

Federal Court



Cour fédérale

Date: 20181107

Docket: T-1590-17

Citation: 2018 FC 1121

Ottawa, Ontario, November 7, 2018

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

HELMUT OBERLANDER

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

and

**LEAGUE FOR HUMAN RIGHTS OF B'NAI
BRITH CANADA**

Intervener

FINAL JUDGMENT

WHEREAS the Court's Judgment of September 27, 2018, was stayed to permit the parties to file representations with respect to the certification of a serious question of general

importance and a request to certify the question as provided in s 22.2(d) of the *Citizenship Act*, RSC 1985, c C-29;

AND WHEREAS the Applicant has asked for certification of nine (9) questions on the topics of standard of review, the limits of the “significant contribution” test, the content of procedural fairness, the nature of the Minister’s report and the identity of the members of the Governor in Council who made the decision under review;

AND WHEREAS the test for certification is that the question must, as found in *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15-16:

1. be determinative of the matter; and
2. transcend the interests of the immediate parties to the litigation and contemplate issues of broad significance or general application.

AND WHEREAS the jurisprudence interpreting the certification test in s 74(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, is application to that same legal test in the *Citizenship Act*;

AND WHEREAS the Court is mindful that whether a question is certified determines rights of appeal;

AND WHEREAS the questions regarding standard of review are not determinative, are contextual leading to no generic or broad approach or have been settled law and/or agreed to by the parties;

AND WHEREAS the question of the limits of the significant contribution test has been decided and in the present context is highly fact driven;

AND WHEREAS the question of procedural fairness and “prosecutor’s brief” are also highly fact driven, do not transcend the interests of the parties and are settled law. Likewise the “Star Chamber” issue of identity of members of the Governor in Council is not dispositive of the judicial review;

AND WHEREAS the remaining questions posed are likewise not dispositive and/or raise issues already the subject of binding authority and/or raise factual matters which do not transcend the interests of the parties;

AND WHEREAS the Court cannot find a “serious question of general importance” to be certified nor can it see how reformulation of any of the proposed questions would meet that threshold.

THIS COURT CONCLUDES AS FOLLOWS:

1. The stay is lifted and the Court confirms that the judicial review is dismissed with costs to the Respondent, for the reasons set forth in the Reasons for Judgment of September 27, 2018.
2. There is no question to be certified.

“Michael L. Phelan”

Judge