

Mugesera v. Canada (Minister of Citizenship and Immigration), [2004] 3 S.C.R. 323,  
2004 SCC 62

**Minister of Citizenship and Immigration**

*Appellant/Applicant*

v.

**Léon Mugesera, Gemma Uwamariya,  
Irenée Rutema, Yves Rusi,  
Carmen Nono, Mireille Urumuri  
et Marie-Grâce Hoho**

*Respondents/Respondents on the motion*

**Indexed as: Mugesera v. Canada (Minister of Citizenship and Immigration)**

**Neutral citation: 2004 SCC 62.**

File No.: 30025.

2004: October 1.

Present: Deschamps J.

motion to strike

*Practice — Supreme Court of Canada — Motion to strike — Documents on appeal — Motion to have certain documents struck from respondents' record — Whether factums from courts below, directions of Court of Appeal, motion to file fresh evidence and written representations on costs in Court of Appeal should be excluded from Part II of respondents' record — Whether these documents constitute*

*“pleadings” or “orders” within meaning of Rule 39(1)(b) of Supreme Court Rules — Whether correspondence between parties regarding establishment of record in Supreme Court and table of concordance should be excluded from Parts III and IV of respondents’ record — Rules of the Supreme Court of Canada, SOR/2002-156, r. 39(1).*

### **Cases Cited**

**Applied:** *Public School Boards’ Assn. of Alberta v. Alberta (Attorney General)*, [1999] 3 S.C.R. 845.

### **Statutes and Regulations Cited**

*Rules of the Supreme Court of Canada*, SOR/2002-156, r. 39(1).

MOTION to strike certain documents from the respondents’ record.  
Motion granted in part.

Written submissions by *Michel F. Denis* and *Normand Lemyre*, for the appellant/applicant.

Written submissions by *Guy Bertrand*, for the respondents/respondents on the motion.

English version of the order delivered by

1            DESCHAMPS J. — The respondents have included documents in their record that the appellant contends should be struck out. Also, the appellant submits that the respondents’ written argument contains passages that should be struck out. The contested documents are the factums from the courts below, directions of the Federal Court of Appeal, a motion to file fresh evidence, the written representations on costs in the Court of Appeal, correspondence between the parties regarding the establishment of the record in this Court and a table of concordance.

2            Rule 39(1)(b) of the *Rules of the Supreme Court of Canada*, SOR/2002-156, requires that Part II of the respondent’s record include, *inter alia*, “pleadings” and “orders”. In the French version, the terms used are *actes de procédure* and *ordonnances*. These expressions are general enough to include the factums from the courts below, the directions of the Court of Appeal, the motion to file fresh evidence and the written representations on costs. In fact, the Court established in *Public School Boards’ Assn. of Alberta v. Alberta (Attorney General)*, [1999] 3 S.C.R. 845, that factums from the courts below are part of the record to which the parties may refer.

3            The correspondence and the table of concordance have been included by the respondents in Parts III and IV of their record. Rules 39(1)(c) and 39(1)(d) of the *Rules of the Supreme Court of Canada* require that these parts include:

(c) Part III: evidence, including transcripts and affidavits; and

(d) Part IV: exhibits, in the order in which they were filed at trial.

The correspondence and the table of concordance are neither evidence nor exhibits included in the record at trial. Nor may these documents be included in Part II of the respondents' record.

4                    These documents constitute fresh evidence. They should be considered to have been struck out. Likewise, the passages of the respondents' factum referring to them should be considered not to have been written.

5                    Rather than ordering the filing of a new factum and a new record, I order the respondents to refrain from referring to these documents and these passages from the factum in their oral argument.

6                    For these reasons, the motion is granted in part, without costs in light of its mixed result. The correspondence and the table of concordance shall be considered to have been struck out and the respondents are ordered not to refer to them.

*Motion granted in part.*

*Solicitor for the appellant/applicant: Deputy Attorney General of Canada,  
Montréal.*

*Solicitors for the respondents/respondents on the motion: Guy Bertrand  
& Associés, Québec.*