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**John** (Litigation Guardian of) v. **Canada** (Minister of Citizenship & Immigration)Fashion **John**, Tushon **John**, Loshon **John** Through their Litigation Guardian Cartusha Skyers, (Appellants) v.  
Minister of Citizenship and Immigration, (Respondent)

Ontario Court of Appeal

Abella J.A., Finlayson J.A., O'Connor J.A.

Heard: March 22, 2000

Judgment: March 23, 2000

Docket: CA C30073

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Proceedings: affirming (1998), [53 C.R.R. \(2d\) 151](#) (Ont. Gen. Div.)Counsel: *Roger Rowe*, for Appellants.*Donald McIntosh* and *Jeremiah Eastman*, for Respondent.

Subject: Immigration; Constitutional; Civil Practice and Procedure

Aliens, immigration and citizenship --- Exclusion and removal — Removal from Canada — General

Mother of three Canadian children, aged 5, 4 and 2, was deported from Canada after Federal Court judge dismissed mother's application for stay on basis that effect of separation on family did not constitute irreparable harm — Children commenced application for declaration that deportation of mother contravened children's rights under ss. 7, 12 and 15 of Charter of Rights and Freedoms, and for other related relief — Children brought motion for interim order directing Minister to forthwith facilitate and pay for return of mother pending determination of application — Motion was dismissed — Federal Court was better positioned to consider how any Charter mandated consideration of rights of children should be integrated into scheme of Immigration Act — Taking of jurisdiction by court would encourage forum-shopping, inconsistency and multiplicity of proceedings — Federal Court of Appeal was appropriate forum to review judge's dismissal of stay — Children appealed — Appeal dismissed — Trial judge properly exercised his discretion and declined jurisdiction to hear application.

**Statutes considered:***Immigration Act*, R.S.C. 1985, c. I-2

Generally — referred to

s. 114(2) — considered

APPEAL by children from judgment reported at (1998), 53 C.R.R. (2d) 151, 46 Imm. L.R. (2d) 112 (Ont. Gen. Div.) dismissing their motion for interim order directing Minister to forthwith facilitate and pay for return of mother pending determination of application.

**Per Curiam:**

- 1 We are not persuaded that we should interfere with the decision of Dambrot J. In our view, he properly exercised his discretion and declined jurisdiction to hear this application.
- 2 Counsel for the appellant expressed a concern that in the event this court dismissed this appeal, there is nothing to prevent the Minister from deporting the children's litigation guardian, who is also the children's caregiver, and who is presently subject to a removal order in her personal capacity.
- 3 We were advised by counsel for the Minister that the litigation guardian is in a position, and has been for some time, to make an application under s. 114(2) of the *Immigration Act* to be permitted to remain in Canada on humanitarian and compassionate grounds. We assume that the Minister will not implement the removal order until there has been a reasonable opportunity to bring the appropriate proceedings under the *Immigration Act*.
- 4 The appeal is therefore dismissed.

*Appeal dismissed.*

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