Federal Court of Appeal  Cour d'appel fédérale

Date: 20180719

Docket: A-316-17

Citation: 2018 FCA 138

Present: **GLEASON J.A.**

BETWEEN:

DAVID ROGER REVELL

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 19, 2018.

REASONS FOR ORDER BY: GLEASON J.A.

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REASONS FOR ORDER

GLEASON J.A.

[1] The Chinese and Southeast Asian Legal Clinic (CSALC) and the South Asian Legal Clinic of Ontario (SALCO) seek leave to intervene in this appeal, which is taken from the judgment of the Federal Court (per Kane, J.) in *Revell v. Canada (Citizenship and Immigration)*, 2017 FC 905. That judgment dismissed Mr. Revell's application for judicial review of the July 28, 2016 decision of the Immigration Division of the Immigration and Refugee Board of

Canada (the ID), determining Mr. Revell to be inadmissible under paragraphs 36(1)(*a*) and 37(1)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the IRPA).

[2] Until he was found to be inadmissible, Mr. Revell was a permanent resident of Canada, having come to this country from England with his family when he was a child in 1974. In this appeal, Mr. Revell asserts that the statutory scheme established under the IRPA and the ID's inadmissibility determination violate his rights under sections 7 and 12 of the *Canadian Charter of Rights and Freedoms*. He seeks a declaration that the IRPA admissibility scheme is void to the extent it authorizes deportation of long-term permanent residents without providing them with an adequate opportunity to raise personal circumstances.

[3] By order of this Court issued April 5, 2018, Mr. Revell's appeal has been ordered to be heard immediately before another appeal, where similar issues are raised. The appellant in the other appeal, Massimo Thomas Moretto, is a citizen of Italy and a former long-time permanent resident of Canada who was likewise declared inadmissible following criminal convictions.

[4] The proposed interveners are both legal clinics. CSALC provides free legal services and acts as an advocacy group on behalf of members of the Chinese, Vietnamese, Cambodian and Laotian communities in Ontario. SALCO provides free legal services to low income members of the South Asian community in Ontario and also engages in law reform, community development and public legal education. Both have represented numerous individuals from the communities they serve (which include a large number of low income immigrants) and have often acted in inadmissibility cases. Both have also been granted intervener status by several courts in cases

dealing with issues affecting non-citizens, including immigration issues (see, for example, *R. v. Wong*, 2018 SCC 25; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54; *India v. Badesha*, 2017 SCC 44; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39; *R. v. N.S.*, 2012 SCC 72; *Canada (Attorney General) v. Mavi*, 2011 SCC 30; *Begum v. Canada (Citizenship and Immigration)*, 2017 FC 409; *Brown v. Canada (Citizenship and Immigration)*, 2017 FC 710; *Canadian Council on Social Development v. Canada (Attorney General)*, 2012 FC 1530; *Peel Law Association v. Pieters*, 2013 ONCA 396; *Metcalf v. Scott*, 2011 ONSC 1292 (Sup. Ct.); *R. v. Peart*, 2017 ONSC 782 (CanLII); *Frank v. Canada (Attorney General)*, 2015 ONCA 536; *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852; *Ontario (Community Safety and Correctional Services) v. De Lottinville*, 2015 ONSC 3085; *Francis (Litigation Guardian of) v. Canada (Minister of Citizenship and Immigration)* (1998), 40 O.R. (3d) 74 (ON SC); and *R. v. Koh* (1998), 42 O.R. (3d) 668 (Ont. C.A.).

[5] In the materials filed in support of their motion to intervene, CSALC and SALCO submit that their experience, especially in inadmissibility cases, where they have acted on behalf of members of the racialized and immigrant communities they serve, gives them a perspective on the issues in this appeal which is relevant for the Court and somewhat different from that of the appellant. In the materials filed in support of their motion for intervention, they outline in detail the sorts of submissions they would make if granted leave to intervene, which are likewise somewhat different from the arguments made by the appellant.

[6] More specifically, insofar as concerns section 7 of the Charter, the appellant asserts that section 7 of the Charter is engaged at the admissibility determination stage of the deportation process. He also asserts that the IRPA scheme produces grossly disproportionate effects for long-term residents, like him, whom he says pose minimal public safety risks. The appellant therefore says that the impugned scheme is impermissibly over-inclusive.

[7] The proposed interveners agree, but provide additional arguments in support of the section 7 challenge. They say that equality rights should be considered a principle of fundamental justice for purposes of section 7 of the Charter that should guide the Court in appropriate cases in assessing the constitutionality of a criminal inadmissibility finding and the resulting deportation. While equality issues do not appear to arise in either Mr. Revell or Mr. Moretto's appeals, the proposed appellants say that the possibility of such an argument's being made in an appropriate case is a matter that this Court should consider in determining whether section 7 of the Charter is engaged at the admissibility determination stage of the deportation process. The proposed interveners also underscore the negative impact inadmissibility determinations have on the personal security of vulnerable individuals, including those with mental health challenges, those who are stateless and those who are low income.

[8] Similarly, as concerns section 12 of the Charter, the proposed interveners raise somewhat different arguments from those of the appellant. The appellant premises his arguments on the contention that deportation is cruel and unusual treatment, within the meaning of section 12 of the Charter. The proposed interveners agree, but also assert that an inadmissibility determination

and resulting deportation constitute cruel and unusual punishment, within the meaning of that section.

[9] The test for granting intervener status under section 109 of the *Federal Courts Rules*, SOR/98-106 was recently re-affirmed in *Sport Maska Inc. v. Bauer Hockey Corp.*, 2016 FCA 44 (*Sport Maska)* and involves consideration of the following factors:

1. Is the proposed intervener directly affected by the outcome?
2. Does there exist a justiciable issue and a veritable public interest?
3. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
4. Is the position of the proposed intervener adequately defended by one of the parties to the case?
5. Are the interests of justice better served by the intervention of a proposed third party?
6. Can the Court hear and decide the case on the merits without the proposed intervener?

[10] As noted in *Sport Maska*, these factors are to be applied flexibly, with the most important factor being what the interests of justice require.

[11] Here, the appellant takes no position on the proposed intervention and the respondent contests it, but concedes the presence of the first two factors from the above list.

[12] In my view, the preponderance of the other factors militates in favor of granting the proposed intervention. While the Court could doubtlessly decide the case without the proposed interveners' submissions, it would miss their perspective, which is different from that of the

appellant. As this is a constitutional case where a declaration of invalidity is sought, it will be of benefit to the Court to have that perspective. Moreover, the proposed interveners do not seek to merely repeat the appellant's arguments, but also seek to make additional ones and to cast their unique perspective on the issues that arise in this appeal. I therefore believe that the interests of justice are better served by allowing the proposed intervention.

[13] That said, the intervention should not impede the process of this appeal and I therefore would order that the interveners be limited to filing a single memorandum of fact and law of no more than 20 pages within 30 days of the date of the order granting them leave to intervene. The respondent, if it wishes, may file a responding memorandum of no more than 20 pages within 30 days of service of the interveners' memorandum. As CSALC and SALCO request only 20 minutes of time to make their oral submission, I would order that their submissions be kept to this length. While they also seek an order that they be absolved from liability for costs, I believe their exposure to costs is a matter that is best left to the panel hearing the appeal, but note that they have indicated they will not be seeking costs.

"Mary J.L. Gleason"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-316-17
STYLE OF CAUSE:	DAVID ROGER REVELL v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	GLEASON J.A.
DATED:	JULY 19, 2018

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