Federal Court Cour fédérale

Date: 20251119

Docket: IMM-12720-23

St. John's, Newfoundland and Labrador, November 19, 2025

PRESENT: Associate Judge Trent Horne

BETWEEN:

RA

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Background

[1] The applicant brings this proceeding to challenge a decision that denied an extension of a study permit. The refusal was based on subsection 38(1)(c) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The officer concluded that the applicant was inadmissible to Canada because they might reasonably be expected to cause excessive demand on health or social services because of their HIV status.

[2] In addition to an order setting aside the decision on the study permit extension, the notice of application for leave and for judicial review seeks a declaration that subsection 38(1)(c) of the IRPA unjustifiably violates subsection 15(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*] and consequential relief pursuant to subsection 52(1) of the *Charter*.

[3] When the proceeding was commenced, the HIV Legal Network [HLN] was named as an applicant. The respondent brought a motion to remove HLN as a party, which was granted by Justice Brown in an order dated September 5, 2024 (*RA v Canada (Citizenship and Immigration)*, 2024 FC 1392 [2024 Order].

[4] The respondent has brought multiple motions to bring this proceeding to an early conclusion.

[5] A motion was filed in May 2024 for an order allowing the application for judicial review. The applicants opposed the motion on the basis that the respondent's proposed disposition would not address the *Charter* issues. Justice Southcott dismissed the respondent's motion (*RA v Canada (Citizenship and Immigration)*, 2024 FC 935). Justice Southcott determined that it remained available to the respondent to argue at the hearing that the principle of judicial restraint warrants a decision not to engage with the applicants' constitutional arguments. The Court was, however, not prepared to grant the respondent's motion and thereby preclude the applicants from advancing their application, including the requests for relief that were not conceded by the respondent (para 12).

[6] After Justice Southcott's decision was released, the applicant filed a refugee claim.

[7] The respondent brought a further motion in January 2025 to strike the application for leave and for judicial review on the basis that the applicant lacked standing and that the issue was moot. The respondent argued that if the applicant's claim for refugee protection is successful, subsection 38(2)(c) of the IRPA would exempt the applicant from being found inadmissible based on health grounds. On the other hand, if the refugee claim is not successful, the respondent argued that admissibility concerns under subsection 38(1)(c) would be irrelevant and redundant as the applicant would be inadmissible pursuant to subsection 49(2) of the IRPA and under an enforceable removal order. As submitted to Justice Southcott, the respondent argued that the Court ought to refrain from hearing the constitutional challenge. It was asserted that deferring a decision on mootness to the hearing on the merits would require the Court and the parties to expend a monumental amount of resources preparing for and attending a hearing for a matter that would resolve no live issue. Justice Conroy dismissed the motion (*RA v Canada (Citizenship and Immigration)*, 2025 FC 702) on the grounds that there was no fatal flaw or show stopper that rendered the proceeding bereft of any possibility of success (para 12).

[8] A production order was made on November 5, 2024. While this suggests that leave may be granted, a decision on leave remains outstanding.

[9] Two contested motions are now before the Court. HLN moves for an order granting it public interest standing. The respondent moves for an order that the Court determine the

preliminary threshold issues of mootness and standing before proceeding to the constitutional challenge. For the reasons that follow, both motions are dismissed.

II. HLN's Motion for Public Interest Standing

[10] When this proceeding was commenced in October 2023, the application for leave and for judicial review named two applicants: the individual affected by the decision, whose identity has been anonymized as RA, and HLN. The pleading asserted that HLN "brings this application on the basis of public interest standing …"

[11] The respondent brought a motion in July 2024 to strike HLN as a party. The grounds in the notice of motion included an assertion that HLN is not directly affected by the matters in issue, and that "HIV Legal Network should not be granted public interest standing in this matter." The respondent's submissions included argument as to why HLN did not meet the test for public interest standing as set out in *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 and other authorities.

[12] The applicants opposed the motion and filed a responding motion record. That record included an affidavit of Sandra Ka Hon Chu, the co-Executive Director of HLN. The written representations argued that HLN has never claimed to be a directly affected individual with an automatic right to standing. The written representations also included argument directed to the legal test for public interest standing, and submissions as to why HLN satisfied that test. The final paragraph of the written representations states "The Legal Network satisfies the criteria for public interest standing. The exercise of judicial discretion in this matter must be in favour of

granting standing. Failing to grant the Legal Network standing will effectively immunize s. 38(1)(c) from constitutional scrutiny."

[13] The respondent's motion was granted. The 2024 Order struck HLN as a party to the proceeding.

[14] On this motion, HLN argues that the 2024 Order did not rule as to whether HLN met the test for public interest standing. I cannot agree. HLN's motion is precluded by principles of issue estoppel.

[15] HLN has not asserted that it has rights of participation because it is directly affected by the decision under review; its status as an applicant is contingent on being granted public interest standing. Competing evidence and argument directed to that specific issue was before Justice Brown. On the motion leading to the 2024 Order, that was the only issue before him for determination. The reasons in the 2024 Order are brief, but the relief requested by the respondent was granted – HLN was struck as a party to the proceeding. The 2024 Order did not grant leave to HLN to argue the same issue again on a further motion or otherwise open the door to a second motion seeking the same relief.

[16] The reasons in the 2024 Order refer to an earlier decision of Justice Brown in *Gnanapragasam v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 761 [*Gnanapragasam*]. In the 2024 Order, Justice Brown concluded that HLN should be struck as a party "for essentially the same reasons the [Canadian Council for Refugees] was struck from the

proceedings in *Gnanapragasam*." The circumstances in *Gnanapragasam* were unique. In that matter, the Canadian Council for Refugees named itself as an applicant and participated in the preparation of an extensive record. The proceeding in *Gnanapragasam* was dismissed as moot, but the record was exported to another consolidated proceeding (IMM-5466-23 and IMM-5481-23; [*Slepcsik* Proceedings] involving similar issues. Justice Brown struck the Canadian Council for Refugees [CCR] as a party in *Gnanapragasam* and noted that if the CCR wished to participate in the *Slepcsik* Proceedings, it could seek leave to do so.

[17] I do not read anything in the 2024 Order that contemplates or permits HLN to bring a further motion for public interest standing. Unlike *Gnanapragasam* and the *Slepcsik* Proceedings, this is a single proceeding without a transfer of materials from one Court file to another. In *Gnanapragasam*, Justice Brown only had that Court file before him and expressly left the determination of CCR's public interest standing in the *Slepcsik* Proceedings to another day. I cannot, directly or by inference, conclude that the 2024 Order opened the door to HLN to bring a further motion on the issue of public interest standing in the same Court file.

[18] HLN submits that reading Justice Brown's 2024 Order in conjunction with his order in *Gnanapragasam* reveals that HLN was struck as a party because it asserted its standing by way of an improper procedure, and that the 2024 Order did not determine the issue of HLN's standing. HLN also notes that the respondent did not raise issue estoppel in the written materials for this motion. I am unable to agree. HLN asked Justice Brown to reach the same outcome as what is requested on this motion – a discretionary grant of public interest standing. That request was not granted.

[19] Issue estoppel involves a two-step analysis. The preconditions to the operation of issue estoppel are: a) that the same question has been decided; b) that the judicial decision which is said to create the estoppel was final; and, c) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies (*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 at para 25 [*Danyluk*]).

[20] Each of these questions are answered in the affirmative. The question of whether HLN should be granted public interest standing was decided in the 2024 Order; that decision is final; and the parties are the same.

[21] The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. The first step is to determine whether the moving party has established the preconditions to the operation of issue estoppel. If successful, the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied (*Danyluk* at para 33).

[22] I am not satisfied that there has been any material change in circumstances between the 2024 Order and the present motion that would justify not applying the principles of issue estoppel. HLN's evidence on both motions is an affidavit of its co-Executive Director, Sandra Ka Hon Chu. The affidavit on the second motion contains some additional evidence, but about the first 30 paragraphs are virtually identical to the affidavit on the first motion. There has been no change in circumstances for the applicant or their counsel in the past year that would

negatively impact their ability to prosecute the matter fully. I note that the applicant did not file materials on HLN's motion that would provide a basis for the Court to grant the extraordinary relief of permitting the same issue to be adjudicated more than once.

[23] Finality of decisions is a key principle in all proceedings before the Court, but especially so in applications for judicial review. Judicial review is meant to be a timely, summary proceeding allowing the state to implement its administrative decisions with minimal delay if the decision is challenged and found lawful or, if found unlawful, to quickly make corrective measures so that the decision complies with law and can take effect (*Wildchild Stockholm, Inc v Canada (Attorney General)*, 2019 FC 874 at para 50). The focus of the Court and the parties should be on moving the application along to a hearing as quickly as possible, while ensuring a fair procedure and ensuring the parties have adequate time to prepare their case (*David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 (FCA); *Gordon v Canada (Minister of National Defence)*, 2004 FC 1642). Permitting parties to argue the same issue a second time in the hopes of achieving a different outcome is contrary to that objective.

[24] The motion by HLN must therefore be dismissed.

III. The Respondent's Bifurcation Motion

[25] The Court may, at any time, order the trial of an issue or that issues in a proceeding be determined separately (Rule 107 of the *Federal Courts Rules*, SOR/98-106 [Rules]).

[26] The starting point in considering bifurcation is the principle that a litigant has a basic right to have all the issues in dispute resolved in one hearing. (*South Yukon Forest Corp. v Canada*, 2005 FC 670 [*South Yukon*] at para 3)

[27] Bifurcation is available in judicial reviews, since they constitute "proceedings" (*Democracy Watch v Canada (Attorney General)*, 2023 FCA 39 at paras 11-12). Moreover, Rule 107 is in Part 3 of the Rules, and these Rules apply to immigration matters (subrule 4(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22).

[28] The factors to consider on a bifurcation motion are:

a) Whether issues for the first trial are relatively straightforward;

b) The extent to which the issues proposed for the first trial are interwoven with those remaining for the second;

c) Whether a decision at the first trial is likely to put an end to the action altogether, significantly narrow the issues for the second trial or significantly increase the likelihood of settlement;

d) The extent to which the parties have already devoted resources to all of the issues;

e) The timing of the motion and the possibility of delay;

f) Any advantage or prejudice the parties are likely to experience; and

g) Whether the motion is brought on consent or over the objection of one or more of the parties.

(*South Yukon* at para 4, citing *Markesteyn v Canada*, 2001 FCT 792)

[29] These factors are to be weighed with the overarching principles of fairness and justice in mind. Expediency is not necessarily the most important factor (*South Yukon* at para 4).

[30] The majority of the Court's decisions on bifurcation relate to the separate determination of liability and damages in intellectual property cases. Neither the parties nor the Court are aware of an instance where mootness was determined separately and before other issues in a judicial review proceeding.

[31] The respondent's argument that preparing *Charter* evidence and argument will require a great deal of time and resources that may not be necessary if the Court ultimately determines that the issues are moot is compelling. That said, Justice Conroy has already determined that the mootness issue is not a show stopper.

[32] There is a two-step test to determine if the Court should exercise its discretion to hear a moot case: 1) first, has the required tangible dispute disappeared and have the issues become academic (the live controversy test); and 2) second, if the answer to (1) is yes, should the Court exercise its discretion to hear the case even though it may have become moot? (*Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*] at 353).

[33] In considering whether to exercise its discretion to hear a moot case, the Court will consider (i) the presence or absence of adversarial parties; (ii) whether the proceeding will have a practical effect on the rights of the parties; and (iii) whether the Court would exceed its proper role by making law in the abstract, a task reserved for the legislative branch of government not

the judicial branch (*Borowski* at 358-62; see also *Amgen Canada Inc v Apotex Inc*, 2016 FCA 196, leave to appeal to SCC dismissed October 27, 2026 case #37124, at para 16).

[34] I agree with the applicant that the mootness issue and the constitutional challenge are interconnected, and that determining mootness as a stand-alone issue could result in a duplicity of evidence, specifically the applicant putting forward the same kind of evidence for both the mootness analysis and constitutional challenge. This is not a remote possibility; it is expected that the applicant will adduce evidence to support an argument that the matter should be heard even if it is moot. The analysis of the *Borowski* factors will not be done in an evidentiary vacuum.

[35] Having regard to all the above, I am not satisfied that the respondent has demonstrated that bifurcation is more likely than not to result in the just, expeditious, and least expensive determination of the proceeding on its merits, particularly in the context of an application for judicial review that is intended to proceed in a timely way. The motion is therefore dismissed.

ORDER in IMM-12720-23

THIS COURT ORDERS that:

1. HIV Legal Network’s motion is dismissed.

2. The respondent’s motion is dismissed.

“Trent Horne”

Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-12720-23
STYLE OF CAUSE:	RA v MCI
PLACE OF HEARING	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING	SEPTEMBER 18, 2025
ORDER AND REASONS:	HORNE A.J.
DATED:	NOVEMBER 19, 2025

APPEARANCES:

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