

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)**

B E T W E E N:

ATTORNEY GENERAL OF QUEBEC

APPELLANT
(Respondent)

- AND -

BIJOU CIBUABUA KANYINDA

RESPONDENT
(Appellant)

- AND -

**COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS
DE LA JEUNESSE**

RESPONDENT
(Appellant)

-AND-

**ATTORNEY GENERAL OF ALBERTA
ATTORNEY GENERAL OF ONTARIO
ATTORNEY GENERAL OF BRITISH COLUMBIA
ATTORNEY GENERAL OF CANADA**

INTERVENERS

**MOTION RECORD OF THE PROPOSED INTERVENER –
THE FCJ REFUGEE CENTRE AND THE MADHU
VERMA MIGRANT JUSTICE CENTRE**

Pursuant to Rule 55 of the Rules of the Supreme Court of Canada, SOR/2002-156

Yin Yuan Chen
University of Ottawa Faculty of Law
57 Louis-Pasteur Pvt.
Ottawa, Ontario, K1N 6N5
T: (613) 562-5800 ext. 2077
yy.chen@uottawa.ca

**COUNSEL FOR PROPOSED
INTERVENER**

Joshua Eisen
FCJ Refugee Centre
208 Oakwood Ave.
Toronto, Ontario, M6E 2V4
T: (416) 469-9754 ext. 261
F: (416) 469-2670
joshuae@fcjrefugeecentre.org

ORIGINAL TO:

REGISTRAR OF THIS COURT

COPIES TO:

Manuel Klein
Luc-Vincent Gendron-Bouchard
Bernard, Roy (Justice-Québec)
Bureau 8.00
1, rue Notre-Dame Est
Montréal, Québec
H2Y 1B6

T: (514) 393-2336 ext. 51560
(Mr. Klein)

T: (514) 393-2336 ext. 51996
(Mr. Gendron-Bouchard)

F: (514) 873-7074

manuel.klein@justice.gouv.qc.ca

luc-vincent.gendron-

bouchard@justice.gouv.qc.ca

Counsel for the Appellant

Pierre Landry
Noël et Associés
225, montée Paiement
Gatineau, Québec
J8P 6M7

T: (819) 771-7393

F: (819) 771-5397

p.landry@noelassociés.com

Agent for the Appellant

Sibel Ataogul
Guillaume Grenier
MMGC
Bureau 300
1717, boul. René-Lévesque Est
Montréal, Québec
H2L 4T3

T: (514) 525-3414
F: (514) 525-2803
sataogul@mmgc.quebec
ggrenier@mmgc.quebec

Counsel for the Respondent,
Bijou Cibuabua Kanyinda

Christine Campbell
CDPDJ (Bitzakidis Clément-Major
Fournier)
2^e étage
360, rue Saint-Jacques
Montréal, Québec
H2Y 1P5

T: (514) 873-5146 ext. 8384
F: (514) 873-6032
christine.campbell@cdpdj.qc.ca

Counsel for the Respondent,
Commission des droits de la personne et
des droits de la jeunesse

Leah M. McDaniel

Alberta Justice Constitutional and
Aboriginal Law
10th Floor
10025 – 102A Avenue N.W.
Edmonton, Alberta
T5J 2Z2

T: (780) 422-7145

F: (780) 643-0852

leah.mcdaniel@gov.ab.ca

**Counsel for the Intervener,
Attorney General of Alberta**

Rochelle Fox

Attorney General of Ontario
4th Floor
720 Bay Street
Toronto, Ontario
M7A 2S9

T: (416) 995-3288

F: (416) 326-4015

rochelle.fox@ontario.ca

**Counsel for the Intervener,
Attorney General of Ontario**

D. Lynne Watt

Gowling WLG (Canada) LLP
Suite 2600
160 Elgin Street
Ottawa, Ontario
K1P 1C3

T: (613) 786-8695

F: (613) 788-3509

lynne.watt@gowlingwlg.com

**Agent for the Intervener,
Attorney General of Alberta**

Marie-France Major

Supreme Advocacy LLP
Suite 100
340 Gilmour Street
Ottawa, Ontario
K2P 0R3

T: (613) 695-8855

F: (613) 695-8580

mfmajor@supremeadvocacy.ca

**Agent for the Intervener,
Attorney General of Ontario**

Ashley A. Caron
Attorney General of British Columbia
P.O. Box 9280 Stn Prov Govt
Victoria, British Columbia
V8W 9J7

T: (778) 974-3342
F: (250) 356-9154
ashley.caron@gov.bc.ca

**Counsel for the Intervener,
Attorney General of British Columbia**

François Joyal
Justine Malone
Lindy Rouillard-Labbé
Attorney General of Canada
5^e étage
200, boul. René-Lévesque Ouest
Montréal, Québec
H2Z 1X4

T: (514) 283-4934
F: (514) 496-7876
francois.joyal@justice.gc.ca
justine.malone@justice.gc.ca
lindy.rouillard-labbe@justice.gc.ca

**Counsel for the Intervener,
Attorney General of Canada**

Michael Sobkin
Michale Sobkin Law Corporation
331 Somerset Street West
Ottawa, Ontario
K2P 0J8

T: (613) 282-1712
F: (613) 228-2896
msobkin@sympatico.ca

**Agent for the Intervener,
Attorney General of British Columbia**

Christopher Rupar
Attorney General of Canada
Suite 500
50 O'Connor Street
Ottawa, Ontario
K1N 0H8

T: (613) 786-0211
F: (613) 954-1920
christopher.rupar@justice.gc.ca

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Attorney General of Canada**

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INTERVENERS

INDEX OF DOCUMENTS

TAB		PAGE
1.	Notice of Motion	1
2.	Affidavit of Diana Gallego	5
3.	Affidavit of Aditya Rao	15
4.	Memorandum of Argument	27

S.C.C. File No. 41210

**IN THE SUPREME COURT OF CANADA
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ATTORNEY GENERAL OF CANADA**

INTERVENERS

NOTICE OF MOTION

Pursuant to Rule 47(1)(a) of the Rules of the Supreme Court of Canada, SOR/2002-156

TAKE NOTICE that the FCJ Refugee Centre (the “FCJ Centre”) and Madhu Verma Migrant Justice Centre (the “Madhu Centre”) hereby apply jointly to a Judge of this Honourable Court, pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*, SOR/2002-156 for an order

granting:

- (a) leave to intervene in the above-listed appeal;
- (b) leave to file a factum in accordance with Rules 37 and 42 of the *Rules of the Supreme Court of Canada*;
- (c) leave to make brief oral argument at the hearing of the above-listed appeal;
- (d) no order as to costs; and
- (e) such further and other order as the said Judge may deem appropriate.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

1. This appeal concerns the interpretation and scope of “analogous grounds” in section 15 of the *Canadian Charter of Rights and Freedoms*. Specifically, the appeal will touch on whether “analogous grounds” includes distinctions based on an individual’s immigration status, or whether the analogous ground of citizenship status already recognized by this Honourable Court encompasses both citizens and various types of non-citizens. The appeal also addresses the question of discrimination on the intersecting grounds of citizenship, immigration status, and sex.
2. The FCJ Centre is a Toronto-based non-profit community organization and registered charity. The FCJ Centre’s membership and clientele includes many individuals with precarious immigration status in Canada, including refugee claimants and irregular migrants. For more than three decades, the FCJ Centre has provided support, guidance, and legal advice to precarious-status migrants across Canada. The FCJ Centre also engages in advocacy aimed at addressing systemic issues facing precarious-status migrants in Canada, including marginalization, discrimination, and access barriers to resources like education, childcare, social services, and health care.
3. The Madhu Centre is a non-profit organization providing services and support to precarious-status migrants in New Brunswick, including refugee claimants, migrant workers, international students, and irregular migrants. It also advocates for border and migrant justice on a systemic level via research, public education, and community mobilization. The Madhu Centre operates a legal clinic offering legal assistance to migrant workers and other underserved migrants.

4. Any ruling impacting the potential application of s. 15 of the *Charter* to individuals based on their citizenship and immigration status would directly affect the clients served by both the FCJ Centre and the Madhu Centre.
5. Accordingly, the FCJ Centre and the Madhu Centre have a genuine interest in this appeal.
6. If granted leave to intervene, the FCJ Centre and the Madhu Centre intend to address the following issues regarding the scope and interpretation of s. 15 of the *Charter*: (i) the nature of discrimination on intersecting grounds of citizenship, immigration status, and sex; (ii) whether immigration status constitutes an analogous ground of discrimination; and (iii) the proper interpretation of citizenship status as an analogous ground. The FCJ Centre and the Madhu Centre will provide submissions demonstrating that the protections afforded by s. 15 of the *Charter* should be extended to individuals based on their immigration status.
7. The submissions that the FCJ Centre and Madhu Centre propose to make are explained further in outline form under the heading “The FCJ Centre and the Madhu Centre will make unique and useful submissions” in the Memorandum of Argument filed in the within motion to intervene.
8. Both the FCJ Centre and the Madhu Centre will abide by any schedule set by this Honourable Court.
9. Neither the FCJ Centre nor the Madhu Centre will seek leave to submit any evidence.
10. Neither the FCJ Centre nor the Madhu Centre will seek costs in the proposed intervention and respectfully requests that none be awarded against it.
11. Consistent with the proper role of interveners before this Honourable Court, the FCJ Centre and the Madhu Centre will take no position on the disposition of the appeal.
12. Rules 47 and 55 of the *Rules of the Supreme Court of Canada*.

13. Such further or other grounds as counsel may see fit to raise and may be permitted by this Honourable Court.

AND FURTHER TAKE NOTICE that the following documents are referred to in support of the motion:

- (a) The within Notice of Motion;
- (b) The Affidavit of Diana Gallego, Co-Executive Director of the FCJ Refugee Centre;
- (c) The Affidavit of Aditya Rao, founding member of the board of directors of the Madhu Verma Migrant Justice Centre;
- (d) The Memorandum of Argument in support of the motion; and
- (e) Such further or other material as counsel may advise and may be permitted.

DATED at Toronto, Ontario, this 7th day of February, 2025.



Yin Yuan Chen
Barrister and Solicitor

University of Ottawa Faculty of Law
Fauteux Hall
57 Louis-Pasteur Pvt.
Ottawa, Ontario, K1N 6N5
T: (613) 562-5800 ext. 2077
yy.chen@uottawa.ca



Joshua Eisen
Barrister and Solicitor

FCJ Refugee Centre
208 Oakwood Ave.
Toronto, Ontario, M6E 2V4
T: (416) 469-9754 ext. 261
F: (416) 469-2670
joshuae@fcjrefugeecentre.org

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INTERVENERS

AFFIDAVIT OF DIANA GALLEGO

*Pursuant to Rules 47(1)(b) and 57(1) of the Rules of the
Supreme Court of Canada, SOR/2002-156*

I, **DIANA GALLEGO**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Co-Executive Director of the FCJ Refugee Centre and as such, I have knowledge of the matters contained in this affidavit. I am a Colombian-trained lawyer, with experience in advocacy, human rights, and social justice. In my various roles at the FCJ Refugee Centre, I work regularly with refugee claimants and other precarious-status migrants.
2. The FCJ Refugee Centre is requesting leave to intervene in this appeal jointly with the Madhu Verma Migrant Justice Centre. I will refer to the two organizations acting jointly as the Madhu Centre and the FCJ Refugee Centre.
3. The Madhu Centre and the FCJ Refugee Centre seek leave to intervene to assist the court in considering three issues arising in this case:
 - i) The nature of discrimination on intersecting grounds of citizenship and immigration status and sex;
 - ii) The proper interpretation of citizenship status as an analogous ground under section 15 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”); and
 - iii) Whether immigration status should be recognized as an analogous ground of discrimination under section 15 of the *Charter*.

The FCJ Refugee Centre

4. The FCJ Refugee Centre (the “Centre”) is a non-profit, grass-roots organization in Toronto and a registered charity. The Centre’s membership and clients encompass individuals whose legal status in Canada is precarious, including refugee claimants and irregular migrants.

For more than 30 years, the Centre has served these precarious-status migrants, and welcomes anyone asking for advice, counsel, and support regarding their refugee or immigration claim process. The Centre addresses systemic issues that precarious-status migrants face in Canada, including marginalization, discrimination, and access barriers to such resources as education, childcare, social services, and health care.

5. The Centre recognizes that all uprooted people, irrespective of their citizenship and immigration status, have strengths and capacities to contribute to the host country. It understands and empathizes with the experiences of precarious-status migrants and strives to offer holistic support to assist people with obtaining work permits, accessing necessary resources, and regularizing their status where possible.

6. The Centre recognizes that precarious-status migrants face prejudice, stigma, and systemic discrimination based on immigration status, which intersects other dimensions of marginalization including race, sex/gender, sexual orientation, age, religion, creed, disability, and socio-economic status.

7. Adopting a rights-based approach, the Centre provides a range of services to precarious-status migrants, such as immigration and refugee protection, support for migrant youth, assistance with accessing education, and services for human trafficking survivors as well as women and children who fled violence and abuse.

8. The Centre shares information with precarious-status migrants about their rights, access to services, and possibilities for regularizing their immigration status. It offers an integrated model of protection; settlement services and education, including shelter for women and their

children; timely counselling and support, including interpretation, in-house legal support, referral to external legal assistance, and programs on Canadian culture and life; and other educational workshops. It also provides primary health care for uninsured individuals.

Addressing Barriers to Securing Employment or Education Facing Migrant Women with Children

9. For the marginalized populations supported by the Centre, access to social services, childcare, and health care is often a critical need. Many of the Centre's clients face systemic discrimination and other barriers, including lack of affordable childcare, food insecurity, and inadequate housing. This not only undermines precarious-status migrants' health and wellbeing but also impedes their attainment of suitable work.

10. To help precarious-status migrants overcome these challenges, the Centre offers a variety of settlement and integration programs. Among them is a transitional housing program for women and children recently arrived in Canada, a health clinic that provides primary care and psychiatry services for uninsured migrants, a food bank for precarious-status migrants and their families, and English classes.

Addressing Discrimination Against Precarious-Status Migrants

11. By way of public education and advocacy, the Centre also works to combat stigmatization, prejudice, and systemic discrimination faced by refugees and migrants in Canada because of their immigration status. The Centre's collaborative projects with the City of Toronto have included initiatives that address these forms of discrimination by encouraging equal

treatment and respect for the human rights of refugee claimants and irregular migrants, many of whom are in the process of seeking to regularize their immigration status.

12. In 2021, the Centre partnered with the City of Toronto for a campaign that advocated for the rights of precarious-status migrants. After the Mayor of Toronto declared August 24th the Day of Undocumented Residents in Toronto, a proclamation was issued acknowledging that “[u]ndocumented residents ... lack access to safe and secure housing, health care, and education for themselves and their children. The COVID-19 pandemic intensified the vast challenges they continue to face. Although the City of Toronto’s Access to City Services for Undocumented Torontonians policy strives to ensure access to all City services regardless of immigration status, the reality is that undocumented residents continue to face barriers in their communities.”

13. The Centre responded to the City’s proclamation with a statement of support, noting: “We are proud to continue working alongside the City to invite all Torontonians to increase awareness, engage in discussion, and embrace Toronto as a true Sanctuary City, where everyone is welcome and treated with dignity.” To that end, the Centre has provided training to City of Toronto staff to help them better ensure equal rights and dignity for irregular migrants. In 2022 and 2024, the Centre further trained two cohorts of mental health crisis workers on engaging effectively with refugee claimants and irregular migrants in crisis situations.

14. The Centre has been equally active in its legal advocacy for the rights of precarious status migrants. Of particular relevance is its joint intervention in the ongoing litigation of *Toussaint v Canada (Attorney General)* (“*Toussaint No. 2*”) before the Ontario Superior Court of Justice.

The Centre intervened in the Motion to Strike the Claim,¹ and more recently, it was granted leave to intervene in the trial, with some participatory rights in pre-trial motions that could be dispositive of the plaintiff's claims.²

15. The plaintiff in *Toussaint No. 2* is challenging Canada's refusal to implement the Views of the UN Human Rights Committee in her successful complaint against Canada.³ The Committee in this case ordered Canada to ensure residents' access to essential health care without discrimination on the basis of immigration status. It found that Canada, by excluding Nell Toussaint from publicly funded health care, thus endangering her life and exposing her to irreversible, negative health consequences, had drawn a distinction "between those with legal status in the country and those who had not been fully admitted to Canada."⁴ This distinction was held "not based on a reasonable and objective criterion and therefore constituted discrimination under article 26 [of the *International Covenant on Civil and Political Rights*]."⁵

16. The FCJ Refugee Centre has been granted intervener status in *Toussaint No. 2*, jointly with the Madhu Centre and two other organizations to address, *inter alia*, "[w]hether in light of the Committee's Views in this case and other factors, immigration status should be recognized as an analogous ground of discrimination under s. 15 of the *Charter*."⁶

¹ *Toussaint v. Canada (AG)*, 2022 ONSC 4747 (CanLII), <<https://canlii.ca/v/jrhj/>> [*Toussaint*].

² *Toussaint v. Canada (AG)*, 2024 ONSC 6974, (12 December 2024), CV-20-00649404-0000 (ON SC) [*Toussaint*, motion to intervene].

³ *Views adopted by the Committee under article 5(2) of the Optional Protocol, concerning communication No. 2348/2014 (Nell Toussaint v Canada)*, CCPR/C/123/D/2348/2014 (30 August 2018) [*Committee Views*].

⁴ *Ibid* at para 11.8.

⁵ *Ibid*.

⁶ *Toussaint*, motion to intervene, *supra* note 2 at para 99.

The Centre's Interest, Unique Perspective and Expertise Relating to the Issues in this Case

17. The FCJ Refugee Centre, its members, and its clients have a direct interest and expertise in combating discrimination based on citizenship and immigration status, as well as the intersecting effects of this and other forms of discrimination facing precarious-status migrant women. These are central issues in the present appeal.

Proposed Submissions of the Madhu Centre and the FCJ Refugee Centre

18. I have reviewed the arguments in this Motion to Intervene and I can confirm they properly reflect the FCJ Refugee Centre's proposed position as intervenor in this appeal. Based on this review, I believe the Madhu Centre and the FCJ Refugee Centre will advance arguments that are distinct from the parties' submissions and will further the Court's determination of this appeal.

19. The Madhu Centre and the FCJ Refugee Centre will propose that discrimination facing refugee claimant women should be analysed through an intersectional lens, taking into account such considerations as sex, race, and citizenship and/or immigration status. To that end, it will be submitted that immigration status should be recognized as an analogous ground of discrimination under section 15 of the *Charter*. Alternatively, it will be suggested that citizenship status, an analogous ground recognized by this Court, should be interpreted to capture legal distinction drawn between non-Canadian citizens of different legal statuses.

20. The question of whether immigration status constitutes an analogous ground of discrimination under section 15 is unsettled. One of the authorities considered by Justice St-

Pierre in the present case when he refused to recognize immigration status as an analogous ground was the ruling of Stratas J.A. in *Toussaint v. Canada (Attorney General)* (“*Toussaint No. 1*”).⁷ However, when Nell Toussaint subsequently lodged her complaint against Canada before the UN Human Rights Committee, the Committee found the differential treatment at issue between regular and irregular migrants violated the right to non-discrimination under article 26 of the *International Covenant on Civil and Political Rights*.⁸ This Court has repeatedly held that the *Charter* should be presumed to provide a level of protection that is as great as afforded by similar provisions in international human rights law.⁹

21. When Canada brought a motion to strike Nell Toussaint’s current action challenging its refusal to implement the Views of the UN Human Rights Committee, Justice Perell, in dismissing Canada’s motion, observed:

[T]here was no analysis of the [*International Covenant on Civil and Political Rights*] in the Federal Court. It should also be noted that Justice Stratas’ conclusion that immigration status is not an analogous ground has been criticized by human rights’ academics and may be an unsettled issue.¹⁰

22. The Madhu Centre and the FCJ Refugee Centre will argue that immigration status should be recognized as an analogous ground under section 15 of the *Charter*, pursuant to considerations identified by this Court in *Andrews v. Law Society of British Columbia* and

⁷ 2011 FCA 213.

⁸ *Committee Views*, *supra* note 3.

⁹ See e.g. *Quebec (AG) v 9147-0732 Québec inc.*, 2020 SCC 32.

¹⁰ *Toussaint*, *supra* note 1 at [para 18](#).

Corbiere v. Canada (Minister of Indian and Northern Affairs).¹¹ Our arguments will further develop the following *obiter* reasoning of the Federal Court in *Toussaint No. 1*:

The Supreme Court’s decision in *Corbiere v. Canada (Minister of Indian and Northern Affairs)* ... leaves open the possibility that “immigration status” may be considered an analogous ground in the future. In *Corbiere*, at para. 60, the Court recognized that in analysing whether a characteristic is an analogous ground “[i]t is also central to the analysis if those defined by the characteristic are lacking in political power, disadvantaged, or vulnerable to becoming disadvantaged or having their interests overlooked.” It may be fair to say that illegal migrants lack political power, are frequently disadvantaged, and are incredibly vulnerable to abuse; this, combined with the difficulty of changing one’s illegal migrant status, might support an argument that such a characteristic is an analogous ground.¹²

23. The Madhu Centre and the FCJ Refugee Centre will argue that laws differentiating refugee claimants from other migrants draw a distinction based on the analogous ground of immigration status. Alternatively, it will be argued that singling out refugee claimants for poorer treatment relative to other non-Canadian citizens constitutes a legal distinction on the basis of citizenship status, an analogous ground recognized by this Court.¹³ Situating refugee claimants within the spectrum of citizenship and immigration statuses as such aligns with this Court’s prevailing

¹¹ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 [*Andrews*]; *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203.

¹² *Toussaint v Canada (AG)*, 2010 FC 810 at [footnote 3](#).

¹³ *Andrews*, *supra* note 11.

approach to interpreting enumerated and analogous grounds under section 15. For example, this Court has understood the ground of disability as capturing not only legal distinctions between able-bodied and disabled persons, but also those between individuals living with different types of disabilities.¹⁴

24. Drawing on the UN Human Rights Committee's decision in *Toussaint*, we will submit that the recognition and interpretation of analogous grounds under section 15, such as in the cases of citizenship and immigration status, should be in line with Canada's obligations to non-discrimination under ratified international human rights treaties.

25. This affidavit is made in support of a motion by the Madhu Verma Migrant Justice Centre for leave to intervene jointly with the FCJ Refugee Centre.

AFFIRMED BEFORE ME in the City of
Toronto, in the Province of Ontario, this 6th day
of February, 2025.

Joshua Eisen

Joshua Eisen
LSO# 854340
A Commissioner etc.

Diana Gallego

Diana Gallego

¹⁴ See e.g. *Nova Scotia (Workers' Compensation Board) v Martin*, 2003 SCC 54.

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INTERVENERS

AFFIDAVIT OF ADITYA RAO

*Pursuant to Rules 47(1)(b) and 57(1) of the Rules of the
Supreme Court of Canada, SOR/2002-156*

I, **ADITYA RAO**, of the City of Ottawa, in the Province of Ontario, **AFFIRM**:

1. I am a founding member of the board of directors of the Madhu Verma Migrant Justice Centre (“Madhu Centre”). In this role, I am responsible for overseeing our casework, acting as a spokesperson, offering our organization’s expertise to decision-making bodies, and working in coalition with other organizations interested in advancing the cause of migrant justice. Thus, I have knowledge of the facts to which I depose below. If I do not have personal knowledge, I have stated the source of my information and believe it to be true.

2. I hold a Juris Doctor from the University of Ottawa’s Faculty of Law, and a Master of Arts in International Affairs from Carleton University. I have been a member of the Law Society of Ontario since 2019, with experience in refugee law. Since 2007, I have been involved in community groups that support and advocate for migrants. I currently reside in Ottawa, Ontario, having lived in New Brunswick from 2020 to 2022.

3. The Madhu Centre is an organization dedicated to advancing migrant justice and supporting the struggles of migrants with precarious status in New Brunswick, including migrant workers, underserved migrants, refugee claimants, international students and people with undocumented or irregular immigration status.

4. The Madhu Centre is requesting leave to intervene in this appeal jointly with the FCJ Refugee Centre. I will refer to the two organizations acting jointly as the Madhu Centre and the FCJ Refugee Centre.

5. The Madhu Centre and the FCJ Refugee Centre seek leave to intervene to assist the court in considering three issues arising in this case:

- i) The nature of discrimination on intersecting grounds of citizenship and immigration status and sex;
- ii) The proper interpretation of citizenship status as an analogous ground under section 15 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”); and
- iii) Whether immigration status should be recognized as an analogous ground of discrimination under section 15 of the *Charter*.

The Madhu Centre’s Work and Expertise Regarding Discrimination Based on Immigration Status

6. The Madhu Centre provides services to precarious-status migrants in New Brunswick, including refugee claimants, migrant workers, international students, and irregular migrants. Since its founding, the Centre has assisted over one hundred migrants and advocated for border and migrant justice on a systemic level through research, public education, and community mobilisation.

7. The Madhu Centre operates a Migrant Worker Legal Clinic (“*Clinic*”), funded by the New Brunswick Law Foundation. Launched in November 2023, the Clinic supports migrant workers and other underserved migrants with legal assistance, including assistance with application for open work permits, permanent residency on humanitarian and compassionate grounds, temporary resident permits, pre-removal risk assessments, and judicial reviews. It therefore fills a significant gap in access to justice in the province.

8. Besides assisting with their immigration application, the Clinic helps precarious-status migrants assert their rights in the workplace, file labour and human rights complaints, and access community resources like food, shelter, and social opportunities.
9. The Madhu Centre also leads the establishment of the New Brunswick Sanctuary Network (“Sanctuary Network”), funded by the Canadian Race Relations Foundation. The Sanctuary Network is a confidential network that ensures people with precarious immigration status in New Brunswick have safe access to doctors, dentists, housing programs, social workers, counselors, and other essential service providers.
10. The Madhu Centre has also supported migrant workers seeking emergency funding for childcare. In New Brunswick, publicly subsidized childcare is only available to Canadian citizens and permanent residents.
11. In addition to service provision, the Madhu Centre produces and collaborates on research into the circumstances of precarious-status migrants and their families. The Madhu Centre was a community partner on the “TFW Maritimes” research project with Dalhousie University and St Thomas University between 2020 and 2023, which explored the challenges facing participants of the Temporary Foreign Worker Program. This research documented, *inter alia*, the exploitative practices and discrimination faced by migrant workers in the Maritime provinces, barriers to their health care access, and the difficulty they experienced in transitioning to permanent resident status. In 2024, the Madhu Centre released a documentary on the experiences of migrant workers called “Chaos and Control.” The documentary was accompanied by a report on the housing challenges faced by migrant workers.

12. Currently, the Madhu Centre has partnered with the University of Ottawa and the National Collaborating Centre for Determinants of Health on another research project, which aims to study the health care entitlement and access of Canadian-born children of precarious-status migrants, including refugee claimants, in New Brunswick, Manitoba, and British Columbia. Through these research projects, the Madhu Centre contributes to the understanding of how different forms of discrimination, including discrimination on the grounds of immigration status, race, and sex/gender, intersect to affect the health and wellbeing of precarious-status migrants and that of their family members.

13. The Madhu Centre also works through public education and advocacy to combat stigmatization, prejudice, and systemic discrimination faced by migrants in New Brunswick because of their immigration status. For example, since 2023, the Madhu Centre has publicly called on the province and the federal government to provide more legal aid support to refugee claimants and refugees. The Madhu Centre, partnering with other organizations, also campaigns for “Medicare for All” and “Status for All.” Whereas the former urges the Government of New Brunswick to broaden health care coverage for precarious-status migrants, the latter calls on the federal government to provide more pathways for precarious-status migrants, including irregular migrants, to obtain permanent resident status.

14. The Madhu Centre’s expertise in issues affecting precarious-status migrants has been recognized by Parliament and United Nations (“UN”) bodies. The Madhu Centre was invited to appear before the Standing Senate Committee on Social Affairs, Science and Technology in June 2023 to provide testimony on the abuse and discrimination facing migrant workers in

workplaces. In September of the same year, the Madhu Centre participated in, and helped convene, a special visit by the Standing Senate Committee to New Brunswick to meet with migrant workers and learn more about their experiences.

15. Also in 2023, the Madhu Centre contributed to a study conducted by the UN Special Rapporteur on Contemporary Forms of Slavery into the problems of closed work permits in Canada. Among other activities, the Madhu Centre organised a symposium for the Rapporteur to meet and hear directly from migrant workers.

16. The Madhu Centre has been equally active in its legal advocacy for the rights of precarious-status migrants. It was recently granted leave by the Ontario Superior Court of Justice to intervene in the case of *Toussaint v. Canada (Attorney General)* (“*Toussaint No. 2*”).¹ In that case, the plaintiff is challenging Canada’s refusal to implement the Views of the UN Human Rights Committee in *Nell Toussaint v Canada*, which requires Canada to ensure irregular migrants’ access to essential health care.² The Committee found that Canada, by excluding Nell Toussaint from publicly funded health care, thus endangering her life and exposing her to irreversible, negative health consequences, had drawn a distinction “between those with legal status in the country and those who had not been fully admitted to Canada.”³ This distinction was

¹ *Toussaint v. Canada (AG)*, 2024 ONSC 6974, (12 December 2024), CV-20-00649404-0000 (ON SC) [*Toussaint*, motion to intervene].

² *Views adopted by the Committee under article 5(2) of the Optional Protocol, concerning communication No. 2348/2014 (Nell Toussaint v Canada)*, CCPR/C/123/D/2348/2014 (30 August 2018) [*Committee Views*].

³ *Ibid* at para 11.8.

held “not based on a reasonable and objective criterion and therefore constituted discrimination under article 26 [of the *International Covenant on Civil and Political Rights*].”⁴

17. The Madhu Centre has been granted intervener status in *Toussaint No. 2*, jointly with the FCJ Refugee Centre and two other organizations to address, *inter alia*, [w]hether in light of the Committee’s Views in this case and other factors, immigration status should be recognized as an analogous ground of discrimination under s. 15 of the *Charter*.⁵

The Madhu Centre’s Distinct Expertise, Perspective, and Interest as an Intervener

18. The Madhu Centre is a well-recognized organization with relevant policy and legal expertise. It has a real, substantial, and identifiable interest in the issues raised in this appeal, and it will be directly affected by the outcome of the Court’s decision. It has an important perspective distinct from the immediate parties, including the perspective of precarious-status migrants beyond refugee claimants who face marginalization and exploitation as a result of their immigration status.

19. The Madhu Centre was founded by former refugees, settlement and case workers, and migrant justice advocates, among others. The organization’s client population consists of precarious-status migrants, including refugee claimants, in an underserved jurisdiction, many of whom experience intersecting forms of discrimination but have few or no other organizations to turn to for support. The Madhu Centre dedicates a substantial amount of its staff time and

⁴ *Ibid.*

⁵ *Toussaint*, motion to intervene, *supra* note 1 at para 99.

resources to assisting precarious-status migrants with accessing health care and social services. It also advocates for systemic changes aimed at protecting the rights, equality, and dignity of precarious-status migrants. The issues raised in this appeal therefore directly affect the Madhu Centre and its client population.

20. Together with FCJ Refugee Centre, the Madhu Centre can make a unique and valuable contribution to the Court's analysis of the issues in this case. In particular, the Madhu Centre has recognized expertise in addressing the prejudice, stereotype, and disadvantage experienced by precarious-status migrants. It also has first-hand knowledge about the challenges facing precarious-status migrants in obtaining permanent residency in Canada. This perspective will be of assistance to the Court's consideration of how to interpret citizenship status as an analogous ground of discrimination under section 15 of the *Charter*, as well as whether immigration status has the immutability to be accepted as an analogous ground.

Proposed Submissions

21. I have reviewed the arguments in this Motion to Intervene and I can confirm they properly reflect the Madhu Centre's proposed position as intervenor in this appeal. Based on this review, I believe the Madhu Centre and the FCJ Refugee Centre will advance arguments that are distinct from the parties' submissions and will further the Court's determination of this appeal

22. The Madhu Centre and the FCJ Refugee Centre will propose that discrimination facing refugee claimant women should be analysed through an intersectional lens, taking into account such considerations as sex, race, and citizenship and/or immigration status. To that end, it will be

submitted that immigration status should be recognized as an analogous ground of discrimination under section 15 of the *Charter*. Alternatively, it will be suggested that citizenship status, an analogous ground recognized by this Court, should be interpreted to capture legal distinction drawn between non-Canadian citizens of different legal statuses.

23. The question of whether immigration status constitutes an analogous ground of discrimination under section 15 is unsettled. One of the authorities considered by Justice St-Pierre in the present case when he refused to recognize immigration status as an analogous ground was the ruling of Stratas J.A. in *Toussaint v. Canada (Attorney General)* (“*Toussaint No. I*”).⁶ However, when Nell Toussaint subsequently lodged her complaint against Canada before the UN Human Rights Committee, the Committee found the differential treatment at issue between regular and irregular migrants violated the right to non-discrimination under article 26 of the *International Covenant on Civil and Political Rights*.⁷ This Court has repeatedly held that the *Charter* should be presumed to provide a level of protection that is as great as afforded by similar provisions in international human rights law.⁸

24. When Canada brought a motion to strike Nell Toussaint’s current action challenging its refusal to implement the Views of the UN Human Rights Committee, Justice Perell, in dismissing Canada’s motion, observed:

⁶ 2011 FCA 213.

⁷ *Committee Views*, *supra* note 2.

⁸ See e.g. *Quebec (AG) v 9147-0732 Québec inc.*, 2020 SCC 32.

[T]here was no analysis of the [*International Covenant on Civil and Political Rights*] in the Federal Court. It should also be noted that Justice Stratas' conclusion that immigration status is not an analogous ground has been criticized by human rights' academics and may be an unsettled issue.⁹

25. The Madhu Centre and the FCJ Refugee Centre will argue that immigration status should be recognized as an analogous ground under section 15 of the *Charter*, pursuant to considerations identified by this Court in *Andrews v. Law Society of British Columbia* and *Corbiere v. Canada (Minister of Indian and Northern Affairs)*.¹⁰ Our arguments will further develop the following *obiter* reasoning of the Federal Court in *Toussaint No. 1*:

The Supreme Court's decision in *Corbiere v. Canada (Minister of Indian and Northern Affairs)* ... leaves open the possibility that "immigration status" may be considered an analogous ground in the future. In *Corbiere*, at para. 60, the Court recognized that in analysing whether a characteristic is an analogous ground "[i]t is also central to the analysis if those defined by the characteristic are lacking in political power, disadvantaged, or vulnerable to becoming disadvantaged or having their interests overlooked." It may be fair to say that illegal migrants lack political power, are frequently disadvantaged, and are incredibly vulnerable to abuse; this,

⁹ *Toussaint v. Canada (AG)*, 2022 ONSC 4747 (CanLII), at [para 18](#).

¹⁰ *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 [*Andrews*]; *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203.

combined with the difficulty of changing one's illegal migrant status, might support an argument that such a characteristic is an analogous ground.¹¹

26. The Madhu Centre and the FCJ Refugee Centre will argue that laws differentiating refugee claimants from other migrants draw a distinction based on the analogous ground of immigration status. Alternatively, it will be argued that singling out refugee claimants for poorer treatment relative to other non-Canadian citizens constitutes a legal distinction on the basis of citizenship status, an analogous ground recognized by this Court.¹² Situating refugee claimants within the spectrum of citizenship and immigration statuses as such aligns with this Court's prevailing approach to interpreting enumerated and analogous grounds under section 15. For example, this Court has understood the ground of disability as capturing not only legal distinctions between able-bodied and disabled persons, but also those between individuals living with different types of disabilities.¹³

27. Drawing on the UN Human Rights Committee's decision in *Toussaint*, we will submit that the recognition and interpretation of analogous grounds under section 15, such as in the cases of citizenship and immigration status, should be in line with Canada's obligations to non-discrimination under ratified international human rights treaties.

28. This affidavit is made in support of a motion by the FCJ Refugee Centre for leave to intervene jointly with the Madhu Centre.

¹¹ *Toussaint v Canada (AG)*, 2010 FC 810 at [footnote 3](#).

¹² *Andrews*, *supra* note 10.

¹³ See e.g. *Nova Scotia (Workers' Compensation Board) v Martin*, 2003 SCC 54.

AFFIRMED BEFORE ME in the City of
Ottawa, in the Province of Ontario, this 30th day
of January, 2025.



Yin Yuan Chen

LSO# 60947P
A Commissioner etc.



Aditya Rao

S.C.C. File No. 41210

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)**

B E T W E E N:

ATTORNEY GENERAL OF QUEBEC

APPELLANT
(Respondent)

- AND -

BIJOU CIBUABUA KANYINDA

RESPONDENT
(Appellant)

- AND -

**COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS
DE LA JEUNESSE**

RESPONDENT
(Appellant)

-AND-

**ATTORNEY GENERAL OF ALBERTA
ATTORNEY GENERAL OF ONTARIO
ATTORNEY GENERAL OF BRITISH COLUMBIA
ATTORNEY GENERAL OF CANADA**

INTERVENERS

**MEMORADUM OF ARGUMENT
IN SUPPORT OF THE MOTION**

Pursuant to Rules 47 and 55 of the Rules of the Supreme Court of Canada, SOR/2002-156

Yin Yuan Chen

University of Ottawa Faculty of Law
57 Louis-Pasteur Pvt.
Ottawa, Ontario, K1N 6N5
T: (613) 562-5800 ext. 2077
yy.chen@uottawa.ca

**COUNSEL FOR PROPOSED
INTERVENER**

Joshua Eisen

FCJ Refugee Centre
208 Oakwood Ave.
Toronto, Ontario, M6E 2V4
T: (416) 469-9754 ext. 261
F: (416) 469-2670
joshuae@fcjrefugeecentre.org

PART I – OVERVIEW AND FACTS

1. This appeal raises questions that strike at the heart of this Court’s commitment to substantive equality, especially as it applies to non-citizens. The FCJ Refugee Centre (the “FCJ Centre”) and the Madhu Verma Migrant Justice Centre (the “Madhu Centre”) consequently have a significant interest in the outcome of this appeal and are seeking leave to intervene jointly.

2. The FCJ Centre and the Madhu Centre intend to address the alleged discrimination at issue, which intersects the grounds of citizenship, immigration status, and sex, among others. In particular, this appeal raises the question of whether immigration status constitutes an analogous ground of discrimination under s. 15 of the *Charter*, as well as how citizenship status, already an analogous ground recognized by this Court, should be interpreted and applied under s. 15. If granted leave to intervene, the FCJ Centre and the Madhu Centre will draw on their collective expertise to provide unique submissions that will assist the Court’s analysis with respect to these questions. Specifically, it will be demonstrated that substantive equality for non-citizens in Canada necessitates either the recognition of immigration status as an analogous ground, or a broader interpretation of the prohibited ground of citizenship.

PART II – QUESTION AT ISSUE

3. Should the FCJ Centre and the Madhu Centre be granted leave to intervene jointly in this appeal?

PART III – ARGUMENT

4. Leave to intervene may be granted where a party has an interest in the subject matter before the Court and will be able to make unique submissions that are useful to the Court.¹ In this case,

¹ *Rules of the Supreme Court of Canada*, SOR/2002-156, [s. 55](#); *Reference re Workers’ Compensation Act, 1983 (Nfld.) (Application to intervene)*, [1989] 2 SCR 335 at [339-341](#).

the FCJ Centre and the Madhu Centre have a direct interest and bring forward considerable expertise relating to the issues raised. It will also make unique and useful submissions respecting the negative impact on non-citizens when laws treat them differently based on immigration status. It is therefore requested that leave to intervene be granted.

A. The FCJ Centre and the Madhu Centre have a legitimate interest and expertise in the subject matter of this appeal

5. Both the FCJ Centre and the Madhu Centre work with clients whose immigration status in Canada is precarious, including refugee claimants. Both organizations serve precarious-status migrants by providing them with resources, support, and advice, as well as by advocating for structural changes to overcome marginalization, discrimination, and barriers to service access.

6. The FCJ Centre is a non-profit community organization and a registered charity based in Toronto.² With a mandate to assist refugees and other uprooted people in re-establishing their lives and integrating into Canadian society, the FCJ Centre offers an integrated service model that encompasses refugee protection, settlement services, and public education about the human rights and dignity of refugees and migrants. Among its programs is a shelter for refugee women and children, and a health clinic that provides primary care and psychiatry services regardless of patients' insurance and immigration status.³

7. The Madhu Centre, based in New Brunswick, is an organization dedicated to supporting precarious-status migrants and advancing migrant justice in the Province.⁴ The Madhu Centre runs a legal clinic that helps migrant workers and other underserved migrants acquire, maintain, and adjust their immigration statuses. It also leads the New Brunswick Sanctuary Network, which

² *Affidavit of Diana Gallego* at para 4.

³ *Affidavit of Diana Gallego* at para 8.

⁴ *Affidavit of Aditya Rao* at para 3.

assists precarious-status migrants with accessing health care and social services, including financial support for childcare.⁵

8. The FCJ Centre and the Madhu Centre are regularly involved in advocacy initiatives aiming at combating discrimination based on immigration status.⁶ Besides doing so by way of public education and community mobilization, the FCJ Centre and the Madhu Centre have been granted leave to intervene in *Toussaint v Canada (AG)*, 2024 ONSC 6974 (“*Toussaint No. 2*”), jointly with two other organizations. *Toussaint No. 2* concerns the legality of Canada’s refusal to implement an order from the UN Human Rights Committee, which in part asks Canada to ensure residents’ access to essential health care without discrimination on the basis of immigration status. The joint intervention of the FCJ Centre and the Madhu Centre in that case focuses on the application of the *Charter* to Canada’s decision, including whether immigration status should be recognized as an analogous ground of discrimination under s. 15 of the *Charter*.

9. In granting the FCJ Centre and the Madhu Centre leave to intervene in *Toussaint No. 2*, Justice Papageorgiou found the two organizations have “recognized interests and expertise in both the application of the *Charter* to disadvantaged groups and the relationship between international human rights law and the *Charter*.”⁷ The two organizations submit that the same conclusion should be reached with respect to the present application for leave to intervene.

10. Given their work with precarious-status migrants and their mandates to advocate on behalf of this population, including promotion of equal treatment irrespective of immigration status, the FCJ Centre and the Madhu Centre are directly affected by any judgement of this Court that concerns the applicability of s. 15 of the *Charter* to discrimination facing migrants. As such, the

⁵ *Affidavit of Aditya Rao* at paras 7, 9-10.

⁶ *Affidavit of Diana Gallego* at paras 11-13; *Affidavit of Aditya Rao* at paras 13-15.

⁷ *Toussaint v Canada (AG)*, [2024 ONSC 6974](#) at para 29.

two organizations have a genuine interest in this appeal. Moreover, the FCJ Centre and the Madhu Centre have the necessary knowledge and experiences to provide useful submissions to this Honourable Court concerning the issues raised in this appeal.

B. The FCJ Centre and the Madhu Centre will make unique and useful submissions

11. The FCJ Centre and the Madhu Centre will advance arguments that are distinct from those of the parties and will assist this Court in its determination of the appeal. If granted leave to intervene, the FCJ Centre and the Madhu Centre will argue as follows:

B.1. Differential treatment facing refugee claimant women implicates citizenship, immigration status, and sex

12. The Court of Appeal in this case found it unnecessary to rule on whether s. 3 of the *Reduced Contribution Regulations*, CQLR, c. S-4.1.1, r. 1 (“*RCR*”), is discriminatory on the bases of citizenship or immigration status, having held the provision discriminatory based on sex.⁸ If granted leave to intervene, the FCJ Centre and the Madhu Centre will argue that the discriminatory analysis in this case should adopt an intersectional approach, taking into account refugee claimant women’s citizenship and immigration status, in addition to their sex.

13. This Honourable Court has repeatedly affirmed that “substantive equality requires attention to the ‘full context of the claimant group’s situation’.”⁹ For refugee claimant women, such a full context includes their experiences as newcomers seeking safety and integration into Canadian society. The gendered impact of s. 3 of the *RCR* found by the Court of Appeal must be situated within the context of international migration and resettlement.

14. Adopting an intersectional approach helps to clarify the nature of the interest affected by the impugned law, which has been identified by this Court as a contextual factor for establishing

⁸ *Procureur général du Québec c Kanyinda*, [2024 QCCA 144](#) at para 121 [*Kanyinda QCCA*].

⁹ *Fraser v Canada (AG)*, [2020 SCC 28](#) at para 42 [*Fraser*].

equality rights violations in a purposive manner.¹⁰ In this case, the record accepted by the Court of Appeal indicates that being excluded from Quebec’s subsidized childcare program has a disproportionately adverse impact on refugee claimant women’s access to the labour market.¹¹ For refugee claimants, access to the labour market not only brings about financial benefits; it also contributes to their sense of belonging by allowing them to put down roots in a new environment. As such, examining s. 3 of the *RCR* through the lenses of sex, non-citizenship, and immigration status is critical to fully appreciating its impact on refugee claimants’ social exclusion.¹²

B.2. Immigration status constitutes an analogous ground under s. 15 of the *Charter*

15. If granted leave to intervene, the FCJ Centre and the Madhu Centre will further demonstrate that immigration status satisfies the immutability test established by this Court for identifying analogous grounds of discrimination prohibited by s. 15 of the *Charter*. The FCJ Centre and the Madhu Centre will also outline how the recognition of immigration status as an analogous ground accords with both substantive equality and Canada’s binding obligations under international law.

B.2.a. Immigration status meets the immutability test

16. In *Corbiere*, this Court described analogous grounds as characteristics that are immutable in either an actual or a constructive sense.¹³ Characteristics are considered constructively immutable if it is in theory changeable, but “there are, in reality, a number of factors that may place the decision [to change] out of [a person’s] control.”¹⁴ The identification of certain

¹⁰ *Law v Canada (Minister of Employment and Immigration)*, [1999 CanLII 675 \(SCC\)](#), [1999] 1 SCR 497 at para 74.

¹¹ *Kanyinda QCCA*, *supra* note 8 at para 95.

¹² *Ibid* at para 95 (the Court of Appeal accepted Dr. Hanley’s conclusion that “[d]enial of subsidized childcare to refugee claimants creates social exclusion”).

¹³ *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999 CanLII 687 \(SCC\)](#), [1999] 2 SCR 203 at para 13 [*Corbiere*].

¹⁴ *Quebec (AG) v A*, [2013 SCC 5](#) at para 316 [*Quebec v A*].

characteristics as analogous grounds recognizes that these characteristics “often serve as the basis for stereotypical decisions” made without due regard to one’s merit.¹⁵ Immigration status satisfies all these elements of the test for establishing analogous grounds under s. 15.

17. Immigration status, including a person’s status as a refugee claimant, is difficult to change. There are typically fees associated with applications for status change, which can be unaffordable to some migrants.¹⁶ Applications for status change can also be a time-consuming process. For example, the court of first instance in this case recognized the possibility that refugee claims in Canada take one or two years to be determined due to a backlog of applications.¹⁷ While waiting for their applications to be processed, migrants’ legal status remains unchanged. Moreover, successful application for status change is always at the government’s discretion. All this renders immigration status constructively immutable.

18. Immigration status also frequently serves as the basis of disadvantage, prejudice, and stereotype in Canadian society. As non-citizens in Canada, migrants have been recognized by this Court as “a group lacking in political power and as such vulnerable to having their interests overlooked and their right to equal concern and respect violated.”¹⁸ In *Toussaint No. 1*, the Federal Court made a similar observation about a subset of migrants, namely those without any legal status in Canada. Justice Zinn noted that “illegal migrants lack political power, are frequently disadvantaged, and are incredibly vulnerable to abuse.”¹⁹ As such, immigration status is a

¹⁵ *Corbiere*, *supra* note 13 at para 13.

¹⁶ See e.g. *Toussaint v Canada (Minister of Citizenship and Immigration)*, [2011 FCA 146](#) (although immigration applicants may seek a fee waiver under s. 25(1) of the *Immigration and Refugee Protection Act*, whether to accept such an application is at the Immigration Minister’s discretion).

¹⁷ *Kanyinda c Procureur general du Québec*, [2022 QCCS 1887](#) at para 50 [*Kanyinda* QCCS].

¹⁸ *Andrews v Law Society of British Columbia*, [1989 CanLII 2 \(SCC\)](#), [1989] 1 SCR 143 at 152.

¹⁹ *Toussaint v Canada (AG)*, [2010 FC 810](#) at footnote 3.

characteristic that, when used as a basis of differential treatment, “has the potential to violate human dignity in the sense underlying s. 15(1).”²⁰ This, combined with its constructively immutable nature, suggests that immigration status constitutes an analogous ground.

B.2.b. Recognizing immigration status as an analogous ground accords with substantive equality

19. By rejecting immigration status as an analogous ground, on the basis that the characteristic is not immutable, the Superior Court of Quebec in this case effectively cast the unequal treatment received by refugee claimants as a result of their “choice” to maintain their present immigration status. Such an emphasis on “choice” in the context of s. 15 has been criticized by this Court on multiple occasions.²¹ As this Court explained, substantive equality demands attention to the “persistent systemic disadvantages [that] have operated to limit the opportunities available” to members of an equality-seeking group.²² To characterize immigration status as a mutable trait, without considering the various structural constraints on migrants’ ability to change their legal status, is contrary to substantive equality.

20. Substantive equality further entails “the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration.”²³ Recognizing immigration status as an analogous ground will further the remedial purpose of s. 15 by expanding the *Charter*’s protection of migrants, who suffer pre-existing disadvantage in Canadian society. It allows migrants to avail themselves of the *Charter*’s equality guarantee when they are treated less favourably on the basis of their legal status. Not all

²⁰ *Corbiere*, *supra* note 13 at para 59.

²¹ See e.g. *Lavoie v Canada*, [2002 SCC 23](#); *Quebec v A*, *supra* note 15, Abella J, dissenting.

²² *Kahkewistahaw First Nation v. Taypotat*, [2015 SCC 30](#), at para 17.

²³ *R v Kapp*, [2008 SCC 41](#) at para 15.

these *Charter* challenges will be successful, as legal distinctions based on immigration status will not always be discriminatory, and even when they are, they may still be justified by the government under s. 1. However, accepting immigration status as an analogous ground makes it possible for migrants to demonstrate, and potentially prove, that an impugned law has the effect of reinforcing, perpetuating, or exacerbating the disadvantage they face as a result of their legal status in Canada.

B.2.c. Recognizing immigration status as an analogous ground accords with Canada's obligations under international law

21. One of the authorities cited by the court of first instance in the present case in support of dismissing immigration status as an analogous ground was the ruling of the Federal Court of Appeal in *Toussaint No. 1*.²⁴ However, when Nell Toussaint subsequently lodged her complaint against Canada before the UN Human Rights Committee, the Committee found the differential treatment at issue between migrants with legal status in Canada and those without, in violation of the right to non-discrimination protected by article 26 of the *International Covenant on Civil and Political Rights* (“*ICCPR*”).²⁵

22. This Court has repeatedly held that the *Charter* should be presumed to provide a level of protection that is as great as afforded by similar provisions in international human rights law.²⁶ Given that immigration status has been recognized as a potential ground of discrimination under the *ICCPR*, a treaty ratified by Canada, recognizing immigration status as an analogous ground under s. 15 of the *Charter* is in line with case law and Canada's international legal obligations.

²⁴ *Toussaint v Canada (AG)*, [2011 FCA 213](#).

²⁵ *Views adopted by the Committee under article 5(2) of the Optional Protocol, concerning communication No. 2348/2014 (Nell Toussaint v Canada)*, [CCPR/C/123/D/2348/2014](#) (30 August 2018).

²⁶ See e.g. *Quebec (AG) v 9147-0732 Québec inc.*, [2020 SCC 32](#).

B.3. Citizenship as an analogous ground should be robustly interpreted

23. If granted leave to intervene, the FCJ Centre and the Madhu Centre will further argue that, irrespective of whether immigration status is accepted by this Court as an analogous ground, what constitutes citizenship-based distinctions under s. 15 of the *Charter* should be robustly construed. Laws that single out a subset of non-citizens for differential treatment should be considered to have drawn a legal distinction on the basis of citizenship status.

24. In *Andrews*, this Court concluded that “non-citizens fall into an analogous category to those specifically enumerated in s. 15.”²⁷ The Superior Court of Quebec in the present case accepted citizenship as an analogous ground, but it found that s. 3 of the *RCR* does not impose differential treatment on the basis of citizenship, because publicly subsidized childcare is available to Canadian citizens as well as seven categories of non-citizens.²⁸ The Superior Court’s decision runs afoul of the general approach adopted by this Honourable Court to determining if differential treatment is based on an enumerated or analogous ground.

25. This Court has more than once acknowledged that heterogeneity may exist within an equality-seeking group, and that different members of the group may be treated differently due to such heterogeneity.²⁹ As such, for a legal distinction to be found based on a prohibited ground of discrimination under s. 15, it is not required that such a distinction treats every person captured by the relevant ground equally poorly. In other words, a legal distinction is based on a prohibited ground not only if it clearly differentiates between individuals with the relevant characteristic and those without, but also if it imposes differential treatment among people who share the relevant characteristic. For example, in *Martin*, this Court found the enumerated ground of disability as

²⁷ *Andrews*, *supra* note 18 at 152.

²⁸ *Kanyinda QCCS*, *supra* note 17 at para 46.

²⁹ See e.g. *Fraser*, *supra* note 9 at para 75.

capturing more than legal distinctions between able-bodied and disabled persons; it also prohibits discrimination between individuals living with different types of disabilities.³⁰

26. In the present case, the fact that some non-citizens are provided with the sought-after benefit does not negate the fact that refugee claimants, being a subset of non-citizens, are treated less favourably when compared with Canadian citizens. The differential treatment experienced by refugee claimants relative to other non-citizens is still a form of citizenship-based distinction. As this Court explained in *Martin*:

For instance, there could be no doubt that a legislative distinction favouring persons of Asian origin over those of African origin would be “based on” race, ethnic origin or colour, or that a law imposing a disadvantage on Buddhists relative to Muslim would draw a distinction “based on” religion. It would be no answer for the legislator to say there is no discrimination because both persons born in Asia and persons born in Africa have a non-Canadian national origin, or that Muslims, like Buddhists, belong to a minority religion in Canada.³¹

27. It follows that citizenship-based distinction captures differential treatment between various types of non-citizens, and not just differential treatment between Canadian citizens and non-citizens. The Superior Court’s decision in this case unduly restricts the scope of what constitutes citizenship-based distinction under s. 15, which has the effect of limiting the availability of the *Charter*’s equality guarantee to non-citizens.

³⁰ *Nova Scotia (Workers’ Compensation Board) v Martin; Nova Scotia (Workers’ Compensation Board) v Laseur*, [2003 SCC 54](#) [*Martin*].

³¹ *Ibid* at para 80.

C. The Role of the Proposed Intervener

28. The FCJ Centre and the Madhu Centre will take no position on the disposition of the appeal, will accept the record as it is, will seek to avoid unnecessarily duplicating submissions of other parties and interveners, and will abide by any schedule set by the Court. Furthermore, granting leave to intervene to the FCJ Centre and the Madhu Centre will cause no prejudice to the parties.

29. Based on the above, it is respectfully submitted that the FCJ Centre and the Madhu Centre have established that they have a genuine interest in this appeal; have the necessary experience and expertise to make useful submissions; will make arguments that are distinct from the parties; and, will further the Court's determination of this appeal.

PART IV and PART V – SUBMISSION ON COSTS AND ORDER SOUGHT

30. The FCJ Centre and the Madhu Centre do not seek costs and request that no costs be ordered against them. The FCJ Centre and the Madhu Centre respectfully request the Court issue an Order granting them:

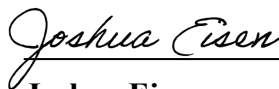
- (a) leave to intervene jointly in the above-listed appeal;
- (b) leave to file a 10-page factum in accordance with Rules 37 and 42 of the *Rules of the Supreme Court of Canada* and to make 10 minutes of oral argument;
- (c) no order as to costs; and
- (d) such further and other order as the said Judge may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF FEBRUARY, 2025



Yin Yuan Chen
Barrister and Solicitor

University of Ottawa Faculty of Law
Fauteux Hall
57 Louis-Pasteur Pvt.
Ottawa, Ontario, K1N 6N5
T: (613) 562-5800 ext. 2077
yy.chen@uottawa.ca



Joshua Eisen
Barrister and Solicitor

FCJ Refugee Centre
208 Oakwood Ave.
Toronto, Ontario, M6E 2V4
T: (416) 469-9754 ext. 261
F: (416) 469-2670
joshuae@fcjrefugeecentre.org