Court File No.: IMM-12720-23

FEDERAL COURT

B E T W E E N :

R.A.

Applicant

- and -

THE MINSITER OF CITIZENSHIP AND IMMIGRATION

Respondent

MEMORANDUM OF FACT AND LAW OF THE HIV LEGAL NETWORK

OVERVIEW

1. The underlying application challenges the constitutionality of s. 38(1)(c) of the *Immigration and Refugee Protection Act* ("*IRPA*") - the "excessive demand" provision.

2. The HIV Legal Network (the "Legal Network") meets the three-step test for public interest standing established in *Downtown Eastside:*

> (1) a serious justiciable issue has been raised in this case;
>
> (2) the Legal Network has a real stake or a genuine interest in the issue; and
>
> (3) in all the circumstances, the Legal Network's proposed action is a reasonable and effective way to bring the issue before the Court.[1]

[1] *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society,* 2012 SCC 45 at para 37 [*Downtown Eastside*].

3. Furthermore, the Legal Network's involvement would be consistent with the principles underlying public interest standing, namely legality and access to justice. It would enable a full and informed consideration of the legality of the government action at issue, while addressing the barriers that would otherwise prevent disadvantaged groups from being heard.

4. Hence, the Legal Network should be granted public interest standing and added as a party to the proceeding.

PART ONE: STATEMENT OF FACT

5. On June 6, 2023, R.A. applied for an extension of a study permit.

6. On September 11, 2023, R.A.'s extension application was refused pursuant to s. 38(1)(c) of *IRPA*, on the grounds that their HIV status would create an "excessive demand" on Canada's health and social services.

7. On September 29, 2023, R.A.'s former counsel Michael Battista, as he then was, approached the Legal Network to ask it to join in R.A.'s application for judicial review.[2] The Legal Network is a non-governmental organization that promotes the human rights of people living with HIV or AIDS. It was federally incorporated as a not-for-profit organization with charitable registration in 1993.[3]

8. On October 3, 2023, R.A. commenced an Application for Leave and for Judicial Review ("ALJR"), challenging the refusal of the extension application and seeking a declaration that s. 38(1)(c) of the *IRPA* violates s.15(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and cannot be saved under section 1.[4] The Legal Network was named as a co-applicant in the ALJR.[5]

9. The Legal Network did not assume that naming itself as a co-applicant in the ALJR was sufficient to secure public interest standing. In fact, in the Applicant's Memorandum of Argument, the Legal Network listed public interest standing as the first issue raised by the

[2] Applicant's Motion Record, Tab 2, Affidavit of Sandra Ka Hon Chu, sworn July 31, 2025, at para 36 [Chu 2025 Affidavit].
[3] Chu 2025 Affidavit, *supra* note 2, at para 3.
[4] Application for Leave and Judicial Review, dated October 3, 2023 (IMM-1270-23).
[5] *Ibid.*

ALJR and submitted evidence and arguments that qualified for standing under the test set out in *Downtown Eastside*.[6]

10. On May 31, 2024, the Respondent in this matter filed a motion for judgment in which they conceded that the Officer's decision was unreasonable and sought an Order allowing the judicial review, setting aside the decision to refuse R.A.'s study permit extension, and sending the matter back to be redetermined by a different officer.

11. On June 18, 2024, Southcott J. dismissed the Respondent's motion, holding that the Court would not preclude the Applicants from advancing their application to seek relief not conceded by the Respondent.[7]

12. On July 3, 2024, R.A. received email correspondence from Immigration, Refugees and Citizenship Canada ("IRCC") indicating that they had decided to reopen R.A.'s study permit application without R.A.'s knowledge or consent.

13. On July 26, 2024, the Respondent filed a motion to strike the Legal Network from the proceedings. The Respondent submitted, first, that the Legal Network was not entitled to add itself as a party to the ALJR without seeking prior court approval, and second, that the Legal Network did not meet the test for public interest standing.

14. On September 5, 2024, Brown J. struck the Legal Network as a party from the proceeding, citing his decision in *Gnanapragasam* as authority for the precept that a public interest party requires prior court approval to be added to a proceeding.[8] The Order did not rule as to whether the Legal Network met the test for public interest standing.[9]

15. On January 31, 2025, the Respondent moved for an Order to strike the ALJR as moot. By Order dated April 16, 2025, Conroy J. dismissed the motion, finding that there was no "fatal flaw" that rendered the ALJR bereft of a chance of success, and that the Applicant should

[6] Application Record [AR], Applicant's Memorandum of Argument at paras 18-40; Affidavit of Sandra Ka Hon Chu, affirmed February 1, 2024 [Chu Affidavit].
[7] Order dated 18-JUN-2024 rendered by the Honourable Mr. Justice Richard Southcott in IMM-12720-23 at para 12.
[8] *RA v Canada (Citizenship and Immigration)*, 2024 FC 1392, citing *Gnanapragasam v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 761 [*Gnanapragasam*].
[9] *Ibid.*

therefore not be deprived of the opportunity to advance constitutional arguments in the absence of a merits hearing.[10]

PART TWO: ISSUES

A. Should the Legal Network be granted public interest standing?

PART THREE: LAW AND ARGUMENT

Issue A: The Legal Network Meets the Test for Public Interest Standing

16. The Legal Network submits that it meets the test for public interest standing outlined in *Downtown Eastside:*

> In exercising the discretion to grant public interest standing, the court must consider three factors: (1) whether there is a serious justiciable issue raised; (2) whether the plaintiff has a real stake or a genuine interest in it; and (3) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts. The plaintiff seeking public interest standing must persuade the court that these factors, applied purposively and flexibly, favour granting standing.[11]

I. *A Serious Justiciable Issue is Raised*

17. The Legal Network submits that a serious justiciable issue has been raised as to the constitutionality of section 38(1)(c) of *IRPA.*

18. As set out in *Council for Canadians with Disabilities,* a serious issue exists when the question raised is "far from frivolous."[12] At this stage, the court is not to examine the merits of the case in other than a preliminary manner.[13]

19. The dispute between R.A. and the Respondent as to the constitutionality of the "excessive demand" provision is one with wide-ranging implications. In the submission of the Applicant

[10] *RA v Canada (Citizenship and Immigration)*, 2025 FC 702.
[11] Downtown Eastside, *supra* note 1 at para 37.
[12] *British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27 at para 49 [*Council of Canadians with Disabilities*], citing Downtown Eastside, at para 42.
[13] Downtown Eastside, *supra* note 1 at para 42.

and the Legal Network, the existence of the impugned provision inflicts substantial harm on people living with disabilities, perpetuating stigma and imposing undue costs and barriers.

20. Given the Court's unquestioned authority to determine this issue of constitutional validity, and the significance of the question raised, this branch of the test is clearly met.

II. The HIV Legal Network has a Genuine Stake in the Proceedings

21. As established in *Council of Canadians with Disabilities*, to determine whether a public interest party has a genuine interest in the proceedings, a court may refer to the party's reputation and to whether it has a continuing interest in and link to the claim.[14] In that case, the public interest party will have demonstrated an extensive history of engagement with the affected group.[15]

22. The Legal Network is a not-for-profit organization that was federally incorporated in 1993 in response to the HIV/AIDS pandemic to ensure that the rights of people living with HIV are respected, protected, and upheld. Its Board of Directors consists of people living with HIV, service providers, researchers, and legal professionals. At all times, a minimum of two board members must be people openly living with HIV.[16]

23. The Legal Network seeks to safeguard the human rights of people living with HIV and other populations disproportionately affected by HIV, and to combat punitive laws and policies, in Canada and internationally. It engages in research and analysis, litigation and other advocacy, public education, and community mobilization related to the rights of those living with HIV.[17]

i. The HIV Legal Network's expertise

24. The Legal Network has an extensive history of work on a wide range of legal and policy issues related to the human rights of people living with HIV and of communities particularly affected by HIV, both domestically and internationally.

[14] *Council of Canadians with Disabilities*, *supra* note 8 at para 51.
[15] *Ibid* at para 101.
[16] Chu 2025 Affidavit, *supra* note 2 paras 3-4.
[17] Chu 2025 Affidavit, *supra* note 2 at paras 5-6.

25. The Legal Network has been granted intervener status in many cases related to a range of issues, including, but not limited to, the criminalization of HIV non-disclosure, the constitutionality of criminal law provisions related to sex work, access to medical cannabis, access to supervised injection sites without the risk of criminal prosecution, and the "excessive demand" provision under *IRPA* impugned in this matter. These cases are:

- *R. v. Cuerrier*, [1998] 2 SCR 371, [1998] SCJ No 64;
- *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44;
- *R. v. DC*, 2012 SCC 48;
- *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45;
- *Canada (Attorney General) v Bedford*, 2013 SCC 72;
- *R. v. Hutchinson*, 2014 SCC 19;
- *R. v. Wilcox*, 2014 SCC 75;
- *R. v. Smith*, 2015 SCC 34;
- *Carter v. Canada (Attorney General)*, 2015 SCC 5;
- *R. v. Lloyd*, 2016 SCC 13;
- *Sherman Estate v Donovan*, 2021 SCC 25;
- *R. v. Kirkpatrick*, 2022 SCC 33;
- *R. v. Sharma*, 2022 SCC 39;
- *R. v. Ndhlovu*, 2022 SCC 38;
- *R. v. JT*, 2008 BCCA 463;
- *R. v. Wright*, 2009 BCCA 514;
- *R. v. Mabior*, 2010 MBCA 93;
- *R. v. Mernagh*, 2013 ONCA 67;
- *R. v. Mekonnen*, 2013 ONCA 414 and *R. v. Felix*, 2013 ONCA 415;
- *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852;
- *R. v. Gowdy*, 2016 ONCA 989;
- *Christian Medical and Dental Society of Canada et al. v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393;
- *R. v. Boone*, 2019 ONCA 652;
- *R. v. G(N)*, 2020 ONCA 494;
- *R. v. Aziga*, 2023 ONCA 12;
- *R. v. Thompson*, 2018 NSCA 13;
- *AB v. Canada (Citizenship and Immigration)*, 2017 FC 1170; and
- *Elementary Teachers' Federation of Ontario v Ontario (Minister of Education)*, 2019 ONSC 1308.[18]

26. In addition, the Legal Network has been granted public interest standing in two cases: *Simons v. Ontario (Minister of Public Safety)*, 2020 ONSC 1431 and *Canadian Alliance for Sex Work Law Reform v. Attorney General*, 2023 ONSC 5197 (as a member of the Canadian Alliance

[18] Chu 2025 Affidavit, *supra* note 2, at para 8.

for Sex Work Law Reform). *Simons v. Ontario* concerned the constitutionality of the implementation of a needle exchange system in Canadian prisons; *Canadian Alliance for Sex Work Reform v. Attorney General* challenged the criminalization of various activities associated with sex work.[19]

27. As part of its public legal education activities, the Legal Network fields hundreds of inquiries each year from people living with HIV, service providers, and policy makers, many of which concern the "excessive demand" provisions under *IRPA.* The Legal Network has published materials on immigration and travel to Canada for people living with HIV, focusing on these provisions.[20]

28. Given its expertise, the Legal Network has regularly been consulted by the federal government and other organizations with respect to legal and human rights issues affecting people living with HIV, and made submissions to provincial and federal policymakers about a wide range of issues including immigration policy.[21]

ii.) The Legal Network's interest in this application

29. The Legal Network has a vested interest in, and commitment to, ensuring that the rights of people living with HIV or disproportionately affected by HIV are protected. The Legal Network represents the voices of many people living with and affected by HIV in Canada, including non-citizens affected by Canada's immigration law and policy. The Legal Network has extensive expertise and experience regarding the stigma and discrimination faced by migrants living with HIV, and the "excessive demand" provision, given the provisions' disproportionate effect on migrants living with HIV.[22]

30. Because of its extensive record of research, community engagement, education, and advocacy, the Legal Network has deep expertise in the legal issues facing people living with HIV, particularly with respect to HIV and immigration.

[19] Chu 2025 Affidavit, *supra* note 2, at para 9.
[20] *Ibid* at paras 10-13.
[21] *Ibid* at para 20.
[22] *Ibid* at paras 23-24.

31. In the present case, the Legal Network seeks to highlight the disproportionate impact that the "excessive demand" provisions have on migrants, while ensuring that this matter is carried to completion and that the appropriate resources and expertise are made available for a proper disposition. More specifically, the Legal Network aims to give a voice within this proceeding to marginalized groups who may not be able to bring forward a lengthy and costly constitutional matter. The Legal Network intends to support R.A.'s litigation by facilitating access to expert testimony and affidavits, without which R.A. would not be able to present comprehensive legal arguments.

III. This Case is a Reasonable and Effective Way to Bring the Issue Before the Court

32. The Legal Network submits that the third factor of the public interest standing test is satisfied. Not only do the Legal Network's resources and experience make it well-suited to bring the litigation, but a grant of public interest standing will reinforce the principles of legality and access to justice.

33. *Downtown Eastside* emphasizes that the principle of legality was "central to the development of public interest standing in Canada."[23] This principle encompasses two ideas: first, that state action should conform to the Constitution and statutory authority, and second, that there must be practical and effective ways to challenge the legality of state action.[24] Courts have subsequently re-affirmed, in cases such as *Council of Canadians with Disabilities*, *Canadian Frontline Nurses*, and *Habiba*, that the "whole purpose" of public interest standing is "to prevent the immunization of legislation or public acts from any challenge."[25]

34. By establishing legality as the purpose of public interest standing, the Court has also centred access to justice as an important consideration in granting public interest standing, as discussed by *Council of Canadians with Disabilities*:

> [34] Access to justice, like legality, is "fundamental to the rule of law" (Trial Lawyers, at para. 39). As Dickson C.J. put it, "[t]here cannot be a rule of law without access, otherwise the rule of law is replaced by a rule of men and women who decide

[23] *Downtown Eastside, supra* note 1 at para 31.
[24] *Ibid* at para 31.
[25] *Council of Canadians with Disabilities*, *supra* note 8 at para 40; *Canadian Frontline Nurses v Canada (Attorney General)*, 2024 FC 42 at para 190 [*Canadian Frontline Nurses*]; *Habiba v Canada*, 2024 FC 39 at para 24.

> who shall and who shall not have access to justice" (B.C.G.E.U. v. British Columbia (Attorney General), 1988 CanLII 3 (SCC), [1988] 2 S.C.R. 214, at p. 230).
>
> [35] Access to justice means many things, such as knowing one's rights, and how our legal system works; being able to secure legal assistance and access legal remedies; and breaking down barriers that often prevent prospective litigants from ensuring that their legal rights are respected. For the purposes of this appeal, however, access to justice refers broadly to "access to courts" (see, e.g., G. J.
>
> Kennedy and L. Sossin, "Justiciability, Access to Justice and the Development of Constitutional Law in Canada" (2017), 45 Fed. L. Rev. 707, at p. 710).[26]

35. *Council of Canadians with Disabilities* further explains that it is the third factor of the test for public interest standing – reasonable and effective means – that "implicates both legality and access to justice":

> It is "closely linked" to legality, since it involves asking whether granting standing is desirable to ensure lawful action by government actors (*Downtown Eastside*, at para. 49).
>
> It also requires courts to consider whether granting standing will promote access to justice "for disadvantaged persons in society whose legal rights are affected" by the challenged law or action (para 51).[27]

36. At this stage of the test, then, the Court must consider the need to uphold access to the courts to ensure effective challenges to the legality of state action. Against this backdrop, the "reasonableness and effective means" factor considers a series of interrelated matters, such as: the plaintiff's capacity to bring the claim; whether the case is of public interest and what impact it will have on access to justice; whether there are alternative means to bring the claim forward, including parallel proceedings; and the potential impact of the proceedings on the rights of others.[28] None of these factors are conclusive; they must be weighed together in a liberal and generous manner.[29] As outlined in *Canadian Council for Refugees*, "[p]ublic interest standing must be addressed in a flexible, liberal, and generous manner, and in light of the purposes of setting limits on standing."[30]

[26] *Council of Canadians with Disabilities, supra* note 8 at paras 34-35. [Emphasis Added].
[27] *Ibid* at para 52.
[28] *Ibid* at para 104.
[29] *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*, 1992 CanLII 116 (SCC), [1992] 1 SCR 236.
[30] *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 1131 at paras 62-64 [*Canadian Council for Refugees*].

i. The Legal Network has the capacity to bring the claim

37. As described above, the Legal Network has the institutional capacity to participate in constitutional litigation and is well situated to provide comprehensive evidence and argument on the issues before the Court. In addition to previous litigation, the Legal Network has been regularly consulted by government and other organizations on legal issues affecting people living with HIV. The Legal Network has also appeared in front of Parliamentary Committees numerous times to examine a range of legislative proposals affecting HIV prevention, care, treatment, and support.[31]

38. Though there is an individual litigant in this matter, the Legal Network has the capacity to bring forward evidence of the broad harms associated with the impugned provision, equipping this Court to appreciate the wider implications of its findings.[32] Its resources and relationships will enable it to bring unique and different perspectives in front of the Court, including those of persons who have experienced discriminatory impact from s. 38(1)(c) but would experience insuperable obstacles in attempting to bring a constitutional claim.

ii. The case is of public interest, impacts access to justice for disadvantaged people, and will have a substantial impact on the rights of others

39. This case is of public interest. It could have substantial impact on the legal rights of members of a historically disadvantaged group, who face many financial, linguistic, and racial barriers, as well as attitudinal and medical barriers associated with disability, when attempting to access justice.

40. In 2019, 1,400 applicants were actually denied status due to the medical inadmissibility provision under the *IRPA*.[33] Many more, however, sustained direct and indirect harm because of the discriminatory nature of the provisions that governed their interactions with IRCC.

41. Individuals who are affected by the medical inadmissibility provisions in *IRPA* may not be in a position to challenge them. People without stable immigration status, in particular, are often not able to undertake major constitutional challenges such as the one at bar. They are a

[31] Chu 2025 Affidavit, *supra* note 2 at para 20.
[32] *Canadian Council for Refugees, supra* note 26 at paras 57-59.
[33]Statistics Canada, "Healthy immigrant effect by immigrant category in Canada" (17 April 2019), DOI: https://www.doi.org/10.25318/82-003-x201900400001-eng.

vulnerable and disadvantaged segment of the population, lacking both resources and status. Those who face removal from Canada may be unable to see the litigation through to its conclusion. In many cases, as the Federal Court has recognized, they will require substantial support in accessing justice.[34]

42. Individuals living with HIV may face further barriers to active participation in litigation, such as chronic illness or the fear of publicity. As recognized by the Supreme Court in *Council of Canadians with Disabilities*, people with disabilities may "hesitate to expose themselves to the unfortunate stigma that can accompany public disclosure of their private health information[35]- a barrier that can be alleviated through an appropriate grant of public interest standing.

43. The Legal Network's participation in this matter will ensure that this Court is able to consider, on a strong evidentiary record, the perspectives of all those harmed by the impugned provisions. It is in the public interest for this Court, in fulfilling its role as the guardian of the constitution and enforcer of *Charter* rights, to hear this case with the most robust arguments. This will only be possible if the Legal Network is allowed standing in this matter, given their unique expertise, resources, and their particular emphasis on the broader impact of the medical inadmissibility provisions.

44. The Court in *Downtown Eastside* invites courts to consider whether the case would "provide access to justice for disadvantaged persons in society whose legal rights are affected."[36] Though this is not determinative for granting public interest standing for anyone who "decides to set themselves up as the representative of the poor and marginalized," the Court in *Council of Canadians with Disabilities* found that the organization possessed the capacity to "promote access to justice for a disadvantaged group who has historically faced serious barriers to bringing such litigation before court."[37] Immigrants similarly compose a marginalized group who have historically faced these serious barriers which are superimposed by financial, linguistic, and racial barriers.

[34] *Canadian Council for Refugees, supra* note 26 at para 62.
[35] *Council of Canadians with Disabilities*, supra note 8 at para 115.
[36] *Downtown Eastside, supra* note 1 at para 51.
[37] *Council of Canadians with Disabilities*, *supra* note 8 at para 110.

45. As an individual litigant, R.A.'s understanding of the medical inadmissibility provisions is limited to his own case. By contrast, the Legal Network has worked with many migrants whose legal matters involved the medical inadmissibility provisions under the *IRPA* and has expertise on the impacts of the provision on the broader HIV and immigrant communities.

46. In *Canadian Frontline Nurses*, the Federal Court found that the Canadian Civil Liberties Association ("CCLA") and the Canadian Constitution Foundation ("CCF") "provide strong public law capabilities to compliment the more limited substantive arguments raised by" the private litigants with direct standing.[38] In fact, "[n]either the evidence submitted nor the arguments advanced by the private litigants would have been sufficient to deal with the issues in [those] proceedings," which created "a definite advantage in having counsel for the two public interest organizations working alongside, and to some extent guiding, the private litigants to move [the] proceedings to the point where the issues could be argued on their merits."[39] In this litigation, the Legal Network's public law knowledge would "assist the Court in reaching a just determination of the issues, which upholds the principle of legality."[40]

47. In short, the involvement of the Legal Network in this application, together with R.A., will ensure that this Court is equipped to consider both the individual and the collective aspect of the litigation.[41]

iii. Efficient and effective use of judicial resources

48. The Respondent has argued that there is no need for a public interest litigant in the present case as there is already a litigant who is directly affected before the Court.[42] However, R.A.'s application is under review, and it is conceded by the Respondent that the denial of his application was improper. Because of the serious constitutional questions that this litigation engages, it would be a just and effective use of judicial resources for the Legal Network to be granted public interest standing to ensure that the litigation is carried to its conclusion.

[38] *Canadian Frontline Nurses, supra* note 21 at para 187.
[39] *Ibid* at para 189.
[40] *Ibid* at para 187.
[41] *Downtown Eastside, supra* note 1 at para 73.
[42] Respondent's Motion Record (Motion to Strike Public Interest Organization), Written Representations, at para 18.

49. Additionally, members of other affected classes may bring forward their own challenges of the provision, which would "simply result in a multiplicity of proceedings and the unnecessary expenditure of judicial resources."[43] As the Court highlighted in *Canadian Doctors for Refugee Care v Canada*, "It makes most sense from a resource allocation perspective to litigate the issues once, in a coherent, comprehensive manner, rather than have them litigated in a piecemeal fashion down the road."[44]

50. The Legal Network cannot adequately advance its position by applying for intervener status, given its active involvement from the outset of this matter. The Court in *Canadian Council of Refugees* indicated that intervener status was not an adequate position for an organization with deep expertise and involvement in a proceeding, as it is "generally not appropriate for 'ghost' parties to lurk in the background, providing extensive funding, evidence, advice, or information."[45] The Legal Network would be acting as a "ghost party" in the present matter given its prior involvement and interest in the case, as well as its planned contribution to the record, which including expert affidavits that provide critical context on the impacts of the medical inadmissibility provision of the *IRPA*.

iv. The present proceedings can be distinguished from Slepcsik (formerly Gnanapragasam)

51. The Legal Network's involvement in the present proceedings can be meaningfully distinguished from that of the Canadian Council for Refugees ("CCR") in *Slepcsik* (formerly *Gnanapragasam*).[46] Therefore, the Court should not deny the Legal Network public interest standing on similar grounds to those advanced in that decision.

52. In *Slepcsik*, the Applicant brought an ALJR, seeking judicial review of the decision to cease his refugee status and challenging the constitutionality of ss. 40.1 and 46(1)(c.1) of the *IRPA* and s. 228(1) of the *Immigration and Refugee Protection Regulations*. The CCR was originally an applicant in *Gnanapragasam*, a similar matter involving an ALJR challenging the constitutionality of the cessation provisions of the *IRPA*. The CCR contributed extensively to the robust factual record in *Gnanapragasam*, submitting memoranda, researching and

[43] *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 at para 344.
[44] *Ibid* at para 344.
[45] *Canadian Council for Refugees*, *supra* note 26 at para 68.
[46] *Slepcsik v Canada (Citizenship and Immigration)*, 2024 FC 1106 [*Slepcsik*].

reviewing documents, and finding expert affiants. After leave was granted, the CCR submitted 14 additional affidavits.[47] In an Order dated May 2, 2024, Brown J struck and dismissed *Gnanapragasam* for mootness, struck CCR as a party, and consolidated the matters into *Slepcsik*. However, Brown J. found that it was "efficient and in the interests of justice" for the factual record developed by CCR to be exported to the consolidated *Slepcsik* proceeding.[48]

53. The CCR's motion for public interest standing in *Slepcsik* was denied by Horne J. in an Order dated July 15, 2024. Horne J. found that the CCR had failed to meet the third step of the test from *Downtown Eastside*, which requires that the action be a reasonable and effective way to bring the matter before the courts. Horne J. held that unlike *Canadian Council for Refugees*, "[th]ere is no apparent risk that these consolidated applications will not be carried through to a conclusion without adding CCR as a public interest party", given that the matters were "fully briefed and ready for hearing".[49] In addition, Horne J. held that the CCR had not demonstrated what it would add to the litigation that would be different from the applicant and interveners, given that it had already contributed extensively to the record.[50]

54. Unlike the CCR in *Gnanapragasam*, the Legal Network was struck from the proceeding prior to the hearing stage and thus has not had the opportunity to contribute to the record. This proceeding is fundamentally different from *Slepcsik* in that there is no pre-existing record that renders further contributions moot or repetitive. This proceeding is not at the point where there is "nothing left to ghost write."[51] Extensive work must be done to develop the robust evidentiary record necessary for the consideration of s.15 *Charter* arguments, including evidence about the "full context of the claimant group's situation" and "the outcomes that the impugned law or policy . . . has produced in practice."[52]

55. Potential expert witnesses, such as Dr. Laura Bisaillon of the University of Toronto, Department of Health and Society, and Dr. Valentina Capurri of the Toronto Metropolitan

[47] Order of Associate Justice Horne *supra* note 46.
[48] IMM-8432-22, IMM-5466-23 and IMM-5481-23, Motion Record, Tab 4 Order of Justice Brown dated May 2, 2024.
[49] Order of Associate Justice Horne *supra* note 46 at para 26.
[50] *Ibid* at para 27.
[51] *Ibid* at para 32.
[52] *R v Sharma*, 2022 SCC 39 at para 49.

University's Middle East and North Africa Studies Centre, have expressed willingness to act explicitly because of their familiarity with the Legal Network's work, reputation, and expertise.

56. The Legal Network has the ability to provide a broader systemic perspective that differs from the individual applicant in the present case. As an intervener, the Legal Network would not have the opportunity to adduce evidence in the same way that an Applicant would. As previously outlined, the Legal Network has decades of experience in researching and litigating immigration matters affecting the rights of people with HIV. As such, the Legal Network has the capacity to provide extensive knowledge and support in the present proceedings, commensurate with the wide-ranging implications of the present case.

v.) The Legal Network did not err in its original approach to establishing public interest standing.

57. It is uncontested that the Legal Network's ability to take part in this litigation as a party depends on a grant of public interest standing by the court. However, the Legal Network contends that it did not err in naming itself as co-applicant with R.A. in the originating notice, submitting materials on the issue of public interest standing, and preparing to address the question as a threshold issue.

58. Both the *Federal Courts Rules* and case law so confirm. Subsection 18.1(1) of the *Federal Courts Act* allows for judicial review to be brought by "anyone directly affected by the matter in respect of which relief is sought". The Federal Court Appeal has held that this does not preclude applicants who are not directly affected from bringing an application, as long as they meet the test for public interest standing.[53] Per the *Federal Courts Rules*, SOR/98-106 and the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, there is no rule that requires a public interest litigant to bring a preliminary motion for standing in order to be a party to an application. In fact, there is no procedural distinction in the *Federal Courts Rules,* SOR/98-106, between private and public interest litigants in bringing an application for judicial review.

59. In *Y.Z.*, the Court held that the Canadian Association of Refugee Lawyers ("CARL") followed proper procedure in adding itself as a public interest litigant to an application for judicial

[53] *Canada (Royal Canadian Mounted Police Public Complaints Commission) v Canada (Attorney General)*, 2005 FCA 213 at para 56.

review along with a private litigant.[54] Boswell J. wrote that "standing is asserted whenever a party applies for judicial review, and the *Federal Courts Rules*, SOR/98-106, do not require any party to prove its standing by preliminary motion."[55] While the Legal Network bears the onus of meeting the test for public interest standing established in *Downtown Eastside*, it is not required to do so as a preliminary matter prior to a hearing on the merits.[56]

60. For all the reasons above, the Legal Network submits that it meets the test for public interest standing established in *Downtown Eastside*.

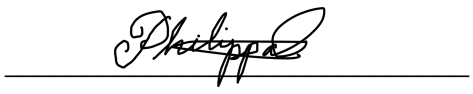
PART FOUR: ORDER SOUGHT

61. The Legal Network respectfully requests that this Honourable Court grant the following relief:

    1. An Order granting the Legal Network public interest standing in this litigation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto, this 31th day of July, 2025.



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[54] *YZ v Canada (Citizenship and Immigration)*, 2015 FC 892 at para 38.
[55] *Ibid* at para 36.
[56] *Ibid* at 37; *Canadian Council for Refugees, supra* note 26 at para 21; *Sierra Club of Canada v. Canada (Minister of Finance)*, [1999] 2 FC 211 at para 24.

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