Federal Court of Appeal | Cour d'appel fédérale

Date: 20250715

Docket: A-348-24

Citation: 2025 FCA 132

Present: **STRATAS J.A.**

BETWEEN:

MD MILON TALUKDER

Appellant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 15, 2025.

REASONS FOR ORDER BY: STRATAS J.A.

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REASONS FOR ORDER

STRATAS J.A.

[1] The Canadian Association of Refugee Lawyers and the Canadian Council for Refugees each move for leave to intervene in this appeal from the Federal Court: 2024 FC 1489 (*per* Brown J.).

[2] The Federal Court dismissed the appellant's application for judicial review from a decision of the Immigration Division of the Immigration and Refugee Board. The Immigration Division decided that the appellant was inadmissible to Canada. It found there were reasonable grounds to believe that the appellant belonged to an organization that has engaged in terrorism.

[3] The Minister, respondent in the appeal, opposes the intervention motions.

[4] For the following reasons, I will dismiss the motions.

[5] First a few background words about interventions. Some—not the proposed interveners here—think we are like some other courts that just about always grant intervener motions. Those courts welcome just about anyone into a case and let them raise just about anything loosely or remotely connected to the case, often with little legal content. That is not how we roll.

[6] We focus on the legal issues raised by the parties or those issues we think are necessary to decide the parties' case—not issues that others think should have been raised—and ask whether a proposed intervener's presence will advance our work. A narrow view? Perhaps, at least in the eyes of some, particularly the louder, more partisan voices in the intervener community. But we are mindful that cases belong to the parties who often have sacrificed so much to get them ready for hearing, not late-arriving special interest groups and other outsiders whose agendas might be different from the parties and the Court.

[7] We are also a court of law that applies governing law, not policy views, less still our inclinations and feelings. Here, the governing law is Rule 109 of the *Federal Courts Rules*, S.O.R./98-106 and its associated case law: see most recently, *Canada v. DAC Investment Holdings Inc.*, 2025 FCA 37; *Le-Vel Brands, LLC v. Canada (Attorney General)*, 2023 FCA 66; *Right to Life Association of Toronto and Area v. Canada (Employment, Workforce and Labour)*, 2022 FCA 67; *Canada (Citizenship and Immigration) v. Canadian Council for Refugees*, 2021 FCA 13.

[8] Here, the proposed interveners are well-represented, quality organizations. They have done their best to show why their intervention is warranted and why they meet the relevant tests. Nevertheless, they have fallen short of the mark.

[9] The Minister submits that many of the interveners' proposed submissions in the appeal either add new issues into the appeal or largely repeat the appellant's arguments, against Rule 109 and the case law. I agree with the Minister.

[10] In intervention motions like this, the first step is to identify the arguments and issues in the appeal. This being an immigration appeal, we must begin with a little more background.

[11] For an appeal to be brought in this Court, the Federal Court must first state a question of serious importance: *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 74(*d*). The appeal, however, is not restricted to that question. An appellant can raise all issues that might affect the result: *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1

S.C.R. 982 at para. 25; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 F.C.R. 344 at para. 50.

[12] But that does not mean that all issues anyone can possibly think of are live. Only the issues the appellant raises in the notice of appeal are in play.

[13] Here, the notice of appeal raises only two issues.

[14] The first issue appears in the question the Federal Court (*per* Brown J.) certified:

> To the extent an organization's "specific intent" is required to support findings under s. 34(1)(c) and s. 34(1)(f) of *IRPA* that the organization is engaging, has engaged, or will engage in acts of terrorism, is the legal and analytical approach applied by the Immigration Division in this case reasonable and if not must the Applicant's alternative proposal be followed?

[15] The Federal Court certified this question because of conflicting jurisprudence on the level of the "specific intent" needed to establish an organization's intention to engage in terrorism.

[16] The second issue appears in a second question the appellant poses in the notice of appeal: whether "international law, and in particular, the *1951 Convention relating to the Status of Refugees* [28 July 1951, 189 UNTS 137, Can TS 1969 No. 6], apply to or constrain the interpretation of subsection 34(1) of the *Immigration and Refugee Protection Act* broadly, not just to paragraphs 34(1)(d) and 34(1)(a)".

[17] On its face, this issue would appear to involve general submissions on international law in all its breadth and detail, and on how all of that applies to subsection 34(1) of the *Immigration and Refugee Protection Act*. Perhaps that is what attracted the proposed intervenors to this case.

[18] But is this case about that broad issue? No, it is not.

[19] No doubt, the notice of appeal should have specified, with particularity, what portions of international law bear on the issue. This would have fulfilled the purpose of the notice of appeal, which is to give the respondent and others, including potential interveners, notice of the issues raised in the appeal.

[20] But vague language in a notice of appeal must be construed in light of the entire notice of appeal and the reasons and judgment that prompted it. Later, that vague language can be further construed with the benefit of the appellant's memorandum of fact and law. See *Canada (Attorney General) v. Canadian Doctors for Refugee Care*, 2015 FCA 34 at para. 5; *Northback Holdings Corporation v. Canada (Environment and Climate Change)*, 2025 FCA 31 at para. 15 and cases cited therein.

[21] In this case, after a review of these sources, the central legal issue in this appeal is the proper analytical approach for the heightened intent requirement for organizations alleged to have engaged in terrorist acts.

[22] As the existing parties to the appeal appreciate, international law will bear on this issue. The Court is also aware of section 3 of the *Immigration and Refugee Protection Act*, which makes certain international law and international instruments highly relevant in issues, particularly statutory interpretation issues, arising under the Act. Also front of mind is the Supreme Court's recent guidance on how international law applies in cases like this: *Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303.

[23] But this appeal will not be an opportunity for the Court to hold an international law colloquium, a roving commission of inquiry, or a graduate seminar into how international law bears upon general issues arising under the *Immigration and Refugee Protection Act*. Instead, this appeal will be a focused and practical examination by a court of law into the "specific intent" question above. Only the international law helping to answer that question matters.

[24] Both interveners suggest that this Court will need help on the relevance of international law to the interpretation of the *Immigration and Refugee Protection Act*. No it will not, at least to the extent they suggest.

[25] The Court has regard for the proposed interveners as experts in immigration and the international law that bears on it. But, in this case, the Court is not persuaded that the proposed interveners will be useful to the actual, real issues in this appeal, beyond duplicating the appellant's submissions. They have not met the all-important requirement of "usefulness": see the case law at para. 7, above.

[26] Without commenting at all on the correctness or otherwise of the submissions the appellant makes in its memorandum, it is well-researched, extremely detailed and comprehensive. It very much covers the waterfront and beyond, as far as the issues relevant to this case as defined in the notice of appeal, properly construed, are concerned. The proposed interveners have not persuaded the Court that their help is needed.

[27] Both interveners fail to restrict themselves on the central legal issue in this case and, rather, make submissions relevant to issues not before us. Thus, in some respects, the submissions are unnecessary and verge into new issues. It is not open to interveners—strangers to the proceeding—to add to those issues. Interveners must remember that they are guests at a table that has already been set.

[28] This Court once put it this way:

> [I]nterveners are guests at a table already set with the food already out on the table. Interveners can comment from their perspective on what they see, smell and taste. They cannot otherwise add food to the table in any way.
>
> To allow them to do more is to alter the proceedings that those directly affected—the applicants and the respondents—have cast and litigated under for months, with every potential for procedural and substantive unfairness.

(*Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 174, 414 D.L.R. (4th) 373 at paras. 55-56; see also *Right to Life Association*, above, at para. 14.) If interveners want to raise issues of interest to them, they must bring their own cases as parties, with all that that entails, including legal expense and potential costs liability.

[29] Often when interveners go beyond the defined issues in an appeal, recharacterize those issues, or raise new issues, they start citing fresh evidence—evidence not admitted below and not properly in the evidentiary record on appeal—to set up or influence those issues. This seems to have happened here: the Canadian Council for Refugees cites government websites, academic articles, Internet blogs and other reports—matters not in evidence—to raise processing times and grant-rates of matters such as Ministerial relief.

[30] The two interveners significantly overlap with each other and, to some extent, with the appellant: for example, on the issue of the dual purpose of the relevant statutory provision, compare paras. 30-31 of the appellant's memorandum with paras. 4, 30-35 and 36-42 of the Canadian Association of Refugee Lawyers' memorandum and para. 11(e) of the Canadian Council for Refugees' memorandum; on Canada's international obligations imposing constraints on the interpretation of ss. 34(1)(c) and (f) of the *Immigration and Refugee Protection Act*, compare paras. 41 and 46-49 of the appellant's memorandum with paras. 4(i) and 16 of the Canadian Association of Refugee Lawyers' memorandum and para. 19 of the Canadian Council for Refugees' memorandum; on compliance with the principle of non-refoulement, compare para. 45 of the appellant's memorandum with paras. 4(iii) and 43 of the Canadian Association of Refugee Lawyers' memorandum and para. 20 of the Canadian Council for Refugees' memorandum; on the practical consequences of inadmissibility, compare paras. 27 and 47-48 of the appellant's memorandum with paras. 46-48 of the Canadian Association of Refugee Lawyers' memorandum and paras. 34-44 of the Canadian Council for Refugees' memorandum.

[31] As well, the appearance of fairness of the hearing matters. Admitting both interveners on similar issues to those the appellant raises might mean that the Court will receive the same submission on international law from one side of the courtroom up to three times, twice from parties admitted into the proceedings by the Court. Although three is not bad—the figure in some other courts can reach into double digits—this Court tries in its intervention decisions to avoid the appearance of a court-sanctioned gang-up on one side of the courtroom: *Zaric v. Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 36 at para. 12; *Teksavvy Solutions Inc. v. Bell Media Inc.*, 2020 FCA 108 at para. 11; *Right to Life Association*, at para. 16.

[32] Finally, this appeal is ready for hearing. All the filings are complete. If the proposed interveners are admitted into the appeal, they will each file memoranda and the respondent will need to file a responding memorandum. All of this will delay the hearing of the appeal.

[33] This is relevant under Rule 3 of the *Federal Courts Rules*. Those who are "[k]een for their important [and useful] viewpoint to be heard" tend to "jump off the starting blocks when they hear the starter's pistol": *Canadian Doctors for Refugee Care*, at para. 28. That did not happen here. The existence of the appeal and the issues in it were known from the date of the filing of the notice of appeal, September 23, 2024. These motions were brought on April 17, 2025 and May 1, 2025. While not a major factor, it does bear on the matter.

[34] One last reflection, if I might. In over 38 years of life in the law, I have learned that the most honourable and impactful contributions are often quiet and unsung. Reputable and public-spirited organizations, like the proposed interveners, who do not meet the legal test for

intervention but feel they can help, might still be able to do so: they can help the appellant behind the scenes, if the appellant is fine with that. True, this does not add a court appearance to counsel's public profile or support a fundraising pitch. But it might still add to the appellant's case, which was ostensibly the point of applying for intervener status in the first place.

[35] Therefore, for the foregoing reasons, I will dismiss the motions for intervention.

"David Stratas"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-348-24
STYLE OF CAUSE:	MD MILON TALUKDER v. THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	STRATAS J.A.
DATED:	JULY 15, 2025

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