Federal Court  Cour fédérale

Date: 20160119

Docket: T-1570-15

Citation: 2016 FC 44

Ottawa, Ontario, January 19, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHAMAD RAAFAT MONLA,
HAMED MOUNLA,
AND RACHID MOUNLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION CANADA

Respondent

ORDER AND REASONS

[1] This is one of a number of applications case-managed by the Court that were commenced after the Minister served written notice of his intention to make a report that may lead to the revocation of the recipients' Canadian citizenship on the grounds that it was obtained by false representation or fraud or by knowingly concealing material circumstances.

[2] Mr. Waldman, counsel for a number of the applicants in these case-managed proceedings, and Ms. Espejo Clarke, counsel for the Minister, indicated that they would be bringing preliminary motions in a number of these applications. The Court directed that these motions be heard together over two days with regard to the following eight applications: T-1570-15 (MONLA), T-1571-15 (BARAKAT), T-1572-15 (SAMER BIDEWI), T-1573-15 (AYMAN BIDEWI), T-1584-15 (HASSOUNA), T-1586-15 (KARIM), T-1696-15 (NADA), and T-1707-15 (KARIM) [collectively the Initial Revocation Judicial Review Applications]. Other similar applications being case-managed in this group are being held in abeyance pending the outcome of these motions [collectively the Additional Revocation Judicial Review Applications]. The Additional Revocation Judicial Review Applications, as at the date of this Order and Reasons, are listed in Annex A.

[3] Subsequent to scheduling these motions, the Court was advised that the Minister was withdrawing the notice of intent to revoke the citizenship in T-1586-15 (KARIM). As that application for judicial review will not be proceeding, no decision will be issued with respect to it.

[4] A copy of this Order and Reasons attached to a separate Order applying these Reasons will be filed in each of the Initial Revocation Judicial Review Applications, except for T-1586-15 (KARIM). A copy of this Order and Reasons will also be filed in each of the Additional Revocation Judicial Review Applications and provided to counsel. This Order and Reasons is not binding on those applications but is binding only on the parties to the Initial Revocation

Judicial Review Applications wherein these motions were brought. A further case management conference shall be held to discuss its impact on the other case-managed files.

Legal Background

[5] The *Strengthening Canadian Citizenship Act*, SC 2014, c 22, came into force on May 28, 2015. It made material revisions to the provisions regarding revocation of citizenship in the *Citizenship Act*, RSC 1985, c C-29. For ease of reference the *Citizenship Act* as it read prior to the *Strengthening Canadian Citizenship Act* shall be referred to as the Former Act, and afterwards, as the Amended Act. The relevant provisions of the Former Act, the Amended Act, and the transitional provisions of the *Strengthening Canadian Citizenship Act*, are reproduced in Annexes B, C, and D, respectively.

[6] Under the Former Act one's citizenship could be revoked pursuant to section 10 by order of the Governor in Council where it was satisfied that citizenship had been obtained "by false representation or fraud or by knowingly concealing material circumstances." The decision of the Governor in Council was based upon a report from the Minister.

[7] Prior to issuing his report, the Minister was required pursuant to section 18 of the Former Act to send a notice of intention to revoke citizenship to the person concerned, outlining the grounds for revocation. The person concerned had the right to request that the matter be referred to the Federal Court to determine whether he or she obtained Canadian citizenship by false representation or fraud or knowingly concealing material circumstances.

[8] If the person did not refer the matter to the Federal Court within 30 days, then the Minister could submit his report to the Governor in Council recommending that citizenship be revoked.

[9] If the person requested that the matter be referred to the Federal Court, then the Minister could bring an action in the Federal Court for a declaration that the person concerned obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. If, after a trial, the Court was satisfied on the balance of probabilities that the affected person obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, then a declaration to that effect would issue.

[10] Only then could the Minister make his report to the Governor in Council. The text of the report that the Minister presented to the Governor in Council was disclosed to the person concerned, who had the opportunity to make written submissions. Any such submissions were considered by the Minister and attached to the final report presented to the Governor in Council If the Governor in Council decided to revoke the person's citizenship, it would be by Order-in-Council.

[11] Under the Amended Act one's citizenship can be revoked pursuant to section 10(1) by the Minister if he "is satisfied on the balance of probabilities that the person has obtained, retained or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances." It is only when an exceptional circumstance specified in the Amended Act applies that the Minister is required to refer the matter to the Federal Court for a

declaration. None of those exceptions applies in any of the Initial Revocation Judicial Review Applications or in the Additional Revocation Judicial Review Applications.

[12] Under subsection 10(3) of the Amended Act, before the Minister can revoke the citizenship of the person concerned, he must issue a notice that specifies "the person's right to make written representations" and "the grounds upon which the Minister is relying to make his or her decision." "A hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is necessary."

[13] Section 7.2 of the *Citizenship Regulations*, SOR 93-246 describes the circumstances when an oral hearing may be held:

> A hearing may be held under subsection 10(4) of the Act on the basis of any of the following factors:
>
> (a) the existence of evidence that raises a serious issue of the person's credibility;
>
> (b) the person's inability to provide written submissions; and
>
> (c) whether the ground for revocation is related to a conviction and sentence imposed outside Canada for a offence that, if committed in Canada, would constitute a terrorism offence as defined in section 2 of the Criminal Code.

[14] The Minister's decision to revoke citizenship is required to be made in writing and may be the subject of a judicial review application in this Court.

[15] The *Strengthening Canadian Citizenship Act* contains transitional provisions dealing with matters prior to the date when the Amended Act became effective. The most relevant of these

for the purposes of these motions is subsection 40(1) which provides that "[a] proceeding that is pending before the Federal Court immediately before the day on which section 8 comes into force, as a result of a referral under section 18 of the *Citizenship Act* as that section 18 read immediately before that day, is to be dealt with and disposed of in accordance with that Act, as it read immediately before that day" [emphasis added].

Nature of the Motions

[16] There are some facts unique and personal to each applicant in the Initial Revocation Judicial Review Applications; however, they do share similarities. Each applicant received a notice of revocation under the Amended Act. All but one also received a notice under the Former Act. All who received a notice under the Former Act requested that the Minister refer the matter to the Federal Court but the Minister did not do so.

[17] Each applicant seeks an injunctive order staying the Minister from taking any steps or proceedings under the notice to revoke issued under the Amended Act until such time as the application for leave and judicial review is considered and finally determined.

[18] Briefly, the underlying applications, with one exception, seek (a) a declaration that the procedural provisions relating to citizenship revocation under the Amended Act are void because they offend section 7 of the *Canadian Charter of Rights and Freedoms* and cannot be saved under section 1; (b) a declaration that the revocation notice is void because it violates section 2(e) of the *Bill of Rights;* (c) a declaration that the revocation notice is void because it violates

the transitional provisions of the *Strengthening of Canadian Citizenship Act;* and (d) an order quashing the notice of revocation due to an abuse of process, stemming from delay.

[19] The Minister moves to strike the applications on the basis that the applications for writs of prohibition and declaration are premature because: (a) any notice issued under the Former Act has been extinguished by operation of law and the notices issued under the Amended Act are permitted by the transitional provisions of the *Strengthening of Canadian Citizenship Act;* (b) the Minister has only taken administrative action in issuing the notices and the applicants have not yet exhausted the process provided in the Amended Act; (c) the *Charter* challenge should not be litigated in a factual vacuum; and (d) the applicants' remedy if citizenship is revoked is to seek review of that decision in Federal Court.

Factual Background of the Applicants

T-1570-15 (MONLA)

[20] Mohammed Monla and his minor children Rachid Mounla and Hamed Mounla, all born in Lebanon, became permanent residents of Canada on August 13, 2003. On December 5, 2006, Mr. Monla submitted an application for Canadian citizenship for himself and his two sons based on his attestation that he had resided in Canada for 1136 days in the preceding four years. On May 28, 2008, all three became Canadian citizens.

[21] On September 30, 2011, pursuant to subsection 18(1) of the Former Act, the Minister issued notices of revocation to Mr. Monla and his sons on the basis that Mr. Monla had failed to

disclose all of his absences from Canada and had provided false information with respect to his residence during the four years immediately preceding his citizenship application.

[22] The notice followed an RCMP investigation of Nizar Zakka, a citizenship consultant, his firm, Decision Immigration 2000 Inc., and his partners. It is alleged that clients of these consultants and firm, including Mr. Monla, used their services to misrepresent their residence in Canada in order to obtain Canadian citizenship.

[23] On March 2, 2012, Mr. Monla and his sons requested that the matter be referred to the Federal Court. The Minister did not refer the matter to the Federal Court in the 3 years and 88 days that followed before the *Strengthening Canadian Citizenship Act* came into force. However, on August 6, 2015, 70 days after it came into force, the Minister issued notices under the Amended Act to Mr. Monla and his two sons. For ease of reference, for Mr. Monla and the others who received notices under the Former Act and the Amended Act, the first notice will be referred to as the Initial Revocation Notice and the second notice will be referred to as the Second Revocation Notice.

[24] The Second Revocation Notice to Mr. Monla stated, in relevant part: "Based upon the evidence currently before me, it appears that you provided false information on your application for Canadian citizenship with respect to your residence by not disclosing all of your absences from Canada within the four (4) years immediately preceding the date of your application." The Minister gave him 60 days "to provide written submissions as to why your citizenship should not be revoked" and informed Mr. Monla that thereafter a decision would be made "as to whether an

oral hearing is required" based upon the factors prescribed in section 7.2 of the *Citizenship Regulations*.

[25] It appears from the record that the supporting information and documents referenced in the Second Revocation Notice predate the issuance of the Initial Revocation Notice provided on September 30, 2011, save for a reference to Mr. Monla's LinkedIn profile as of July 10, 2015.

T-1571-15 (BARAKAT)

[26] Maaz Mohammad Barakat, born in Syria, became a permanent resident of Canada on September 20, 1988. He submitted family sponsorship applications for his wife, Hassana Sidana, and son, Kareem Barakat, and they became permanent residents of Canada on August 3, 2002.

[27] Mr. Barakat submitted an application for Canadian citizenship on August 8, 2002, declaring no absences from Canada in the relevant four year period. He became a Canadian citizen on April 1, 2003.

[28] Initially Mr. Barakat's wife was an applicant in his application for judicial review; however, counsel has subsequently filed a separate application relating to the notice of revocation she received, which is being held in abeyance pending the disposition of these motions.

[29] Mr. Barakat made an application for citizenship for his minor son, Kareem, on September 22, 2004, declaring that he had not been absent from Canada for more than six months during the relevant period. Kareem became a Canadian citizen on December 20, 2005.

[30] On June 11, 2011, pursuant to subsection 18(1) of the Former Act, the Minister issued a revocation notice to Mr. Barakat on the basis that he had failed to disclose all of his absences from Canada and had provided false information with respect to his residence during the four years immediately preceding his citizenship application. A notice was also issued the same day to his son, Kareem, on the basis that he had obtained citizenship directly as a result of his father having obtained citizenship by false representation or fraud or by concealing material circumstances.

[31] The notice followed an RCMP investigation of Nizar Zakka, a citizenship consultant, his firm, Decision Immigration 2000 Inc., and his partners. It is alleged that clients of these consultants and firm, including Mr. Barakat, used their services to misrepresent their residence in Canada in order to obtain Canadian citizenship.

[32] On October 28, 2011, Mr. Barakat and his son requested that the matter be referred to the Federal Court. The Minister did not refer the matter to the Federal Court in the 3 years and 213 days that followed before the *Strengthening Canadian Citizenship Act* came into force. However, on August 6, 2015, 70 days after it came into force, the Minister issued notices under the Amended Act to Mr. Barakat and his son.

[33] The Second Revocation Notices, in relevant part, are identical to that issued to Mr. Monla.

[34] It appears from the record that all of the supporting information and documents referenced in the Second Revocation Notices predate the issuance of the Initial Revocation Notice provided on June 11, 2011, save for a recent internet search.

T-1573-15 (SAMER BIDEWI)

[35] Samer Bidewi was born in Syria. He became a permanent resident of Canada on August 30, 1998. In his application for citizenship dated March 1, 2004, he declared that he had been absent from Canada for two trips totalling 28 days and that he had been physically present in Canada for 1432 days. He became a Canadian citizen on March 7, 2005.

[36] On February 27, 2012, pursuant to subsection 18(1) of the Former Act, the Minister served a notice on Mr. Bidewi on the basis that he had failed to disclose all of his absences from Canada and had provided false information with respect to his residence during the four years immediately preceding his citizenship application.

[37] The notice followed an RCMP investigation of Nizar Zakka, a citizenship consultant, his firm, Decision Immigration 2000 Inc., and his partners. It is alleged that clients of these consultants and firm, including Mr. Bidewi, used their services to misrepresent their residence in Canada in order to obtain Canadian citizenship.

[38] On March 2, 2012, Mr. Bidewi requested that the matter be referred to the Federal Court. The Minister did not refer the matter to the Federal Court in the 3 years and 88 days that followed before the *Strengthening Canadian Citizenship Act* came into force. However, on August 11, 2015, 75 days after it came into force, the Minister issued a notice under the Amended Act to Mr. Bidewi.

[39] The Second Revocation Notice, in relevant part, is identical to that issued to Mr. Monla.

[40] It appears from the record that all of the supporting information and documents referenced in the Second Revocation Notices predate the issuance of the Initial Revocation Notice provided on December 6, 2011, save for a recent internet search.

T-1574-15 (AYMAN BIDEWI)

[41] Ayman Bidewi was born in Syria. He became a permanent resident of Canada on August 30, 1998. In his application for citizenship dated July 19, 2004, he declared that he had been absent from Canada for 34 days and that he had been physically present in Canada for 1426 days. He became a Canadian citizen on July 25, 2005.

[42] On February 23, 2012, pursuant to subsection 18(1) of the Former Act, the Minister served a notice on Mr. Bidewi on the basis that he had failed to disclose all of his absences from Canada and had provided false information with respect to his residence during the four years immediately preceding his citizenship application.

[43] The notice followed an RCMP investigation of Nizar Zakka, a citizenship consultant, his firm, Decision Immigration 2000 Inc., and his partners. It is alleged that clients of these consultants and firm, including Mr. Bidewi, used their services to misrepresent their residence in Canada in order to obtain Canadian citizenship.

[44] On March 2, 2012, Mr. Bidewi requested that the matter be referred to the Federal Court. The Minister did not refer the matter to the Federal Court in the 3 years and 88 days that followed before the *Strengthening Canadian Citizenship Act* came into force. However, on August 11, 2015, 75 days after it came into force, the Minister issued a notice under the Amended Act to Mr. Bidewi.

[45] The Second Revocation Notice, in relevant part, is identical to that issued to Mr. Monla.

[46] It appears from the record that all of the supporting information and documents referenced in the Second Revocation Notices predate the issuance of the Initial Revocation Notice provided on December 6, 2011, save for recent internet searches.

T-1584-15 (HASSOUNA)

[47] Mr. Hassouna was born in Lebanon. He became a permanent resident of Canada on September 17, 2001. In his application for citizenship dated May 24, 2005, he declared to have been absent from Canada for 92 days and declared he has been physically present in Canada for 1252 days. He became a Canadian citizen on April 19, 2006 and began the process to sponsor his wife Lina Emad Al Saber, and his son Waleed Abdulla Hassouna, to come to Canada.

[48] On February 5, 2012, pursuant to subsection 18(1) of the Former Act, the Minister served a revocation notice on Mr. Hassouna on the basis that he had failed to disclose all of his absences from Canada and had provided false information with respect to his residence during the four years immediately preceding his citizenship application.

[49] The notice followed an investigation arising from the sponsorship applications made for his wife and son. That investigation concluded that Mr. Hassouna had been continuously resident in Kuwait during the relevant period prior to obtaining his citizenship.

[50] On February 13, 2012, Mr. Hassouna requested that the matter be referred to the Federal Court. The Minister did not refer the matter to the Federal Court in the 3 years and 105 days that followed before the *Strengthening Canadian Citizenship Act* came into force. However, on July 13, 2015, 46 days after it came into force, the Minister issued a notice under the Amended Act to Mr. Hassouna.

[51] The Second Revocation Notice, in relevant part, is identical to that issued to Mr. Monla.

[52] It appears from the record that all of the supporting information and documents referenced in the Second Revocation Notices predate the issuance of the Initial Revocation Notice provided on February 2, 2012.

T-1696-15 (NADA)

[53] Mr. Nada was born in Egypt. He became a permanent resident of Canada on April 9, 1997. In his application for citizenship, he declared to have been absent from Canada for 165

days and declared he has been physically present in Canada for 1096 days. He became a Canadian citizen on January 22, 2002.

[54] On August 19, 2015, Mr. Nada was served with a notice of revocation under the Amended Act on the basis that he had failed to disclose all of his absences from Canada and had provided false information with respect to his residence during the four years immediately preceding his citizenship application.

[55] The notice states that on October 8, 2003, the Minister received information that appeared to contradict Mr. Nada's declaration concerning residency on his citizenship application and the matter was referred to the Case Management Branch of Citizenship and Immigration on November 6, 2003, to initiate revocation proceedings. Mr. Nada received no notice of revocation under the Former Act. No explanation is provided for failing to serve a notice of revocation under the former Act during the 11 year and 233 day period prior to the Amended Act coming into force.

[56] Mr. Nada was served with a notice of revocation under the Amended Act on August 19, 2015, 83 days after it came into force.

The Minister's Motions to Strike

[57] I propose to address first the Minister's motions to dismiss these applications.

[58] The Minister submits that the present applications are premature and ought to be struck. It is submitted that the notices issued under the Former Act were extinguished by operation of law pursuant to the provisions of the *Strengthening Canadian Citizenship Act*. The Minister further submits that there has not yet been any decision made to revoke the citizenship of these applicants and that they have the opportunity under the Amended Act to make submissions to the Minister as to whether any revocation ought to happen. He argues that the applicants "ought to exhaust that remedy prior to seeking the remedy from the Court."

[59] The Minister accepts that the test to strike a notice of application for judicial review is a high one. The parties and the Court accept that the test the Minister must meet is that most recently stated by the Federal Court of Appeal in *Canada (Minister of National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250, [2014] 2 FCR 557 at para 47:

> The Court will strike a notice of application for judicial review only where it is "so clearly improper as to be bereft of any possibility of success": *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 at page 600 (C.A.). There must be a "show stopper" or a "knockout punch" – an obvious, fatal flaw striking at the root of this Court's power to entertain the application: *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117 at paragraph 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286 at paragraph 6; cf.. *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

The applicants submit that it is neither "clear" nor "obvious," as the Minister suggests, that the Initial Revocation Notices provided to applicants in the Initial Revocation Judicial Review Applications, save T-1696-15 (NADA), were extinguished by the transitional provisions of the *Strengthening Canadian Citizenship Act*. They further submit that, even if the Initial Revocation Notices have been cancelled by operation of law, the issuance of the Second Revocation Notices

constitutes an abuse of process because the Minister failed to take the action available to him and requested by the applicants to refer the Initial Revocation Notices to the Federal Court under the Former Act. They submit that the Minister's action in this regard, coupled with the delay that has occurred, has deprived them of rights they had under the Former Act and constitutes an abuse of process warranting the quashing of the Second Notices of Revocation. Lastly, they submit that, while the administrative process currently challenged has not been completed, the facts at hand constitute "most unusual and exceptional circumstances" warranting the Court's intervention: *Air Canada v Lorenz*, [2000] 1 FCR 494 at para 12; *Almrei v Canada (Minister of Citizenship and Immigration)*, 2014 FC 1002 at para 34.

[60] When a judge has determined, as I have in this case, that a motion to strike should be dismissed, the less said the better because the merits of the parties' positions will subsequently be determined after a full hearing on the evidence presented.

[61] In my view, the Minister's motions must be dismissed because he has failed to establish that these applications for judicial review are bereft of any possibility of success.

[62] It cannot be said to be beyond doubt at this stage of the process that the Initial Revocation Notices provided by the Minister to all but one of the applicants have been extinguished by operation of law. The Minister relies on subsection 40(4) of the *Strengthening Canadian Citizenship Act* as the basis for his submission that the Initial Revocation Notices have been extinguished. That transitional subsection provides, in relevant part: "If, before the coming into force of section 8, a notice has been given under subsection 18(1) of the Citizenship Act, as that

subsection read immediately before that coming into force, and the case is not provided for under section 32 or any of subsections (1) to (3), the notice is cancelled and any proceeding arising from it is terminated on that coming into force, in which case the Minister, within the meaning of that Act, may provide the person to whom that notice was given a notice under subsection 10(3) of that Act …"

[63] The applicants submit that subsection 40(4) does not apply because subsection 40(1) applies to the facts here. Subsection 40(1) provides, in relevant part: "A proceeding that is pending before the Federal Court immediately before the day on which section 8 comes into force … is to be dealt with and disposed of in accordance with that Act, as it read immediately before that day."

[64] The submission of the applicants is that the Initial Revocation Notices issued by the Minister under the Former Act coupled with their request that the revocation be referred to the Federal Court creates a "proceeding that is pending before the Federal Court" even though the Minister has not (yet) referred the matter to the Federal Court. In support of that submission, the applicants point to two decisions of this Court: *Canada (Minister of Citizenship and Immigration) v Walid Zakaria*, 2015 FC 1130 [*Zakaria*], and *Canada (Minister of Citizenship and Immigration) v Rubuga*, 2015 FC 1073 [*Rubuga*].

[65] *Zakaria* was an appeal of a decision of a Prothonotary dismissing the Minister's motion to amend the pleadings in a citizenship revocation action commenced by the Minister under the Former Act. The claims the Minister sought to include were allegations that had been contained

in the Notice of Revocation but had not been included in the Statement of Claim. In dismissing the Minister's appeal, Justice Russell observed at para 5:

> The purportedly "new" claims against [one of the defendants] are not, in fact, new. Identical allegations were made in the Notice of Revocation. The Minister made the allegations in the Notice of Revocation which began the legal process and then omitted them from the Statement of Claim [emphasis added].

[66] The applicants submit that this decision supports their view that "once the Minister makes allegations in the notice of intent of revocation, the legal process begins and the proceeding is to be deemed as 'pending'."

[67] In *Rubuga* the Minister moved for default judgment in its action for a declaration that Mr. Rubuga had obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances contrary to the Former Act. The Minister alleged that, when he obtained refugee status and permanent resident status, Mr. Rubuga concealed that he had participated in the genocide that occurred in Rwanda between April and July 1994. It was argued that, had Mr. Rubuga disclosed this information about his past, he would not have been permitted to remain in Canada and would not have been granted Canadian citizenship.

[68] The Court found that the Minister sent the defendant a notice of intention to recommend that the Governor in Council revoke his citizenship on March 28, 2014. Mr. Rubuga requested that the matter be referred to the Federal Court. The Minister initiated the Federal Court proceeding on August 26, 2014, "serving the solicitor who was representing the defendant at the time, and leaving a copy of his statement of claim at the defendant's residence with his wife."

The then-solicitor did not accept service of the statement of claim as provided for in Rule 146, and soon thereafter advised the Minister that he had ceased representing the defendant.

[69] The Court noted that Mr. Rubuga did not appear on the motion and had not been personally served with the statement of claim and proceeded to inquire "whether the defendant was served in due form and whether it is appropriate to continue in his absence." The Court turned to the *Federal Court Rules* for guidance. Subsection 127(1) of the *Rules* provides that an originating document "shall be served personally" but subsection 127(2) carves out an exception by providing that "A party who has already participated in the proceeding need not be personally served." The question addressed by Justice Gleason was whether Mr. Rubuga had "already participated in the proceeding" such that personal service was not required.

[70] Justice Gleason found that he had already participated in the proceeding. She writes at para 45:

> Clearly, the defendant was aware that the procedure to revoke his citizenship had been initiated by the Minister before the Minister served his statement of claim. He had already taken positive action in the procedure by exercising his right to request that the case be referred to the Federal Court. He also retained the services of a solicitor, who acknowledged receipt of the statement of claim in his name. I find that the defendant had "already participated in the proceeding" within the meaning of subsection 127(2) of the Rules, and that the plaintiff was therefore not required to serve the statement of claim in person.

[71] The applicants submit that *Rubuga* supports its position that a proceeding under the Former Act is "pending from the moment the notice is issued and even prior to the issuance of the statement of claim, because once the notice is issued the revocation proceeding is pending as

it is awaiting further action by the Respondent, namely the issuance of the statement of claim" [emphasis in the original].

[72] In response, the Minister submits that the jurisprudence is clear that "a court proceeding must be a matter that began with an originating document" and that absent the issuance of a statement of claim under the Former Act, there can be no proceeding pending in the Federal Court. The authorities relied on by the applicants, he says, must be read in context and do not support that the issuance of the notice of intention to revoke citizenship under the Former Act initiates "a proceeding that is pending before the Federal Court" as described in subsection 40(1) of the *Strengthening Canadian Citizenship Act*.

[73] I agree with the Minister that it is clear from jurisprudence and from Rule 62 of the *Federal Courts Rules* that a proceeding is commenced by the issuance of an originating document. However, subsection 40(1) of the *Strengthening Canadian Citizenship Act* speaks to a proceeding that is pending before the Federal Court and not to a proceeding before the Federal Court and this suggests that a pending proceeding may, as the applicants submit, be something other than a proceeding that has been commenced by the issuance of an originating document. It may be that a proceeding is pending once the recipient of the notice requests a referral to the Federal Court. It is not plain and obvious to me, in the context of revocation of citizenship, that the applicants' assertion that there is a pending proceeding involving them within the meaning of subsection 40(1) of the *Strengthening Canadian Citizenship Act*, is bereft of any chance of success.

[74] I also observe that, while the Minister has not made any final decision as to whether to revoke the applicants' citizenship, he has, as was rightly conceded by counsel, made the decision that the transitional provision in subsection 40(1) of the *Strengthening Canadian Citizenship Act* does not apply to the applicants. If he is in error in that decision, then the Second Revocation Notices he has issued under the Amended Act are a nullity, and the process he intends to follow, in appropriate.

[75] Because the applicants' position with respect to the proper application of the transitional provisions cannot be said to be bereft of any possibility of success, the Minister's motion to strike the pleadings in those applications where the Minister issued an Initial Revocation Notice under the Former Act and a request was made to refer the matter to the Federal Court cannot succeed.

[76] There remains for consideration the one application where there was no Initial Revocation Notice issued, T-1696-15 (NADA).

[77] In addition to claims that the relevant provisions of the Amended Act violate the *Charter* and *Bill of Rights*, Mr. Nada seeks an order quashing the Minister's notice of intent to revoke his citizenship "due to abuse of process, stemming from delay, both pursuant to section 7 [of the *Charter*] and pursuant to administrative principles." In the notice of intention to revoke Mr. Nada's citizenship the Minister acknowledges that on October 8, 2003, he was provided with information that Mr. Nada may have obtained his citizenship because of fraud or misrepresentation. Despite the Minister referring this information to his Case Management

Branch on November 6, 2003, to initiate revocation proceedings, no such proceeding was initiated until the notice under the Amended Act was provided to Mr. Nada on August 19, 2015 – nearly 12 years later.

[78] The Minister had provided no information or explanation for this extremely lengthy delay in initiating proceedings. Mr. Nada alleges that he has suffered prejudice due to lost evidence and recollection of events that occurred so long ago. It may be that the Minister will be able to provide a sufficient explanation of his actions in the preceding decade, and it may be that Mr. Nada will not be able to convince a judge that he has or is likely to suffer prejudice arising from the delay. However, at this point, based on the record before the Court, it cannot be said that Mr. Nada's claim that the notice ought to be struck as an abuse of process by the Minister is bereft of any chance of success. Accordingly, and for this reason alone, the Minister's motion to strike Mr. Nada's application must be dismissed.

[79] In each of the Initial Revocation Judicial Review Applications, it is alleged that the revocation procedure provided for in the Amended Act violates the rights to liberty and security of the person in section 7 of the *Charter*, and the right to a fair hearing under paragraph 2(e) of the *Bill of Rights*. These claims are premised on the fact that the citizenship revocation process under the Amended Act does not require that the Minister to disclose to the affected person all relevant information in his possession, does not provide the affected person with a hearing before an independent and impartial decision-maker, and does not guarantee an oral hearing in all circumstances where it is required.

[80] The Minister submits that the applicants' real complaint is that the procedure under the Former Act is no longer available to them and says that fact is insufficient to support the alleged breaches. I agree with the Minister that the mere fact that the more formal process has been changed does not in itself support the claims of breaches of the *Charter* and *Bill of Rights*. However, the allegations raised regarding the alleged deficiencies in the procedure provided to persons facing revocation of Canadian citizenship under the Amended Act cannot be said to be frivolous or vexatious, nor can it be said that they are bereft of any possibility of success. Administrative law principles alone are sufficient to address the Minister's argument. The more serious the consequences to an individual, the greater the need for procedural fairness and natural justice. Revocation of citizenship for misrepresentation and fraud is a very serious matter and the allegations made by these applicants, although they may ultimately not succeed, raise a case demanding a response from the Minister.

[81] Lastly, the Minister submits that the *Charter* and *Bill of Rights* challenges ought to be determined on a complete record which will only be available following the conclusion of the revocation process the Minister takes under the Amended Act. It is arguable that additional evidence will be obtained that may be relevant if these challenges are determined at the end of the revocation process, such as whether the applicants are ultimately granted an oral hearing, and facts related to the decision-making procedure used by the Minister and, in particular, the degree of independence enjoyed by the delegate who makes the revocation decision. However, it is also arguable that these facts are not relevant to the constitutionality of the process itself, but simply to the fairness of particular decisions that the Minister might make pursuant to that process.

[82] In any event, the underlying applications deal with much more than the *Charter* and *Bill of Rights* issues. If the applicants who received an Initial Revocation Notice are ultimately successful in persuading this Court that they fall under the Former Act and not the Amended Act, then these constitutional challenges do not arise at all. Similarly, these challenges do not arise if Mr. Nada is successful in persuading the Court that it would be an abuse of process if the revocation process were to continue.

[83] Generally, the Minister's submissions are valid – the applications should neither be determined on an incomplete record and the issues raised ought not to be split. However, in the very unique circumstances before the Court, considering the serious possibility that these constitutional issues may not need to be determined, and the impact on these applicants if the revocation process proceeds and is subsequently found to have been a nullity or an abuse of process, I am persuaded that even if the *Charter* and *Bill of Rights* issues may have to be determined subsequently on a complete record, justice demands that the judicial review applications (to the extent possible) be determined before the revocation process proceeds further. It may be that the judge hearing these applications will determine that while he or she can determine most of the issues raised, he or she is unable or should not determine the constitutional issues on the record then before the Court. If all of the other issues raised by these applicants are determined in favour of the Minister, then the judge may decide to postpone those constitutional issues until after the revocation process has been completed and on the record as it is then. However, the alleged constitutional breaches focus on the process and procedure the Amended Act mandates, and at this point they are not obviously dependant on any factual evidence that may be disclosed following the revocation process. None of the other issues raised

are at all dependant on the factual evidence that may be disclosed in the revocation process but may be determined on a record that includes affidavit evidence. In these circumstances, and given the potential serious consequences to the applicants, the determination of the judicial review application should not have to await the final disposition of the revocation process.

The Applicants' Motions to Stay the Revocation Proceedings

[84] In order to be granted a stay, the applicants must meet a tri-partite test: (1) that an issue that is neither frivolous or vexatious has been raised, (2) that irreparable harm will occur to the applicant in the interim period between the date of the motion and the disposition of the application if the stay is denied, and (3) that the balance of convenience rests with the applicant.

[85] The previous conclusion that the applications are not bereft of any possibility of success is sufficient to establish that at least one serious issue has been raised. These include: whether the transition provisions dictate that the revocation notices are a nullity; whether the notices should be quashed as an abuse of process; and whether the revocation procedure under the Amended Act violates the *Charter*, the *Bill of Rights*, and general administrative law principles.

[86] In all but one of the applications, the Minister commenced revocation proceedings under the Former Act but chose not to refer the matter to the Federal Court for decision. Those applications allege that, in light of the Minister's failure to proceed with his applications under the Former Act, his new notices are a nullity and further constitute an abuse of process. In the remaining application, T-1696-15 (NADA), the notice is accepted as validly issued according to

the terms of the Amended Act but it is asserted that the Minister has engaged in an abuse of process in delaying serving it for more than a decade.

[87] I agree with the applicants that subjecting them to the process under the Amended Act prior to the determination of the validity of the notices subjects them to a process which may be found to be invalid and unconstitutional. I also agree that there is an air of reality to the allegations that the proceedings constitute an abuse of process. Lastly, I accept that requiring the applicants to participate in a process which requires that they disclose their case by responding to the new notices may well prejudice them if it is later determined that they ought to have been before the Federal Court in an action where the Minister bears the burden of proof. I accept that each of these real possibilities creates the likelihood that the failure to stay the revocation proceedings pending the disposition of the judicial review applications will constitute irreparable harm.

[88] I am also satisfied that the balance of convenience does not rest with the Minister. He had every opportunity to initiate proceedings many years ago to strip these applicants of their citizenship but chose or failed to do so. He cannot reasonably now say that he and Canada will be prejudiced by the delay that will be caused in granting the stay when he himself has been responsible for years and years of delay in taking steps to advance these proceedings.

[89] For these reasons, an order will issue in each of the Initial Revocation Judicial Review Applications dismissing the Minister's motion to strike the application, and granting the

applicant's motion to stay the revocation proceedings pending final disposition of the judicial review application.

ORDER

THIS COURT ORDERS that:

1. The Minister's motion to strike the application for leave and judicial review is dismissed;

2. The applicants' motion for an Order enjoining the Minister from taking any steps or proceedings under the notice to revoke issued under the *Citizenship Act*, RSC 1985, c C-29, as amended by the *Strengthening Canadian Citizenship Act*, SC 2014, c 22, until such time as the application for leave and judicial review is considered and finally determined, is granted; and

3. A case-management conference shall be scheduled by the Court to set the next steps to be taken and their timing.

"Russel W. Zinn"``

Judge

ANNEX "A"

Additional Revocation Judicial Review Applications

T-1867-15 (SUMAN)

T-1963-15 (YAHYA)

T-2002-15 (DIB)

T-2026-15 (ASSRAN)

T-2067-15 (SIDANI)

T-2105-15 (S. KOPAHI)

T-2106-15 (A. KOPAHI)

T-2124-15 (NGUYEN)

T-2132-15 (LIU)

T-2133-15 (HAN)

T-22-16 (L. GUCAKE)

T-23-16 (C. GUCAKE)

T-24-16 (R. GUCAKE)

T-25-16 (K. GUCAKE)

T-27-16 (T. GUCAKE)

T-28-16 (F. C. GUCAKE)

T-29-16 (F. T. GUCAKE)

T-30-16 (S. GUCAKE)

T-31-16 (B. GUCAKE)

T-32-16 (R. C. GUCAKE)

T-55-16 (H. ASHOR)

T-56-16 (M. ASHOR)

ANNEX "B"

Citizenship Act, RSC 1985, c, C-29, as it read prior to May 28, 2015

10 (1) Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

10 (1) Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée :

(a) the person ceases to be a citizen, or

a) soit perd sa citoyenneté;

(b) the renunciation of citizenship by the person shall be deemed to have had no effect,

b) soit est réputé ne pas avoir répudié sa citoyenneté.

as of such date as may be fixed by order of the Governor in Council with respect thereto.

(2) A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

(2) Est réputée avoir acquis la citoyenneté par fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels la personne qui l'a acquise à raison d'une admission légale au Canada à titre de résident permanent obtenue par l'un de ces trois moyens.

18 (1) The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

18 (1) Le ministre ne peut procéder à l'établissement du rapport mentionné à l'article 10 sans avoir auparavant avisé l'intéressé de son intention en ce sens et sans que l'une ou l'autre des conditions suivantes ne se soit réalisée

(a) that person does not, within thirty days after the day on which the notice

a) l'intéressé n'a pas, dans les trente jours suivant la date d'expédition de

is sent, request that the Minister refer the case to the Court; or

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

l'avis, demandé le renvoi de l'affaire devant la Cour;

b) la Cour, saisie de l'affaire, a décidé qu'il y avait eu fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels.

(2) The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it is sent by registered mail to the person at his latest known address.

(2) L'avis prévu au paragraphe (1) doit spécifier la faculté qu'a l'intéressé, dans les trente jours suivant sa date d'expédition, de demander au ministre le renvoi de l'affaire devant la Cour. La communication de l'avis peut se faire par courrier recommandé envoyé à la dernière adresse connue de l'intéressé.

(3) A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

(3) La décision de la Cour visée au paragraphe (1) est définitive et, par dérogation à toute autre loi fédérale, non susceptible d'appel.

ANNEX "C"

Citizenship Act, RSC 1985, c. C-29, as it currently reads

10 (1) Subject to subsection 10.1(1), the Minister may revoke a person's citizenship or renunciation of citizenship if the Minister is satisfied on a balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.	10 (1) Sous réserve du paragraphe 10.1(1), le ministre peut révoquer la citoyenneté d'une personne ou sa répudiation lorsqu'il est convaincu, selon la prépondérance des probabilités, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.
(2) The Minister may revoke a person's citizenship if the person, before or after the coming into force of this subsection and while the person was a citizen,	(2) Le ministre peut révoquer la citoyenneté d'une personne si celle-ci, avant ou après l'entrée en vigueur du présent paragraphe, et alors qu'elle était un citoyen, selon le cas :
(a) was convicted under section 47 of the *Criminal Code* of treason and sentenced to imprisonment for life or was convicted of high treason under that section;	a) a été condamnée au titre de l'article 47 du *Code criminel* soit à l'emprisonnement à perpétuité pour une infraction de trahison soit pour haute trahison;
(b) was convicted of a terrorism offence as defined in section 2 of the *Criminal Code* - or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in that section - and sentenced to at least five years of imprisonment;	b) a été condamnée à une peine d'emprisonnement de cinq ans ou plus soit pour une infraction de terrorisme au sens de l'article 2 du *Code criminel*, soit, à l'étranger, pour une infraction qui, si elle était commise au Canada, constituerait une infraction de terrorisme au sens de cet article;
(c) was convicted of an offence under any of sections 73 to 76 of the *National Defence Act* and sentenced to imprisonment for life because the person acted traitorously;	c) a été condamnée, au titre de l'un des articles 73 à 76 de la *Loi sur la défense nationale*, à l'emprisonnement à perpétuité pour s'être conduit en traître
(d) was convicted of an offence under section 78 of the *National Defence Act* and sentenced to imprisonment for life	d) a été condamnée, au titre de l'article 78 de la *Loi sur la défense nationale*, à l'emprisonnement à perpétuité;

(e) was convicted of an offence under section 130 of the *National Defence Act* in respect of an act or omission that is punishable under section 47 of the *Criminal Code* and sentenced to imprisonment for life

e) a été condamnée à l'emprisonnement à perpétuité au titre de l'article 130 de la *Loi sur la défense nationale* relativement à tout acte ou omission punissable au titre de l'article 47 du *Code criminel*;

(f) was convicted under the *National Defence Act* of a terrorism offence as defined in subsection 2(1) of that Act and sentenced to at least five years of imprisonment;

f) a été condamnée à une peine d'emprisonnement de cinq ans ou plus au titre de la *Loi sur la défense nationale* pour une infraction de terrorisme au sens du paragraphe 2(1) de cette loi;

(g) was convicted of an offence described in section 16 or 17 of the *Security of Information Act* and sentenced to imprisonment for life; or

g) a été condamnée à l'emprisonnement à perpétuité pour une infraction visée aux articles 16 ou 17 de la *Loi sur la protection de l'information*;

(h) was convicted of an offence under section 130 of the *National Defence Act* in respect of an act or omission that is punishable under section 16 or 17 of the *Security of Information Act* and sentenced to imprisonment for life.

h) a été condamnée à l'emprisonnement à perpétuité au titre de l'article 130 de la *Loi sur la défense nationale* relativement à tout acte ou omission punissable au titre des articles 16 ou 17 de la *Loi sur la protection de l'information*.

(3) Before revoking a person's citizenship or renunciation of citizenship, the Minister shall provide the person with a written notice that specifies

(3) Avant de révoquer la citoyenneté d'une personne ou sa répudiation, le ministre l'avise par écrit de ce qui suit :

(a) the person's right to make written representations;

a) la possibilité pour celle-ci de présenter des observations écrites;

(b) the period within which the person may make his or her representations and the form and manner in which they must be made; and

b) les modalités - de temps et autres - de présentation des observations;

(c) the grounds on which the Minister is relying to make his or her decision.

c) les motifs sur lesquels le ministre fonde sa décision.

(4) A hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required.

(4) Une audience peut être tenue si le ministre l'estime nécessaire compte tenu des facteurs réglementaires.

(5) The Minister shall provide his or her decision to the person in writing.

(5) Le ministre communique sa décision par écrit à la personne.

10.1 (1) If the Minister has reasonable grounds to believe that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the *Immigration and Refugee Protection Act* other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act, the person's citizenship or renunciation of citizenship may be revoked only if the Minister seeks a declaration, in an action that the Minister commences, that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances and the Court makes such a declaration.

10.1 (1) Si le ministre a des motifs raisonnables de croire que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels — concernant des faits visés à l'un des articles 34, 35 et 37 de la *Loi sur l'immigration et la protection des réfugiés*, autre qu'un fait également visé à l'un des alinéas 36(1)a) et b) et (2)a) et b) de cette loi - , la citoyenneté ou sa répudiation ne peuvent être révoquées que si, à la demande du ministre, la Cour déclare, dans une action intentée par celui-ci, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

(2) If the Minister has reasonable grounds to believe that a person, before or after the coming into force of this subsection and while the person was a citizen, served as a member of an armed force of a country or as a member of an organized armed group and that country or group was engaged in an armed conflict with Canada, the person's citizenship may be revoked only if the Minister - after giving notice to the person - seeks a declaration, in an action that the Minister commences, that the person so served, before or after the coming into force of this subsection and while they were a citizen, and the Court makes such a declaration.

(2) Si le ministre a des motifs raisonnables de croire qu'une personne, avant ou après l'entrée en vigueur du présent paragraphe, a servi, alors qu'elle était un citoyen, en tant que membre d'une force armée d'un pays ou en tant que membre d'un groupe armé organisé qui étaient engagés dans un conflit armé avec le Canada, la citoyenneté ne peut être révoquée que si, à la demande du ministre - présentée après que celui-ci ait donné un avis à cette personne - , la Cour déclare, dans une action intentée par celui-ci, que la personne, avant ou après l'entrée en vigueur du présent paragraphe, a ainsi servi alors qu'elle était un citoyen.

(3) Each of the following has the effect of revoking a person's citizenship or

(3) A pour effet de révoquer la citoyenneté

renunciation of citizenship:

(a) a declaration made under subsection (1);

(b) a declaration made under subsection (2).

de la personne ou sa répudiation :

a) soit la déclaration visée au paragraphe (1);

b) soit celle visée au paragraphe (2).

(4) For the purposes of subsection (1), the Minister need prove only that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.

(4) Pour l'application du paragraphe (1), il suffit au ministre de prouver que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

10.2 For the purposes of subsections 10(1) and 10.1(1), a person has obtained or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances if the person became a permanent resident, within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, by false representation or fraud or by knowingly concealing material circumstances and, because of having acquired that status, the person subsequently obtained or resumed citizenship.

10.2 Pour l'application des paragraphes 10(1) et 10.1(1), a acquis la citoyenneté ou a été réintégrée dans celle-ci par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels la personne ayant acquis la citoyenneté ou ayant été réintégrée dans celle-ci après être devenue un résident permanent, au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés*, par l'un de ces trois moyens.

10.5 (1) On the request of the Minister of Public Safety and Emergency Preparedness, the Minister shall, in the originating document that commences an action under subsection 10.1(1), seek a declaration that the person who is the subject of the action is inadmissible on security grounds, on grounds of violating human or international rights or on grounds of organized criminality under, respectively, subsection 34(1), paragraph 35(1)(a) or (b) or subsection 37(1) of the *Immigration and Refugee Protection Act*.

10.5 (1) À la requête du ministre de la Sécurité publique et de la Protection civile, le ministre demande, dans l'acte introductif d'instance de l'action intentée en vertu du paragraphe 10.1(1), que la personne soit déclarée interdite de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour criminalité organisée au titre, respectivement, du paragraphe 34(1), des alinéas 35(1)a) ou b) ou du paragraphe 37(1) de la *Loi sur l'immigration et la protection des réfugiés*.

(2) When a declaration is sought under subsection (1), the Minister of Public Safety

(2) Dès lors que le ministre fait la demande visée au paragraphe (1), le ministre de la

and Emergency Preparedness becomes a party to the action commenced under subsection 10.1(1).

Sécurité publique et de la Protection civile devient partie à l'action intentée au titre du paragraphe 10.1(1).

(3) A declaration that the person is inadmissible on one of the grounds referred to in subsection (1) is a removal order against the person under the *Immigration and Refugee Protection Act* that comes into force when it is made, without the necessity of holding or continuing an examination or an admissibility hearing under that Act. The removal order is a deportation order as provided for in regulations made under that Act.

(3) La déclaration portant interdiction de territoire constitue une mesure de renvoi contre l'intéressé aux termes de la *Loi sur l'immigration et la protection des réfugiés* qui prend effet dès qu'elle est faite, sans qu'il soit nécessaire de procéder au contrôle ou à l'enquête prévus par cette loi. La mesure de renvoi constitue une mesure d'expulsion au sens des règlements pris en vertu de la même loi.

(4) If a declaration is sought under subsection (1), the Court shall first hear and decide all matters related to the declaration sought under subsection 10.1(1). If the Court denies the declaration sought under subsection 10.1(1), it shall also deny the declaration sought under subsection (1).

(4) Lorsque la déclaration visée au paragraphe (1) est demandée, la Cour entend et tranche d'abord toute question relative à la déclaration demandée au titre du paragraphe 10.1(1). Le rejet par la Cour de la déclaration demandée au titre du paragraphe 10.1(1) vaut rejet de la déclaration visée au titre du paragraphe (1).

(5) If a declaration sought under subsection (1) is not denied under subsection (4), the Court

(5) Si elle n'a pas rejeté, en application du paragraphe (4), la demande faite au titre du paragraphe (1), la Cour :

(a) shall assess the facts - whether acts or omissions - alleged in support of the declaration on the basis of reasonable grounds to believe that they have occurred, are occurring or may occur;

a) apprécie les faits - actes ou omissions - qui sont allégués au soutien de la demande en fonction de l'existence de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir;

(b) shall take into account the evidence already admitted by it and consider as conclusive any finding of fact already made by it in support of the declaration sought under subsection 10.1(1); and

b) prend en compte les éléments de preuve qu'elle a déjà admis au soutien de la demande faite au titre du paragraphe 10.1(1) et est liée par toute décision qu'elle a déjà prise sur une question de fait s'y rapportant;

(c) with respect to any additional evidence, is not bound by any legal or technical rules of evidence and may receive and base its decision on any

c) n'est pas liée, à l'égard des éléments de preuve supplémentaires, par les règles juridiques ou techniques de présentation de la preuve et peut

evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances.

recevoir les éléments de preuve déjà traités dans le cadre de l'instance qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sa décision sur eux.

(6) The Court shall issue a single judgment in respect of the declarations sought under subsections (1) and 10.1(1).

(6) La Cour rend un seul jugement statuant sur les demandes faites au titre des paragraphes (1) et 10.1(1).

ANNEX "D"

Strengthening Canadian Citizenship Act, SC 2014, c 22

40. (1) A proceeding that is pending before the Federal Court immediately before the day on which section 8 comes into force, as a result of a referral under section 18 of the *Citizenship Act* as that section 18 read immediately before that day, is to be dealt with and disposed of in accordance with that Act, as it read immediately before that day.	40. (1) Les instances en cours, à l'entrée en vigueur de l'article 8, devant la Cour fédérale à la suite d'un renvoi visé à l'article 18 de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en vigueur, sont continuées sous le régime de cette loi, dans cette version.
(2) Any proceeding with respect to allegations that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the *Immigration and Refugee Protection Act* other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act, that is pending before the Federal Court immediately before the day on which section 8 comes into force, as a result of a referral under section 18 of the *Citizenship Act* as that section 18 read immediately before that day, is to be continued as a proceeding under subsection 10.1(1) of the *Citizenship Act*, as enacted by section 8.	(2) Les instances en cours relatives à des allégations portant que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels - concernant des faits visés à l'un des articles 34, 35 et 37 de la *Loi sur l'immigration et la protection des réfugiés*, autre qu'un fait également visé à l'un des alinéas 36(1)a) et b) et (2)a) et b) de cette loi - , à l'entrée en vigueur de l'article 8, devant la Cour fédérale à la suite d'un renvoi visé à l'article 18 de la Loi sur la citoyenneté, dans sa version antérieure à cette entrée en vigueur, sont continuées sous le régime du paragraphe 10.1(1) de cette loi, édicté par l'article 8.

(3) In a proceeding that is continued as set out in subsection (2), the Minister of Citizenship and Immigration, on the request of the Minister of Public Safety and Emergency Preparedness, may seek a declaration that the person is inadmissible on security grounds, on grounds of violating human or international rights or on grounds of organ-ized criminality under, respectively, subsection 34(1), paragraph 35(1)(a) or (b) or subsection 37(1) of the *Immigration and Refugee Protection Act*.

(3) Dans le cadre des instances continuées conformément au paragraphe (2), à la requête du ministre de la Sécurité publique et de la Protection civile, le ministre de la Citoyenneté et de l'Immigration peut demander que l'intéressé soit déclaré interdit de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour criminalité organisée, aux termes, respectivement, du paragraphe 34(1), des alinéas 35(1)a) ou b) et du paragraphe 37(1) de la *Loi sur l'immigration et la protection des réfugiés*.

(4) If, immediately before the coming into force of section 8, a notice has been given under subsection 18(1) of the *Citizenship Act*, as that subsection read immediately before that coming into force, and the case is not provided for under section 32 or any of subsections (1) to (3), the notice is cancelled and any proceeding arising from it is terminated on that coming into force, in which case the Minister, within the meaning of that Act, may provide the person to whom that notice was given a notice under subsection 10(3) of that Act, as enacted by section 8, or may commence an action for a declaration in respect of that person under subsection 10.1(1) of that Act, as enacted by section 8.

(4) Si, à l'entrée en vigueur de l'article 8, un avis a été donné en application du paragraphe 18(1) de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en vigueur, et qu'il ne s'agit pas d'un cas prévu à l'article 32 ou à l'un des paragraphes (1) à (3), l'avis et toute instance qui en découle sont dès lors annulés et le ministre, au sens de cette loi, peut fournir à la personne à qui l'avis a été donné un avis en vertu du paragraphe 10(3) de cette loi, édicté par l'article 8, ou intenter une action pour obtenir une déclaration relativement à cette personne en vertu du paragraphe 10.1(1) de cette loi, édicté par l'article 8.

FEDERAL COURT

SOLICITORS OF RECORD

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