Federal Court  Cour fédérale

Date: 20240109

Docket: T-1835-21

Citation: 2024 FC 30

Ottawa, Ontario, January 9, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Plaintiff

and

RAGOORTHAN MAHENDRAN

Defendant

ORDER AND REASONS

Overview

[1] This decision addresses a motion by the Plaintiff, the Minister of Citizenship and Immigration [Minister], seeking summary judgment in the within action and a declaration that the Defendant obtained Canadian citizenship by false representation, which would result in the revocation of his Canadian citizenship. The Minister argues that there remains no genuine issue for trial.

[2] As explained in greater detail below, the Minister's motion is dismissed, because I have concluded that a trial is required to determine whether the Defendant had the requisite intention to deceive when he failed to disclose criminality that was a statutory impediment to him obtaining citizenship.

Background

[3] The Defendant was born in Sri Lanka in 1987. He landed in Canada as a permanent resident on July 10, 2003, when he was sixteen years old, with his widowed mother, sister and two brothers. On November 25, 2007, the Defendant applied for Canadian citizenship at the same time as his mother and siblings. The Defendant says that his family hired a representative in the Sri Lankan community to help them complete their citizenship application forms.

[4] On March 7, 2008, the Defendant was convicted of two counts of theft under $5,000, contrary to subparagraph 334(1)(ii) of the *Criminal Code*, RSC, 1985, c C-46 [the Code], and two counts of possession, use or traffic in a credit card or a forged or falsified credit card, contrary to paragraph 342(1)(c)(f) of the Code. He was sentenced to 75 hours of community service, a fine of $400, and two years of probation [Probation Order].

[5] The Defendant's application for citizenship was approved on November 25, 2008.

[6] On December 16, 2008, the Defendant was charged with three counts of possession, use or traffic in a credit card or a forged or falsified credit card, contrary to paragraph 342(1)(c)(e) of the Code, and one count of fraud contrary to subparagraph 380(1)(b)(i) of the Code.

[7] The Defendant took the oath of citizenship on February 19, 2009 [Oath], and obtained Canadian citizenship.

[8] On December 17, 2015, Citizenship and Immigration Canada [CIC] sent the Defendant a Notice of Intent to Revoke Citizenship. In a letter dated April 15, 2016, the Defendant's then counsel responded to the notice with an acknowledgement that he was accused of criminal infractions and the assertion that the Defendant was not aware that he had to disclose this information when he took the Oath. On April 25, 2016, the Defendant's citizenship was revoked by a delegate of the Minister. However, as a result of this Court's decision in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473, the decision to revoke the Defendant's citizenship was quashed.

[9] With the *Act to amend the Citizenship Act and to make consequential amendments to another Act*, SC 2017, c 14, new revocation of citizenship provisions came into force on January 24, 2018. Subsequently, the Defendant was sent letters on February 20, 2018, and March 9, 2018, indicating that the Minister believed the Defendant had obtained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances. On July 11, 2018, the Defendant's counsel requested that the revocation proceedings not be initiated because of various immigration consequences the Defendant would face as a result of the proceedings.

[10] On October 9, 2019, Immigration, Refugees and Citizenship Canada sent a letter to the Defendant, explaining that citizenship revocation proceedings were being initiated pursuant to subsection 10(3) of the *Citizenship Act*, RSC 1985, c C-29 [the Act]. On December 6, 2019, the

Defendant's counsel again requested that the revocation proceedings not be initiated on the basis of potential immigration consequences.

[11] By Statement of Claim dated December 1, 2021 the Minister commenced this action alleging, and seeking a declaration pursuant to subsections 10(4.1) and 10.1(1) of the Act, that the Defendant obtained Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances. More specifically, the Statement of Claim alleges that the Defendant obtained his citizenship by making false representations and by fraudulently and knowingly concealing material circumstances, about the Probation Order to which he was subject and subsequent criminal charges that were pending against him, at the time he took his Oath.

[12] The Defendant defended this action and, on August 23, 2023, filed an Amended Statement of Defence [Amended Defence], in which he acknowledges that he failed to disclose the criminal charges against him, as well as the crimes of which he was convicted in 2008, at the time he took his Oath. However, the Amended Defence asserts that the Defendant did not do so intentionally, as: (a) he did not prepare his November 2007 application for citizenship [Citizenship Application] himself and was not aware of its contents; and (b) he was not aware of the wording in the document entitled Oath or Affirmation of Citizenship, completed on the day he took his Oath [Oath Document], which asked him to confirm that he had not been subject to any criminal or immigration proceedings since he filed his Citizenship Application.

[13] The Amended Defence admits that the incidents which led to the Probation Order and additional charges occurred between the date the Defendant signed his Citizenship Application and the taking of his Oath. It also admits that, on the day the Defendant took the Oath, he signed the Oath Document wherein he stated that he had not been subject to any criminal or immigration proceedings since submitting his Citizenship Application, and he therefore took the Oath despite being prohibited from doing so. However, stating that he did not read and was not aware of the contents of the Citizenship Application or the Oath Document, the Amended Defence asserts that the Defendant did not intentionally fail to make the required disclosures.

[14] The Minister brings this motion for summary judgment, seeking an order declaring that the Defendant obtained Canadian citizenship by fraud or false representations, resulting in the revocation of his Canadian citizenship. The Minister argues that there is no genuine issue for trial, taking the position that the Defendant has admitted to making false representations during the course of the processing of his application for Canadian citizenship or has admitted to facts that mean as a matter of law that he obtained Canadian citizenship by fraud or false representations.

Issue

[15] The parties agree that the only issue before the Court is whether summary judgment should be granted in favour of the Minister and the requested order granted, declaring that the Defendant obtained citizenship by false representation or fraud.

Relevant Legislation

[16] The relevant sections of the *Federal Courts Rules*, SOR/98-106 [Rules], governing motions for summary judgment, are as follows:

Motion by a party	**Requête d'une partie**
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.	**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.
[…]	[…]
Facts and evidence required	**Faits et éléments de preuve nécessaires**
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.	**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.
If no genuine issue for trial	**Absence de véritable question litigieuse**
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.	**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.

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.

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.

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

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

[17] The relevant sections of the Act are:

Revocation by Minister — fraud, false representation, etc.

10 (1) Subject to subsection 10.1(1), the Minister may revoke a person's citizenship or renunciation of citizenship if the Minister is satisfied on a balance of probabilities that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.

(2) [Repealed, 2017, c. 14, s. 3]

Notice

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

(a) advises the person of his or her right to make written representations;

(b) specifies the form and manner in which the representations must be made;

(c) sets out the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision; and

(d) advises the person that the case will be referred to the Court unless the person requests that the case be decided by the Minister.

[…]

Révocation par le ministre — fraude, fausse déclaration, etc.

10 (1) Sous réserve du paragraphe 10.1(1), le ministre peut révoquer la citoyenneté d'une personne ou sa répudiation lorsqu'il est convaincu, selon la prépondérance des probabilités, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

(2) [Abrogé, 2017, ch. 14, art. 3]

Avis

(3) Avant que la citoyenneté d'une personne ou sa répudiation ne puisse être révoquée, le ministre lui envoie un avis écrit dans lequel :

a) il l'informe qu'elle peut présenter des observations écrites;

b) il précise les modalités de présentation des observations;

c) il expose les motifs et les justifications, notamment les éléments de preuve, sur lesquels il fonde sa décision;

d) il l'informe que, sauf si elle lui demande de trancher l'affaire, celle-ci sera renvoyée à la Cour.

[…]

Referral to Court

(4.1) The Minister shall refer the case to the Court under subsection 10.1(1) unless

(a) the person has made written representations under paragraph (3.1)(a) and the Minister is satisfied

(i) on a balance of probabilities that the person has not obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, or

(ii) that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case; or

(b) the person has made a request under paragraph (3.1)(b).

[…]

Renvoi à la Cour

(4.1) Le ministre renvoie l'affaire à la Cour au titre du paragraphe 10.1(1) sauf si, selon le cas :

a) la personne a présenté des observations écrites en vertu de l'alinéa (3.1)a) et le ministre est convaincu que :

(i) soit, selon la prépondérance des probabilités, l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci n'est pas intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels,

(ii) soit des considérations liées à sa situation personnelle justifient, vu les autres circonstances de l'affaire, la prise de mesures spéciales;

b) la personne a fait une demande en vertu de l'alinéa (3.1)b).

[…]

Revocation for fraud — declaration of Court

10.1 (1) Unless a person makes a request under paragraph 10(3.1)(b), the person's citizenship or renunciation of citizenship may be revoked only if the Minister seeks a declaration, in an action that the Minister commences, that the person has obtained,

Révocation pour fraude — déclaration de la Cour

10.1 (1) Sauf si une personne fait une demande en vertu de l'alinéa 10(3.1)b), la citoyenneté de la personne ou sa répudiation ne peuvent être révoquées que si, à la demande du ministre, la Cour déclare, dans une action intentée par celui-

retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances and the Court makes such a declaration.

ci, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

(2) [Repealed, 2017, c. 14, s. 4]

(2) [Abrogé, 2017, ch. 14, art. 4]

Effect of declaration

(3) A declaration made under subsection (1) has the effect of revoking a person's citizenship or renunciation of citizenship.

Effet de la déclaration

(3) La déclaration visée au paragraphe (1) a pour effet de révoquer la citoyenneté de la personne ou la répudiation de la citoyenneté de celle-ci.

[…]

[…]

Prohibition

22 (1) Despite anything in this Act, a person shall not be granted citizenship under subsection 5(1), (2) or (4) or 11(1) or take the oath of citizenship

Interdiction

22 (1) Malgré les autres dispositions de la présente loi, nul ne peut recevoir la citoyenneté au titre des paragraphes 5(1), (2) ou (4) ou 11(1) ni prêter le serment de citoyenneté :

(a) while the person, under any enactment in force in Canada,

a) pendant la période où, en application d'une disposition législative en vigueur au Canada :

(i) is under a probation order,

(i) il est sous le coup d'une ordonnance de probation,

(ii) is a paroled inmate, or

(ii) il bénéficie d'une libération conditionnelle,

(iii) is serving a term of imprisonment;

(iii) il purge une peine d'emprisonnement;

(a.1) while the person is serving a sentence outside Canada for an offence committed outside Canada

a.1) tant qu'il purge une peine à l'étranger pour une infraction commise à l'étranger qui, si elle

that, if committed in Canada, would constitute an offence under an enactment in force in Canada;	avait été commise au Canada, aurait constitué une infraction à une disposition législative en vigueur au Canada;
(a.2) while the person is serving a sentence outside Canada for an offence under any Act of Parliament;	**a.2)** tant qu'il purge une peine à l'étranger pour une infraction à une loi fédérale;
(b) while the person is charged with, on trial for, subject to or a party to an appeal relating to an offence under subsection 21.1(1) or 29.2(1) or (2), or an indictable offence under subsection 29(2) or (3) or any other Act of Parliament, other than an offence that is designated as a contravention under the Contraventions Act;	**b)** tant qu'il est inculpé pour une infraction prévue aux paragraphes 21.1(1) ou 29.2(1) ou (2) ou pour un acte criminel prévu par les paragraphes 29(2) ou (3) ou par une autre loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions, et ce, jusqu'à la date d'épuisement des voies de recours;
[…]	[…]

Principles Governing Motions for Summary Judgment

[18] The parties agree on the principles governing motions for summary judgment.

[19] The purpose of summary judgment is to allow the Court to summarily dispense with cases that should not proceed to trial because there is no genuine issue for trial, thus conserving judicial resources and improving access to justice (*Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 at para 25 [*Milano Pizza*]; *Canmar Foods Ltd v TA Foods Ltd*, 2021 FCA 7 at para 23 [*Canmar Foods*]; *Manitoba v Canada*, 2015 FCA 57 at paras 15-17; *Hryniak v Mauldin*, 2014 SCC 7 at para 34).

[20] Summary judgment has been described as a valuable tool for striking sham claims and defences, although it is not intended to deprive a litigant of the right to a trial unless there is a clear demonstration that there is indeed no genuine issue material to the claim or defence that the trial judge must resolve (*Oriji v Canada*, 2006 FC 1539 at para 31 [*Oriji*]). Recently, in *Canmar Foods*, the Federal Court of Appeal stated that the underlying rationale of summary judgments is that a case ought not to proceed to trial, with all the consequences that would follow for the parties and the costs involved for the administration of justice, unless there is a genuine issue that can only be resolved through the full apparatus of a trial (at para 24).

[21] Rule 215(1) of the Rules provides that the Court shall grant summary judgment where the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence. The test on a motion for summary judgment is not whether a party cannot succeed at trial, but rather whether the case is clearly without foundation (*Canmar Foods* at para 24) or that the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial (*Oriji* at para 35; *Milano Pizza* at para 33; *Kaska Dena Council v Canada*, 2018 FC 218 at para 21; *Canmar Foods* at para 24). As such, claims that are clearly without foundation should not take up the time and incur the costs of a trial (*Oriji* at para 35).

[22] Summary judgment can only be granted where the necessary facts to determine questions of fact and law are found in the material before the Court (*AMR Technology Inc v Novopharm Limited*, 2008 FC 970 at para 6). The onus is on the party seeking summary judgment to establish the absence of a genuine issue for trial on the balance of probabilities (*Collins v Canada*, 2015 FCA 281 at para 70), which is a heavy burden (*Canmar Foods* at para 24). However, the responding party bears an evidentiary burden (*Canmar Foods* at para 27), as

reflected in Rule 214, which requires the responding party to set out specific facts and adduce evidence showing that there is a genuine issue for trial.

[23] Where there is a serious issue with respect to credibility, summary judgment is not appropriate, and the case should go to trial because the witnesses should be cross-examined before the trial judge who is in a better position to draw appropriate inferences (*Rallysport Direct LLC v. 2424508 Ontario Ltd.*, 2019 FC 1524 at para 42 [*Rallysport*]; *Schneeberger v Canada (Minister of Citizenship and Immigration)*, 2003 FC 970 [*Schneeberger*] at para 17).

[24] However, not all conflicting evidence will raise credibility issues and preclude summary judgment. Rather, the Court should take a hard look at the merits and decide if there are issues of credibility to be resolved (*Rallysport* at para 42; *Schneeberger* at para 17). Credibility issues will not defeat a motion for summary judgment if the Court does not need to resolve them to dispose of the motion (see *7294140 Canada Inc. (Zoomtoner) v. Connexlogix Inc.*, 2023 FC 1010 at para 18; *Saskatchewan (Attorney General) v. Witchekan Lake First Nation*, 2023 FCA 105 at para 40).

Analysis

[25] Consistent with the requirements of subsection 10.1(1) of the Act, the Minister seeks in this action a declaration by the Court that the Defendant obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances.

[26] As an initial point, I will address an argument by the Minister that there is no genuine issue for trial in this matter, because the Defendant has expressly admitted obtaining citizenship by false representation. The Minister's argument relies on the Defendant's responses to a Request to Admit, dated April 26, 2022, that the Minister served on the Defendant under Rule 255 in the course of the within action. The Minister thereby requested that the Defendants admit, for the purposes of this proceeding, the truth of facts identified in numbered paragraphs including the following paragraph 9:

> 9. By failing to disclose, at the time he took the Oath of Citizenship, that he was under an active Probation Order or that he was charged with indictable offences under the *Code*, the Defendant obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances.

[27] In a Response to Request to Admit dated May 4, 2022, the Defendant admitted the truth of the facts in the Request to Admit. While not the principal argument advanced in support of this motion for summary judgment, the Minister submits that, based on this admission, there is no issue to be determined at trial.

[28] In response, the Defendant argues that paragraph 9 of the Request to Admit improperly sought admissions as to conclusions of law, which are not the purpose of a Request to Admit under Rule 255. That Rule permits a party to request only that another party admit a fact or the authenticity of a document. The Defendant acknowledges, as reflected in his Amended Defence, that at the time he took his Oath, he failed to disclose that he was under the Probation Order and had been charged with indictable defences under the Code. However, the Amended Defence asserts that the Defendant did not do so intentionally, as he did not read the Citizenship Application or the Oath Document before signing them. He argues that, in the absence of such

intention, section 10.1 of the Act does not apply, and the Minister cannot rely upon the Defendant's response to the Request to Admit to demonstrate the requisite intention.

[29] I will canvass shortly the jurisprudence surrounding the intention that must be demonstrated in an action to revoke Canadian citizenship, as the Minister's principal submissions seek to demonstrate such intention based on that jurisprudence and the Defendant's evidence given in discovery examinations in this action. However, I first note that I am not prepared to grant the Minister's motion for summary judgment based solely on the Defendant's response to the Request to Admit. While it is difficult to know how to interpret the response to paragraph 9 of the Request to Admit, as that paragraph seeks an admission of what I would consider to be questions of mixed fact and law, I agree with the Defendant's position that the Minister cannot rely on the mechanism afforded by Rule 255 to obtain an admission that extends beyond facts and documentary authenticity.

[30] Turning to the Defendant's discovery evidence, the Minister emphasizes the Defendant's testimony that he signed both the Citizenship Application and the Oath Document without reading them and while knowing that he did not understand their contents. He also testified that he did not ask the representative, whom he says his family hired to assist with the citizenship process, to explain the Citizenship Application to him. Nor did he ask a government official at the citizenship ceremony to explain the Oath Document to him. The Minister also relies on the Defendant's testimony that he did not disclose to CIC the Probation Order or pending criminal charges before taking the Oath and that, as of the date he signed the Oath Document, the

resulting statement therein (that he had not been subject to any criminal or immigration proceedings since he filed his citizenship application) was false.

[31] At the hearing of this summary judgment motion, the Minister's counsel explained that, if the motion is dismissed and this matter proceeds to a trial, the Minister reserves the right to challenge at trial the credibility of Defendant's evidence that he did not read or understand the contents of the Citizenship Application and the Oath Document. However, for purposes of this motion, the Minister does not challenge the credibility of that evidence. Rather, the Minister's motion is premised on the position that, even accepting the Defendant's evidence, it follows that he obtained citizenship by false representation or fraud. (For purposes of this motion, the Minister does not rely on the knowing concealment element of subsection 10.1(1) of the Act.)

[32] Put otherwise, the Minister argues that, as a matter of law, it is not a valid defence to a subsection 10.1(1) action for the Defendant to assert that he did not have the requisite intention to support a finding a false representation or fraud, on the basis that he did not read the Citizenship Application or Oath Document. The Minister submits that self-imposed (or professed) ignorance of the contents of such documentation cannot represent a defence to a citizenship revocation action, as any defendant could then create (or assert) such ignorance and leave the Minister without any recourse against those who obtained citizenship through misrepresentation.

[33] In support of this position, the Minister relies on jurisprudence surrounding the innocent misrepresentation exception that has developed in connection with subsection 40(1)(a) of the

Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. That subsection provides that a permanent resident or foreign national is inadmissible to Canada for misrepresentation, for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the IRPA.

[34] As explained in *Appiah v Canada (Citizenship and Immigration)*, 2018 FC 1043 at paragraph 18, the application of subsection 40(1)(a) is subject to an exception that excuses withholding material information only in extraordinary circumstances where a person honestly and reasonably believed they were not misrepresenting a material fact, knowledge of the misrepresentation was beyond the person's control, and the person was unaware of the misrepresentation. As explained in *Oloumi v Canada (Citizenship and Immigration)*, 2012 FC 428 at paragraph 39, this exception applies only where the person can demonstrate that they both honestly and reasonably believed they were not withholding material information.

[35] If the present matter involved the application of subsection 40(1)(a) of the IRPA, the Minister would perhaps have a compelling argument that the Defendant would be unable to avoid a finding of misrepresentation under that subsection. The Minister could argue that, even if the Defendant did not read the Citizenship Application and Oath Document before signing them, and was therefore actually unaware of the prohibitions and obligations reflected therein, it was not reasonable for him to have signed those documents without reading them. In other words, even if the Defendant lacked a subjective intention to deceive, the objective reasonableness requirement that applies to the innocent misrepresentation exception under subsection 40(1)(a) of the IRPA would preclude his reliance on that exception.

[36] However, this matter involves the application of sections 10 and 10.1 of the Act, and the jurisprudence of this Court is clear that subsection 40(1)(a) of the IRPA does not apply. In *Canada (Citizenship and Immigration) v Savic*, 2014 FC 523 [*Savic*], the Court explained at paragraph 81 that it was not persuaded by the Minister that the jurisprudence regarding section 40 of the IRPA was instructive in bolstering the Minister's position that false representations within the meaning of section 10 of the Act did not include an element of intention to mislead. *Savic* canvassed the jurisprudence under section 10, in the context of the three different types of conduct referenced in that section (false representation, fraud, or knowingly concealing material circumstances), and concluded that all three types of conduct require some intention to deceive (at paras 50-81).

[37] In analysing the intent requirement related to false representations, *Savic* relied (at paras 77-79) on the then recent decision in *Canada (Citizenship and Immigration) v Thiara*, 2014 FC 220 [*Thiara*], which concluded that obtaining citizenship by false representation implied an action made with the intent to deceive (at para 49). In the subsequent decision in *Canada (Citizenship and Immigration) v Zakaria*, 2014 FC 864 [*Zakaria*], the Court considered *Savic*, its reliance on *Thiara*, and earlier jurisprudence, and again concluded (at paras 76-77) that the three categories of conduct contemplated by section 10 of the Act include an element of intent.

[38] At the hearing of this application, the Minister's counsel advised that the Minister does not agree with the conclusion in this jurisprudence that an element of intent is required to establish a false representation, although counsel acknowledged that the Court may be required to follow the jurisprudence as a matter of comity. The Minister has not provided any compelling

submission as to why I should depart from the jurisprudence canvassed above. I will follow that line of authority and hereby adopt the reasoning therein.

[39] The effect of that conclusion is that, in order for the Minister's summary judgment to succeed, the Court must be satisfied that there is no genuine issue for trial as to whether the Defendant, in signing the Oath Document and failing to disclose his relevant criminality, had the intention to deceive that is required for sections 10 and 10.1 of the Act to apply. To perform that assessment, it is helpful to first canvass further the guidance in the above-referenced jurisprudence as to the nature of the intention that is required under the different categories of intent contemplated by those sections.

[40] It is clear that knowingly concealing material circumstances requires an intention to mislead the decision-maker (*Savic* at para 72; see also *Canada (Citizenship and Immigration) v Odynsky*, 2001 FCT 138 at para 159). *Savic* also explained at paragraph 70 that the category of fraud is generally defined as intentional or reckless misrepresentation of fact by words or conduct that deceives another person and which results in a detriment to that person (see also *Bruno Appliance and Furniture, Inc v Hryniak*, 2014 SCC 8 at para 18) and that conduct which amounts to fraud can also be an omission or silence in situations where there is an obligation to disclose information. As will be explained shortly, it is significant to the Minister's position in this motion that, for purposes of establishing fraud under section 10.1 of the Act, intention can include recklessness regarding the statement or omission (*Savic* at para 71).

[41] Finally, with respect to the category of false representations, while some intention to mislead is required (*Savic* at para 74), it is also significant to the Minister's positon that the jurisprudence confirms that wilful blindness will not be condoned (see, e.g., *Canada (Citizenship and Immigration) v Modaresi*, 2016 FC 185 at paras 16-17, relying on *Canada (Citizenship and Immigration) v Phan*, 2003 FC 1194 at para 33).

[42] Against that backdrop, the Minister submits that the circumstances of this case amount to wilful blindness and/or recklessness on the part of the Defendant and therefore satisfy the required intention to mislead. As such, it necessary for the Court to examine the meaning of those categories of intent, in order to assess whether the present circumstances support a conclusion that the Defendant was wilfully blind or reckless, without the need for further evidence or the opportunity for evidentiary assessment that would come with a trial.

[43] With respect to wilful blindness, the Defendant relies on the explanation of the Supreme Court of Canada in *R v Briscoe*, 2010 SCC 13, that this doctrine imputes knowledge to someone whose suspicion is aroused to the point where they see the need for further inquiries but deliberately choose not to make those inquiries (at para 21). Similarly, *R v Jorgensen*, [1995] 4 SCR 55, describes wilful blindness as involving circumstances where the person shuts their eyes because they knew or strongly suspected that looking would fix them with knowledge (at para 103).

[44] Regarding recklessness, the Defendant references *Sansregret v The Queen*, 1985 CanLII 79, [1985] 1 SCR 570 [*Sansregret*] at paragraph 72, where the Supreme Court described

recklessness as involving awareness of a danger or risk associated with one's conduct and nevertheless persisting with that conduct. The Minister disputes the application of this description, which *Sansregret* provided in the context of criminal (rather than civil) liability, and instead emphasizes the statement in *Savic* (at para 70) that the conduct which amounts to fraud can be an omission or silence in situations where there is an obligation to disclose information.

[45] While that statement in *Savic* is instructive as to a type of conduct that can constitute fraud under section 10.1 of the Act, I agree with the Defendant's submission that it does not read as an explanation of the meeting of recklessness. Rather, if the impugned conduct is an omission or silence, in the context of an obligation to disclose information, it remains necessary to assess whether the required mental element is present. That mental element can include recklessness, and I find *Sansregret* instructive as to how to assess whether recklessness is present.

[46] Therefore, the outcome of this motion turns on whether the evidence before the Court, taken at face value for purposes of this motion, supports a conclusion on a balance of probabilities that the Defendant was either wilfully blind or reckless, within the above meaning of those terms, when he signed the Citizenship Application and Oath Document without reading them and with an awareness that he did not understand their contents.

[47] The Minister argues that such a conclusion follows as a matter of law. I have difficulty with this proposition. In *Zakaria*, the Court addressed a motion for summary judgment (in that case, brought by the defendants) in the context of a citizenship revocation action based on a misrepresentation in the relevant citizenship application. One of the two minor defendants was

old enough to have been required to sign the application that contained the misrepresentation, but he provided an affidavit in the motion, swearing that he did not know what was in the application and that he signed it without reading it (see paras 28-29). The Minister did not cross-examine the defendant, and the Court was prepared to infer that he was not aware of the misrepresentation in the application (see paras 32-33). The Court in *Zakaria* conducted a legal analysis of the required mental element, concluding (at paras 76-77) that the three categories of conduct contemplated by section 10 of the Act include an element of intent and therefore, based on the evidence, that the minor defendant did not have the requisite intent (at para 77).

[48] At the hearing of this motion, the Minister's counsel submitted that *Zakaria* was distinguishable, based on the nature of the representation (whether a third party had assisted with the preparation of the citizenship application) and the fact that the defendant was a minor. I accept that these differences exist and represent an arguable basis to treat the facts of the present case differently. However, the Minister's submission serves to emphasize that the particular facts matter for purposes of the analysis of intention. I am not convinced that, as a matter of law, the fact that an applicant for Canadian citizenship has signed documentation forming part of the citizenship application process, without reading it or being aware of its contents, automatically translates into either wilful blindness or recklessness for purposes of the application of section 10.1 of the Act.

[49] I am sympathetic to the Minister's concern about a defendant to a citizenship revocation action being able to create (or assert) ignorance of the contents of citizenship application documentation and thereby leave the Minister without any recourse against misrepresentation.

The Minister raises the specter of such defendants asserting unverifiable claims that they did not read the forms they signed. However, I agree with the Defendant's submission that, as with any defence that the law recognizes, it is for the trier of fact to test such factual assertions. While a trier of fact may be sceptical of such assertions, and principles such as the doctrine of blindness may ultimately represent an impediment to such assertions providing a successful defence, their prospects are not necessarily so forlorn that they should not proceed to trial.

[50] As explained earlier in these Reasons, the doctrine of wilful blindness imputes knowledge to someone whose suspicion is aroused to the point where they see the need for further inquiries but deliberately choose not to make those inquiries. The evidence upon which the Minister relies in support of this motion establishes that the Defendant signed the Citizenship Application and Oath Document without reading or being aware of their contents. However, in order to grant the motion on the basis that the Defendant was wilfully blind, the Minister must also establish that the Defendant's suspicions were aroused as to the contents of this documentation (particularly the Oath Document in which the misrepresentation was made) and therefore deliberately chose not to inform himself as to its contents. Similarly, for purposes of recklessness, the Minister must establish that the Defendant was aware of a danger or risk.

[51] The Minister may succeed in establishing at trial that the Defendants had the requisite intention to deceive, through one or more of these species of intent contemplated by section 10.1 of the Act, including by challenging the credibility of the Defendant's explanation as to why he says he signed both the Citizenship Application and the subsequent Oath Document without reading them and while knowing that he was unaware of their contents. Indeed, while not

disputed on this motion, the Minister may also challenge at trial the credibility of the Defendant's evidence that he did not read this documentation. However, based on the evidentiary record presently before the Court, and in the absence of a finding that the Minister's motion must succeed as a matter of law, the Court cannot conclude that the Defendant's case is so doubtful that it does not deserve consideration by the trier of fact at trial.

Conclusion and Costs

[52] Having found that there is a genuine issue for trial, the Minister's motion for summary judgment will be dismissed, and this matter will proceed. While the Minister sought costs of this motion in the event of its success, the Defendant sought dismissal of the motion without costs. As the Defendant has prevailed, I will order no costs on this motion.

ORDER IN T-1835-21

THIS COURT'S ORDER is that:

1. The Minister's motion for summary judgment is dismissed.

2. No costs are awarded on this motion.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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