

SOAR Annual Conference Nov 3, 2022 – Opening Plenary Resources

All the Fish in the Sea: Navigating Questions of Identity in Administrative Justice

There is a growing awareness of the need to address questions of race and identity in adjudication, but there are significant barriers in doing so, including discomfort, lack of expertise or evidence, and the myth of colour blindness. Our speakers will discuss different strategies and lessons learned in grappling with these important issues.

MODERATOR: CYNTHIA PAY, Counsel, Law Society Tribunal

SPEAKERS: ADA CHAN, Executive Director/Lawyer, Chinese and Southeast Asian Legal Clinic, **NEGAR AZMUDEH**, Assistant Deputy Chairperson, Refugee Protection Division, Quality Centre, Immigration and Refugee Board of Canada, **JOANNE DALLAIRE LL.D**, Elder and Senior Adviser, Indigenous Relations and Reconciliation, Toronto Metropolitan University, **NANA YANFUL**, Legal Director, Black Legal Action Centre (BLAC)

Immigration and Refugee Board of Canada Chairperson’s Guidelines:

Guideline 4 - Gender Considerations in Proceedings Before the Immigration and Refugee Board

[Chairperson’s Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board - Immigration and Refugee Board of Canada \(irb.gc.ca\)](#)

The revised Guideline 4 incorporates approaches and best-practices already well-established at the Board and which reflect expert advice, evidence-based developments in social science, and developments in law.

(November 1996 | Revised in July 2022)

Guideline 9 - Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics

[Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics - Immigration and Refugee Board of Canada](#)

The purpose of this Guideline is to promote greater understanding of cases involving sexual orientation, gender identity and expression and sex characteristics (SOGIESC) and the harm individuals may face due to their non-conformity with socially accepted SOGIESC norms in a particular cultural environment.

(May 2017 | Revised in December 2021)



CSALC

CHINESE AND SOUTHEAST ASIAN
LEGAL CLINIC

華越柬寮法律援助中心

Trung Tâm Hướng Dẫn Luật Pháp Hoa-Việt-Khmer-Lào

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Chinese and Southeast Asian Legal Clinic – Charter challenge test case:

CANADA CHILD BENEFIT CHARTER TEST

CASE OVERVIEW

The Chinese and Southeast Asian Legal Clinic brought a Charter Challenge test case to the Tax Court of Canada regarding the eligibility criteria for receiving the Canada Child Benefit (CCB); specifically, the requirement which excludes refugee claimants from receiving these benefits for their children, even if they have resided in Canada for over 18 months. We are representing two clients who were refused CCB as they were refugee claimants during the relevant time. This case is funded by the Court Challenge Program, which has allowed CSALC to retain Osler, Hoskin & Harcourt to co-counsel with us. The Income Security Advocacy Centre (ISAC) is granted intervenor status in this case.

The Canada Child Benefit (CCB) was introduced by the federal government in 2016 to help low- and middle-income families with the cost of raising children. The CCB is not only an important driver of economic growth, it also has an important role to play in reducing child poverty in Canada. However, some of the most vulnerable children in Canada are unable to receive CCB because of the parents' immigration status.

CURRENT LEGISLATION

To be eligible for CCB, the *Income Tax Act* requires a parent to have the required immigration status (or who cohabits with a partner with such status). Many are excluded, including in this case before the court, children of refugee claimants. These children do not get CCB even though they reside in Canada and may be Canadian citizens. In many cases, these parents are considered residents for tax purposes, and file and pay income tax like other Canadians.

ARGUMENTS

This denial of CCB particularly has an adverse impact on racialized communities, who already face a higher risk of poverty. It also reinforces pre-existing gendered poverty because women are still the primary caregivers for children in most Canadian families.

CSALC argues that such an exclusion violates the Canadian Charter of Rights and Freedoms - specifically our clients' equality rights under section 15 and the right to security of the person under section 7.

CSALC has presented evidence from our clients and experts demonstrating the lasting impact of childhood poverty, as well as evidence of poverty that is disproportionately experienced by

racialized communities and those with precarious status in Canada.

STATUS

Final oral submissions were made last week (October 2022) before the Tax Court of Canada, decision pending.



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Black Legal Action Centre

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Black Legal Action Centre (BLAC) – Sample questions about social context in relation to sentencing:

Sample Questions

- Did the individual live in or were they arrested in a highly policed community?
- Was the individual streamed in school towards less academically rigorous programs (i.e. applied vs. academic)?
- Was the individual ever suspended or expelled from school, or did they ultimately decide to drop out?
- Was the individual underemployed or unemployed for a significant period of time?
- Has the individual or any of their primary caregivers experienced serious mental health challenges?
- Did the individual experience child poverty or come from a family reliant on social assistance?
- Was the individual ever a Crown ward within the child welfare system?
- Did the individual grow up in or do they still live in social housing or a low-income household?
- Does the individual have an incarcerated or absentee parent?
- Was the individual on restrictive bail conditions?
- Did the individual or their family arrive in Canada as refugees or through some form of forced displacement?
- Has the individual been the subject of discrimination by police (i.e. carding, harassment, violence)?
- Has the individual been the subject of discrimination in any context?