

Federal Court of Appeal



CANADA

Cour d'appel fédérale

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SUBJECT / OBJET : A-408-09 / Neil Toussaint v. Minister of Citizenship and Immigration

Order of the Court (Trudel, J.A.) dated February 18, 2010

<p><u>FROM / EXPÉDITEUR</u> : Maria Jocée Montpetit</p> <p>Telephone / Téléphone : 613-996-6795</p> <p>Facsimile / Télécopieur : 613-952-7226</p>	<p><u>DATE</u> : February 18, 2010</p> <p><u>TIME / HEURE</u> : 1:54 PM</p> <p>Total number of pages (including this page) / Nombre de pages (incluant cette page) : 8</p>
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Federal Court of Appeal



Cour d'appel fédérale

Date: 20100218

Docket: A-408-09

Ottawa, Ontario, February 18, 2010

Present: TRUDEL J.A.

BETWEEN:

NELL TOUSSAINT

Appellant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER

UPON motion by the Charter Committee on Poverty Issues (CCPI) for an order granting it leave to intervene in this appeal, as it did in the Court below;

AND UPON motion by the appellant to determine the contents of the Appeal Book;

AND UPON reading the written representations of the parties and proposed intervener and the transcript of the hearing at the Federal Court;

IT IS HEREBY ORDERED:**On the motion for leave to intervene**

1. CCPI is granted leave to intervene in this appeal, with the following limited rights:

- a) CCPI is entitled to receive all materials filed in this appeal;
- b) CCPI's intervention shall be limited to the following grounds of appeal, as found in the Amended Notice of Appeal:

2. ~~the learned application judge erred in failing to find that the absolute~~
procedural prerequisite of paying processing fees pursuant to the said provisions of the Regulation, which prevents a substantive decision under section 25 of the *IRPA* from being made for an exemption from any applicable criteria or obligation of the Act or Regulation, for an individual in a class too poor to procure the processing fees:

...
b) ~~is~~ *ultra vires* section 25 in that the interpretation of section 25 must be consistent with, and informed by, international law obligations as set out in, *inter alia*, *Baker, Hape and DeGuzman* and *Charter* values and interests under sections 7 and 15 of the *Charter*, and

c) is unconstitutional as procedurally and substantively violating section 7 as well as section 15 of the *Charter* and to that extent is of no force or effect.

...

5. the learned application judge erred in failing to consider and to find that the effective denial of access to a hearing provided for by law under section 25(1) of *IRPA*, as a result of the imposition of an unaffordable fee, is not in accordance with the principles of fundamental justice and is inconsistent with section 2(e) of the *Canadian Bill of Rights*, the Rule of Law, and the common law constitutional right of access to administrative justice; she erred in restricting the application of the Rule of Law to the courts and concluding that it cannot be applied to access to and determinations under administrative justice and in particular to the humanitarian and compassionate review under section 25(1);
6. the learned application judge erred in law in holding that the said fee requirements of the Regulation were established by Parliament and that “this was a legitimate policy decision that may not lend itself to a review under s. 15 of the “*Charter*”;
7. ...
8. ...

9. ...
 10. the learned application judge erred in law in concluding that the social condition of receipt of social assistance is not an analogous ground of discrimination under section 15 of the *Charter*, contrary to the decision of the Court of Appeal for Ontario in *Falkiner*, and contrary to the extensive evidence in the Record before the court, none of which was referred to by the learned judge on this point;
 11. the learned application judge erred in law in holding that the social condition of poverty is not an analogous ground of discrimination under section 15 of the *Charter*, contrary to the extensive evidence in the Record before the court, none of which was referred to by the learned judge on this point;
 12. ...
 13. the learned application judge erred in law in her understanding of “immutability” as precluding the recognition of grounds of discrimination linked to personal characteristics of disadvantage which the government may have a legitimate interest in alleviating, such as poverty or certain types of disability;
2. CCPI shall serve and file its memorandum of fact and law, not to exceed 15 pages, five days after service and filing of its memorandum by the respondent.

3. CCPI shall be entitled to address the Court at the hearing of this appeal solely on the issues stated above. The time for the argument of counsel for CCPI shall be determined by the panel hearing the appeal, but counsel shall be prepared to limit oral submissions to not more than 15 minutes.
4. The style of cause shall be changed accordingly and hereafter, all documents shall be filed under the amended style of cause:

BETWEEN:**NELL TOUSSAINT****Appellant****and****MINISTER OF CITIZENSHIP AND IMMIGRATION****Respondent****and****CHARTER COMMITTEE ON POVERTY ISSUES****Intervener****On the motion to determine the contents of the appeal book**

1. From the principle of Rule 343 stating that the parties shall include in an appeal book only such documents, exhibits and transcripts as are required to dispose of the issues on appeal, the appeal book shall contain:

1. A table of contents describing each document

2. For ease of reference, a sub-table of contents preceding those documents that include themselves many documents or exhibits

And, as found at paragraph 20 of the respondent's motion record:

3. The Notice of Appeal
4. The September 5th 2009 Order and reasons therefore of Madam Justice Snider in Toussaint
5. The Certified Tribunal Record in Toussaint
6. The Applicant's application record in Toussaint (excluding the Applicant's Memorandum of Argument)
7. Affidavit of Geraldine Sadoway
8. Affidavit of Mary Tatham
9. Affidavit of Ron Goldman
10. Affidavit of Caroline Watson
11. Affidavit of Nell Toussaint (September 2008)
12. Affidavit of Josephine Grey
13. Affidavit of Jeffrey Reitz
14. Affidavit of Ernia Lightman
15. Affidavit of Bruce Porter
16. Affidavit of John Powell
17. The transcript of the examination for discovery of Marlene Patrick
18. Government's answers to undertakings
19. Affidavit of Nell Toussaint (April 2009)

20. Supplementary affidavit of John Powell
21. Affidavit of Marlene Patrick
22. Affidavit of Martha Justus
23. Affidavit of Louise Wanczycki
24. Affidavit of Josephine Siskos
25. Reitz cross-examination transcript and exhibits thereto
26. Toussaint cross-examination transcript and exhibits thereto
27. Powell cross-examination transcript
28. Wanczycki cross-examination transcript and exhibits thereto
29. Justus cross-examination transcript and exhibits thereto
30. Patrick cross-examination transcript and exhibits thereto
31. All orders of This Honourable Court concerning the conduct of the appeal that have been made up to the point that the Appeal Book is prepared
32. Certificate of Completeness of the Appeal Book

"Johanne Trudel"

J.A.