Once a person is subjected to a measure of such gravity that we consider it 'persecution,' that person is 'persecuted' in the sense of the Convention, irrespective of how many others are subjected to the same or similar measures.

A. Grahl-Madsen, The Status of Refugees of International Law (1966), Leyden: A.W. Sijthoff, at 213

10 Salibian v. M.E.I. (1990), 11 Imm. L.R. (2d) 165 at 173, 174 (F.C.A.)

39. It is therefore submitted that the majority in Chan was correct in rejecting the particular social group proposed by counsel for the appellant in that it was identified by the persecution (forced sterilization) that the members sought to avoid:

20 The definitive characteristics of a particular social group are those which mark the group for persecution and not the actual persecution itself. While the persecution suffered by an applicant in the past is relevant to the (sic) whether her fear of future persecution is well-founded and may, in some instances, make her identifiable to the persecutor as a member of the group, the characteristic which defines the group is generally separate and distinct from the persecution. For example, in the case of a woman who is subject to battering by her spouse and to whom the government has denied protection, it is not the fact that she has been battered in the past which marks her for future battering or upon which basis the state has denied its protection. The fact that she has been battered in the past is evidence that her fear of future battering is well-founded. However, the characteristic which identifies her for battering is her gender-not her past battering.

30

Nancy Kelly, Gender-Related Persecution: Assessing the Asylum Claims of Women, 26 Cornell International Law Journal (1993) 625 at 658, emphasis added and 654-657

Chan, *supra* paragraph 7 at 192, 201

40. However, it is also submitted that the particular social group in Chan identified by Mr. Justice Mahoney is one where the internal characteristics of the group (being a parent of two or more children) do "exist independently of the fact of persecution." Chan feared persecution because of this internal characteristic, just as Mayers did as a woman. There is a pre-existing common characteristic present in both cases.

Chan, *supra* paragraph 7, at 202

41. It is further submitted that the requirement imposed by the majority in Chan that there be a conscious act of association or decision to associate for a particular social group to exist is unfounded, and this for the following reasons:

- 10 i) the jurisprudential requirement is only that there be a common characteristic which is immutable or is one which the group members "should not be required to change because it is fundamental to their individual identities or consciences." No decision to associate is necessary. Thus the criteria of common immutable characteristic or one which one ought not be forced to abandon both apply to Chan and Cheung. As has been stated:

20 ...such persons may be subject to persecution for a characteristic that they are either without power to change (such as having a family that exceeds enforced birth quotas), or should not in good conscience be forced to change (such as having the capacity to bear additional children). See Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). As such, these persons should be considered subject to persecution on account of membership in a particular social group.

INS Brief in Matter of Chu and Matter of Tsun, *supra* paragraph 32 at 28

Matter of Acosta, Interim Decision 2986, U.S. Bd. of Imm. App., March 1, 1985 at 31

Cheung, *supra* paragraph 7, at 321, 322

- 30 ii) As mentioned previously, the tests listed by this Honourable Court in Ward setting out the criteria to define a particular social group provide merely "a good working rule" to ensure that the objective of protecting fundamental human rights is attained. In this respect the reasoning of Mr. Justice Mahoney in dissent in Chan is particularly relevant: what is necessary is the existence of a shared reason fundamental to one's dignity. Both Mr. Chan and his wife as well as Ms. Cheung and her spouse were exercising a basic human right to reproductive control. This is the proper focus in determining the existence of a particular social group. What they did (exercise this right) coincided with what they are in a fundamental way (parents). This is always the case when one resists or breaches a law of general or specific application which is persecutory: what is sanctioned is what one does, but that is not the end of the matter.
- 40

Ward, *supra* paragraph 8, at 116, 117, 118 and 121

Chan, *supra* paragraph 7, at 223

Zolfagharkhani, *supra* paragraph 22, at 9, 10

- iii) There is no requisite mental element or consciousness of association for members of a particular social group:

10 The essence of the reasoning of Pratte J.A. in *Musial*, as it appears to me, is rather that the mental element which is decisive for the existence of persecution is that of the government, not that of the refugee. In the statutory definition of a Convention refugee as a person who "by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion," the key words in this context are "persecution for," which have reference to the state of mind of the active party, the persecutor, rather than to that of the "persecuted." Probably all fanatic assassins in the world today have as their motivation political, religious, racial, nationalistic or group reasons, but
20 they cannot be refugees if the action which is taken against them by a government is not itself for similar reasons...

Zolfagharkhani, *supra* paragraph 22 at 8, emphasis added

- iv) Finally, in a very repressive and atomized society, it is possible for one to be persecuted without knowing that others in the group are subject to the same treatment. For example, writers as a group may be arrested, incarcerated and isolated from the rest of society and one another so that they may have made no decision to associate with their colleagues. Similarly, the first writer to be persecuted may have made no such conscious act to associate with others in exercising the basic human right of
30 expression.

PART IV - Nature of the Order Sought

- 40 42. The Intervener respectfully requests that this Appeal be allowed, so that the interpretation of persecution, political opinion and "membership in a particular social group"

as found in s. 2(1) of the Immigration Act as well as the application of the definition of these terms may be consistent with international law and the jurisprudence of this Honourable Court.

10 ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 3rd day of January, 1995.

Ronald Shacter
15 _____
Ronald Shacter

20 Counsel for the Intervener, Canadian Council
for Refugees

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APPENDIX "A": LIST OF CASES

		Page
	1. <u>Adjei v. M.E.I.</u> (1989), 7 Imm. L.R. (2d) 169, [1989] 2 F.C. 680, 57 D.L.R. (4th) 153 (F.C.A.)	13
10	2. <u>Alfred v. M.E.I.</u> , unreported, Court file Imm-1466-93, April 7, 1994 (F.C.T.D.)	4,5
	3. <u>Brar v. M.E.I.</u> , unreported, Court file Imm-292-93, October 15, 1993 (F.C.T.D.)	7
	4. <u>Chan v. M.E.I.</u> (1993), 20 Imm. L.R. (2d) 181, [1993] 3 F.C. 675, 156 N.R. 279 (F.C.A.)	3, 8, 12, 14, 15
	5. <u>Cheung v. M.E.I.</u> [1993] 2 F.C. 314, 102 D.L.R. (4th) 214 (F.C.A.)	3, 4, 5, 13, 15
20	6. <u>E. (Mrs.) v. Eve</u> [1986] 2 S.C.R. 388, 31 D.L.R. (4th) 1	4
	7. <u>Fleming v. Reid</u> (1991), 4 O.R. (3d) 74 (Ont. C.A.)	4
	8. <u>Guo v. Carroll and Millhollan</u> , CV93-1377-A, U.S. District Court for the Eastern District of Virginia, January 14, 1994	10
	9. <u>Jebanayagam v. M.E.I.</u> , unreported, Court file IMM-5156-93, September 30, 1994 (F.C.T.D.)	7, 8
30	10. <u>Matter of Acosta</u> , Interim Decision 2986, U.S. Bd. of Imm. App., March 1, 1985	15
	11. <u>M.E.I. v. Mayers</u> [1993] 1 F.C. 154, 97 D.L.R. (4th) 729 (F.C.A.)	13
	12. <u>Murugiah v. M.E.I.</u> (1993), 63 F.T.R. 230 (F.C.T.D.)	7
	13. <u>Salibian v. M.E.I.</u> (1990), 11 Imm. L.R. (2d) 165, 73 D.L.R. (4th) 551, [1990] 3 F.C. 250 (F.C.A.)	13, 14
40	14. <u>Thirunavukkarasu v. M.E.I.</u> (1993), 22 Imm. L.R. (2d) 241 (F.C.A.)	7
	15. <u>Ward v. Attorney General of Canada</u> (1993), 20 Imm. L.R. (2d) 85, [1993] 2 S.C.R. 689, 103 D.L.R. (4th) 1	3, 4, 11, 13, 15
	16. <u>Zolfagharkhani v. M.E.I.</u> (1993), 20 Imm. L.R. (2d) 1, 155 N.R. 311 (F.C.A.)	7, 15, 16

APPENDIX "B": LIST OF AUTHORITIES

		Page
10	1. <u>Center for Reproductive Law and Policy</u> , submission dated September 13, 1993 to the U.S. Department of Justice	6
	2. <u>Convention on the Elimination of All Forms of Discrimination Against Women</u> , Supplement No. 46 (A/34/46), p. 193, [1982] C.T.S. 31, as found in Schabas, W., <u>International Human Rights Law and the Canadian Charter</u> at 243	6
20	3. <u>Driedger on the Construction of Statutes</u> , Ruth Sullivan, 3rd ed. (Toronto: Butterworths, 1994)	2,3
	4. Grahl-Madsen, Atle, <u>The Status of Refugees in International Law</u> , Vol. 1 (A.W. Sijthoff-Leyden, 1966)	13,14
	5. <u>International Covenant on Civil and Political Rights</u> , U.N. General Assembly Resolution 2200A(XXI), December 16, 1966, as found in <u>Collection of International Instruments Concerning Refugees</u> , 2nd ed. (Geneva: Office of the United Nations High Commissioner for Refugees, 1988) at 104	5, 6
30	6. Immigration and Naturalization Services Brief in <u>Matter of Chu and Matter of Tsun</u> , A 71 824 281 and A 71 824 320	11, 15
	7. Kelly, Nancy, <u>Gender-Related Persecution: Assessing the Asylum Claims of Women</u> , 26 Cornell International Law Journal (1993) 625	14
	8. <u>Proclamation of Teheran</u> (U.N. Doc. A/Conf. 32/41 (1968)) as found in <u>Collection of International Instruments Concerning Refugees</u> , 2nd ed. at 139	6
40	9. Schabas, W., <u>International Human Rights Law and the Canadian Charter</u> (Toronto: Carswell, 1991)	5
	10. <u>United Nations Handbook of Procedures and Criteria for Determining Refugee Status</u>	3,4