

Federal Court



Cour fédérale

Date: 20100616

Docket: IMM-3272-10

Citation: 2010 FC 654

Toronto, Ontario, June 16, 2010

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

MICHAL KRZYSZTOF KOPACZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] This is a motion by the applicant for an order allowing the applicant to be represented by his friend, Ben Gondek.

[2] The applicant has no status in Canada and thus, cannot work. He is unable to afford legal counsel and is not eligible for legal assistance.

[3] The applicant's friend, Mr. Gondek, is not a lawyer. He is a former director of a Polish credit union in Toronto.

Issue

[4] Should Mr. Gondek, a non-lawyer, be allowed to represent the applicant in Federal Court?

Analysis and Decision

[5] Rule 119 of the *Federal Courts Rules* allows the applicant to represent himself or to be represented by a solicitor. There is no provision for representation by another person who is not a solicitor.

[6] However, the Federal Court of Appeal in *Erdmann v. Canada*, [2001] F.C.J. No. 834 stated at paragraphs 10 and 11:

10 I have also considered whether this is an appropriate case to grant Mr. Swift leave to represent Ms. Erdmann even though he is not a lawyer. According to Rule 119, an individual may act in person or be represented by a lawyer. There is no specific provision that permits a non-lawyer to represent a litigant who is an individual.

11 An argument might be made that the Court has the inherent jurisdiction to permit representation by a non-lawyer if the interests of justice so require. Assuming, without deciding, that I have the requisite jurisdiction, I would not be inclined to exercise it in this case to permit Ms. Erdmann to be represented by Mr. Swift.

[7] The applicant wishes to have Mr. Gondek represent him because he states he does not speak English well and he does not know the law.

[8] I would note that the applicant has submitted his own affidavit in English. Rule 80(2.1) of the *Federal Courts Rules* states:

80.(2.1) Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall

80.(2.1) Lorsqu'un affidavit est rédigé dans une des langues officielles pour un déclarant qui ne comprend pas cette langue, l'affidavit doit :

(a) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and

(a) être traduit oralement pour le déclarant dans sa langue par un interprète indépendant et compétent qui a prêté le serment, selon la formule 80B, de bien exercer ses fonctions;

(b) contain a jurat in Form 80C.

(b) comporter la formule d'assermentation prévue à la formule 80C.

[9] As no certificate of translation (Form 80B) was filed, I would infer that the applicant gave the information for the affidavit in English.

[10] The respondent also indicated at the hearing of this motion that an interpreter could be made available for the hearing.

[11] I would note that the applicant also wishes to have Mr. Gondek represent him because he does not know the law. The affidavit evidence does not tell me whether Mr. Gondek knows the law.

[12] As a result of the above conclusions and after considering the motion material and the remarks of the parties, I am not prepared to allow the applicant to be represented by Mr. Gondek who is a non-lawyer.

[13] The applicant's motion is therefore dismissed.

[14] There shall be no order for costs.

ORDER

IT IS ORDERED that:

1. The applicant's motion is dismissed.
2. There shall be no order for costs.

"John A. O'Keefe"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3272-10

STYLE OF CAUSE: MICHAL KRZYSZTOF KOPACZ v.
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 14, 2010

**REASONS FOR ORDER
AND ORDER OF:** O'KEEFE J.

DATED: June 16, 2010

APPEARANCES:

Michal Krzysztof Kopacz FOR THE APPLICANT
(Self-represented)

Monmi Goswami FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT
(Self-represented)

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada