

CASE LAW UPDATE

Jordan Glick, Associate, WeirFoulds LLP

Canada (Attorney General) v Mavi

2011 SCC 30 (Released June 10, 2011)

Administrative Law – Procedural Fairness – *Immigration and Refugee Protection Act* – Sponsorship program

This case addresses what duty of fairness, if any, is owed to residents of Canada who have defaulted on undertakings made to the federal government to guarantee the financial security of family members that they sponsored to come to Canada when the sponsor is in default of the undertaking and the government files an application to collect on the debt.

Canadian citizens or permanent residents are entitled to sponsor their relatives to immigrate to Canada. Before a family member is sponsored, the Canadian resident is obligated to provide an undertaking of support for the sponsored relative wherein the Canadian resident assumes responsibility for the financial stability of their family member. Should the sponsored relative apply for social assistance benefits subsequent to their arrival in Canada, the government (federal or provincial by virtue of a Memorandum of Understanding), is entitled to seek to recover those payments from the resident sponsor. In this way, the government encourages family unification while ensuring that the public does not bear the cost of subsidizing sponsors.

This proceeding was initiated by eight sponsors whose relatives had received social assistance and therefore were in default of their undertakings. The sponsors put forward that the enabling legislation, the *Immigration and Refugee Protection Act*, vested discretion with the government to determine on a case-by-case basis whether or not to enforce the debt and sought to avoid payment of the debt either temporarily or permanently.

Binnie J., for a unanimous court, ruled that the undertakings are valid contracts and that there is no discretion for the government to forgive the debt. However, the contracts are controlled by federal legislation and therefore the enforcement of the contracts must import administrative law principles including a limited duty of fairness. As set out in the judgment, “the content of this duty of fairness includes the following obligations:

- (a) to notify the sponsor that the government will be pursuing a claim regarding the debt;

- (b) to afford the sponsor an opportunity within limited time to explain in writing his or her relevant personal and financial circumstances that are said to militate against immediate collection;
- (c) to consider any relevant circumstances brought to its attention, keeping in mind that the undertakings were the essential conditions precedent to allowing the sponsored immigrant to enter Canada in the first place;
- (d) to notify the sponsor of the government's decision;
- (e) without the need to provide reasons."

The court concluded that the duty of fairness was met with respect to all eight respondent sponsors.