

Federal Court



Cour fédérale

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March 23, 2009

REGISTERED MAIL

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WeirFoulds LLP
MAR 31 2009
RECEIVED

Dear Sir/Madam:

RE: TOUSSAINT/GUNTHER/KRENA v. MCI
Court File No.: IMM-326-09/IMM-3045-08/IMM-2926-08

Please find enclosed the Order of Prothonotary Aalto, dated March 18, 2009.

Yours truly,

Rochelle Dickenson
Registry Officer
Case Management Team (Toronto)

Encl.
P.D. SENT BY FACSMILE 19-MAR-2009

Federal Court



Cour fédérale

Date: 20090318

Dockets: IMM-2926-08
IMM-3045-08
IMM-326-09

Toronto, Ontario, March 18, 2009

PRESENT: Kevin R. Aalto, Esquire, Prothonotary

BETWEEN:

Docket: IMM-2926-08

**CHANTAL BAVUNU KRENA, KETSIA KRENA
and JODICK MOUDIANDAMBU**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

AND BETWEEN:

Docket: IMM-3045-08

**JANOS ROBERT GUNTHER, JANOSNE (MARIA) GUNTHER,
ANITA GUNTHER and MARIA GUNTHER**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND
THE ATTORNEY GENERAL OF CANADA**

Respondents

AND BETWEEN:

Docket: IMM-326-09

NELL TOUSSAINT

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER

UPON MOTION on behalf of the Proposed Intervener, Low Income Families Together (LIFT), filed February 16, 2009, pursuant to Rule 109 of the *Federal Courts Rules* for an Order granting leave to:

1. be added as an intervener in this judicial review;
2. file an additional affidavit of Anita Prasad, Secretary of the Board of Directors for LIFT and as an Exhibit the results and final report of the survey conducted by LIFT;
3. file written submissions before the hearing of the judicial review;
4. to participate in oral argument; and
5. such further Order(s) as this Court deems just.

AND UPON MOTION on behalf of the Proposed Intervener, Charter Committee on Poverty Issues (CCPI), filed February 20, 2009, pursuant to Rule 109 of the *Federal Courts Rules* for an order:

1. Granting leave to intervene;
2. Granting leave to file the affidavit of Bonnie Morton;
3. Granting leave to file a factum;
4. Granting leave to make oral argument; and
5. Such further or other orders as this Honourable Court may deem just.

AND UPON reading the Motion Records of the Proposed Interveners, the Respondent's Written Submissions, the Motion Record of the Applicants and upon hearing counsel for the parties and for the Proposed Interveners;

Both LIFT and CCPI seek to intervene in these proceedings on the ground that the issues raised in the proceedings raise issues of public interest. Both LIFT and CCPI have a long history of interventions in court proceedings affecting low income individuals and families. The issues in these proceedings deal with the waiver of fees to Applicants who filed Humanitarian and Compassionate Applications (H&C Applications) under *Immigration and Refugee Protection Act and Regulations* (IRPA).

The proposed intervention by CCPI will be confined to issues arising out of the requirement to pay fees to process H&C Applications for permanent residence pursuant to IRPA and the impact of such fees on persons living in poverty. Similarly, LIFT's proposed intervention will relate more specifically to the impact of the failure to waive fees on the best interests of children. Both Interveners will be raising arguments relating to s. 7 and 15 of the *Charter* as well as other arguments relating to patterns of discrimination and inequality, public policy concerns and competing demands on resources.

These motions are opposed by the Respondent who argues that to allow these Interveners to have standing will put the Court in the legislative role which has been reserved for Parliament. They also argue that it is duplicative for two Interveners to be permitted to intervene as they appear to raise similar arguments.

In my view, based on the very helpful submissions of counsel for the Interveners, the Applicant and counsel for the Respondent, this is one of those unique cases that raise issues of public policy, access to justice and discrimination and inequality that the Court will benefit from the participation of these organizations. As was noted in the Supreme Court of Canada in *Reference re: Workers Compensation Act* [1989] 2 SCR 335:

... public interest organizations are, as they should be, frequently granted intervener status. The views of interveners on issues of public importance frequently provide great assistance to the Courts.

The factors which are frequently considered on motions such as this are enumerated in *CUPE v. Canadian Airlines Limited* [2000] FCJ No. 220 at para. 8 wherein Mr. Justice Noël summarized the factors as follows:

1. Is the proposed intervener directly affected by the outcome?
2. Does there exist a justiciable issue and a veritable public interest?
3. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
4. Is the position of the proposed intervener adequately defended by one of the parties to the case?
5. Are the interests of justice better served by the intervention of the proposed third party?
6. Can the Court hear and decide the cause on its merits without the proposed intervener?

I am satisfied that both proposed Interveners meet either all of the tests or substantially all of the tests. It has recently been held by Justice Mosley of this Court in *Khadar v. Attorney General* 2008 FC 807 at para. 42, that not all of the *CUPE* factors must be present or weigh in favour of the intervention before the Court may grant leave.

In my view, the issues raised in this proceeding and the participation of the proposed Interveners will not infringe on the role of Parliament. These types of issues frequently come before the Court for resolution. On matters of important public policy, Interveners such as LIFT and CCPI are precisely the type of parties who are able to assist the Court in dealing with the myriad of social policy and Charter issues which are raised. Further, based on the submissions of the parties it is my view that there will not be overlap, or significant overlap, between the proposed arguments of either CCPI or LIFT. From the submissions of LIFT it is apparent that they focus directly on the rights of children while CCPI is focused on the requirement of the payment of fees for H&C Applications

more generally. The positions which they will put forward will not replicate those of the Applicants. Thus, on balance, the proposed Interveners will be of assistance to the Court on these matters. Thus, both of the proposed Interveners, LIFT and CCPI, are granted standing to intervene in these proceedings on the terms set out below.

THIS COURT ORDERS that

1. Low Income Families Together (LIFT) and the Charter Committee on Poverty Issues (CCPI) are hereby granted standing to intervene in these proceedings.
2. The participation of CCPI is limited to the filing of a factum and oral argument at the hearing.
3. The participation of LIFT is limited to the filing of one affidavit, the filing of a factum and oral argument at the hearing.
4. The deponent of the affidavit filed by LIFT shall be subject to cross-examination if requested by the Respondent.
5. Neither LIFT nor CCPI shall seek costs of their respective participation in these proceedings and shall not be subject to a costs award.

6. Neither LIFT nor CCPI shall have a right of appeal from any decision arising from the hearing of these proceedings except as may be exercised by the Applicants.

7. Should further directions regarding the participation of LIFT and CCPI be required, the parties and the Interveners may contact the Court to arrange a case conference.

“Kevin R. Aalto”

Prothonotary