Federal Court  Cour fédérale

Date: 20190514

Docket: T-1255-16

Citation: 2019 FC 669

Ottawa, Ontario, May 14, 2019

PRESENT: Madam Justice Walker

BETWEEN:

CHIRADEEP DUTTA GUPTA

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

JUDGMENT AND REASONS

[1] This judgment addresses the Defendant's motion for summary judgment made pursuant to Rule 213 of the *Federal Courts Rules*, SOR/98-106 (*Federal Courts Rules*).

[2] On July 28, 2016, the Plaintiff, Mr. Chiradeep Gupta, served and filed an action for damages against the defendants, Her Majesty the Queen and the Minister of Immigration, Refugees and Citizenship (Minister). The Plaintiff's claim is based on allegations of gross misconduct, conspiracy and breach of his fundamental rights by representatives of the Minister

and the Canada Border Services Agency (CBSA) in their treatment of his application for Canadian citizenship from 2010 through 2015.

[3] The Defendant submits that this Court should grant summary judgment pursuant to Rule 215 of the *Federal Courts Rules* on the grounds that: (1) the Plaintiff's action is statute-barred pursuant to the Ontario *Limitations Act, 2002,* SO 2002, c 24, Sched. B, (*Ontario Limitations Act*) because the proceeding was commenced more than two years after the claim was discovered; and (2) the Plaintiff's action raises no genuine issue for trial.

[4] For the following reasons, I have found that there is no genuine issue for trial with respect to the Plaintiff's claims. The Defendant's motion for summary judgment will be granted.

I. Amendments to the Named Defendants and Style of Cause

[5] Pursuant to Rule 76 of the *Federal Courts Rules*, the Defendant properly requests that the Minister of Immigration, Refugees and Citizenship be removed as a Defendant in this matter and the style of cause amended accordingly. The request is granted and the style of cause is so amended.

II. Factual Background

[6] The Plaintiff is a citizen of India. He became a permanent resident of Canada in December 2002. The Plaintiff applied for Canadian citizenship on December 29, 2008 and passed a citizenship test in November 2009. On April 30, 2010, his application for Canadian

citizenship was approved by a citizenship judge. The Plaintiff was scheduled to take his oath of citizenship at a ceremony in Etobicoke, Ontario on September 10, 2010.

[7] In his Statement of Claim, the Plaintiff states that, on July 12, 2010, he returned to the United States to take care of business matters. He was arrested in the US on July 16, 2010 and indicted for health care fraud.

[8] On September 7, 2010, an agent with the US Federal Bureau of Investigation (FBI), Ms. Katrina Amos, contacted Immigration, Refugees and Citizenship Canada (IRCC) (*then* Citizenship and Immigration Canada or CIC) to inform IRCC of the charges against the Plaintiff and of the FBI's concern that the Plaintiff would go to Canada if released on bail and would not return to the US for his trial. On September 9, 2010, the Plaintiff was granted permission by a US district court judge in Michigan to travel to Canada for one day on September 10, 2010 for his citizenship ceremony. The same day, Ms. Amos informed Ms. Heather Primeau of IRCC that the Plaintiff would be travelling to Canada.

[9] On September 9, 2010, IRCC officials brought the Plaintiff's situation to the attention of Ms. Maha Suleiman, a citizenship officer in IRCC's Etobicoke office who had carriage of the Plaintiff's file.

[10] On September 10, 2010, at or just prior to the oath ceremony, the Plaintiff was informed by Ms. Suleiman that his oath was being postponed until more information was obtained concerning his residence in Canada and the US criminal proceedings against him. The Plaintiff

and Defendant disagree as to whether the Plaintiff was removed from the ceremony room as the ceremony started, causing him humiliation, or whether he was approached privately by Ms. Suleiman just before the ceremony.

[11] On September 16, 2010, the Plaintiff wrote to IRCC stating that his criminal charges would be settled quickly and that he would update IRCC on the outcome of the proceedings. He requested that his citizenship oath be postponed until the charges against him were resolved. The Plaintiff also provided his new address in Toronto.

[12] On October 18, 2010, Ms. Caroline Lemieux, a case review officer at IRCC, recommended to Ms. Suleiman that the Plaintiff's case be referred to the CBSA for an admissibility review due to the US criminal charges and that a letter be sent to the Plaintiff to inform him of IRCC's residency concerns. No action was taken on these recommendations because of a business realignment at IRCC. In November 2010, the Plaintiff's file was transferred from Etobicoke to Mississauga, leading to processing delays. On April 8, 2011, the Plaintiff's file was assigned to Ms. Livia Cardamone, an IRCC citizenship officer.

[13] On October 26, 2012, the Plaintiff was convicted of health care fraud and money laundering in the United States.

[14] On June 7, 2013, Ms. Cardamone attempted to contact the Plaintiff regarding the outcome of his criminal charges. The parties disagree as to whether the Plaintiff returned her call and left a message. In any event, Ms. Cardamone and the Plaintiff did not speak.

[15] On January 24, 2014, the Plaintiff was sentenced in the United States to ten years in prison and ordered to pay $10 million (USD) in restitution. Just before the date on which he was scheduled to report for incarceration, the Plaintiff was arrested while attempting to board a flight to India. He pled guilty to one charge of contempt of court and was sentenced to an additional two years of imprisonment, to be served consecutively to his original sentence. The Plaintiff began his prison sentence on February 4, 2015. He appealed his conviction and sentence based on ineffective assistance from counsel but, on March 14, 2018, the United States Court of Appeal for the Sixth Circuit refused the Plaintiff's Motion to Vacate, Set Aside or Correct Sentence.

[16] In early 2015, IRCC's Case Processing Centre in Mississauga conducted a review of its outstanding citizenship files. On April 9, 2015, Ms. Laura Miggiani, an IRCC citizenship officer, contacted Ms. Anne Raposo of the CBSA to inform her that IRCC had discovered that the Plaintiff had been convicted and sentenced to ten years in prison in the United States. Ms. Miggiani asked whether the CBSA intended to pursue enforcement action against the Plaintiff because of his criminal inadmissibility. The same day, Ms. Cardamone instructed a colleague to schedule the Plaintiff to take the citizenship oath and that his file should be abandoned if he was not present at the ceremony. The ceremony was scheduled for April 27, 2015.

[17] Also on April 9, 2015, Ms. Raposo informed IRCC that the CBSA planned to pursue enforcement action on the basis of the Plaintiff's criminality. The CBSA requested that the Plaintiff's citizenship application be placed on hold. On April 14, 2015, Ms. Raposo advised IRCC that no further action would be taken against the Plaintiff until his 2023 release from prison and that his file would be flagged.

[18] On or about April 13, 2015, the Plaintiff was summoned, by way of a Notice to Appear sent to his last known address on file, the address in Toronto, to a citizenship ceremony to be held in Mississauga, Ontario, on April 27, 2015. The Plaintiff did not attend the oath ceremony. The IRCC's Notice to Appear was returned to the sender on May 5, 2015.

[19] On June 9, 2015, an Abandonment of Citizenship Application letter was sent to the Plaintiff. This letter too was returned to its sender.

[20] On June 11, 2015, the *Citizenship Act*, RSC 1985, c C-29 (*Citizenship Act*) was amended to expand the criminal prohibition against granting citizenship to include persons who are charged outside Canada for an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament or who are serving a sentence outside Canada for such an offence.

[21] On August 5, 2015, the Plaintiff's counsel wrote to IRCC, stating that the Plaintiff had failed to update his contact information. He requested that the Plaintiff's file be reopened and that his citizenship ceremony be rescheduled once he is released from custody. The letter stated that the Plaintiff's failure to attend the ceremony was outside of his control. On September 10, 2015, Plaintiff's counsel requested an update on the status of his letter.

[22] On October 27, 2015, the contents of the Plaintiff's citizenship file were disclosed to him pursuant to a response to an Access to Information (ATIP) request. Among the documents

provided to the Plaintiff were the emails among IRCC and CBSA officials that now form the basis for his claim.

III. Litigation Background

[23] On July 28, 2016, the Plaintiff filed an action for damages against Her Majesty the Queen and the Minister. The Plaintiff seeks moral damages of $30,000 per year since 2010 and exemplary damages of $50,000 for the loss of his citizenship rights and the violation of his fundamental rights. Broadly speaking, the Plaintiff bases his action on the following assertions:

> 1. Gross misconduct of IRCC: The Plaintiff alleges repeatedly that he was granted Canadian citizenship by the citizenship judge on April 30, 2010 and that, beginning with the actions of IRCC officials on September 10, 2010 to deny him the opportunity to take the oath of citizenship, IRCC and CBSA officials conspired to deprive him of his citizenship rights in order to assist US prosecutor Wyatt Pratt in his personal agenda against the Plaintiff. In so doing, the officials failed to respect Canadian laws and regulations as his US criminality was not a basis to deny his citizenship rights. The Plaintiff states that this conduct continued through June 2015 with the actions of Ms. Cardamone and Ms. Raposo in convoking his attendance at an oath ceremony while he was incarcerated in the United States and, therefore, unable to attend. The Plaintiff argues that these actions were not carried out by a lone employee but were planned and acted on in unity by numerous agents and supervisors who intentionally ignored his crystallized citizenship rights and repeatedly lied to him.
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> 2. Breach of fundamental rights of the Plaintiff: The Plaintiff alleges that the actions of IRCC and CBSA officials breached his right to equality pursuant to section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (*Charter*) and, more generally, the protection of all rights afforded to Canadian citizens under the *Charter*.
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> 3. Damages: The Plaintiff alleges that the Defendant has caused him unquantifiable moral damages by virtue of the continual emotional stress occasioned by his knowledge that he was not treated legitimately by IRCC and CBSA officials and by the defeat

> of his legitimate expectation to obtain citizenship. He alleges that these actions caused him the unrecoverable loss of his citizenship rights as he is incarcerated in the US and unable to serve his sentence in a Canadian prison. The Plaintiff also refers to his adverse experiences as a foreigner incarcerated in a US jail in support of his claim for damages.

[24] On September 26, 2016, the Defendant filed a Statement of Defence. The Defendant denies the Plaintiff's characterization of the actions of IRCC and CBSA officials as part of a plot or conspiracy against him and submits:

> 1. Factual Arguments: The Defendant denies the Plaintiff's allegations that Ms. Suleiman was asked to stop the Plaintiff from taking his citizenship oath following exchanges with Ms. Amos of the FBI. The Defendant also denies that Ms. Suleiman misinformed the Plaintiff regarding the basis for the postponement of his oath ceremony. The Defendant asserts that Ms. Suleiman informed the Plaintiff that his ceremony would be postponed in light of the fact that his fraud charges in the US raised concerns regarding his residence in Canada during the relevant period. In countering the Plaintiff's allegation that IRCC and CBSA officials disregarded the law and waited five years until he could not return to Canada to rescind his rights, the Defendant states that the Minister postponed rather than refused to grant citizenship to the Plaintiff and that the Minister had no statutory or positive duty to administer the citizenship oath within a prescribed period of time.
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> 2. Statute of Limitations: The Defendant argues that the material facts that form the basis of the Plaintiff's claim for damages against the Minister occurred in Etobicoke, Ontario on September 10, 2010 when he was prevented from taking the citizenship oath. Pursuant to section 32 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (*Crown Liability and Proceedings Act*), and subsection 39(1) of the *Federal Courts Act*, RSC 1985, c F-7 (*Federal Courts Act*), as the Plaintiff's claim arose in Ontario, the provincial laws of prescription and limitation apply in this case. Pursuant to section 4 of the *Ontario Limitations Act*, the applicable limitation period is two years. As the claim on which the Plaintiff's action is based was discovered more than two years before the action was commenced, the claim is statute-barred.
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> 3. Conduct of IRCC: The Defendant emphasizes that the citizenship judge could not grant citizenship to the Plaintiff. The

> power to do so was reserved to the Minister pursuant to subsection 14(2) of the *Citizenship Act* as it then read. In order to become a Canadian citizen, the Plaintiff was required to take the oath of citizenship at a citizenship ceremony pursuant to subsections 19(1) and (2) of the *Citizenship Regulations*, SOR/93-246. The Defendant argues that Canadian citizenship is a privilege and not a fundamental right and that, based on the information from the FBI regarding the Plaintiff's US fraud charges, IRCC's concerns about his residence in Canada during the relevant period were legitimate. Ms. Suleiman had the authority to postpone the Plaintiff's oath ceremony and the evidence is not reflective of an improper purpose or of a conspiracy.
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> 4. Alleged Damages: The Defendant argues that the Plaintiff has not suffered any damages or harm through the actions of IRCC. The evidence does not support a claim that IRCC officials acted in bad faith or maliciously. They are not liable for the good-faith exercise of their duties in the course of their employment. Further, there is no evidence of any infringement of the Plaintiff's constitutional rights that would allow the recovery of damages pursuant to the *Charter*.

[25] On June 28, 2017, the Defendant examined the Plaintiff at the Federal Correctional Institution in Milan, Michigan.

[26] On October 27, 2017, the Plaintiff served two examination questionnaires on the Defendant (for IRCC and CBSA). On November 17, 2017, the CBSA opposed its examination by the Plaintiff because the action did not involve any allegations of torts, wrongdoings or damages caused by the CBSA. The Defendant provided IRCC's responses to the examination questionnaire on December 17, 2017 and the CBSA's responses on October 11, 2018.

[27] Counsel for the parties had settlement discussions in early July 2018. On July 18, 2018, the Plaintiff filed a requisition for a pre-trial conference. Shortly thereafter, on July 23, 2018, the

Defendants informed the Court and the Plaintiff that they would be presenting a motion for summary judgment.

IV. Motion for Summary Judgment

[28] The Defendant brought this motion for summary judgment on October 15, 2018.

[29] The Defendant submits that this Court should grant summary judgment pursuant to Rule 215 of the *Federal Courts Rules* on the grounds that:

1. The Plaintiff's action is statute-barred pursuant to the *Ontario Limitations Act* because the proceeding was commenced more than two years after the claim was discovered; and
2. The Plaintiff's action raises no genuine issue for trial as it:
   (a) fails to plead the common law of tort in Ontario which is the applicable law governing the action;
   (b) fails to properly plead and establish any of the alleged causes of action; and
   (c) fails to properly plead and establish any damages.

V. Preliminary Matter – Plaintiff's Request to strike Certain Affidavits

[30] In support of its motion for summary judgment, the Defendant filed the following affidavits:

- Wayne F. Pratt, Assistant US Attorney for the Eastern Division of Michigan and Chief of the Health Care Fraud Unit;
- Heather Primeau, Director General, Centralized Network, IRCC (previously, Senior Director, Case Review Division, IRCC);
- Rosemarie Redden, Senior Program/Policy Analyst, Integrity Risk Guidance Branch, IRCC (previously, Manager, Citizenship Case Review Unit, IRCC);

- Diane Desrosiers, Unit Manager, Embassy of Canada in Turkey (previously, Director, Immigration Unit, IRCC);
- Maha Suleiman, Citizenship Officer, IRCC;
- Livia Cardamone, former Citizenship Officer, IRCC;
- Anne Raposo, Inland Enforcement Supervisor, CBSA; and
- Carmela Manni, Legal Assistant, Department of Justice Canada.

[31] The Plaintiff argues that the affidavits of Mr. Pratt, Ms. Primeau, Ms. Redden and Ms. Desrosiers should each be struck. With respect to Mr. Pratt's affidavit, the Plaintiff argues that it is of no help in the motion as Mr. Pratt declares that he was involved in neither the Plaintiff's file nor the US investigation or prosecution of the Plaintiff. The Plaintiff argues that Mr. Pratt has no personal knowledge of the events as required by Rule 81(1) of the *Federal Courts Rules*. Similarly, the Plaintiff argues that the affidavits of Ms. Primeau, Ms. Redden and Ms. Desrosiers should be struck because they are not based on the personal knowledge of the affiants.

[32] The Plaintiff relies of Rule 81(1) which provides as follows:

81(1) Content of Affidavits – Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.	**81 (1)** Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

[33] At the hearing of this motion, I indicated that I would not grant the Plaintiff's request to strike the affidavits. My reasons are as follows.

[34] The Plaintiff's request to strike the affidavits is based on a flawed understanding of the requirement in Rule 81(1) that an affiant must confine the content of their affidavit to facts within their personal knowledge. In Mr. Pratt's affidavit, he sets out the course of the investigation, prosecution and conviction of the Plaintiff for health care fraud in the United States. He also describes his limited involvement in the process. Mr. Pratt states categorically that the Plaintiff's assertion that he contacted Ms. Amos is a fabrication as are the Plaintiff's claims that Mr. Pratt participated in the plea bargaining process. All of these matters are within Mr. Pratt's personal knowledge and are directly relevant to the Plaintiff's assertions regarding Mr. Pratt's alleged personal agenda and involvement in the conspiracy against him, a cornerstone of the Plaintiff's claim.

[35] Ms. Primeau, Ms. Redden and Ms. Desrosiers each explain the presence of their names in one of the critical email chains the Plaintiff relies on as evidence of a conspiracy at IRCC. Though Ms. Primeau states that she does not remember the Plaintiff's case specifically, this admission does not affect the admissibility and relevance of her affidavit as it is based on her personal knowledge and is relevant to the allegations made by the Plaintiff. Ms. Primeau details her role at IRCC at the relevant time and how she would have responded to information from the FBI regarding a possible Canadian citizenship issue. She also explains why she would have copied Ms. Desrosiers and Ms. Redden on her correspondence. The same analysis applies to the affidavits of Ms. Desrosiers and Ms. Redden who provide similar explanations.

VI. Legislative Background

[36] The full text of the relevant provisions of the *Citizenship Act*, RSC 1985, c C-29, as they were in 2010, (*2010 Citizenship Act*) and the *Federal Courts Rules* regarding motions for summary judgment are set out in Annex A to this judgment. I also refer to specific provisions of the *2010 Citizenship Act* and *Federal Courts Rules* as required in my analysis of this motion.

[37] Although I have determined that it is not necessary to address the Defendant's arguments regarding the limitation period applicable to the Plaintiff's claim (see paragraphs 44-46 of this judgment), I have included the text of the federal and provincial legislation relevant to this issue in Annex A for ease of reference.

VII. Analysis

A. *The Law regarding Motions for Summary Judgment*

[38] Before addressing the merits of the Defendant's motion, I will briefly review the law governing motions for summary judgment in the Federal Court. The purpose of summary judgment is to allow the Court to summarily dispense with cases which should not proceed to trial because there is no genuine issue to be tried. In *Hryniak v Mauldin*, 2014 SCC 7 (*Hryniak*), the Supreme Court of Canada considered the values underlying the summary judgment process. Although *Hryniak* involved the interpretation of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg. 194 (which are worded differently from the *Federal Courts Rules* relating to summary judgment), the principles set out by the Supreme Court are of general application and remind us that the same goals of conserving judicial resources and improving access to justice,

while safeguarding the proper disposition of an action, underlie the applicable *Federal Courts Rules* (*Hryniak* at para 35; see also *Manitoba v Canada*, 2015 FCA 57 at para 11).

[39] Rules 213 to 215 of the *Federal Courts Rules* govern motions for summary judgment before this Court. The application of those Rules was comprehensively reviewed by Justice MacTavish in *Milano Pizza v 6034799 Canada Inc.*, 2018 FC 1112 at paras 24-41 (*Milano Pizza*). Rule 215(1) provides that the Court shall grant summary judgment where the judge is satisfied that "there is no genuine issue for trial with respect to a claim or defence". The Supreme Court described the circumstances in which a judge can make such a determination as follows (*Hryniak* at para 49):

> [49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[40] The test on a motion for summary judgment is not whether a party cannot possibly succeed at trial; rather, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial (*Milano Pizza* at para 33; *Canada (Citizenship and Immigration) v Campbell*, 2014 FC 40 at para. 14). The onus is on the party seeking summary judgment to meet the test. However, Rule 214 of the *Federal Courts Rules* requires the responding party to set out specific facts in their response to the motion and to adduce evidence showing that there is a genuine issue for trial (*Milano Pizza* at paras 34-35). In other words, the responding party must put their best foot forward (*Samson First Nation v Canada*, 2015 FC 836 at para 94 (*Samson First Nation*); aff'd 2016 FCA 223 at paras 21, 24).

[41] It is well established that cases involving serious issues of the credibility of witnesses should not be determined on motions for summary judgment. As Justice Mactavish stated (*Milano Pizza* at para 37):

> [37] The jurisprudence is clear that issues of credibility ought not to be decided on motions for summary judgment. Generally, a judge who hears and observes witnesses giving evidence orally in chief and under cross-examination will be better positioned to assess the witnesses' credibility and to draw the appropriate inferences than a judge who must depend solely on affidavits and documentary evidence: *TPG Technology Consulting Ltd. v. Canada*, 2013 FCA 183 at para. 3, [2013] F.C.J. No. 836.

[42] The fact that serious issues of credibility should only be determined at trial does not preclude the granting of a motion for summary judgment where there is a conflict in the evidence before the motions judge. Rather, the judge must assess whether the issue is one of credibility.

[43] Finally, I am mindful of the fact that I must proceed with care in considering the Defendant's motion for summary judgment as the granting of the motion would dispose of the Plaintiff's action without providing the opportunity to present evidence at a full trial. Summary judgment should only be granted in the clearest of cases where the Court is satisfied that a trial on the issue(s) is unnecessary (*Samson First Nation* at para 96).

B. *Applicable Limitation Period*

[44] The Defendant correctly asserts that this Court may grant summary judgment on the basis of an expired limitation period (*Warner v Canada*, 2019 FC 329, at para 18; see also *Riva Stahl GmbH v Combined Atlantic Carriers GmbH*, [1999] FCJ No 762, 243 NR 183). The Defendant reiterates its position that the Plaintiff's claim is statute-barred in whole or in part because the

incident that forms the basis of the claim occurred in Etobicoke, Ontario on September 10, 2010 when he was prevented from taking the citizenship oath. Any consequences that flowed therefrom were immediately or reasonably discoverable. The Defendant argues that a combination of section 32 of the *Crown Liability and Proceedings Act*, subsection 39(1) of the *Federal Courts Act* and sections 4 and 5 of the *Ontario Limitations Act* result in a two-year limitation period for the Plaintiff's claim. As a result, the Plaintiff filed his Statement of Claim almost four years after the expiry of the applicable limitation period.

[45] The Plaintiff disagrees with the Defendant's analysis of the limitation period applicable to his claim, arguing that the claim arises otherwise than in a province and that the applicable limitation period is six years after his cause of action arose (section 32 of the *Crown Liability and Proceedings Act* and subsection 39(2) of the *Federal Courts Act*). The Plaintiff argues that his claim did not arise in a province as his citizenship application was first reviewed in Nova Scotia and then sent to Ontario where he resided. He also relies on the communication between an IRCC official in Canada and Ms. Amos, the FBI agent at the US embassy in Canada, as an international event which gave rise to a series of actions by IRCC and CBSA officials.

[46] For the reasons set out in the next section of this judgment, I am satisfied that the Plaintiff's action raises no genuine issue for trial and that the Defendant's motion will be granted. In my view, this is a clear case in which summary judgment should be granted in favour of the Defendant. Therefore, I will not address the issue of whether the Plaintiff's claim is also statute-barred.

C. *No Genuine Issue for Trial*

[47] I have organized my analysis in this section as follows:

(1) Brief Summary of the Parties' Positions

(2) Applicable Provisions of the *2010 Citizenship Act*

(3) Identification of the Basis of the Plaintiff's Claim

(4) The Evidence

(5) Torts of Misfeasance in Public Office and Conspiracy: Analysis Against the Evidence

(6) Damages

(7) *Charter* Arguments

(1) Brief Summary of the Parties' Positions

[48] The Defendant submits that the Plaintiff's claims of conspiracy and misfeasance by IRCC and CBSA officials to deny him Canadian citizenship are a distortion of plain facts and two administrative email chains from 2010 and 2015. The Defendant argues that the Plaintiff failed to specify any actionable torts in his Statement of Claim, leaving the Defendant to guess at what is in issue. In the Defendant's view, the only potential actionable wrongs that can be gleaned from the Statement of Claim are tortious misfeasance in public office and conspiracy spanning the period from September 2010 to June 2015. The Defendant also argues that the Plaintiff failed to properly plead or prove the existence of compensable damages, stating that he presented "no material facts supporting a claim for damages and limited himself to conclusory assertions that damages exist". Accordingly, there is no genuine issue for trial relating to claims of actionable wrongs and compensable damages.

[49] The Plaintiff submits that his claim is based on the intentional decisions, actions and omissions of IRCC and CBSA officials to prevent him from taking his citizenship oath on September 10, 2010, all at the prompting of an FBI agent. In oral argument, the Plaintiff stated that the basis of his claim is that of misfeasance in public office as he had the right to take the oath of citizenship and was unlawfully and deliberately precluded from doing so. He argues that there are serious credibility issues at stake in this matter that require a full trial. In his written and oral submissions in this motion, the Plaintiff raised the issue of negligence on the part of public officials and argued that the June 11, 2015 amendments to the *Citizenship Act* did not affect his acquired citizenship rights. With respect to damages, he alleges that different damages appeared in 2010, 2013 and 2015, most of them unknown to him or discovered much later. Finally, the Plaintiff states that, as a *de jure* Canadian citizen, he was entitled to the benefit of the rights and protections of sections 6, 7 and 15 of the *Charter*. The Plaintiff submits that there is a genuine issue to be tried and that this motion should not be granted.

(2) Applicable Provisions of the *2010 Citizenship Act*

[50] Sections 5(1) and 17 of the *2010 Citizenship Act* are critical to the proper analysis of IRCC's actions in 2010 and read as follows:

Grant of citizenship	**Attribution de la citoyenneté**
5 (1) The Minister shall grant citizenship to any person who	5 (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :
(a) makes application for citizenship;	a) en fait la demande;
(b) is eighteen years of age or over;	b) est âgée d'au moins dix-huit ans;

(c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

c) est un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante:

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one-half of a day of residence, and

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

(d) has an adequate knowledge of one of the official languages of Canada;

d) a une connaissance suffisante de l'une des langues officielles du Canada;

(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.

f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.

…

…

Suspension of processing of application	**Suspension de la procédure d'examen**
17 Where a person has made an application under this Act and the Minister is of the opinion that there is insufficient information to ascertain whether that person meets the requirements of this Act and the regulations with respect to the application, the Minister may suspend the processing of the application for the period, not to exceed six months immediately following the day on which the processing is suspended, required by the Minister to obtain the necessary information.	17 S'il estime ne pas avoir tous les renseignements nécessaires pour lui permettre d'établir si le demandeur remplit les conditions prévues par la présente loi et ses règlements, le ministre peut suspendre la procédure d'examen de la demande pendant la période nécessaire — qui ne peut dépasser six mois suivant la date de la suspension — pour obtenir les renseignements qui manquent.

[51] The Plaintiff states in his Statement of Claim that he was granted citizenship on April 30, 2010 by the citizenship judge. This is incorrect. The role of the citizenship judge was to consider whether the Plaintiff's application for citizenship met the requirements of the *2010 Citizenship Act* and to approve or not approve the application and notify the Minister accordingly (subss. 14(1) and (2) of the *2010 Citizenship Act*). The right to grant citizenship to the Plaintiff was reserved to the Minister (s. 5 of the *2010 Citizenship Act*).

[52] The Plaintiff argues in his submissions in this motion that IRCC officials, namely Ms. Suleiman, had no right to prevent him from taking his oath of citizenship on September 10, 2010. This too is incorrect. The Minister was permitted to suspend the processing of the Plaintiff's application for a period of six months if the Minister was of the opinion that there was insufficient information to ascertain whether the Plaintiff met the requirements of the legislation

(s. 17 of the *2010 Citizenship Act*). Ms. Suleiman, acting as the Minister's representative, had the authority to suspend the processing of the Plaintiff's application by preventing him from taking the oath to enable IRCC to obtain more information.

[53] The Plaintiff questions the *bona fides* of Ms. Suleiman's actions in this regard and I will discuss that question later in this judgment. However, the Plaintiff's arguments that Ms. Suleiman acted without authority and that "the Minister had but one duty" which was to grant him Canadian citizenship do not accurately reflect the law.

(3) Identification of the Basis of the Plaintiff's Claim

[54] A plaintiff is required to plead the constituent elements of each cause of action or legal ground raised (*Al Omani v Canada*, 2017 FC 786 at para 23 (*Al Omani*)). The "who, when, where, how and what" that gave rise to the alleged liability of the defendant must be set out. In this case, the Plaintiff's Statement of Claim does not refer to a specific actionable tort. His claim is premised on the alleged gross misconduct of IRCC and CBSA officials in conspiring with US officials, namely Mr. Pratt and Ms. Amos, to deny him Canadian citizenship. As stated by the Defendant and agreed by the Plaintiff in oral argument, it appears that the Plaintiff's claim is best framed as a claim against the Defendant due to misfeasance in public office by named IRCC and CBSA officials. I will also address the tort of conspiracy as the theme of an extended plot against the Plaintiff recurs throughout his written materials.

[55] The tort of misfeasance in public office is an intentional tort. In *Odhavji Estate v Woodhouse*, 2003 SCC 69 at paragraph 23 (*Odhavji Estate*), the Supreme Court set out the two constituent elements of the tort:

> In my view, there are two such elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff.

[56] The Supreme Court's reasoning in *Odhavji Estate* has been followed by this Court on many occasions, emphasizing that the essential question to be determined is not whether the officer has unlawfully exercised a power they possess but whether the officer's alleged misconduct is deliberate and unlawful (*Odhavji Estate* at para 24; see also *Brazeau v Canada (Attorney General*), 2015 FC 151 at para 43).

[57] As Justice Roy of this Court stated in *Al Omani* at paragraph 85, the tort of conspiracy can be established on two grounds. A plaintiff can claim: (i) a conspiracy to injure in that two or more people work together in agreement using lawful or unlawful means for the predominant purpose of injuring the plaintiff, who is in fact injured; or (ii) a conspiracy of unlawful acts by two or more people working together in agreement to engage in unlawful conduct directed toward the plaintiff that they ought to know is likely to cause injury to the plaintiff, who is in fact injured.

[58] In his written and oral submissions in response to this motion, the Plaintiff alleges negligence or abuse of process as a basis for his claim. However, he did not plead the case on this basis in the Statement of Claim. The Plaintiff unequivocally asserted that IRCC and CBSA

officials took deliberate action over a 5-year period to deny him citizenship. It is not open to him, in opposing this motion, to attempt to modify the basis of his claim.

[59] In addition and again in response to the Defendant's motion, the Plaintiff argues that, due to the transitional provisions enacted with the amendments to the *Citizenship Act* in June 2015, his citizenship rights were unaffected by his US criminality. This too is a new argument and cannot be raised for the first time in this motion. I would only observe that, if the Plaintiff's arguments are correct, and I make no finding in this regard, he has effectively removed a substantive element of his arguments in support of his initial claim.

(4) Evidence

[60] The evidence on which the Plaintiff bases his claims of misfeasance and conspiracy consists primarily of two email chains among Ms. Amos of the FBI, and IRCC and CBSA officials.

[61] The first email chain can be summarized as follows:

> *September 7, 2010:* Michael Watts (Director, International Policy Coordination, IRCC) responds to an email (not included) from Katrina Amos (FBI agent at the US embassy) stating that the most appropriate person to contact would be Heather Primeau (Senior Director, Case Review Division, IRCC).
>
> *September 7, 2010:* Ms. Amos emails Ms. Primeau stating she has some information to forward to CIC (now IRCC) regarding an individual seeking citizenship in Canada and the US. Ms. Amos states:
>
> However, the individual has been indicted and arrested for Health Care Fraud in the US. It is highly likely that he will go to Canada if released on bail and not return to stand trial.

Ms. Amos states that she will send the information by letter to IRCC.

September 7, 2010: Ms. Primeau emails Ms. Amos (copied to Chantale Larocque, Rosemarie Redden, Diane Desrosiers) stating that Ms. Amos can address the letter to her.

September 9, 2010: Ms. Amos emails Ms. Primeau (same individuals copied) stating:

Here is the information on Chiradeep GUPTA who I believe is traveling to Canada today. I believe [he] is scheduled to take the Oath of Citizenship tomorrow (see attached document). He's also suppose[d] to return to Michigan by 4:00 pm tomorrow.

Thank you for your assistance, Katrina

September 9, 2010: Diane Desrosiers emails Blair Fraser (copied to Ms. Primeau) forwarding to him the email from Ms. Amos and requesting that he deal with it immediately.

September 9, 2010: Blair Fraser (Case Management Headquarters, IRCC) emails Maha Suleiman, forwarding the prior emails and stating:

Maha,

As per our phone conversation, please see the attachments concerning applicant. Good chance that he has been residing in the US. Since he has been approved and granted may have to postpone his ceremony. May wish to contact CBSA on applicant if he shows up concerning charges in the US.

September 15, 2010: Ms. Suleiman emails Ms. Redden, stating:

Hello Rosemarie

I am going to be transferring this file to CMB [Case Management Branch], to your attention.

As you can see from the original e-mail from Blair Fraser, the applicant is facing fraud charges in the US and the US officials facilitated his return to Canada in order to attend the ceremony that was scheduled on September 10th. I spoke to the client and explained to him that we would have to postpone his ceremony until further notice.

> Blair suggested that we transfer the file to Case Management and send it to your attention.
>
> Thanks

[62] Subsequent to the September 2010 emails, the Plaintiff's file was transferred to Case Management for review. On October 18, 2010, Caroline Lemieux (Case Review Officer, Case Management Branch (CMB), IRCC) emailed Ms. Suleiman stating that she had reviewed the file and was forwarding it to Ms. Suleiman with a memo and recommendation. The Plaintiff cites part of this email as evidence that IRCC officials knew they were acting without authority but he cites only the first line of the second paragraph of the email. The full text of the second paragraph (which is the substance of the email) is as follows:

> Basically, since the file is approved and granted, we can only do a notwithstanding letter. You will need to send him a letter requesting proof of residence in Canada (lease agreements for the locations he listed on his res. Q and application as his previous addresses). In the letter, please state that CIC has received information from the USA and clarifications regarding his residence in Canada are required. Request a lease agreement or land title (if ownership) and list all the addresses he has listed as his addresses during the residence period. There is not one piece of evidence on file showing residence in Canada. We will need proof that he has held a domicile here. If he is unable to prove (which I am sure he will as I do not believe that he has resided in Canada for a while) then we may send him a notwithstanding letter stating that he has not [met] the residence requirements.

[63] The memo referred to by Ms. Lemieux contains information detailing her concerns regarding the Plaintiff's residency in Canada following her review of the documentation submitted by him with his residence questionnaire. The memo focuses on the residence question and states clearly that the concerns raised in the case are not based on the Plaintiff's criminal charges in the US:

> You should refer this case to your local CBSA enforcement branch as he is currently charged [i]n the USA of criminality which may make him inadmissible to Canada (his criminality has no affect on his citizenship application but if he is under investigation for serious criminality by CBSA, we may put the file on HOLD).

[64] The second set of emails relied on by the Plaintiff relates to events in April and October of 2015 at the CBSA and IRCC. There are two email chains during this period and I will set them out separately. The first emails relate to an inquiry from Laura Miggiani (IRCC) regarding whether the CBSA would be following up on the Plaintiff's admissibility should he return to Canada and are as follows:

> *April 9, 2015:* Ms. Miggiani (Citizenship Officer, IRCC) emails Anne Raposo (Enforcement Supervisor, CBSA) informing her that IRCC had received information that the Plaintiff had been convicted in Michigan of health care fraud and money laundering, sentenced to serve 120 months in prison, and ordered to pay more than $10 million in restitution. Ms. Miggiani states that there does not appear to be an enforcement action against the Plaintiff but that he is likely reportable under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). Ms. Miggiani requests that Ms. Raposo inform her if the CBSA decides to pursue the matter.
>
> *April 9, 2015:* Ms. Raposo responds to Ms. Miggiani (copies Ms. Cardamone (IRCC) and Ruby Sangha (CBSA)) stating that the CBSA will be pursuing enforcement action against the Plaintiff given the criminality. Ms. Raposo asks that IRCC hold off on the Plaintiff's citizenship application until that CBSA has dealt with the issue.
>
> *April 10, 2015:* There are three short emails among Ms. Miggiani, Ms. Raposo and Ms. Sangha as to whether the Plaintiff remains in detention in the US, with Ms. Raposo noting that, if he is outside of Canada, there is little the CBSA can do until he attempts to enter Canada.
>
> *April 10, 2015:* Ms. Miggiani emails Ms. Raposo and Ms. Sangha (copy to Ms. Cardamone) as follows:
>
> If confirmation is received that he is still serving a sentence, and your team in turn does not write him up, would it be possible to enter an Info Alert or EII to ensure a mandatory referral to secondary if he attempts to return? He will not have met the

> residence requirement by the time he's released and would be inadmissible. Would hate to see him just cross in at the border. Just a thought…
>
> *April 10, 2015:* Ms. Raposo responds to Ms. Miggiani (copy to Ms. Cardamone) stating that they will do so once they have confirmation that the Plaintiff is actually out of the country.
>
> *April 13, 2015:* Ms. Sangha (General Support Clerk, CBSA) emails Ms. Raposo stating that she has forwarded the email to an inland enforcement officer, Mr. C. Uzoruo, to confirm whether the Plaintiff was still detained in the US.
>
> *April 14, 2015:* Mr. Uzoruo emails Ms. Sangha and Ms. Raposo confirming that the Plaintiff is detained in the US until July 2023.
>
> *April 14, 2015:* Ms. Raposo emails Mr. Uzoruo, Ms. Sangha and Ms. Miggiani thanking them for the follow-up and work on this case.

[65] The second set of emails during the same period are emails within IRCC as follows:

> *April 9, 2015:* Ms. Cardamone (Citizenship officer, IRCC) emails Michael Macukic (IRCC) to request that he schedule an oath of citizenship ceremony for the Plaintiff for April 27, 2015. She notes that all clearances have expired and that IRCC would not be reworking them in order to schedule the ceremony.
>
> *April 13, 2015:* Mr. Macukic responds to Ms. Cardamone's email of April 9, 2015, stating that he has scheduled the citizenship ceremony for the Plaintiff for Monday, April 27, 2015.

[66] In support of his submission that this motion should not be granted, the Plaintiff filed an affidavit without exhibits (Motion Affidavit) and motion record. The motion record contains: an affidavit from his brother which details the Plaintiff's life in Canada and his criminal charges and trial in the United States; the information the Plaintiff provided in support of his citizenship application; the notes from the September 10, 2010 ceremony which indicate that he was "Pulled out of ceremony"; and Ms. Suleiman's note to file dated September 15, 2010 which explained

her conversation with the Plaintiff at the ceremony. Ms. Suleiman's note to file begins as follows:

> [The Plaintiff] appeared for the ceremony on September 10, 2010 @ 8:15. I informed him that we have information regarding the fraud charges in the US and that we would have to postpone his ceremony until we get more information regarding the criminal proceedings as well as concerns regarding his residence and physical presence. The client indicated that he was not formally charged and that he and his lawyer were confident that the charges against him will be dropped. He asked if his lawyer can join us and I agreed. When I asked for the lawyer's name, he said that he was the criminal lawyer in the US and there was no need to provide his name. [The Plaintiff] and his lawyer stated that the fraud charges were against the staffing company that supplied his staff and he was not directly involved, that's why he is very confident that all charges against him will be dropped.

[67] Ms. Suleiman indicates that they discussed the Plaintiff's then current address and that he understood why he could not proceed that day. Finally, she stated that the Plaintiff "was also informed that since it appears that he is residing in the US, he may be required to go through a residence determination".

[68] The Plaintiff's motion record included the emails between Ms. Cardamone and Mr. Macukic referenced above. The Plaintiff also supplied mobile phone records for June 2013 which are stated to indicate that he called Ms. Cardamone's number five times between June 10 and June 18, 2013. Finally, the Plaintiff provided the Order of this Court setting out the parameters of the Defendant's cross-examination of the Plaintiff, together with a letter from his counsel outlining a concern that the Department of Justice lawyers for the Defendant were willing to assist the US Justice Department through the cross-examination.

(5) Torts of Misfeasance in Public Office and Conspiracy: Analysis Against the Evidence

[69] I find that the Plaintiff has not presented proof of the torts of misfeasance in public office or conspiracy by IRCC and/or CBSA officials. The evidence required to establish the tort of misfeasance in public office is considerable as the tort involves "deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff" (*Odhavji Estate* at para 23). There must be an element of bad faith or dishonesty in the conduct in question. With respect to the tort of conspiracy, the Plaintiff is required to adduce proof of actual intent on the part of two or more individuals, the primary purpose of which was to injure him.

[70] The Plaintiff's claim is premised on the existence of a conspiracy prompted by the personal agenda of US attorney Wayne Pratt. The Plaintiff argues that the Canadian officials in question acted deliberately to prevent him from completing the citizenship process without lawful authority to do so. He relies on the evidence set out above in drawing inferences which are repeated with fervour throughout his Statement of Claim and Memorandum filed in this motion. However, the evidence does not support his claims.

US Involvement

[71] I will begin with the alleged involvement of Mr. Pratt, the US prosecutor, as the purported instigator or impetus for the actions of IRCC and the CBSA. The Plaintiff alleges in his Statement of Claim that, following the US judge's grant of his request to travel to Canada to attend the oath ceremony on September 10, 2010, Mr. Pratt "took it personally and decided to counter the effect of [the] court's order: the Plaintiff's becoming a Canadian citizen". The

Plaintiff submits that Mr. Pratt contacted FBI agent Amos and requested that she "help him in stopping the Plaintiff from being granted Canadian Citizenship". Ms. Amos then contacted IRCC officials.

[72] I find that the Plaintiff has adduced no evidence regarding Mr. Pratt's involvement with Canadian officials or with Ms. Amos of the FBI. As a result, the Plaintiff has not established the alleged genesis of the conspiracy against him. Apart from the Plaintiff's statements and theories in his Statement of Claim and Motion Affidavit, his claims regarding Mr. Pratt's personal agenda are unsubstantiated.

[73] In contrast, Mr. Pratt's affidavit sets out in detail his involvement in the US prosecution of the Plaintiff. Mr. Pratt states that his involvement in the prosecution was to review and approve the charges and plea agreements presented to him by the prosecuting attorneys. His office was involved in a consultative capacity only. Mr. Pratt's statements are supported by the exhibits to his affidavit. The following paragraphs of Mr. Pratt's affidavit are instructive:

> 22. Except for approving the Indictments, I was not involved in the Medicare Fraud Strike Force investigation and prosecution of Plaintiff for health care fraud and money laundering.
>
> 23. More specifically, I was not involved or consulted in the adjudication of Plaintiff's motion, filed on September 1, 2010, seeking to recover his passport and travel to Canada to take his oath of Canadian Citizenship. I did not read, approve or sign the United States' response to the motion, as evidenced by the document dated September 3, 2010 and attached hereto as "Exhibit B";
>
> 24. Plaintiff's claim that I contacted Katrina Amos of the FBI is a total fabrication. I do not know Agent Amos, and have never contacted her for any purpose, let alone the purposes falsely alleged by Plaintiff;

> 25. Plaintiff's claims pertaining to my participation in his plea bargaining process are also a total fabrication;

[74] There is no evidence in the record linking Mr. Pratt with Ms. Amos. There is also no evidence in the record that, in reaching out to Mr. Watts on September 7, 2010, Ms. Amos was prompted by a desire to prevent the Plaintiff from obtaining Canadian citizenship. Her emails contain no such undercurrent. They are focussed on ensuring that Canadian officials were aware of the fact that the Plaintiff was required to return to Michigan on September 10, 2010. In her first email, Ms. Amos stated that it was "highly likely that he will go to Canada if released on bail and not return to stand trial". The most obvious inference from her words is that US officials were properly concerned with safeguarding their own criminal process.

September/October 2010

[75] The September 2010 emails from Ms. Amos set in motion a series of emails among Canadian IRCC officials ending with Ms. Suleiman. I find no suggestion in these emails that Canadian officials were acting to carry out a personal agenda, whether that of Mr. Pratt, Ms. Amos or their own.

[76] In her affidavit, Ms. Primeau, the contact point for Ms. Amos, explains her role in the email chain and the fact that, upon receipt of a "tip" of this nature from another entity (in this case, the FBI), she would pass it along to the subject matter experts. She would also copy the appropriate members of her team in the normal course of operations, at that time being Ms. Desrosiers, Ms. Redden and Ms. Larocque. Ms. Primeau's explanation of her actions is not contradicted by the Plaintiff's evidence.

[77] Ms. Suleiman was notified by Mr. Fraser, who was located in Ottawa, of the information received from Ms. Amos. As the oath ceremony was to take place in Etobicoke and Ms. Suleiman was the officer on site and familiar with the Plaintiff's file, there is nothing unusual in this email. The reason for Mr. Fraser's email to Ms. Suleiman was to alert her that the Plaintiff may have been residing in the US, an issue directly relevant to his Canadian citizenship application. Mr. Fraser stated that the Plaintiff's ceremony may have to be postponed and that Ms. Suleiman may wish to contact the CBSA regarding the US charges. He did not direct her to stop the Plaintiff from taking the oath.

[78] The CBSA had no involvement in this chain of events. It is important to note the distinct interests of IRCC and the CBSA. IRCC officials were concerned in 2010 that the US criminal charges raised the possibility that the Plaintiff had not met Canadian residency requirements. For IRCC, the non-Canadian criminal charges themselves were not the issue; it was the underlying facts that raised flags. As the Plaintiff correctly points out, the US charges were not then a bar to his obtaining Canadian citizenship. When the CBSA became involved in 2015, it was concerned with the distinct question of admissibility, in respect of which the US criminal conviction was relevant.

[79] Ms. Suleiman's affidavit provides information regarding the events of September 9 and 10, 2010. She confirms that the information regarding the Plaintiff's US charges raised questions regarding his residence in Canada. Ms. Suleiman states that, having reviewed the new information, she decided to meet the Plaintiff at the oath ceremony to discuss his citizenship application and "to inform him that I would have to postpone his citizenship oath because his

fraud charges in the United States raised concerns regarding his residence in Canada and that further information regarding both the criminal charges and his residency would need to be obtained". As stated above, Ms. Suleiman did not act unlawfully in deciding to postpone the Plaintiff's oath ceremony. Section 17 of the *2010 Citizenship Act* permitted the Minister to suspend the processing of his application pending receipt of further information. Therefore, the Plaintiff has not established a breach of a public duty to act based on Ms. Suleiman's actions in September 2010, a constituent element of the tort of misfeasance in public office.

[80] Ms. Suleiman affirms in her affidavit that she met with the Plaintiff when he arrived to register for the ceremony and asked to speak privately. This information is reflected in her September 15, 2010 note to file. Ms. Suleiman also explains the notation in the *Global Case Management System* (GCMS) notes that the Plaintiff was a "No Show" at the ceremony. The Plaintiff characterizes this notation as a "sombre misrepresentation" of the facts as he had in fact attended at the ceremony. Ms. Suleiman explains that the wording of "No Show" is GCMS terminology for a data entry. There are two options, "Show" or "No Show". The Plaintiff could not be registered as showing because the system would indicate that his citizenship application had been finalized and that he became a Canadian citizen on September 10, 2010.

[81] The Plaintiff attacks the credibility of Ms. Suleiman's statement in her affidavit that she did not receive any instruction or direction from IRCC officials on the processing of his file. He states that Ms. Suleiman's written exchanges with Mr. Fraser and Ms. Lemieux contradict her assertion. However, as noted above, Mr. Fraser did not require Ms. Suleiman to remove the Plaintiff from the oath ceremony. The Plaintiff also alleges that Ms. Suleiman did not take action

on her statement that his file required review. This allegation is contradicted by her subsequent email asking for advice from the CMB (*see* September 15 email to Ms. Redden).

[82] The Plaintiff submits that there was no reason for Ms. Suleiman to intervene on September 10, 2010 as she had carriage of and was familiar with his application. The Plaintiff appears to suggest that her intervention was unlawful and was prompted by a desire to thwart his application. There is no evidence to support the Plaintiff's allegation. Further, there was a reason for her intervention: the new information provided to the IRCC by Ms. Amos which cast doubt on the Plaintiff's compliance with Canadian residency requirements.

[83] With respect to the involvement of Ms. Lemieux, Ms. Suleiman forwarded the Plaintiff's file to Ms. Redden's attention at the CMB on September 15, 2019. As Ms. Redden explains in her affidavit, the CMB was tasked with providing advice and support on cases to senior management and the Minister. The Plaintiff's file was transferred for review to Ms. Lemieux, an IRCC case review officer. Ms. Lemieux reviewed the file and provided her advice to Ms. Suleiman on October 18, 2010 as set out in paragraphs 62-63 above. Ms. Lemieux's role was advisory in nature. The provision of her advice in October does not contradict Ms. Suleiman's statement that she was not directed by other IRCC officials in her treatment of the Plaintiff's file on September 10, 2010. The fact that the Defendant has not provided an affidavit from Ms. Lemieux is not material to this motion as Ms. Lemieux's advice to Mr. Suleiman is clear on its face.

[84] In summary, I find no evidence of any conspiracy, plot or misfeasance on the part of IRCC officials in September and October 2010 in their treatment of the Plaintiff and his application for Canadian citizenship.

April 2015

[85] I turn now to the Plaintiff's arguments centring on the actions of Ms. Cardamone (IRCC) and Ms. Raposo (CBSA). There are two aspects to the Plaintiff's arguments. First, he questions Ms. Cardamone's delay in addressing his citizenship application (2011-2015). Second, he questions her actions in requiring him to attend a citizenship oath ceremony in 2015 when she knew he was incarcerated in the United States. The Plaintiff also alleges that Ms. Raposo of the CBSA played a role in Ms. Cardamone's decision to proceed in this manner.

[86] In October 2010, Ms. Lemieux made two recommendations: (1) that the Plaintiff's case be referred to the CBSA for an admissibility review due to the US criminal charges; and (2) that a letter be sent to the Plaintiff to inform him of IRCC's residency concerns. There is no doubt that significant delays in the processing of the Plaintiff's case ensued at IRCC. His file was transferred to the IRCC office in Mississauga in November 2010 and assigned to Ms. Cardamone in April 2011. Ms. Cardamone began work on the file in June 2013. She spoke with the Plaintiff on June 7, 2013 and they arranged to speak on June 10, 2013. They did not do so and Ms. Cardamone indicates in her affidavit that the Plaintiff did not leave a voicemail message for her on June 10, 2013. She undertook no further work on the Plaintiff's file until April 2015.

[87] The Plaintiff states that he called Ms. Cardamone on June 10, 2013 as per their arrangement. He states that he also called Ms. Cardamone's number on each of June 11, 12 and 18, 2013 and left voicemail messages. The Plaintiff has provided a copy of his phone records for the period and Ms. Cardamone's number appears five times. It is not possible to ascertain whether voicemail messages were left and I make no finding in this regard. Assuming that the Plaintiff did leave voicemail messages for Ms. Cardamone in June 2013, she failed to return the calls and, arguably, failed to efficiently carry out her duties at that time. In my view, this failure does not amount to misfeasance and does not point to a broader conspiracy to deprive the Plaintiff of Canadian citizenship through delay.

[88] The Plaintiff did not attempt to follow up with Ms. Cardamone in the following years, nor did Ms. Cardamone take action to advance the file. The Plaintiff states that he relied on the IRCC's "MyCIC" website for updates. He suggests that IRCC's failure to make postings to the website regarding the processing of his file is evidence of the alleged conspiracy. In refuting this suggestion, the Defendant led evidence that Ms. Cardamone, as a citizenship officer, did not have access to MyCIC and, more generally, that the website was not used to post interim steps in the application process. The Plaintiff provided no evidence with regards to the functionality or capabilities of the MyCIC website.

[89] On April 9, 2015, Ms. Cardamone instructed her colleague, Mr. Macukic to schedule an oath ceremony for the Plaintiff on April 27, 2015. At that time, she was aware that the Plaintiff was incarcerated in the United States. The Plaintiff did not receive the Notice to Appear sent to him at the Toronto address on file but neither Ms. Cardamone nor IRCC can be faulted in this

regard as the Plaintiff had failed to provide a current address. He acknowledged this fact in the letter dated August 5, 2015 in which his counsel stated that the Plaintiff had unfortunately failed to update his contact information with IRCC. Ms. Cardamone states in her affidavit that her thinking at the time was that the Plaintiff would contact IRCC to ask for a postponement if he could not attend the ceremony and she emphasizes that IRCC did use the address on file.

[90] The Defendant concedes that Ms. Cardamone erred in attempting to advance the processing of the Plaintiff's file in this manner. However, the Defendant argues that the mistake was a mistake only and is not evidence of an extended and deliberate course of action intended to cause the Plaintiff harm.

[91] I find that Ms. Cardamone's attempt to close the Plaintiff's file by scheduling an oath ceremony at which she knew he could not appear reflects a mistaken decision taken by her on the Plaintiff's file. It does not support the Plaintiff's conspiracy theory involving US and Canadian officials as the Plaintiff has produced no evidence that the decision was other than one taken by Ms. Cardamone alone. In my view, while the decision may have been subject to successful review by this Court, the evidence submitted by the Plaintiff does not establish that Ms. Cardamone's conduct was deliberately unlawful.

[92] The Plaintiff questions Ms. Cardamone's credibility on the basis that she did not explain the long delays in her handling of his file. The Plaintiff's position is not persuasive as Ms. Cardamone explains in her affidavit that the delays were the result of workload. The Plaintiff may disagree with her explanation but he has provided no evidence to contradict it.

[93] The Plaintiff also questions Ms. Cardamone's explanation of her decision to proceed with the oath ceremony without reworking his clearances. He states that this action was contrary to IRCC policy and the jurisprudence of this Court. Ms. Cardamone addresses the issue of the Plaintiff's clearances, stating that she thought clearances would not be necessary as his citizenship application had already been granted. The Plaintiff argues that Ms. Cardamone contradicts herself in her affidavit when she states that he would have been prevented from taking the oath if he attended the April 2015 ceremony and that she would have followed up on Ms. Lemieux's 2011 advice and requested residency information from him. I disagree with the Plaintiff's interpretation of Ms. Cardamone's statements. First, she states that the Plaintiff's citizenship application had been granted, not that citizenship had been granted. There is a distinction. Second, Ms. Cardamone provides an explanation for proceeding in this manner: she wanted to move the file forward and knew there were residency questions surrounding the Plaintiff's application. Had his address on file been current, a dialogue between IRCC and the Plaintiff could have followed his receipt of the Notice to Appear.

Role of CBSA

[94] With respect to the role of the CBSA, the Plaintiff alleges in his Statement of Claim that the actions of Ms. Raposo reflected in her emails in April 2015 are evidence of the CBSA's role in the conspiracy against him. Unfortunately, he confuses Ms. Raposo and Ms. Cardamone in stating that the former scheduled the April 2015 oath ceremony. I find that there is no evidence that CBSA officials had any role in the September 2010 events relating to the Plaintiff's oath ceremony, Ms. Cardamone's actions in 2015, or the processing of the Plaintiff's citizenship application more generally.

[95] Evidence of the sharing of information between CBSA and IRCC officials regarding the Plaintiff's US criminal charges is not sufficient to sustain an allegation of conspiracy. In her affidavit, Ms. Raposo acknowledges that the Plaintiff's case was brought to the attention of the CBSA in April 2015 by Ms. Miggiani of IRCC. Not surprisingly, Ms. Raposo states that it is common for IRCC to contact the CBSA when they receive information that might affect the admissibility of an individual to Canada. The follow-up and investigation by her colleagues were standard practice and, notably, were the only actions taken by the CBSA with respect to the Plaintiff. IRCC and the CBSA fulfil distinct roles within Canada's immigration framework. The fact that they pursued separate admissibility and citizenship investigations of the Plaintiff reflects the discharge of their respective and lawful roles within that framework.

Summary

[96] In summary, the theory of the Plaintiff's claim is encapsulated in the first two paragraphs of his Memorandum filed in this motion:

> 1. Plaintiff's claim is based on the intentional decisions, actions and omissions of Federal agents, to prevent him from finalizing his Citizenship Oath, on September 10, 2010, under the false pretention that an investigation on his citizenship application would take place, letting him believe, in 2013 that said investigation was ongoing or being finalized, to call him [in] 2015 to take the citizenship's oath after finding out that he was incarcerated in the USA without posting said information on MYCIC and to finally treat his citizenship as abandoned;
>
> 2. The Federal agents' actions were prompted by a Federal Bureau of Investigation ("FBI") agent requesting that Citizenship not be granted to Plaintiff.

[97] Based on my review of the evidence in this matter, the jurisprudence regarding the torts of misfeasance in public office and conspiracy, and the law and jurisprudence regarding motions

for summary judgment, I find that no genuine issue for trial exists in relation to the Plaintiff's claims. He has not established the material facts underlying his allegations of misfeasance and conspiracy. As stated by Justice Roy in *Al Omani* (at para 88), "[i]t is fine to have a conspiracy theory, but it must be spelled out. Crying "conspiracy" is not enough to disclose a reasonable cause of action".

[98] I also find that the Plaintiff has raised no serious issue of credibility in the Defendant's evidence that would require a trial.

[99] There is no evidence in the record of Mr. Pratt's personal agenda. Ms. Amos of the FBI made no request that Canadian citizenship not be granted to the Plaintiff. Her emails related to his return to the United States. Ms. Suleiman's actions in September 2010 were lawful and in conformity with the provisions of the *2010 Citizenship Act*. They reflect her concern that the Plaintiff had provided insufficient or misleading residency information in his citizenship application. She duly followed up on her concern, requesting and receiving advice from the CMB on the file. The delays in the processing of the Plaintiff's file were unfortunate. However, his allegation that the delays were premeditated and intended by IRCC officials to prevent him from gaining Canadian citizenship is unsubstantiated. Finally, the Plaintiff has provided no evidence that the CBSA was involved in any decision affecting the processing of his citizenship application.

(6) Damages

[100] The Plaintiff's claim for damages is described as follows in his Statement of Claim:

> 107. Through its agents, the Defendant has caused unquantifiable moral damages to the Plaintiff, by causing him a continual emotional stress related to his findings that he was not treated legitimately.

[101] The Plaintiff submits that his legitimate expectation to obtain Canadian citizenship has been shattered and that this caused him considerable emotional distress. In his submissions in support of this motion, he focuses on the alleged wrongful conduct of IRCC officials and states that his removal from the oath ceremony caused him mental stress. The Plaintiff argues that the deprivation of fundamental rights caused a prejudice and is in itself a compensable damage, particularly in light of Ms. Suleiman's actions on September 10, 2010. He states:

> 161. Different damages appeared in 2010, 2013, 2015 most of them unknown to him or found much later by him, all of them, initiated by public servants acting in bad faith, intentionally, illegally with a complete indifference to the consequences their actions they knew would have on Plaintiff and the injuries these would cause him: the Defendants are liable for that conduct.

[102] The Defendant argues that the Plaintiff has submitted no proof of damages.

[103] I agree with the Defendant. The Plaintiff's submissions regarding the damages he suffered due to the alleged misfeasance and conspiracy by IRCC and CBSA officials are difficult to follow and are not supported by evidence. The Plaintiff claims damages from 2010 but his pleadings are inconsistent in this regard. Depending on the interpretation of his submissions, the Plaintiff began to suffer mental stress and damages either in September 2010 when removed from the oath ceremony or in October 2015 upon receiving documents in response to his ATIP request. If the receipt of documents in October 2015 triggered his mental suffering, the Plaintiff's claim for damages extends at best from that date.

[104] The Plaintiff has submitted no evidence in support of his claim for damages. Assertions of stress, upset and harm to reputation, all of which are referenced by the Plaintiff, are not sufficient to ground a claim for damages. The Defendant cites the Supreme Court's formulation of mental injury which would sustain a claim for damages as injury which "rises above the ordinary emotional disturbances that will occasionally afflict any member of civil society" (*Saadati v Moorhead*, 2017 SCC 28 at para 19).

[105] The Plaintiff's claim for damages due to his humiliation and stress from being removed from the oath ceremony is belied by his letter of September 16, 2010 to the IRCC in which he stated that his criminal charges would be settled quickly and requested that his citizenship oath be put on hold until then. He also undertook to update IRCC on the outcome of his legal issues. There is no indication in the letter that the Plaintiff had experienced significant emotional stress or humiliation at the ceremony.

[106] The Plaintiff did not follow up with IRCC following his September 16, 2010 letter. He did not inform IRCC of the status of the US criminal case against him nor did he actively request any review of his file. There is no evidence of mental anguish or stress during the period from 2010 to 2015.

[107] The Plaintiff submits that the Defendant's unlawful failure to grant him Canadian citizenship caused him damage as he cannot apply to serve his prison sentence in Canada. He also submits that his US sentence is longer than it would have been had he been a Canadian

citizen and that he is afforded limited rights as a non-US prisoner in the United States. The Plaintiff has provided no proof in support of his submissions.

[108] The Plaintiff argues that the deprivation of his fundamental rights is compensable in and of itself. I address the Plaintiff's *Charter* arguments in the next section of this judgment.

[109] Finally, the Plaintiff has claimed punitive damages. An award of punitive damages is made if general damages awarded to a plaintiff are insufficient for the purposes of punishment and deterrence. In order to substantiate a claim for punitive damages, the Plaintiff was required to prove malicious and oppressive misconduct which offends the court's sense of decency. Justice Mainville, writing for the Federal Court of Appeal in *Bauer Hockey Corp v Sport Maska Inc (Reebok-CCM Hockey)*, 2014 FCA 158, discussed punitive damages in the context of a trade-mark infringement action. Justice Mainville canvassed the law generally and described the test to meet for an award of punitive damages as a high hurdle; they are the exception to the general rule of damages (at paras 19-20):

> [19] Punitive damages, as the name indicates, are designed to punish. As a result they constitute an exception to the general rule, in both common law and civil law, that damages are designed to compensate the injured, not to punish the wrongdoer. Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. It is the means by which the court expresses its outrage at the egregious conduct of the defendant where the defendant's conduct is truly outrageous. Punitive damages are in the nature of a fine, which is meant to act as a deterrent to the defendant and to others from acting in the impugned manner: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paras. 196 to 199 (*Hill*); *Whiten v. Pilot*

> *Insurance Co*., 2002 SCC 18, [2002] 1 S.C.R. 595 (*Whiten*) at para. 36.
>
> [20] The level of blameworthiness of the defendant's conduct leading to punitive damages may be influenced by many factors, which include (a) whether the misconduct was planned or deliberate; (b) the intent and motive of the defendant; (c) whether the defendant persisted in the outrageous conduct over a lengthy period of time; (d) whether the defendant concealed or attempted to cover up its misconduct; (e) the defendant's awareness that what it was doing was wrong; (f) whether the defendant profited from its misconduct; and (g) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff: *Whiten* at para. 113.

[110] For the reasons given above, I find that the Plaintiff has failed to establish that IRCC and CBSA officials engaged in such conduct.

(7) *Charter* Arguments

[111] The Plaintiff submits that, as he had satisfied all of the requirements under the *2010 Citizenship Act* and had been *de jure* granted citizenship, he was entitled to the benefit of the rights and protections of the *Charter*. Specifically, he argues that the actions of IRCC and CBSA officials amounted to a breach of the rights guaranteed under sections 6, 7 and 15 of the *Charter*.

[112] I will deal briefly with the Plaintiff's *Charter* submissions as his pleadings and submissions raise no viable argument.

[113] Subsection 6(1) of the *Charter* provides that every citizen of Canada has the right to enter, remain in and leave Canada. The Plaintiff appears to argue that, as IRCC and the CBSA conspired to prevent him from becoming a Canadian citizen, he has been unable to benefit from

the prisoner transfer regime between Canada and the US, which is a breach of his section 6 *Charter* right. The Plaintiff provides little analysis of the nature of the rights protected by section 6 or of the scope and application of the provisions and conditions governing prisoner transfers.

[114] Section 7 of the *Charter* safeguards the right to life, liberty and security of the person and "the right not to be deprived thereof except in accordance with the principles of fundamental justice". The Plaintiff submits that the Defendant did not comply with its "general constitutional duties of procedural fairness and transparency" by failing to disclose the case against him. With respect, this submission fails to engage any reasonable analysis of the rights protected by section 7 of the *Charter*.

[115] The Plaintiff's submission regarding section 15 of the *Charter,* and its protection of equality before and under the law without discrimination, is as follows:

> On section 15 of the Charter, Plaintiff submits that the misprocessing of his citizenship file amounted to denial of the equal protection and benefit of the Law, namely the provisions of the Citizenship Act and all relevant policies and regulations for the acquisition and grant of Citizenship.

[116] The Plaintiff failed in written or oral submissions to identify any discrimination or discriminatory behaviour on the part of IRCC or CBSA officials. He has not argued that any official acted on or drew a distinction based on grounds enumerated in section 15 or on analogous grounds in dealing with his file. Accordingly, the Plaintiff has failed to plead any breach of section 15 of the *Charter*.

VIII. Conclusion

[117] I find that there is no genuine issue for trial with respect to the Plaintiff's claims. The Plaintiff has provided no evidence of a 5-year conspiracy by IRCC and CBSA officials, acting unlawfully at the request of US officials, to deny the Plaintiff Canadian citizenship. The evidence in the record does not support a claim in tort for misfeasance of public duty by groups of officials in two federal government departments operating deliberately and without regard to their lawful duties. The Plaintiff's interpretations of the emails in question and his assertions of conspiracy, misrepresentation and delay are not reflected in the evidence. His pleadings in respect of the claim for damages are inconsistent when viewed against the theory of his case and lack evidentiary support. Finally, the Plaintiff's claims for *Charter* relief fail to plead the constituent elements of the *Charter* rights cited. In my view, as there are no serious credibility issues to be addressed, this is a clear case in which summary judgment should be granted to properly conserve judicial resources.

[118] This motion for summary judgment will be granted and the Statement of Claim will be dismissed in its entirety.

[119] The Defendant shall have its costs in this motion paid by the Plaintiff forthwith.

JUDGMENT in T-1255-16

THIS COURT'S JUDGMENT is that:

1. The "Minister of Immigration, Refugees and Citizenship" is removed as a defendant in this matter and the style of cause amended accordingly.
2. The motion for summary judgment is granted and the Plaintiff's action is dismissed in its entirety.
3. The Defendant shall have its costs in this motion paid by the Plaintiff forthwith.

"Elizabeth Walker"

Judge

Annexe A

Federal Courts Rules, SOR/98-106

Summary Judgment and Summary Trial

Motion and Service

Motion by a party

213 (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.

Further motion

(2) If a party brings a motion for summary judgment or summary trial, the party may not bring a further motion for either summary judgment or summary trial except with leave of the Court.

Obligations of moving party

(3) A motion for summary judgment or summary trial in an action may be brought by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.

Obligations of responding party

(4) A party served with a motion for summary judgment or summary trial shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.

Jugement et procès sommaires

Requête et signification

Requête d'une partie

213 (1) Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heure, date et lieu de l'instruction soient fixés.

Nouvelle requête

(2) Si une partie présente l'une de ces requêtes en jugement sommaire ou en procès sommaire, elle ne peut présenter de nouveau l'une ou l'autre de ces requêtes à moins d'obtenir l'autorisation de la Cour.

Obligations du requérant

(3) La requête en jugement sommaire ou en procès sommaire dans une action est présentée par signification et dépôt d'un avis de requête et d'un dossier de requête au moins vingt jours avant la date de l'audition de la requête indiquée dans l'avis.

Obligations de l'autre partie

(4) La partie qui reçoit signification de la requête signifie et dépose un dossier de réponse au moins dix jours avant la date de l'audition de la requête indiquée dans l'avis de requête.

Summary Judgment

Facts and evidence required

214 A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

If no genuine issue for trial

215 (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

Genuine issue of amount or question of law

(2) If the Court is satisfied that the only genuine issue is

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.

Powers of Court

(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

(a) nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or

(b) dismiss the motion in whole or in part and order that the action, or the issues in the action

Jugement sommaire

Faits et éléments de preuve nécessaires

214 La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.

Absence de véritable question litigieuse

215 (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

Somme d'argent ou point de droit

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;

b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

Pouvoirs de la Cour

(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :

a) néanmoins trancher cette question par voie de procès sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;

b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question

not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

Citizenship Act, RSC 1985, c C-29 (in force April 17, 2009 to February 5, 2014)

The Right to Citizenship

Persons who are citizens

3 (1) Subject to this Act, a person is a citizen if

…

(c) the person has been granted or acquired citizenship pursuant to section 5 or 11 and, in the case of a person who is fourteen years of age or over on the day that he is granted citizenship, he has taken the oath of citizenship;

…

Grant of citizenship

5 (1) The Minister shall grant citizenship to any person who

(a) makes application for citizenship;

(b) is eighteen years of age or over;

(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act, and has, within the four years immediately preceding the date of his or her application, accumulated at least three years of residence in Canada calculated in the following manner:

(i) for every day during which the person was resident in Canada before his lawful admission to Canada for permanent residence the person shall be deemed to

Le droit à la citoyenneté

Citoyens

3 (1) Sous réserve des autres dispositions de la présente loi, a qualité de citoyen toute personne:

…

c) ayant obtenu la citoyenneté — par attribution ou acquisition — sous le régime des articles 5 ou 11 et ayant, si elle était âgée d'au moins quatorze ans, prêté le serment de citoyenneté;

…

Attribution de la citoyenneté

5 (1) Le ministre attribue la citoyenneté à toute personne qui, à la fois :

a) en fait la demande;

b) est âgée d'au moins dix-huit ans;

c) est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et a, dans les quatre ans qui ont précédé la date de sa demande, résidé au Canada pendant au moins trois ans en tout, la durée de sa résidence étant calculée de la manière suivante :

(i) un demi-jour pour chaque jour de résidence au Canada avant son admission à titre de résident permanent,

have accumulated one-half of a day of residence, and

(ii) for every day during which the person was resident in Canada after his lawful admission to Canada for permanent residence the person shall be deemed to have accumulated one day of residence;

(ii) un jour pour chaque jour de résidence au Canada après son admission à titre de résident permanent;

(d) has an adequate knowledge of one of the official languages of Canada;

d) a une connaissance suffisante de l'une des langues officielles du Canada;

(e) has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and

e) a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;

(f) is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.

f) n'est pas sous le coup d'une mesure de renvoi et n'est pas visée par une déclaration du gouverneur en conseil faite en application de l'article 20.

…

...

Suspension of processing of application

17 Where a person has made an application under this Act and the Minister is of the opinion that there is insufficient information to ascertain whether that person meets the requirements of this Act and the regulations with respect to the application, the Minister may suspend the processing of the application for the period, not to exceed six months immediately following the day on which the processing is suspended, required by the Minister to obtain the necessary information.

Suspension de la procédure d'examen

17 S'il estime ne pas avoir tous les renseignements nécessaires pour lui permettre d'établir si le demandeur remplit les conditions prévues par la présente loi et ses règlements, le ministre peut suspendre la procédure d'examen de la demande pendant la période nécessaire — qui ne peut dépasser six mois suivant la date de la suspension — pour obtenir les renseignements qui manquent.

Citizenship Regulations, SOR/93-246 (in force February 12, 2018 to November 29, 2018)

Oath of Citizenship

19 (1) Subject to subsection 5(3) of the Act and section 22 of these Regulations, a person who has been granted citizenship under subsection 5(1) of the Act shall take the oath of

Serment de citoyenneté

19 (1) Sous réserve du paragraphe 5(3) de la Loi et de l'article 22 du présent règlement, la personne qui s'est vu attribuer la citoyenneté en vertu du paragraphe 5(1) de la Loi doit

citizenship by swearing or solemnly affirming it before a citizenship judge.

(2) Unless the Minister otherwise directs, the oath of citizenship shall be taken at a citizenship ceremony.

(3) If a person is to take the oath of citizenship at a citizenship ceremony, a certificate of citizenship shall be forwarded by the Registrar to a citizenship officer of the appropriate citizenship office, who shall notify the person of the date, time and place at which the person is to appear before the citizenship judge to take the oath of citizenship and receive the person's certificate of citizenship.

prêter le serment de citoyenneté par un serment ou une affirmation solennelle faite devant le juge de la citoyenneté.

(2) À moins de directives contraires du ministre, le serment de citoyenneté doit être prêté lors d'une cérémonie de la citoyenneté.

(3) Lorsqu'une personne doit prêter le serment de citoyenneté lors d'une cérémonie de la citoyenneté, le greffier fait parvenir le certificat de citoyenneté à l'agent de la citoyenneté du bureau de la citoyenneté compétent, lequel avise la personne des date, heure et lieu auxquels elle doit comparaître devant le juge de la citoyenneté pour prêter le serment de citoyenneté et recevoir son certificat de citoyenneté.

Crown Liability and Proceedings Act, RSC, 1985, c C-50

Prescription and Limitation

Provincial laws applicable

32 Except as otherwise provided in this Act or in any other Act of Parliament, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings by or against the Crown in respect of any cause of action arising in that province, and proceedings by or against the Crown in respect of a cause of action arising otherwise than in a province shall be taken within six years after the cause of action arose.

Prescription

Règles applicables

32 Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent lors des poursuites auxquelles l'État est partie pour tout fait générateur survenu dans la province. Lorsque ce dernier survient ailleurs que dans une province, la procédure se prescrit par six ans.

Federal Courts Act, RSC, 1985, c F-7

Prescription and limitation on proceedings

39 (1) Except as expressly provided by any other Act, the laws relating to prescription and the limitation of actions in force in a province between subject and subject apply to any proceedings in the Federal Court of Appeal or the Federal Court in respect of any cause of action arising in that province.

Prescription — Fait survenu dans une province

39 (1) Sauf disposition contraire d'une autre loi, les règles de droit en matière de prescription qui, dans une province, régissent les rapports entre particuliers s'appliquent à toute instance devant la Cour d'appel fédérale ou la Cour fédérale dont le fait générateur est survenu dans cette province.

Limitations Act, 2002, S.O. 2002, c. 24, Sched. B

Basic limitation period

4 Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered. 2002, c. 24, Sched. B, s. 4.

Délai de prescription de base

4 Sauf disposition contraire de la présente loi, aucune instance relative à une réclamation ne peut être introduite après le deuxième anniversaire du jour où sont découverts les faits qui ont donné naissance à la réclamation. 2002, chap. 24, annexe B, art. 4.

Discovery

5 (1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

Découverte des faits

5 (1) Les faits qui ont donné naissance à la réclamation sont découverts celui des jours suivants qui est antérieur aux autres :

a) le jour où le titulaire du droit de réclamation a appris les faits suivants :

(i) les préjudices, les pertes ou les dommages sont survenus,

(ii) les préjudices, les pertes ou les dommages ont été causés entièrement ou en partie par un acte ou une omission,

(iii) l'acte ou l'omission est le fait de la personne contre laquelle est faite la réclamation,

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a). 2002, c. 24, Sched. B, s. 5 (1).

Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved. 2002, c. 24, Sched. B, s. 5 (2).

Demand obligations

(3) For the purposes of subclause (1) (a) (i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation, once a demand for the performance is made. 2008, c. 19, Sched. L, s. 1.

Same

(4) Subsection (3) applies in respect of every demand obligation created on or after January 1, 2004. 2008, c. 19, Sched. L, s. 1.

(iv) étant donné la nature des préjudices, des pertes ou des dommages, l'introduction d'une instance serait un moyen approprié de tenter d'obtenir réparation;

b) le jour où toute personne raisonnable possédant les mêmes capacités et se trouvant dans la même situation que le titulaire du droit de réclamation aurait dû apprendre les faits visés à l'alinéa a). 2002, chap. 24, annexe B, par. 5 (1).

Présomption

(2) À moins de preuve du contraire, le titulaire du droit de réclamation est présumé avoir appris les faits visés à l'alinéa (1) a) le jour où a eu lieu l'acte ou l'omission qui a donné naissance à la réclamation. 2002, chap. 24, annexe B, par. 5 (2).

Engagements à vue

(3) Pour l'application du sous-alinéa (1) a) (i), le jour où des préjudices, des pertes ou des dommages surviennent à l'égard d'un engagement à vue correspond au premier jour où il y a défaut d'exécution de l'engagement, une fois qu'une demande formelle d'exécution est présentée. 2008, chap. 19, annexe L, art. 1.

Idem

(4) Le paragraphe (3) s'applique à l'égard de chaque engagement à vue créé le 1er janvier 2004 ou par la suite. 2008, chap. 19, annexe L, art. 1.

FEDERAL COURT

SOLICITORS OF RECORD

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DATED:	MAY 14, 2019

APPEARANCES:

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Me Evan Liosis Me Anne-Renée Touchette	FOR THE DEFENDANTS

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