

**CORAM:**MacGUIGAN, J.A.  
ROBERTSON, J.A.  
McDONALD, J.A.

**B E T W E E N:**

**DOLAT POUR-SHARIATI**

Appellant

- and -

**THE MINISTER OF EMPLOYMENT AND IMMIGRATION**

Respondent

HEARD at Toronto, Ontario, Tuesday, June 10, 1997.

JUDGMENT delivered from the Bench at Toronto, Ontario, on Tuesday,  
June 10, 1997.

REASONS FOR JUDGMENT BY:

MacGUIGAN, J.A.

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**REASONS FOR JUDGMENT**

(Delivered from the Bench at Toronto, Ontario,  
Tuesday, June 10, 1997)

**MacGUIGAN, J.A.:**

Rothstein, J., on a judicial review application, certified the following question to this Court (*Appeal Book*, III, 314):

Is indirect persecution as described in *Bhatti v. The Secretary of State*, A-89-93, September 14, 1994, (F.C.T.D.) (not yet reported) a basis for a claim to Convention refugee status where there is no evidence of direct persecution against an applicant and if so, is the Convention Refugee Determination Division required to assess whether there is evidence of indirect persecution when an applicant does not raise the issue before it.

We find ourselves in agreement with Rothstein, J.'s own answer (*Appeal*

*Book, III, 314*):

Having considered all the cases referred to in *Bhatti*, and the provisions of the *Immigration Act*, to which I have referred, I do not see how indirect persecution as described in *Bhatti* arises. I conclude therefore that the panel in the case at bar did not err by not considering the question of indirect persecution or by not raising indirect persecution in the proceedings before it.

We accordingly overrule *Bhatti's* recognition of the concept of indirect persecution as a principle of our refugee law. In the words of Nadon, J. in *Casettlanos v. Canada (Solicitor General)* (1994), 89 F.T.R. 1, 11, "since indirect persecution does not constitute persecution within the meaning of Convention refugee, a claim based on it should not be allowed." It seems to us that the concept of indirect persecution goes directly against the decision of this Court in *Rizkallah v. Canada*, A-606-90, decided 6 May 1992, where it was held that there had to be a personal nexus between the claimant and the alleged persecution on one of the Convention grounds. One of these grounds is, of course, a "membership in a particular social group," a ground which allows for family concerns in an appropriate case. As Rothstein J. also pointed out, s.46.04 (1) and (3) allow for the landing of dependents of refugees.

It follows that the Refugee Division cannot be faulted for not deciding an issue that was not raised before it.

The appeal should therefore be dismissed and both included questions should be answered in the negative.

"Mark R. MacGuigan"

J.A.

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

COURT NO: A-721-94

STYLE OF CAUSE: DOLAT POUR-SHARIATI

- and -

THE MINISTER  
OF EMPLOYMENT  
AND IMMIGRATION

DATE OF HEARING: JUNE 10, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR JUDGMENT BY: MacGUIGAN, J.A.

Delivered from the Bench at Toronto, Ontario  
on Tuesday, June 10, 1997

**APPEARANCES:**

Ms. Dolat Pour-Shariati  
For the Appellant

Ms. Lori Hendriks  
For the Respondent

**SOLICITORS OF RECORD:**

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For the Appellant

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Deputy Attorney General of Canada

For the Respondent

**FEDERAL COURT OF CANADA**

**Court File No.:** A-721-94

**Between:**

**DOLAT POUR-SHARIATI**

Appellant

**- and -**

**THE MINISTER OF EMPLOYMENT AND  
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**REASONS FOR JUDGMENT**