

CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Motion by respondents to strike applicants Canadian Council for Refugees (CCR), Amnesty International (Amnesty), Canadian Council of Churches (CCC) (Organizations) as parties — Underlying issue application for leave, judicial review of decision by Canada Border Services Agency officer finding that applicants, mother and children (Family), ineligible for referral to Refugee Protection Division (RPD) under *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), s. 101(1)(e), *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), s. 159.3 — Application challenging constitutionality of these provisions, ongoing designation of United States (U.S.) as “Safe Third Country” (STC) under Act, Regulations — F.C. order staying return of Family to U.S. pending determination of application herein — Respondents arguing, *inter alia*, that present motion not motion to strike under aegis of *Federal Courts Rules*, SOR/98-106 (Rules), r. 221, but rather motion to remove Organizations as parties pursuant to Rules, r. 369, Act, s. 18.1(1) — Also invoking Court’s inherent jurisdiction to control its process, as well as Rules, r. 104(1)(a), whereby Court may remove improper or unnecessary party from proceeding — Organizations characterizing respondents’ request as “motion to strike” governed by Federal Court of Appeal’s case law in *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557, *Apotex Inc v. Canada (Governor in Council)*, 2007 FCA 374, following *David Bull Laboratories (Canada) Inc v. Pharmacia Inc*, [1995] 1 F.C. 588(FCA) (*David Bull*) — Main issues whether Organizations should be granted public interest standing — Court not persuaded that Rules, r. 104(1)(a) permitting Court to simply disregard *David Bull* cases addressing preliminary determinations of standing in applications for judicial review — Respondents actually asking Court to exercise its discretion to finally determine question of public interest standing at this preliminary stage of application — Court having all information required to finally determine whether Organizations should be granted public interest standing — Court applying three-part test for determining public interest standing in *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 S.C.R. 524 — Application herein raising substantial, important constitutional issues — Organizations having constituents or stakeholders who are impacted by subject-matter challenged in application — Having real stake, genuine interest in issues raised in application — Motion turning on third part of test, namely whether litigation, with Organizations participating as public interest parties, reasonable, effective way to litigate serious justiciable issues raised in application — Organizations uniquely situated to assist Court in appreciating broader effects of its potential findings — Court benefitting from participation of Organizations — Organizations’ participation furthering aims of access to justice — Refugee claimants ordinarily cannot undertake major constitutional challenges alone — Organizations granted public interest standing — Motion denied.

CANADIAN COUNCIL FOR REFUGEES V. CANADA (IMMIGRATION, REFUGEES AND CITIZENSHIP) (IMM-2977-17, 2017 FC 1131, Diner J., order dated December 11, 2017, 25 pp.)