

Case Name:

**Siadat v. Ontario College of Teachers**

**Between**  
**Fatima Siadat, Appellant, and**  
**Ontario College of Teachers, Respondent**

[2007] O.J. No. 65

Court File No. 561-04

Ontario Superior Court of Justice  
Divisional Court - Toronto, Ontario

**J.H. Brockenshire, E.M. Macdonald and**  
**D.R. Cameron JJ.**

Heard: September 13 and 14, 2006.  
Judgment: January 10, 2007.

(66 paras.)

**Counsel:**

Chantel Tie and Jean Lash, for the Appellant.

Caroline R. Zayid and Keary Grace, for the Respondent.

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The judgment of the Court was delivered by

**1 J.H. BROCKENSHIRE J.:**-- This is an appeal from a decision of the Ontario College of Teachers, Registration Appeals Committee (the Committee). That decision denied the request to the Committee by Ms. Siadat to waive the College requirement of producing official documentation, in this case, from Iran, and to devise an individualized method of determining her qualifications for certification as a teacher. The decision went on to uphold the previous decision of the Registrar to refuse to issue her a Certificate. The principal issue raised by the Appellant before us was the applicability of the Ontario *Human Rights Code*, R.S.O. 1990, c. H-19 to the deliberations and decisions of the Committee, when dealing with a Convention refugee. I have concluded that the appeal should be granted for the following reasons.

**Background**

**2** The Ontario College of Teachers (the College) is a self-regulatory body with a statutory mandate to licence, govern and regulate the practice of teaching in Ontario. It was created and is governed by the *Ontario College of Teachers Act*, S.O. 1996, c. 12, (the *Act*).

**3** To teach in Ontario's publicly funded education system, a teacher must have a Certificate of Qualification from the College.

**4** The College has the power to make regulations. Regulation 184/97 (the regulation) covers the requirements for Certification. For an Applicant who trained outside of Ontario the requirements are proof of proficiency in English or French and then:

- (b) Evidence of his/her academic or technological qualifications;
- (c) His/her teaching certificate and a transcript of his/her teaching education program;
- (d) A statement from the issuing authority that his/her teaching certificate has not been suspended or cancelled.

(O.R.184/97) s. 12(1).

**5** Section 18(1) of the *Act* provides that the Registrar shall issue a certification of qualification and registration to a person who applies for it in accordance with the regulations and who fulfills the requirements specified in the regulations for the issuance of the Certificate.

**6** If a Certificate is refused, an applicant may request a review by the Committee. It was agreed before us that, as per s. 21(9) of the *Act*, the Committee has the power to order the issue of a Certificate even if the requirements, supra, of the regulation have not been met, and also has the power to impose conditions or limitations on the Certificate that might not be found in the regulation.

**7** Outside of the *Act* and the regulation, it has been the policy of the College, and the Ministry of Education before it, to require the production of only original documents, with official documents, duly signed and sealed, to be sent directly from the granting institution.

**8** We were advised that the practice of the College is to simply return an application containing documents that do not fit that policy, advising that the application is incomplete.

**9** The evidence filed shows that Fatima Siadat was born, raised, educated, and worked for some 16 years as a teacher in Iran. When teaching literature classes at the High School level, she made comments about the right of authors to freedom of expression. This resulted in harassment of her by the governing regime, particularly the Ministry of Education, leading to loss of her employment, and threats to her life. She fled Iran in advance of a "political trial" and was accepted as a Convention refugee in Canada. Her teaching career in Iran was perhaps unconventional by our standards, in that she indicates that after she graduated from High School, she commenced teaching in Iranian Grade Schools, and did this for several years. Then, with the support of the Iranian Government, she attended University while still teaching part-time and graduated with the equivalent of a Canadian undergraduate University Degree plus a Bachelor of Education. Thereafter, she was accepted by the Iranian Ministry of Education as a teacher qualified to teach in High School, and did just that for some years before having to flee.

**10** In Canada, she has continued her involvement in education by obtaining a Community College Certificate in early childhood learning, and being involved in or operating day-care facilities and working in assistant or administrative positions in grade schools. She has been attempting to gain recognition from firstly, the Ministry of Education, and then, after its creation, from the College of Education, without success.

**11** Her problem is that the originals of her University Degree, her transcript from the University and the equivalent of her Teacher's certification in Iran are all held by the Ministry of Education there, which is, in effect her prosecutor as a political dissident, for which she fled the country. In her view, supported by some other evidence, not only would Iran not respond to requests to provide the originals or certified copies, but might well, if it receives such request, respond by searching out and harming members of Ms. Siadat's family still in Iran.

**12** The one original governmental document she has is an identification card issued by the Ministry of Education with her name and photograph on it indicating her to be a teacher.

**13** She did obtain, through a relative of a friend who works in the Ministry of Education, a handwritten copy of what purports to be the transcript of her courses and marks at the Iranian University she attended. The explanation given about this was that the computer records were "blocked" so they could not be printed out, that the person who copied them from the computer screen was performing an illegal act in Iran, and did not dare go to a lawyer or notary in Iran to prepare and swear a formal affidavit as to the source and accuracy of this document.

**14** She did have photocopies of her Bachelor's Degree in teaching and of her employment order from the Ministry of Education in Iran and has provided Certified Translations of those. She also filed a personal resume outlining 16 years of teaching experience in Iran, with some support from affidavits from a friend and relative.

**15** She had obtained, and filed, an opinion from the Comparative Education Service at the University of Toronto, to the effect that the copies of her Bachelor's Degree and handwritten copy of her University transcript would indicate an education comparable in level to a Bachelor's Degree, specializing in education, from a reputable Canadian University offering a similar program.

**16** Before the Committee, she relied upon the foregoing materials to show her background, education, certification, and teaching experience, and to explain why she could not obtain the original documents the College was requesting, and to request that alternate ways of further showing her qualifications be permitted. The hearing was a "paper hearing" - Ms. Siadat was not called to testify and be cross-examined.

### **The Committee Decision**

**17** The reasons for the decision of the Committee are found at Tab C of the Appeal Book. At the start of the decision, it is noted that what was requested was that the Committee "... re-evaluate her application and devise an individualized method of determining her current qualifications, so that their equivalency could be evaluated."

**18** The Committee decision, in some 3 pages reviews the previous history of applications to the College, and the Ministry before that, which were unsuccessful. This includes the 2002 application to the Committee, when arguments had been made that the usual documents required could not be obtained from Iran, that the "satisfactory evidence" required by the College should be read to include more than "official documents," as to not so consider them would cause her to suffer discrimination on the basis of national origin, and that the College had an obligation to accommodate Ms. Siadat. The Committee simply refused certification in 2002.

**19** The Committee decision then recites that in 2004 this further Application was brought, including all the previous material plus arguments that the College ought to provide an individualized inclusive approach to considering her credentials, which would involve looking to the social context of the law, so that 6 further affidavits were submitted relating generally to the impact of laws on certain groups of people. Four additional volumes of social context materials were also provided. With all of that before it, the Committee met July 15th, 2004. The decision then lists all of the materials received by it, which took some 4 pages.

**20** The actual decision of the Committee is contained in the last one and one-third pages of the document. Therein, the Committee notes it has the power to consider any document it considers relevant and says that it had examined all of the documents submitted by the Appellant. However there is no discussion of the content of these documents, except to say that they are not satisfactory evidence of a previous teaching certificate, an undergraduate degree, completion of a teacher education program, and/or professional standing. The Committee states that the College requires official documents supporting those items be submitted directly by the appropriate issuing authority to the College, and adds that in exceptional circumstances these documents can be provided by the Appellant and then verified by the College. However, the decision notes, the alternative documents provided by the Appellant cannot be verified by the College.

**21** The decision goes on to detail that the College cannot verify the handwritten list of courses taken and marks achieved that were submitted by Ms. Siadat and supported by her affidavit. The College makes the same point about the translation of an educational certificate provided by her, and notes that the affidavits filed by her from a friend and her brother do not attest to the courses completed by the Appellant, her professional qualifications, or her teaching record, nor are they supported by any original documents.

**22** The decision notes that the Committee had received photocopies of an employment order and an identification card but simply states that these documents did not constitute acceptable evidence.

**23** The decision notes that Ms. Siadat's Application included material about the difficulties experienced by internationally trained individuals and that she argued these difficulties should exempt her from the requirements of providing evidence acceptable to the College. The decision states that the College recognizes these difficulties and "intervenes on behalf of Applicants who have requested assistance in obtaining documents."

**24** The Committee decided that "the material presented as social context' does not convince the Committee that this Appellant should be treated any differently from other Applicants because other Applicants with similar backgrounds

and experiences have successfully met the requirements for Ontario Certification." This is the extent of the decision on the requested accommodation. The Committee, based on this, upheld the decision of the Registrar to refuse certification.

### **Position of the Appellant**

**25** Ms. Tie acknowledged that the College would have vast experience in reviewing the qualifications of teachers and that in most cases, original documents can be provided to the College by the issuers of such documents, which is the most certain way of assuring their authenticity.

**26** Her argument was that in this case, because Ms. Siadat fled Iran, and would be regarded there as a dissident and enemy of the State, such documents were not available. She is a Convention refugee to Canada and as such is entitled to the protection and assistance offered by Canada to Convention refugees. She points particularly to the Lisbon Convention on recognition of higher education qualifications, which Canada signed. This Convention calls upon the evaluators of qualifications of refugees to develop alternate methods of evaluation, which could include interviews, competence examinations, use of sworn statements, and giving provisional recognition while waiving the usual documentation. (Tab 62N, Certified Record of Proceedings).

**27** Ms. Tie points to the efforts of the British Columbia College of Education to accommodate exceptional circumstances, where academic requirements may be satisfied by writing "challenge examinations" at a B.C. University or by completing a familiarization program and practicum (see pp. 1408-10, Tab 68D Certified Record of Proceedings).

**28** Ms. Tie's principle thrust was that the failure to accommodate Ms. Siadat's problems with documents from Iran constitutes a breach of s. 6 of the *Human Rights Code*, R.S.O. 1990, c. H-19, which provides as follows:

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap.

**29** The particular position taken was that Ms. Siadat has been accepted in Canada as a Convention refugee from Iran, and that she has established by her affidavits and other evidence that she fled from Iran because the Ministry of Education there was persecuting her for teaching students about freedom of thought, that the Iranian Ministry of Education holds all of the records the College of Education in Ontario is seeking, and would not only not release them to her, but if inquiries were made, would likely seek out and do harm to relatives of her still in Iran. Therefore, insisting on such records in the circumstances constitutes discrimination by reason of place of origin. *Canada (Secretary of State for External Affairs) v. Menghani (T.D.)* (1993), 24 Imm. L.R. (2d) 250 (F.C.T.D.) was cited.

**30** For the details of the duty to accommodate, Ms. Tie looked to what is popularly known as the *B.C. Firefighters case - British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.U.* (1999), 176 D.L.R. (4th) 1 (S.C.C.). She also relied upon *British Columbia (Superintendent Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (the Grismer case).

**31** Ms. Tie also raised a number of other points, including the differences between College policy and the regulations, the broad meaning of the word "transcript," and that the tribunal has the power to admit into evidence any oral testimony and any document or other thing, with limited exceptions, pursuant to the *Statutory Powers Procedure Act*, R.S.O. 1990 c. S-22. She also argued that the Committee denied the appellant procedural fairness and natural justice. Ms. Tie, in her factum, had developed a full argument on breach of the s. 15 of the *Charter*, and simply relied on that without repeating the arguments orally.

### **Position of the Respondent**

**32** Ms. Zayid summarized her position in paras. 5 and 6 of her factum where she submitted that deference should be given to the Committee's decision in light of the Committee's expertise in the area and its statutorily mandated duty to serve and protect the public interest. She stated that in this case the Applicant had failed to supply adequate evidence of her professional training and suitability to teach and in the absence of that, it would not be consistent with the public interest for the College to certify her as a qualified teacher in Ontario.

**33** She relied upon the affidavit of Registrar Wilson at Tab 1 in her Compendium. She argued that the regulations set out fair requirements to become an Ontario teacher, and it is up to the College, per s. 3(1)(2): "To develop, establish and

maintain qualifications for membership in the College." Further, pursuant to s. 3(2) of the *Act*, the College "... has a duty to serve and protect the public interest."

**34** Ms. Zayid recognized that the *Human Rights Code* is part of public policy binding on the Committee. However, she argued that the Regulations on their face are not discriminatory as they apply equally to every applicant. Therefore, there had to be evidence before the Committee that the literal application of the Regulations to Ms. Siadat would result in discrimination. Her argument was that the evidence presented by Ms. Siadat did not persuade the Committee that a case of constructive discrimination had been made out. She referred to *Jamorski v. Ontario (Minister of Health)* (1988), 64 O.R. (2d) 161 (Ont. C.A.) a case in which the different requirements for internships for foreign educated doctors as against those educated in Canada was attacked under the *Charter of Rights and Freedoms*. Zuber J.A. for the Court observed that there was no question of a differential treatment, but this would not infringe s. 15 of the *Charter* unless the unequal treatment was the result of discrimination.

**35** She summarized the point of this case as being whether or not the College was being reasonable in saying that the material supplied by Ms. Siadat was not sufficient.

**36** She argued that despite the lack of a privative clause, and the full right of appeal on fact and or law to the Divisional Court, this Court should give deference to the Committee in view of its expertise, so that the standard of review of its decision would be that of reasonableness.

### Reply

**37** In reply, Ms. Tie argued that the issue before the hearing had been whether or not Ms. Siadat should be accommodated, allowed to explain the problem, and given a reasonable way to prove that she had completed a Teacher Education Program and had been certified as a teacher in her homeland. She suggested several ways in which this could be done, including:

- 1) examination and cross-examination of Ms. Siadat before the Committee;
- 2) review of Ms. Siadat's documents, and perhaps an interview with her by persons knowledgeable of the educational system in Iran (perhaps some or all of the 12 Iranians now, per the College, licensed as teachers in Ontario); or
- 3) independent proficiency testing as authorized by the B.C. College of Education.

**38** She argued that the purported justification given by the Committee for its decision - that it was treating everyone the same - in fact, resulted in discrimination against some, as was found in *B.C. Firefighters, supra*.

**39** She argued that refugees are different, and the College should recognize that fact, and be prepared to work on an individual basis with Convention refugees who are applicants to the College, to develop alternate ways of obtaining evidence of education and prior certification. This would have the effect of achieving the broad overreaching objects of the College of determining whether qualifications for a membership in the College had been met by the applicant, while serving and protecting the public interest.

### Discussion

**40** Firstly, the power of this Court is found in s. 35(4) of the *Act*:

An appeal under this section may be made on questions of law or fact or both and the Court may affirm or may rescind the decision of the Committee appealed from and may exercise all powers of the Committee and may direct the Committee to take any action which the Committee may take and that the Court considers appropriate and, for that purpose, the Court may substitute its opinion for that of the Committee or the Court may refer the matter back to the Committee for re-hearing, in whole or in part, in accordance with such direction as the Court considers appropriate.

**41** Second, the requirement for certified copies of teaching certificates and college transcripts, sent direct from the issuing institution to the College is an internal administrative practice, not called for under the Regulations. The Regulations limit the authority of the Registrar to issue a certificate to cases where a teaching certificate and a transcript have been produced. But the Committee, under s. 21(9) of the *Act*, may, on the basis of "the submissions and any documents that the Committee considers relevant" simply direct the Registrar to issue a certificate.

42 Third, the certificate in issue for all foreign educated applicants is not a final unlimited certificate, but is instead an interim certificate limited in time, during which time the teacher teaches under the supervision of others. It is subject to cancellation if the teacher does not perform satisfactorily.

43 The issue before the Committee was not whether Ms. Siadat had satisfied the requirements of the College for certificate. The opening paragraph of its decision defined the issue as a request to the Committee to "re-evaluate her application and devise an individualized method of determining her current qualifications so that their equivalency can be evaluated." The re-evaluation sought was clearly to be made in light of the Ontario *Human Rights Code*, and public policy relating to Convention refugees.

44 In my view, the two issues before us that are determinative of this appeal are first, whether or not the Committee properly interpreted and applied the provisions of the Ontario *Human Rights Code*, and public policy relating to Convention refugees; and second, whether or not the Committee gave sufficient and proper reasons to support its decision on that issue.

### **The Human Rights Code, and Public Policy**

45 On the first issue, Ms. Zayid, in argument, recognized that public policy is binding on the Committee, as is the Ontario *Human Rights Code*. The public policy here is expressed in statute supported treaties, particularly the Lisbon Convention. The Ontario *Human Rights Code* is of course a statute. In my view, when an administrative tribunal is called upon to decide whether statutes and legal decisions thereunder are applicable, and if so, what is required of the tribunal, the standard of review is correctness: See *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 (generally and particularly para. 50), and *Dr. Q. v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226 (also generally, and particularly para. 28).

46 Section 6 of the Ontario *Human Rights Code* explicitly confirms the right of every person to equal treatment with respect to membership in any self-governing profession without discrimination because of place of origin. Teaching is a self-governing profession, and membership in the College is a pre-requisite of practicing that profession in the publicly funded grade and high schools of Ontario. Ms. Siadat's problems with her application to the College directly relate to her place of origin. The evidence placed by her before the Committee clearly indicates that Iran found her to be a political dissident, that she fled the country and was accepted by Canada as a Convention refugee, that her original professional records were all held by the Iranian Ministry of Education, and that it would not only refuse to supply them, but if asked, would seek out and harm Ms. Siadat's relatives still in Iran. There is no evidence contrary to this before the Committee.

47 Her original professional records, or duly certified copies from her place of origin, would be the normal requirement of the College. Ms. Siadat sought to provide alternative evidence, which the College had found unacceptable. Ms. Siadat, in the application under review, was seeking a ruling by the Committee on what it would accept, in addition to what she had already provided. That application, in essence was one for accommodation from the usual requirements, because of difficulties tied to her place of origin, to a Committee empowered by statute to make accommodations.

48 It is plain and obvious to me that to insist on original, or government certified documents from her place of origin, is *prima facie* discriminatory against her, in view of the evidence she has provided. It is no answer for the Committee, or the College Registrar to say that 17,414 other applicants had succeeded in providing these documents, and she is the first one who cannot, especially in view of the evidence that others, who did not provide all the documents, simply had their applications returned to them as incomplete, and were not counted among the 17,414. It appears Ms. Siadat is the first person to protest that treatment, and appeal to the Committee, and then to this Court as a test case.

49 In *B.C. Firefighters, supra*, McLachlin J. (as she then was) put forth at para. 54, a three-step test for determining whether a *prima facie* discriminatory standard is a bona fide occupational requirement. She places the onus on the person or organization imposing the requirement to show first, that the standard was adopted for a purpose rationally connected to the performance of the job; second, that the standard was adopted in an honest and good faith belief that it was necessary, and third, that the standard actually is reasonably necessary to the accomplishment of that legitimate work related purpose. In showing that third element, it "must be demonstrated that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer" (at para. 54).

50 McLachlin J., at para. 62, amplified the meaning of "undue" by quoting Sopinka J. who said "the term 'undue' infers that some hardship is acceptable; it is only 'undue hardship' that satisfied this test." She continued on by saying,

It may be ideal from the employer's perspective to choose a standard that is uncompromisingly stringent. Yet the standard, if it is to be justified under the human rights legislation, must accommodate factors relating to the unique capabilities and inherent worth and dignity of every individual, up to the point of undue hardship.

**51** At para. 65 of her decision, McLachlin J. posed a series of questions to be asked in the course of the analysis as follows:

- (a) Has the employer investigated alternative approaches that do not have a discriminatory effect, such as individual testing against a more individually sensitive standard?
- (b) If alternative standards were investigated and found to be capable of fulfilling the employer's purpose, why were they not implemented?
- (c) Is it necessary to have all employees meet the single standard for the employer to accomplish its legitimate purpose or could standards reflective of group or individual differences and capabilities be established?
- (d) Is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?
- (e) Is the standard properly designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?

**52** Further, at para. 68 she says:

Employers designing workplace standards owe an obligation to be aware of both the differences between individuals, and differences that characterize groups of individuals. They must build conceptions of equality into workplace standards. By enacting human right statutes and providing that they are applicable to the workplace, the legislatures have determined that the standards governing the performance of work should be designed to reflect all members of society, insofar as this is reasonably possible. Courts and tribunals must bear this in mind when confronted with a claim of employment-related discrimination. To the extent that a standard unnecessarily fails to reflect the differences among individuals, it runs afoul of the prohibitions contained in the various human rights statutes and must be replaced.

**53** In the *Grismer* case, *supra*, McLachlin J. said at para. 22 that, "failure to accommodate may be established by ... an unreasonable refusal to provide individual assessment ...," and at para. 32 that, "in order to prove that its standard is 'reasonably necessary,' the defendant always bears the burden of demonstrating that the standard incorporates every possible accommodation to the point of undue hardship, whether that hardship takes the form of impossibility, serious risk or excessive cost."

**54** The foregoing decisions, released in 1999, continue to be the "law of the land" on the duty to accommodate.

**55** The decision of the College indicates at the bottom of page 2 that the issue of failure by the College to accommodate her had been raised in December of 2001. The Committee refused her application on March 27, 2002. The current application was commenced in 2004, bolstered by six affidavits and four additional volumes of various materials, raising the issue of accommodation under both the Ontario *Human Rights Act* and the treaty obligations to Convention refugees, which also call for accommodation. Despite having in hand all of this material, the decision does not indicate that the Committee considered the request for accommodation in any meaningful way. It simply, in the last page and a half, states that the documents provided to establish evidence of a previous teaching certificate, an undergraduate degree, completion of a teacher education program, and a statement of professional standing have not come directly from the issuing institution and cannot be verified by the College. The decision indicates that the affidavits provided are not acceptable because they are not supported by any original documents. Even photocopies presented were not accepted as appropriate evidence. In the second from the last paragraph of the decision, the Committee acknowledges that the materials filed referenced difficulties of internationally trained individuals in providing evidence acceptable to the College but then simply states the material presented as "social context" does not convince the Committee that the appellant should be treated any differently from other applicants because other applicants with similar backgrounds and experiences have successfully met the requirements for Ontario certification. Not only does that statement not provide any particulars of how others with similar backgrounds and experiences somehow managed to satisfy the "uncompromising-

ly stringent" (to use the words of McLachlin J., *supra*), College requirements, it reverses the onus, which is on the Committee to establish that accommodation is not possible without undue hardship.

**56** I find that the Committee failed to properly interpret and apply the provisions of the Ontario *Human Rights Code*.

### **Sufficiency of Reasons**

**57** Secondly, I have considered the decision of the Committee in light of the requirement on administrative tribunals to give sufficient reasons for their decision.

**58** The duty to give sufficient reasons is a component of procedural fairness. That is triggered by the fact that the decision here is administrative and affects "the rights, privileges or interests of an individual." See *Cardinal v. Kent Institution* [1985] 2 S.C.R. 643 at p. 653.

**59** In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, the court held that procedural fairness can include a duty to give reasons, and stated at para. 43 that: "... it is now appropriate to recognize that, in certain circumstances, the duty of procedural fairness will require the provision of a written explanation for a decision. The strong arguments demonstrating the advantage of written reasons suggest that, in cases such as this where the decision has important significance for the individual, where there is a statutory right of appeal, or in other circumstances, some form of reasons should be required."

**60** In Ontario, the obligation to give adequate reasons has been commented on, both where the empowering statute requires written reasons (see *Gray v. Ontario (Disability Support Program, Director)* (2002), 59 O.R. (3d) 364 (C.A.)), and where the empowering statute does not impose such a requirement (see *Lee v. College of Physicians and Surgeons* (2003), 66 O.R. (3d) 592, where the obligation was found to arise from the common law, as enunciated in *Baker, supra*, and as a component of procedural fairness).

**61** In *London (City) v. Ayerswood Development Corporation*, [2002] O.J. No. 4859 (C.A.) the court said, in relation to an allegation of lack of procedural fairness, at para. 10: "... a court need not engage in an assessment of the appropriate standard of review. Rather, the court is required to evaluate whether the rules of procedural fairness or the duty of fairness have been adhered to. The court does this by assessing the specific circumstances giving rise to the allegation and by determining what procedures and safeguards were required in those circumstances in order to comply with the duty to act fairly."

**62** In *Gray, supra*, Chief Justice McMurtry, for the court, at para. 22 set out succinctly the requirements for adequate reasons by administrative tribunals as follows:

The obligation to provide adequate reasons is not satisfied by merely reciting the submissions and evidence of the parties and stating a conclusion. Rather, the decision maker must set out its findings of fact and the principle evidence upon which those findings were based. The reasons must address the major points in issue. The reasoning process followed by the decision maker must be set out and must reflect consideration of the main relevant factors.

**63** I find that the "reasons" provided by the Committee do not meet the above criteria at all. The point at issue before the Committee was appropriate accommodation for the Applicant, in view of her status as a Convention refugee, from a place of origin that would not provide her with formally certified documents. The only mention of that was in the "background" section, where the Committee in effect said that it had heard all of this before, and had turned her down; and on the last page, where the Committee said, "the material presented as 'social context' does not convince the Committee that the appellant should be treated any differently from other applicants because other applicants with similar backgrounds and experiences have successfully met the requirements for Ontario certification."

**64** Particularly, the Committee did not ask itself the questions suggested by the Supreme Court of Canada in the *B.C. Firefighter, supra*, case, let alone provide answers thereto, and it did not seem to appreciate that, with the issues of discrimination and treaty compliance before it, the obligation was upon the Committee to provide individual accommodation, unless it could establish that accommodation was impossible without imposing undue hardship on the College. Simply saying that unnamed others had met the College criteria does not even address, much less answer, the issue before the Committee.

### **Conclusion**

**65** I therefore conclude, as the Committee has failed to meet both the obligation to properly interpret and apply the relevant law, and the obligation to provide adequate reasons for its decision, that its decision must be rescinded, and the application of Ms. Siadat must be referred back to the Committee for re-hearing, in the context of the statute and case law referred to in these reasons.

**66** Counsel for the parties agreed there would be no costs of this appeal.

J.H. BROCKENSHIRE J.

E.M. MACDONALD J.:-- I concur.

D.R. CAMERON J.:-- I concur.

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