S.C.C. File No. 39430

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

B E T W E E N:

ATTORNEY GENERAL OF BRITISH COLUMBIA

APPELLANT
(*Respondent*)

-AND -

COUNCIL OF CANADIANS WITH DISABILITIES

RESPONDENT
(*Appellant)*

-AND -

ATTORNEY GENERAL OF CANADA; ATTORNEY GENERAL OF ONTARIO; ATTORNEY GENERAL OF SASKATCHEWAN; ATTORNEY GENERAL OF ALBERTA; WEST COAST PRISON JUSTICE SOCIETY; EMPOWERMENT COUNCIL, SYSTEMIC ADVOCATES IN ADDICTIONS AND MENTAL HEALTH; CANADIAN CIVIL LIBERTIES ASSOCIATION; DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS; ECOJUSTICE CANADA SOCIETY; TRIAL LAWYERS ASSOCIATION OF BRITISH COLUMBIA; ANIMAL JUSTICE; ADVOCACY CENTRE FOR TENANTS ONTARIO, ARCH DISABILITY LAW CENTRE, CANADIAN ENVIRONMENTAL LAW ASSOCIATION, CHINESE AND SOUTHEAST ASIAN LEGAL CLINIC, HIV & AIDS LEGAL CLINIC ONTARIO and SOUTH ASIAN LEGAL CLINIC ONTARIO (JOINTLY); CANADIAN MENTAL HEALTH ASSOCIATION (NATIONAL), CANADA WITHOUT POVERTY, ABORIGINAL COUNCIL OF WINNIPEG INC., and END HOMELESSNESS WINNIPEG INC. (JOINTLY); CANADIAN CONSTITUTION FOUNDATION; JOHN HOWARD SOCIETY OF CANADA and QUEEN'S PRISON LAW CLINIC (JOINTLY); FEDERATION OF ASIAN CANADIAN LAWYERS and THE CANADIAN MUSLIM LAWYERS ASSOCIATION (JOINTLY); CENTRE FOR FREE EXPRESSION; WEST COAST LEGAL EDUCATION AND ACTION FUND; CANADIAN ASSOCIATION OF REFUGEE LAWYERS; BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION; MENTAL HEALTH LEGAL COMMITTEE; and NATIONAL COUNCIL OF CANADIAN MUSLIMS

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PARTS I and II: OVERVIEW AND STATEMENT OF FACTS AND ON ISSUES

1. The Canadian Association of Refugee Lawyers ("CARL") takes no position on the facts and intervenes in this appeal to make three submissions.

2. First, the revised legal test set out in *Downtown Eastside* has provided an effective and workable framework for public interest standing – and it has done so without generating the jurisprudential and academic criticisms that typified the pre-*Downtown Eastside* era. This record of success, the result of a careful recalibration to address the limitations of the earlier caselaw, should warrant a strong reluctance to revise the test. The experience of refugees is emblematic of this. Following the guidance of *Downtown Eastside*, laws impacting refugees have been subjected to greater judicial scrutiny as courts have been more willing to recognize *Charter* litigation brought by organizations such as CARL as being a reasonable and effective means to advance refugee issues. This, in turn, has markedly advanced principles of legality and access to justice, leading to a number of measured, fact-based and un-appealed *Charter* judgments in favour of refugees.

3. Second, the Appellant invites this Court to revise the current standing test to require public interest litigants to first seek out, and prove the unavailability of, an individual plaintiff. The Court should decline to do so. In addition to imposing the onerous burden of having to prove a negative, such a requirement would reverse the central, modest innovation of *Downtown Eastside*: that public interest litigants must only show that their case is *a* – and not *the only* – reasonable and effective means of bringing the issue forward. Consideration of the existence of private litigants is already accounted for in the current standing test as *one* factor in the balancing. Imposing a pre-requisite on public interest litigants to have to first fail in the search for such a private litigant before coming to court would make this a controlling factor, delay access to justice, and sap resources.

4. Third, the Appellant invites this Court to impose a requirement that a litigant must establish they meet the conditions for a grant of public interest standing "at the time standing is challenged". Whether litigation is commenced by way of action or application, preliminary challenges to standing will sometimes be brought too early to permit the Court to properly decide the issue. But in an application, an additional and often more potent reason exists to defer such challenges to standing to the hearing: to do otherwise would interfere with the summary nature of applications. Instead, absent certain exceptional circumstances, challenges to standing in applications should normally be deferred to, and be decided by, the application judge alongside the merits.

PART III: ARGUMENT

i. *Downtown Eastside* has proven an effective and workable test for standing.

5. In the past decade, *Downtown Eastside*[1] has proven to be an effective and workable test to achieve the goals of public interest standing. The Appellant agrees in its memorandum that "[t]he modifications to the standing test introduced in *Downtown Eastside* have been well received by legal academics and social justice advocates. […] Critics have been rare."[2] Similarly, the Appellant does not cite any jurisprudence criticizing the existing test or urging its reconsideration. Given this record of success, the normal conditions for this Court to depart from its precedents are not met and the Court should decline to do so.[3] The legal challenges brought forward relating to refugees provide a compelling example of this – both in terms of the beneficial changes brought about by *Downtown Eastside* and the potential costs of reversing those gains.

6. Refugee decision-making involves questions of life-and-death for a vulnerable and marginalized category of people. The *Charter* implications inherent in laws governing such decision-making is obvious. Yet prior to *Downtown Eastside*, public interest litigation to uphold *Charter* rights was stymied by a focus on the simple number of refugee claimants in Canada – and thus the number of theoretical private interest litigants. As this Honourable Court stated in *Canadian Council of Churches* (1992), rejecting a public interest challenge to the former *Immigration Act, 1976*, S.C. 1976-77, c. 52: "The challenged legislation is regulatory in nature and directly affects all refugee claimants in this country. Each one of them has standing to initiate a constitutional challenge to secure his or her own rights under the *Charter*."[4] Yet, reliance on theoretical private challenges did not account for the real limitations that preclude refugees from litigating. This is evidenced by the absence, in the decade following the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("IRPA") coming into force, of a single case brought by refugee alone that resulted in a declaration of constitutional invalidity in respect of the law or its regulations.

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[1] *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524 ("*Downtown Eastside*")
[2] *Factum of the Appellant*, at para. 44.
[3] *R. v. Henry*, 2005 SCC 76, [2005] 3 SCR 609 at paras. 41-47; *Canada v. Craig*, 2012 SCC 43, [2012] 2 SCR 489, at paras. 24-31.
[4] *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, 1992 CanLII 116 (SCC), [1992] 1 S.C.R. 236 at 253.

7. In fact, the *only* declaration of constitutional invalidity issued by the Federal Court in respect of the IRPA prior to *Downtown Eastside* was in *Canadian Council for Refugees* (2007), which exemplifies the essence of the problem. In that case, the Federal Court granted public interest standing to the Canadian Council for Refugees, the Canadian Council of Churches and Amnesty International, along with an individual co-plaintiff, to successfully challenge the safe-third country provisions of the IRPA.[5] On appeal, however, the Federal Court of Appeal applied a rigid reading of the pre-*Downtown Eastside* test to conclude that none of the organizations should have been granted standing on the constitutional question. The Court of Appeal focused on the simple number of refugee claimants subject to the safe-third country provisions, holding that a directly affected refugee claimant could have theoretically presented themself at the U.S.-Canada border and challenged their immediate removal back to the U.S. on *Charter* grounds.[6] In doing so, the Federal Court of Appeal did not consider the fact that no refugee claimant had *in fact* been successful in doing so up to that date. Nor did it consider the risks its proposal required vulnerable refugee claimants to undertake in presenting themselves at the border, including the risk of being summarily returned to the U.S. to face possible immigration detention and then deportation. After the denial of standing by the Federal Court of Appeal, the constitutionality of the IRPA safe-third country provisions remained unchallenged for almost another decade.

8. By contrast, in the decade since its inception, the revised *Downtown Eastside* test for public interest standing has opened up diverse areas of law to greater judicial scrutiny for *Charter* compliance. Central to this has been *Downtown Eastside*'s guidance that the existence of private litigants is but *one* factor – and not a determinative factor – in deciding whether a public interest challenge is a reasonable and effective means to bring forward a case. And in weighing that factor, courts must look beyond the theoretical possibility of private litigants advancing litigation. Instead, courts must weigh the practical realities of vulnerable and marginalized people actually doing do so – and with skill and resources of the public interest litigant.[7] This innovation has allowed the Federal Court to move beyond the earlier caselaw's focus on the mere existence of directly affected refugee claimants, to properly appreciate the real barriers they face in bringing litigation:

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[5] *Canadian Council for Refugees v. R*, 2007 FC 1262 at paras. 37-54
[6] *Canadian Council for Refugees v. Canada*, 2008 FCA 229 at paras. 98-105.
[7] *Downtown Eastside*, *supra* note 1, at para. 51; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623, at para. 43

Refugees often lack <u>the means</u> to bring Charter litigation on their own behalf: As noted by the Federal Court in *Y.Z.*, "[m]ost refugee claimants arrive with little money and lack the financial means to litigate complex constitutional issues".[8] This includes the resources needed to build an evidentiary record, such as retaining expert witnesses, or to absorb adverse cost awards. To the contrary most refugee litigation is funded through provincial legal aid societies who impose strict limits on counsel hours and disbursement costs.

Refugees often lack <u>the incentive</u> to bring Charter litigation on their own behalf: The Federal Court has recognized "the reluctance of applicants to challenge the Government of Canada while their immigration status is uncertain" and the untenable nature of "ask[ing] a refugee claimant whose case is still pending to take on the very government whose protection he or she seeks in a systemic challenge to a government policy".[9] Moreover, the IRPA contains numerous provisions where an individual may not access a further statutory remedy until an earlier application for judicial review and appeals thereof are exhausted.[10] This further disincentivizes refugees brave enough to challenge the government from tying themselves to lengthy *Charter* litigation.

Refugees often lack <u>the opportunity</u> to bring Charter litigation on their own behalf: Refugees are a transitory class of litigants. As the Federal Court noted in *Y.Z.* (2015), "many potential claimants could be deported before they even try to challenge the legislation".[11] Even for those who do successfully commence a challenge, an application for judicial review of many types of refugee decisions does not automatically stop deportation and, if deportation does occur in the midst of the proceeding, it renders many applications moot.[12]

9. As a direct consequence of a more purposive and flexible test for standing, public interest litigation has exposed refugee law to far greater constitutional scrutiny, resulting in a series of meaningful – but measured – constitutional judgments arising from robust evidentiary records.

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[8] *Y.Z. and CARL v. Canada (MCI)*, 2015 FC 892 at para. 42.
[9] *Canadian Doctors for Refugee Care v. Canada (A-G)*, 2014 FC 651, at paras. 341-343.
[10] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, § 25(1.2)(c)(ii)(C), 112(2)(b.1)(ii)(C); *Immigration and Refugee Protection Regulations*, SOR/2002-227, § 24.1(2).
[11] *Y.Z. and CARL v. Canada (MCI)*, 2015 FC 892 at para. 42.
[12] *Solis Perez v. Canada (MCI)*, 2009 FCA 171 at para 5.

10. For example, CARL was granted public interest standing in *Canadian Doctors for Refugee Care and CARL* (2014). That case successfully challenged the constitutionality of regulations withdrawing healthcare coverage from certain refugee claimants, which the Federal Court found unjustifiably infringed ss.12 and 15(1) of the *Charter*.[13] CARL was also a public interest litigant in *Y.Z. and CARL* (2015) and in *Sebok and CARL* (2019). Those cases successfully challenged the constitutionality of laws denying certain refugee claimants statutory appeal rights and timely access to risk assessments, which the Federal Court found unjustifiably infringed s. 15(1) of the *Charter*.[14] Consistent with the existing requirements of *Downtown Eastside*, the cases were set in a firm factual record, with the Court noting in *Y.Z. and CARL* that: "CARL's resources and expertise are such that the constitutional issues have been presented in a concrete factual setting."[15] Moreover, the government declined to pursue appeals in respect of any of these three declarations of constitutional invalidity – indicating that none of these cases were 'busybody' litigation.

11. Likewise, it was only after the application of *Downtown Eastside*'s more purposive and flexible test to public interest standing that a renewed challenge to the constitutionality of the IRPA safe-third country provisions was finally allowed to proceed in *Canadian Council for Refugees* (2017). In applying *Downtown Eastside*, the Federal Court was able to determine that litigation driven by the same three public interest organizations from 2007 was, in fact, a reasonable and effective means for bringing forward the complex legal challenge.[16] This time, the Federal Court of Appeal did not interfere with the standing decision on appeal.[17]

12. The above cases illustrate how a purposive and flexible approach to standing brought about by *Downtown Eastside* has led to more *Charter* compliance and increased access to justice for vulnerable refugees. And it has done so without opening the floodgates to frivolous suits or so-called 'private reference questions'.[18] To the contrary, "the participation of immigration organizations in complex litigation since 2011 has been largely welcomed and appreciated by the

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[13] *Canadian Doctors for Refugee Care v. Canada (A-G)*, 2014 FC 651.
[14] *Y.Z. and CARL v. Canada (MCI)*, 2015 FC 892; *Sebok and CARL v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 335.
[15] *Y.Z. and CARL v. Canada (MCI)*, 2015 FC 892 at para. 42.
[16] *Canadian Council for Refugees v. Canada (MCI)*, 2017 FC 1131 at paras. 57-74.
[17] *Canada (MCI) v. Canadian Council for Refugees*, 2021 FCA 72 leave to appeal to the SCC pending in case file 39749.
[18] Such suits have been easily screened out: *Camara v. Canada (MPSEP)*, 2012 FC 1309.

courts."[19] This experience of refugees demonstrates the virtues of current standing test – and the real costs to the principles of legality and access to justice that come when public interest standing is unduly narrowed. When combined with the noted lack of jurisprudential and academic criticism of *Downtown Eastside*, these all strongly caution against modifying the current guidance.

ii. New legal or evidentiary requirements should not be added to the test for standing.

13. In this appeal, the Appellant directly invites this Court to revise the current standing test to require that "[w]here a case challenges the impacts of a legislative regime and no individual plaintiff is involved, applicants […] should include evidence of efforts to engage a directly impacted individual plaintiff or co-plaintiff and an explanation of why those efforts proved unsuccessful."[20] Imposing these requirements would introduce an additional procedural roadblock to standing that is inconsistent with access to justice and would amount to a reversal of the innovations of *Downtown Eastside*. The existence of potential private litigants is already addressed in the current test and it need not be modified further.

14. As mentioned in the section above, the pre-*Downtown Eastside* era was commonly typified public interest litigants being rejected not on the merits of their ability to mount a proper challenge but on the basis that theoretical private litigants might have done so. To remedy this, *Downtown Eastside* held that the standing test does not require a litigant to prove that public interest standing is the *only* way in which to advance the issue. Rather, the requirement is to show that it is *a* reasonable and effective way to bring the issue before the Court in the circumstances. Central to this innovation was the Court treating the existence of potential private litigants as only one factor to be balanced alongside – and in some cases outweighed by – others in the 'reasonable and effective' analysis.[21] This reflects the reality that the relevance to standing of the existence of a potential private litigant – and the choice of a public interest litigant to proceed in the absence of one – will invariably be case-specific. Moreover, there will be cases where public interest litigation is reasonable and effective means to bring a case regardless of whether a private litigant is available.

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[19] Angus Grant, "Stand by Me: Public Interest Standing and Immigration and Refugee Advocacy in Canada", (2019), 90 S.C.L.R. (2d) 147 – 170, at para. 73.
[20] *Factum of the Appellant*, at para. 63.
[21] *Downtown Eastside, supra* note 1, at para. 51; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 SCR 623, at para. 43

15. For instance, *CARL* (2017) concerned a challenge to the *vires* of an administrative action by the Chairperson of the Immigration and Refugee Board. In granting CARL public interest standing, the Federal Court found that no private interest litigant or "factual matrix" was necessary as "the essence of the relief sought deals with a legal question which can easily and simply be brought before the Court" by a public interest litigant.[22] Furthermore, the Federal Court in that case, like this Court in *Vriend* (1998), found that it may be inappropriate to await for a member of a vulnerable group to undergo the harms of a rights violation before adjudicating an issue where the facts were well known or could be easily established by a public interest litigant.[23] Lastly, even in cases which require a robust evidentiary record, the Federal Court has recognized that a public interest litigant may simply be better suited than a private interest litigant to assemble that record. For example, in *Canadian Doctors for Refugee Healthcare* (2014), the Federal Court noted the public interest litigants assembled an "substantial evidentiary record […. which] greatly exceeds what one could reasonably expect individuals seeking the protection of Canada […] to assemble"[24]

16. In short, in some cases, such as those mentioned above, there may be ample reason why it is reasonable for a public interest litigant to proceed with litigation on its own. To nonetheless impose a uniform requirement in these cases for a public interest litigant to expend time and money on an unnecessary search for a private litigant would only delay bringing the case before the court – while also needlessly depleting scarce resources of public interest organizations. And in all cases, it would saddle public interest organizations with the burden of proving a negative. This risks shifting the focus away from whether the grant of public interest standing is a reasonable and effective means to bring the case and into a series of unhelpful questions that lack clear answers. How much time and money must be spent searching for a private litigant be before it can be said none is available? How many potential private litigants must have been approached? How far can a respondent go in proposing hypothetical private litigants which were not explored?

17. Given these concerns, this Court in *Downtown Eastside* was correct to leave the availability of private interest litigants as a *factor* in the discretionary balancing – and not as a separate legal and evidentiary hurdle – with the weight to be given to it decided on a case-by-case basis.

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[22] *CARL v Canada (MCI)*, IMM-3233-17, Order on standing, dated November 14, 2017.
[23] Ibid; *Vriend v. Alberta*, 1998 CanLII 816 (SCC), 1 SCR 493 at para 47.
[24] *Canadian Doctors for Refugee Care v. Canada (A-G)*, 2014 FC 651 at para. 345.

Moreover, the Appellant's concerns are already addressed in the current test. In cases where there does not appear to be any advantage or reason to the public interest litigant proceeding alone, such a litigant likely bears a *strategic* burden to explain why a private interest litigant was unavailable. And, in the discretionary balancing, its failure to discharge that burden could prove fatal to an application for standing. But this is very different from imposing an additional *legal* burden in every case for a public interest litigant to have to seek out and exhaust the availability of a private interest litigant before it can even come to court. Such an innovation to the standing test is unhelpful and unnecessary and should be rejected.

iii. Standing in applications should generally be decided alongside the merits.

18. Whether litigation is commenced by way of action or application, preliminary challenges to standing will sometimes be brought too early to permit the Court to properly decide the issue. In such cases, preliminary challenges should be deferred until the case is more fully developed or to the hearing itself: *Finlay* (1986).[25] But in an application, an additional and often more potent reason exists to defer standing challenges to the hearing: to do otherwise would interfere with the summary nature of applications and the strong emphasis on moving the matter along to a hearing as expeditiously as possible. While Appellant's argument that "[t]he proposed plaintiff bears the onus to establish the conditions for a grant of public interest standing […] *at the time standing is challenged*"[26] raises concerns for all types of litigation, the Court should be especially careful not to adopt it in applications. Instead, absent the exceptional circumstances discussed below, standing challenges in applications should be deferred and decided by the application judge with the merits.

19. As this Court noted in *TeleZone* (2010), "[t]he focus of judicial review is to quash invalid government decisions — or require government to act or prohibit it from acting — **by a speedy process**."[27] This imperative is codified in the *Federal Courts Act* which requires that applications for judicial review "be heard and determined without delay and in a summary way."[28] The emphasis on a speedy process is also reflected in the abbreviated procedures in applications as compared to actions – no discovery, no *viva voce* evidence, no damage awards.[29] As underscored by the Federal

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[25] *Finlay v. Canada (Minister of Finance)*, 1986 CanLII 6 (SCC), [1986] 2 SCR 607 at para. 16.
[26] *Factum of the Appellant*, at para. 69 [italics in original].
[27] *Canada (A-G) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 SCR 585 at para. 26 [bolding added].
[28] *Federal Courts Act*, RSC 1985, c F-7, § 18.1(2), 18.4.
[29] *Canada (A-G) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 SCR 585 at para. 26.

Court of Appeal in *David Bull Laboratories* (1994): "This all reinforces the view that the focus in judicial review is on moving the application along to the hearing stage as quickly as possible. This ensures that objections to the originating notice can be dealt with promptly in the context of consideration of the merits of the case."[30]

20. Consistent with the focus on speedy hearings – and contrary to the Appellant's argument – motions judges should generally decline to hear preliminary challenges to standing in applications. CARL submits the Federal Court of Appeal in *Apotex* (2007) correctly held that "a court should be prepared to terminate an application for judicial review on a preliminary motion for lack of standing only in very clear cases" and that "**[t]his discretion should be exercised sparingly. This is affirmed by the principle that applications for judicial review are supposed to be decided summarily, and that interlocutory motions are to be avoided."**[31] The alternative approach urged by the Appellant risks repeating what took place in *League for Human Rights of B'Nai Brith Canada* (2008). In that case, the Federal Court of Appeal heard an appeal of a Federal Court judge's decision to allow an appeal of a prothonotary's decision granting a preliminary motion to strike the application for lack of standing. Adding to the complexity, the appeal hearing on standing took place in the Court of Appeal two days before the application itself was to be heard in the Federal Court. In the end, the Court of Appeal adopted the approach that the prothonotary should have taken in the first place: dismissing the appeal and "let[ting] the application for judicial review proceed on the merit where all the issues raised in this appeal will be dealt with."[32]

21. Deferring challenges to standing to the hearing may appear to impose burdens on a respondent who wishes to pre-empt litigation that it views to be unmeritorious. But the procedural economies that the Appellant contends are gained by early motions to strike in actions are far less compelling in the context of applications. As noted by the Federal Court in *Amnesty International Canada* (2008):

> Moreover, different economic considerations come into play in relation to applications for judicial review as opposed to actions. That is, applications for judicial review do not involve examinations for discovery and a trial - matters which can be avoided in

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[30] *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA), [1995] 1 FC 588.
[31] *Apotex Inc. v. Canada (Governor in Council)*, 2007 FCA 374 at para. 13 [bolding added]; *Y.Z. v. Canada (MCI)*, 2015 FC 892 at para. 37; *Canadian Council for Refugees v. Canada (MCI)*, 2017 FC 1131 at para. 21.
[32] *Odynsky v. League for Human Rights of B'Nai Brith Canada*, 2009 FCA 82 at para. 10.

> actions by a decision to strike: *David Bull*, at ¶10. In contrast, the full hearing of an Application for Judicial Review proceeds in much the same way that a motion to strike the Notice of Application would proceed, namely on the basis of affidavit evidence and argument before a judge of this Court.[33]

22. To ensure that preliminary challenges to standing in applications are, following the words of the Federal Court of Appeal in *Apotex*, heard "sparingly" and granted only "in very clear cases", CARL submits that the burden on the respondent in bringing such a challenge should be substantial. In preliminary motions to strike an application for lack of standing, the federal courts have consistently required the moving party to provide a "**show stopper**" or a "**knockout punch**" that reveals that it is "plain and obvious that the application for judicial review was **bereft of success**" because the Applicant lacks standing.[34] Similarly, in preliminary motions to dismiss an application for lack of standing, the federal courts have applied the "**doomed to fail**" test which "is the same threshold as the 'plain and obvious' test."[35] For example, in *Bernard* (2019), the Federal Court of Appeal allowed a preliminary motion to dismiss an application brought by "a vexatious litigant" who plainly failed all three branches of the *Borowski/Downtown Eastside* test.[36] These stringent standards should be adopted by this Court to ensure that applications proceed as Parliament intended – i.e., in a summary manner leading to a speedy hearing for affected parties.

PARTS IV and V – SUBMISSION ON COSTS AND ORDER SOUGHT

23. CARL does not seek costs and requests that no costs be ordered against it. CARL respectfully seeks permission to present oral argument at the hearing of the appeal.

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[33] *Amnesty International Canada v. Canadian Forces*, 2007 FC 1147 at paras. 24-25. See also: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA) ["This case well illustrates the waste of resources and time in adding on to what is supposed to be a summary judicial review proceeding the process of an interlocutory motion to strike. This motion to strike has involved a hearing before a trial judge and over one half day before the Court of Appeal, the latter involving the filing of several hundred pages of material, all to no avail."].

[34] *Apotex Inc. v. Canada (Governor in Council)*, 2007 FCA 374 at para. 13; *Canada (Health) v. Canadian Generic Pharmaceutical Association*, 2007 FCA 375 at para. 5; *Canadian Council for Refugees v. Canada (MCI)*, 2017 FC 1131 at para. 22 [bolding added].

[35] *Lukács v. Canada (Transportation Agency)*, 2021 FCA 141 at para. 31 [bolding added].

[36] *Bernard v. Canada (Attorney General)*, 2019 FCA 144 at paras. 33-39.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd DAY OF DECEMBER, 2021

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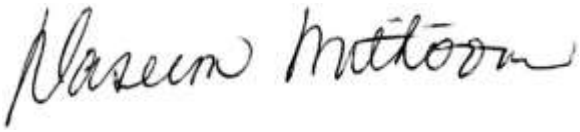

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PART VI: AUTHORITIES CITED

STATUTES AND REGULATIONS:	**PARAS. IN FACTUM**
(1) ***Immigration and Refugee Protection Act,*** S.C. 2001, c. 27, § 25(1.2)(c)(ii)(C), 112(2)(b.1)(ii)(C)	**8**
(2) ***Immigration and Refugee Protection Regulations,*** SOR/2002-227, § 24.1(2).	**8**
(3) ***Federal Courts Act,*** RSC 1985, c F-7, § 18.1(2), 18.4	**19**
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(4) ***Amnesty International Canada v. Canadian Forces,*** 2007 FC 1147	**21**
(5) ***Apotex Inc. v. Canada (Governor in Council),*** 2007 FCA 374	**20, 22**
(6) ***Bernard v. Canada (Attorney General),*** 2019 FCA 144	**22**
(7) ***Camara v. Canada (MPSEP),*** 2012 FC 1309	**12**
(8) ***Canada v. Craig,*** 2012 SCC 43, [2012] 2 SCR 489	**5**
(9) ***Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society***, 2012 SCC 45, [2012] 2 SCR 524	**5, 8, 14**
(10) ***Canada (Attorney General) v. TeleZone Inc.***, 2010 SCC 62, [2010] 3 SCR 585	**19**
(11) ***Canada (Health) v. Canadian Generic Pharmaceutical Association,*** 2007 FCA 375	**22**
(12) ***Canada (MCI) v. Canadian Council for Refugees,*** 2021 FCA 72 leave to appeal to the SCC pending in case file 39749	**11**

(13) ***Canadian Council for Refugees v. Canada,*** 2008 FCA 229 at paras. 98-105 leave to appeal to the SCC dismissed 2009 CanLII 4204 (SCC)	**7**
(14) ***Canadian Council for Refugees v. Canada (MCI),*** 2017 FC 1131	**11, 20, 22**
(15) ***Canadian Council for Refugees v. R,*** 2007 FC 1262	**7**
(16) ***Canadian Council of Churches v. Canada (Minister of Employment and Immigration),*** 1992 CanLII 116 (SCC), [1992] 1 S.C.R. 236	**6**
(17) ***Canadian Doctors for Refugee Care v. Canada (A-G),*** 2014 FC 651	**8, 10, 15**
(18) ***CARL v Canada (MCI),*** IMM-3233-17, Order on standing, dated November 14, 2017 [unreported].	**15**
(19) ***David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.,*** 1994 CanLII 3529 (FCA), [1995] 1 FC 588	**19, 21**
(20) ***Finlay v. Canada (Minister of Finance),*** 1986 CanLII 6 (SCC), [1986] 2 SCR 607	**18**
(21) ***Lukács v. Canada (Transportation Agency),*** 2021 FCA 141 at para. 31	**22**
(22) ***Manitoba Metis Federation Inc. v. Canada (Attorney General***), 2013 SCC 14, [2013] 1 SCR 623, at para. 43.	**8, 14**
(23) ***Odynsky v. League for Human Rights of B'Nai Brith Canada,*** 2009 FCA 82	**20**
(24) ***R. v. Henry***, 2005 SCC 76**,** [2005] 3 SCR 609	**5**
(25) ***Sebok and CARL v. Canada (Public Safety and Emergency Preparedness),*** 2019 FC 335	**10**
(26) ***Solis Perez v. Canada (MCI),*** 2009 FCA 171	**8**
(27) ***Vriend v. Alberta,*** 1998 CanLII 816 (SCC), 1 SCR 493	**15**

(28) ***Y.Z. and CARL v. Canada (MCI),*** 2015 FC 892	**8, 10, 20**
SECONDARY SOURCES:	
(29) Angus Grant, "Stand by Me: Public Interest Standing and Immigration and Refugee Advocacy in Canada", (2019), 90 S.C.L.R. (2d) 147 – 170, at para. 73.	**12**