

Federal Court



Cour fédérale

**Date: 20150914**

**Docket: T-1839-14**

**Citation: 2015 FC 1073**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Ottawa, Ontario, the 14th day of September 2015**

**PRESENT: The Honourable Madam Justice Gleason**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Plaintiff**

**And**

**MAURICE RUBUGA**

**Defendant**

**JUDGMENT AND REASONS**

[1] This is a motion for default judgment in respect of a referral initiated by the plaintiff, the Minister of Citizenship and Immigration [the Minister], pursuant to paragraph 18(1)(b) of the *Citizenship Act*, RSC (1985), c. C-29 [the CA]. In this motion, the Minister is seeking a declaration that the defendant obtained his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances. Following the hearing of this motion, the

CA was subject to significant amendments. As discussed below, pursuant to these amendments, an order allowing the Minister's motion for default judgment in this case will have the effect of revoking the defendant's citizenship.

I. Legislative context

A. *New provisions of the Citizenship Act that apply in this case*

[2] The relevant former provisions of the CA (in force until May 28, 2015, inclusively) under which this motion was first brought, listed a six-step process for the revocation of an individual's citizenship in a case such as this one.

[3] Under subsections 10(1) and 18(1) of the former CA, now repealed, the Minister, having reason to believe that an individual obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, was required to first notify this individual of his intention to recommend that the Governor in Council revoke the individual's citizenship.

[4] If the individual wished to oppose this procedure, he or she could request that the issue be referred to the Federal Court.

[5] When an individual made such a request, it was the Minister's responsibility to initiate a proceeding before the Federal Court to obtain a declaration that the individual obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances.

[6] Once presented with the case, the Federal Court would hear the parties and issue the declaration requested if it considered the allegations to be founded. As noted in *Canada (Minister of Citizenship and Immigration) v Obodzinsky*, 2002 FCA 518 at para 15, [2003] 2 FCJ 657 [*Obodzinsky*], a declaration issued in this context did not have the effect of revoking the individual's citizenship. Rather, it was a factual finding that the citizenship had been obtained by false representation or fraud or by knowingly concealing material circumstances.

[7] If the Minister wished to complete the last step of the procedure to revoke the individual's citizenship, he could submit a report to the Governor in Council based on the declaration issued by the Federal Court, when applicable, pursuant to former subsection 10(1) of the CA (*Obodzinsky*, above, at para 15).

[8] Once the Minister's report was received, the Governor in Council was authorized to revoke the individual's citizenship if it was convinced that it had been obtained by false representation or fraud or by knowingly concealing material circumstances.

[9] This process was shortened considerably by amendments to the CA that came into force on June 11, 2015, which created two distinct revocation procedures.

[10] In simpler cases, if the Minister considers that an individual obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, he could revoke the citizenship under the new section 10 of the CA. The Minister would, however, have to provide the individual with a written notice of his intention to proceed with the

revocation and give the individual the opportunity to make written representations. Moreover, under subsection 10(4) of the CA, “[a] hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required.” To date, there is no regulatory provision under the CA that prescribes such factors. A decision to revoke under section 10 of the CA may be reviewed by the Federal Court, with leave of the Court (subs 22.1(1) of the CA).

[11] The more serious cases are governed by the new section 10.1 of the CA. If the Minister has reasonable grounds to believe that an individual’s citizenship was obtained by false representation or fraud or by knowingly concealing material circumstances with respect to a fact described in section 34, 35 or 37 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], other than a fact that is also described in paragraph 36(1)(a) or (b) or 36(2)(a) or (b) of the IRPA, under subsection 10.1(1) of the CA the Minister must obtain a declaration from the Federal court to this effect.

[12] A declaration issued by the Federal Court in accordance with new subsection 10.1(1) of the CA has the effect of revoking the citizenship of the person in question (para 10.1(3)(a) of the CA).

[13] Under the transitional provisions in the *Strengthening Canadian Citizenship Act*, RS, c C-29 (act making the described amendments to the CA), the new procedure for revocation provided at subsection 10.1(1) applies to cases of revocation involving facts described in sections 34, 35 and 37 of the IRPA (other than a fact also described in paragraph 36(1)(a) or (b) or 36(2)(a) or (b) of the IRPA) which was before the Federal Court at the time the new provision

came into force, on June 11, 2015. On this, subsection 40(2) of the *Strengthening Canadian Citizenship Act* states the following:

**40.** (2) Any proceeding with respect to allegations that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the *Immigration and Refugee Protection Act* other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act, that is pending before the Federal Court immediately before the day on which section 8 [of the *Strengthening Canadian Citizenship Act*] comes into force, as a result of a referral

under section 18 of the *Citizenship Act* as that section 18 read immediately before that day, is to be continued as a proceeding under subsection 10.1(1) of the *Citizenship Act*, as enacted by section 8 [of the *Strengthening Canadian Citizenship Act*].

**40.** (2) Les instances en cours relatives à des allégations portant que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels — concernant des faits visés à l'un des articles 34, 35 et 37 de la *Loi sur l'immigration et la protection des réfugiés*, autre qu'un fait également visé à l'un des alinéas 36(1)a) et b) et (2)a) et b) de cette loi —, à l'entrée en vigueur de l'article 8 [de la *Loi renforçant la citoyenneté canadienne*],

devant la Cour fédérale à la suite d'un renvoi visé à l'article 18 de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en vigueur, sont continuées sous le régime du paragraphe 10.1(1) de cette loi, édicté par l'article 8 [de la *Loi renforçant la citoyenneté canadienne*].

[Emphasis added]

B. *Related provisions that apply in this case*

[14] Sections 34, 35 and 37 of the IRPA, above, address inadmissibility on grounds of security, violating human or international rights or organized crime, as defined by the IRPA.

[15] Subsection 35(1) of the IRPA is of particular relevance in this case:

<p><b>35. (1)</b> A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for</p> <p>(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the <i>Crimes Against Humanity and War Crimes Act</i>;</p> <p>...</p>	<p><b>35. (1)</b> Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :</p> <p>a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la <i>Loi sur les crimes contre l'humanité et les crimes de guerre</i>;</p> <p>...</p>
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[16] Committing genocide, a crime against humanity or war crime outside Canada is considered a criminal offence under subsection 6(1) of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24.

[17] Subsection 6(3) of that act defines the terms “crime against humanity”, “war crime,” and “genocide” as follows:

<p><b>“crime against humanity”</b></p> <p>“crime against humanity” means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or</p>	<p><b>« crime contre l'humanité »</b></p> <p>« crime contre l'humanité » Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait —</p>
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omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

**“war crime”**

“war crime” means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

**“genocide”**

“genocide” means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the

acte ou omission — inhumain, d’une part, commis contre une population civile ou un groupe identifiable de personnes et, d’autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l’humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d’après les principes généraux de droit reconnus par l’ensemble des nations, qu’il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

**« crime de guerre »**

« crime de guerre » Fait — acte ou omission — commis au cours d’un conflit armé et constituant, au moment et au lieu de la perpétration, un crime de guerre selon le droit international coutumier ou le droit international conventionnel applicables à ces conflits, qu’il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

**« génocide »**

« génocide » Fait — acte ou omission — commis dans l’intention de détruire, en tout ou en partie, un groupe identifiable de personnes et constituant, au moment et au lieu de la perpétration, un génocide selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d’après

<p>general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.</p>	<p>les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.</p>
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[18] Moreover, these offences include conspiracy, attempts to commit, being an accessory after the fact or counselling (subs 6(1.1) of the *Crimes Against Humanity and War Crimes Act*).

C. *Applicable provisions at the time the defendant submitted his refugee claim and application for permanent resident status*

[19] Committing a war crime or crime against humanity constituted a grounds for exclusion as a refugee as defined under the *United Nations Convention Relating to the Status of Refugees* [the Convention] and constituted a grounds for inadmissibility under the *Immigration Act*, RSC 1985, c I-2 at the time the defendant submitted his refugee claim and application for permanent resident status, on July 2, 1998, and December 13, 1999, respectively.

[20] More specifically, to be recognized as a Convention refugee, the defendant had to show that he met the definition of "Convention refugee." When the defendant submitted his refugee claim on July 2, 1998, this definition was provided under subsection 2(1) of the *Immigration Act*:

<p>"Convention refugee" means any person who</p> <p>(a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p>	<p>« réfugié au sens de la Convention » Toute personne :</p> <p>a) qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p>
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(i) is outside the country of the person's nationality and is unable or, by reason of that fear, unwilling to avail himself of the protection of that country, or

(ii) not having a country of nationality, is outside the country of the person's former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country, and

(b) has not ceased to be a Convention refugee by virtue of subsection (2),

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act.

(i) soit se trouve hors du pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays;

(ii) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ou, en raison de cette crainte, ne veut y retourner;

b) n'a pas perdu son statut de réfugié au sens de la Convention en application du paragraphe (2).

Sont exclues de la présente définition les personnes soustraites à l'application de la Convention par les sections E ou F de l'article premier de celle-ci dont le texte est reproduit à l'annexe de la présente loi.

[21] Among other things, the defendant had to show that he was not excluded as a refugee under clause 1F(a) of the Convention, which states the following:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

a) qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;

[22] Paragraph 19(1)(j) of the *Immigration Act*, in force when the defendant submitted his application for permanent resident status on December 13, 1999, and which is the precursor to section 35 of the IRPA, provided that persons were to be excluded in cases where there were reasonable grounds to believe they had committed a war crime or crime against humanity outside Canada:

**19.** (1) No person shall be granted admission who is a member of any of the following classes:

...

(j) persons who there are reasonable grounds to believe have committed an act or omission outside Canada that constituted a war crime or a crime against humanity within the meaning of subsection 7(3.76) of the *Criminal Code* and that, if it had been committed in Canada, would have constituted an offence against the laws of Canada in force at the time of the act or omission.

**19.** (1) Les personnes suivantes appartiennent à une catégorie non admissible :

...

j) celles dont on peut penser, pour des motifs raisonnables, qu'elles ont commis, à l'étranger, un fait constituant un crime de guerre ou un crime contre l'humanité au sens du paragraphe 7(3.76) du *Code criminel* et qui aurait constitué, au Canada, une infraction au droit canadien en son état à l'époque de la perpétration.

[23] Subsection 7(3.76) of the *Criminal Code*, RSC 1985, c C-46, in force at the time, defined “crime against humanity” and “war crime” as follows:

**“crime against humanity”**

“crime against humanity” means murder, extermination, enslavement, deportation, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group of persons, whether or not it constitutes a

**« crime contre l'humanité »**

« crime contre l'humanité »  
Assassinat, extermination, réduction en esclavage, déportation, persécution ou autre fait – acte ou omission – inhumain d'une part, commis contre une population civile ou un groupe identifiable de personnes – qu'il ait ou non

contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of customary international law or conventional international law or is criminal according to the general principles of law recognized by the community of nations.

**“war crime”**

“war crime” means an act or omission that is committed during an international armed conflict, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of the customary international law or conventional international law applicable in international armed conflicts.

constitué une transgression du droit en vigueur à l’époque et au lieu de la perpétration – et d’autre part, soit constituant, à l’époque et dans ce lieu, une transgression du droit international coutumier ou conventionnel, soit ayant un caractère criminel d’après les principes généraux de droit reconnus par l’ensemble des nations.

**« crime de guerre »**

« crime de guerre » Fait – acte ou omission – commis au cours d’un conflit armé international – qu’il ait ou non constitué une transgression du droit en vigueur à l’époque et au lieu de la perpétration – et constituant, à l’époque et dans ce lieu, une transgression du droit international coutumier ou conventionnel applicable à de tels conflits.

[24] These definitions included attempting or conspiring to commit, counselling any person to commit, aiding or abetting any person in the commission of, or being an accessory after the fact, pursuant to subsection 7(3.77) of the *Criminal Code*.

[25] A copy of all the above-noted legislative provisions is attached to these reasons.

II. Context of the motion

[26] The defendant, a Rwandan citizen from the Hutu ethnic group, claimed refugee status on July 2, 1998. The Refugee Protection Division [RPD] granted this status on October 13, 1999. On December 13, 1999, the defendant applied for permanent residence, and he became a permanent resident on May 31, 2001. The defendant then applied for citizenship and became a Canadian citizen on September 13, 2004.

[27] On March 28, 2014, the Minister sent a notice to the defendant informing him of his intention to recommend that the Governor in Council revoke his citizenship, in accordance with sections 10 and 18 of the CA, now repealed.

[28] On April 10, 2014, as was his right, the defendant requested that his case be referred to this Court. The Minister then initiated this proceeding against the defendant on August 26, 2014, serving the solicitor who was representing the defendant at the time, and leaving a copy of his statement of claim at the defendant's residence with his wife.

[29] In his statement of claim, the Minister alleges that the defendant made false representations in his refugee claim and his application for permanent resident status, with regard to his identity and origins, concealing the fact that he was a member of the Rwandan armed forces [FAR]. The Minister also alleges that the defendant participated in the genocide that occurred in Rwanda between April and July 1994, during which hundreds of thousands of Rwandans from the Tutsi ethnic group and moderate Rwandans from the Hutu ethnic group were massacred. The Minister alleges that if the defendant had told the truth about his past, he would not have obtained refugee status or permanent resident status (and therefore he would never have

been considered eligible to become a Canadian citizen), because he would have been deemed ineligible under paragraph 19(1)(j) of the *Immigration Act* (now section 35 of the IRPA).

[30] Although he asked for this case to be referred to this Court, the defendant was not present at the hearing, even though the Minister's statement of claim was served on the solicitor representing him at the time.

[31] On February 16, the Minister filed a motion for default judgment under subsection 210(1) of the *Federal Courts Rules*, SOR/98-106 [the Rules], providing a significant amount of evidence by affidavit. A copy of this motion for default judgment was served at the home of the defendant, on his wife.

[32] The Minister's motion was heard April 14, 2015, and I reserved judgment.

[33] On June 1, 2015, counsel for the Minister wrote to the Court, taking the position that the new provisions of section 10.1 of the CA applied in the present case, since the statement of claim and notice of motion submitted by the Minister already included allegations that the defendant made false representations and knowingly concealed material circumstances with respect to a fact described in section 35 of the IRPA.

[34] I agree with the Minister on this and find that the relevant provisions of section 10.1 of the CA, recently in force, apply to the present case in accordance with subsection 40(2) of the *Strengthening Canadian Citizenship Act*.

[35] I also find that, for the reasons set out below, the Minister established on a balance of probabilities that the defendant obtained his Canadian citizenship by false representation and by knowingly concealing material circumstances set out in section 35 of the IRPA, such that the declaration being sought should be issued. Pursuant to subsection 10.1(3) of the CA, this declaration has the effect of revoking the defendant's Canadian citizenship.

### III. Default proceeding

[36] The pleadings entered for the present motion were not served on the defendant personally and he did not attend the hearing of his case. Before considering the evidence submitted by the plaintiff, the Court must determine whether the defendant was served in due form and whether it is appropriate to continue in his absence.

[37] Rule 127 governs the service of originating documents and states the following:

#### **Service of originating documents**

**127.** (1) An originating document that has been issued, other than in an appeal from the Federal Court to the Federal Court of Appeal or an ex parte application under rule 327, shall be served personally.

(2) A party who has already participated in the proceeding need not be personally served.

#### **Signification de l'acte introductif d'instance**

**127.** (1) L'acte introductif d'instance qui a été délivré est signifié à personne sauf dans le cas de l'appel d'une décision de la Cour fédérale devant la Cour d'appel fédérale et dans le cas d'une demande visée à la règle 327 et présentée *ex parte*.

(2) Il n'est pas nécessaire de signifier ainsi l'acte introductif d'instance à une partie qui a déjà participé à l'instance.

[Emphasis added]

[38] The terms governing personal service on an individual are set out in rule 128 as follows :

**Personal service on individual**

**128.** (1) Personal service of a document on an individual, other than an individual under a legal disability, is effected

(a) by leaving the document with the individual;

(b) by leaving the document with an adult person residing at the individual's place of residence, and mailing a copy of the document to the individual at that address;

...

(d) by mailing the document to the individual's last known address, accompanied by an acknowledgement of receipt form in Form 128, if the individual signs and returns the acknowledgement of receipt card or signs a post office receipt;

(e) by mailing the document by registered mail to the individual's last known address, if the individual signs a post office receipt; or

(f) in any other manner provided by an Act of Parliament applicable to the proceeding.

**Signification à une personne physique**

**128.** (1) La signification à personne d'un document à une personne physique, autre qu'une personne qui n'a pas la capacité d'ester en justice, s'effectue selon l'un des modes suivants :

a) par remise du document à la personne;

b) par remise du document à une personne majeure qui réside au domicile de la personne et par envoi par la poste d'une copie du document à cette dernière à la même adresse;

...

d) par envoi par la poste du document à la dernière adresse connue de la personne, accompagnée d'une carte d'accusé de réception selon la formule 128, si la personne signe et retourne la carte d'accusé de réception;

e) par envoi par courrier recommandé du document à la dernière adresse connue de la personne si la personne signe le récépissé du bureau de poste;

f) le mode prévu par la loi fédérale applicable à l'instance.

[Emphasis added]

[39] Pursuant to rule 134, service on the solicitor of a party is the equivalent of service on the individual in question:

**Acceptance of service by solicitor**

**134.** Personal service of a document on a party may be effected by the acceptance of service by the party's solicitor.

**Acceptation de la signification par l'avocat**

**134.** La signification à une personne d'un document à une partie peut être effectuée auprès de son avocat si celui-ci en accepte la signification.

[40] The plaintiff's statement of claim was served on the solicitor for the defendant on August 28, 2014. However, he did not complete an acceptance of service as required under rule 146(1)(d), which states the following:

**Proof of service**

**146.** (1) Service of a document is proven by

...

(d) if the service is effected under rule 134, an acceptance of service that is signed and dated by the party's solicitor.

**Preuve de signification**

**146.** (1) La preuve de la signification d'un document est établie :

...

d) si le document a été signifié aux termes de la règle 134, par une acceptation de signification datée et signée par l'avocat.

[41] Additionally, in a letter dated October 10, 2014, the solicitor for the defendant notified the Court that he had ceased representing the defendant. Therefore, this solicitor never appeared before the Federal Court.

[42] As noted above, in addition to having served this solicitor, the Minister sent a copy of his statement of claim to the defendant's home through a messenger service. The defendant's wife



acknowledged receipt of the statement of claim. However, no additional copy was sent to the defendant's home by mail, contrary to the requirements under paragraph 128(1)(b) of the Rules.

[43] The subsequent pleadings, namely the motion for default judgment and the motion for confidentiality, were served on February 13, 2015, at the defendant's home, where the defendant's wife acknowledged receipt.

A. *Did the defendant "already participate in the proceeding" within the meaning of rule 127(2)?*

[44] Pursuant to former section 18 of the CA, only the defendant could request that his case be referred to the Federal Court, and this was to be done within thirty days following receipt of the Minister's notice. In the absence of such a request, the Minister could proceed with making the report for the Governor in Council. Section 18 of the CA provided the following:

**Notice to person in respect of revocation**

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

(a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court; or

(b) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed

**Avis préalable à l'annulation**

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

a) l'intéressé n'a pas, dans les trente jours suivant la date d'expédition de l'avis, demandé le renvoi de l'affaire devant la Cour;

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

citizenship by false representation or fraud or by knowingly concealing material circumstances.

**Nature of notice**

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

faits essentiels.

**Nature de l'avis**

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

[Emphasis added]

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

B. *Was the service of the statement of claim on the defendant's wife sufficient for the purposes of the case?*

[46] If this interpretation of rule 127(2) is inaccurate, the Court is still authorized to validate the service as it took place pursuant to rule 147, “if it is satisfied that the document came to the

notice of the person to be served or that it would have come to that person's notice except for the person's avoidance of service."

[47] The plaintiff served a copy of the statement of claim on the defendant's wife, who resided at the defendant's home, but did not send an additional copy of the statement of claim to this address by mail.

[48] Considering the circumstances, I am convinced that the document came to the defendant's notice or it would have come to his notice had he not avoided service. He was clearly aware that the procedure to revoke his citizenship had been initiated before the statement of claim was filed. Moreover, sending an additional copy of the statement of claim by mail, as provided under paragraph 128(1)(b) of the Rules, is more a requirement as to form than of substance. I therefore validate the service as it was completed, pursuant to rule 147.

C. *It is fair to proceed with this motion for default judgment under rule 211?*

[49] If the interpretation of rules 127(2) and 147, set out above, is inaccurate, the Court is still authorized to issue a substitutional service order. When the personal service of a document "cannot practicably be effected", subsection 136(1) of the Rules confers on the Court the power to order substitutional service:

**Substituted service or dispensing with service**

**136.** (1) Where service of a document that is required to be served personally cannot

**Ordonnance de signification substitutive**

**136.** (1) Si la signification à personne d'un document est en pratique impossible, la Cour

practicably be effected, the Court may order substitutional service or dispense with service.

peut rendre une ordonnance autorisant la signification substitutive ou dispensant de la signification.

[50] In such circumstances, rule 211 provides the following:

**Service pursuant to order for substitutional service**

**211.** Judgment shall not be given against a defendant who is in default where service of the statement of claim was effected pursuant to an order for substitutional service, unless the Court is satisfied that it is just to do so having regard to all the circumstances.

**Signification substitutive en vertu d'une ordonnance**

**211.** Lorsque la signification de la déclaration a été faite en vertu d'une ordonnance de signification substitutive, aucun jugement ne peut être rendu contre le défendeur en défaut à moins que la Cour ne soit convaincue qu'il est équitable de le faire dans les circonstances.

[51] In this case, if my interpretation of rules 127(2) and 147 is inaccurate, I find that it is appropriate to dispense the plaintiff from his obligation to serve the statement of claim on the defendant in person. I also find that it is fair to render judgment against the defendant because he was clearly aware of the proceeding before the declaration was submitted. If it were otherwise, it would be all too easy for a defendant in a similar situation to avoid having his citizenship revoked by making himself unavailable for the purposes of the service of the pleadings in the case.

IV. The evidence

[52] The Minister submitted the affidavits of Jasmina Stebelsky, Corporal Yves Gravelle, Médard Nduwamungu, Virginie Désilets, François-Pierre Déry, Scott Strauss, Isabelle Nicolas,

Svetlana Kritenko and a witness whose identity shall remain confidential and whom I shall designate as “ND-05.” Considering the possible repercussions for this witness and certain other witnesses mentioned in the affidavits of Corporal Gravelle and Mr. Nduwamungu, on March 12, 2015, I ordered that the identity of all these individuals be declared confidential.

[53] Ms. Stebelsky is an immigration officer and attached to her affidavit are the refugee claim and applications for permanent resident status and for Canadian citizenship submitted by the defendant [the immigration applications].

[54] Before the RPD, the defendant alleged the following:

- His name is Maurice Rubuga;
- He was born on September 3, 1966, in Mukingo, Ruhengeri, Rwanda;
- His father’s name is Munyarubuga, his mother’s name is Bavugabwose and his brothers are called Serubingo, Munyempanzi, Rutanganya, Nkundakozero, Nduwayezu, Sebahigi and Nkurunziza;
- From 1982 to 1988, he studied at Groupe scolaire St-André in Kigali;
- He earned a bachelor’s degree from the National University of Rwanda [NUR] in 1990;
- From 1990 to 1993, he worked as a teacher in Rwankeri, in the Ruhengeri prefecture in Rwanda;
- From 1993 to April 1994, he was the secretary for the “Birunga maize Project” in the Nkuli commune in Rwanda;

- From July 1994 to September 1996, he was at the Katale refugee camp in Zaire, then from September 1996 to April 1998, he returned to Mukingo in Rwanda;
- His wife, Agnès Mahoro, was allegedly killed in 1998 in Rwanda by members of the Rwandan Patriotic Front [RPF];
- He left Rwanda on April 25, 1998, because he was wanted and being persecuted by members of the RPF;
- He was never a member of the Rwandan army; and
- He never participated in the commission of a crime against humanity.

[55] In his application for permanent residence presented in 1999, the defendant reiterated most of these points. He provided the same information in support of his application for Canadian citizenship.

[56] In her affidavit, Ms. Stebelsky stated that if the defendant had told the truth regarding his identity and his origins in his refugee claim and application for permanent resident status, a more thorough investigation would have been conducted to determine whether he was eligible since at the time, Canadian authorities wanted to prevent Canada from becoming a haven for individuals who had committed war crimes or had violated human rights in Rwanda. She also stated that if the information that the Royal Canadian Mounted Police [RCMP] later discovered had been known at the time, the defendant would probably have been excluded because of his participation in human rights violations and would therefore not have been eligible for refugee status. The rejection of his refugee claim would have made him ineligible for permanent resident status, which would then have prevented him from obtaining his Canadian citizenship.

[57] One of the conditions for obtaining Canadian citizenship is obtaining (and retaining) permanent resident status for a period determined by the CA.

[58] Corporal Gravelle and Mr. Nduwamungu [the investigators] are investigators employed by the RCMP and the Crimes Against Humanity and War Crimes Section of the Department of Justice, respectively. Their affidavits describe the investigations involving the defendant. With these affidavits, they enclosed many documents discovered during the investigation as well as affidavits signed by witnesses they met with during their investigation.

[59] Each of the investigators also reported information obtained during interviews with witnesses who did not sign an affidavit. The transcripts of many of these meetings are enclosed with their affidavits. The plaintiff provided recordings of these interviews to the Court.

[60] Svetlana Kritenko, a Department of Justice employee, provided a summary in her affidavit of the resources that would be required to send two counsel from the Crimes Against Humanity and War Crimes Section of the Department of Justice to Rwanda to obtain sworn statements from these witnesses. Ms. Kritenko did not, however, explain why these witnesses did not sign an affidavit at the time they were questioned by the investigators.

[61] Mr. Nduwamungu also included a series of documents with his affidavit that were submitted to the International Criminal Tribunal for Rwanda [ICTR].

[62] The information the investigators collected directly or that was obtained through the affidavits enclosed with Mr. Nduwamungu's affidavit establish the following with regard to Maurice Rubuga:

- No document confirms that a person named "Maurice Rubuga", born in Mukingo, in the Ruhengeri prefecture in Rwanda, attended the Groupe scolaire St-André in Kigali or the NUR;
- No document confirms that a person named "Maurice Rubuga" was employed as a teacher from 1990 to 1993 or contributed to the Rwandan Social Security Board [RSSB] during this period; and
- Many documents indicate that a person named "Fulgence Munyengango" was born in 1965 in the Ruhengeri prefecture to a father called "Munyarubuga" and a mother called "Bavugabwose". These are the same names the defendant provided in support of his immigration applications.

[63] Many individuals questioned by Corporal Gravelle indicated that "Fulgence Munyengango" changed his name to "Gervais Ndahayo" after he failed the high school entrance exam. These witnesses also indicated that changing one's name was a common technique used by young Rwandans so they could take the entrance exam again the following year, using a pseudonym.

[64] The investigators and other informants who gave sworn statements provided evidence that establishes the following:



- Gervais Ndahayo attended the Groupe scolaire Saint-André in Kigali, claiming to have been born in 1966 rather than 1965, the year Fulgence Ndayishimiye was born;
- The high school and university transcripts provided by the defendant in support of his applications for permanent resident status and citizenship were forgeries (moreover, the defendant gave himself a better average than the one he actually earned);
- Gervais Ndahayo attended NUR, but left after his first year, having failed; and
- Gervais Ndahayo made contributions to the RSSB from 1990 to 1993, when he was a second lieutenant with the FAR.

[65] Mr. Nduwamungu attached a copy of a photo of Gervais Ndahayo from his student records, found in the NUR archives, to his affidavit.

[66] The documents submitted to the ICTR in *Prosecutor v Ephrem Setako*, ICTR-04-81 [Setako], enclosed with Mr. Nduwamungu's affidavit, establish that Gervais Ndahayo was an officer in the FAR from 1990 to March 1994, and he was second lieutenant and platoon chief of the 2nd company of the Ruhengeri Commando Battalion at Camp Mukamira, located near the communes of Mukingo and Nkuli.

[67] Scott Strauss, an expert witness who has published many documents on the Rwandan genocide, provided an opinion that supports the authenticity of these documents, and testified that the FAR members at Camp Mukamira played an active role in the organization and perpetration of genocide. They were allegedly involved in training members of the *Interahamwe* militia, which played a key role in perpetrating the massacre of the region's Tutsis.

[68] Witnesses who were questioned by investigators but did not sign an affidavit, for whom transcripts of their testimony were submitted as attachments to Corporal Gravelle's affidavit, indicated that the defendant was assigned to Camp Mukamira during the Rwandan genocide and that he was involved in training the members of the *Interahamwe* militia. The defendant allegedly congratulated these militia members after the first day of massacres perpetrated in the region, during which hundreds of civilians were killed.

[69] Witness ND-05 stated in his affidavit that he went to high school with Gervais Ndahayo and confirmed that this name corresponded to the photo found in the immigration record of "Maurice Rubuga." Virginie Désilets, deponent and employee of the Department of Justice, corroborated ND-05's identification of Gervais Ndahayo, having participated in the photo identification session.

[70] François-Pierre Déry, expert witness in facial comparisons, compared the photo of Gervais Ndahayo taken from his NUR file and photos of "Maurice Rubuga" retained by Citizenship and Immigration Canada and Passport Canada in their files on Mr. Rubuga. Mr. Déry was of the opinion that it was highly probable that these photos were of the same individual, thereby corroborating the identification made by ND-05.

V. Burden and standard of proof

[71] The case law regarding relevant former provisions of the CA establishes that a reference under former section 18 of the CA was a civil rather than a criminal proceeding. It is therefore the Minister's burden to establish on a balance of probabilities that the alleged facts took place

*(Canada (Minister of Citizenship and Immigration) v Halindintwali*, 2015 FC 390 at para 32 [*Halindintwali*]).

[72] The case law also establishes that in such a case, the Minister was not required to prove that false representation, fraud, or knowing concealment of material circumstances would necessarily have led to the rejection of the application for permanent residence, but merely that the false representation, fraud or knowing concealment of material circumstances had the effect of foreclosing or averting further inquiries (*Canada (Minister of Manpower and Immigration) v Brooks*, [1974] SCR 850 at p 873, [1973] SCJ No 112 (QL); *Canada (Minister of Citizenship and Immigration) v Rogan*, 2011 FC 1007 at para. 31, 396 FTR 47; *Halindintwali*, above, at para 35).

[73] When the Court is assessing the material character of the concealed facts, it must determine “the significance for purposes of the decision in question of the information not disclosed” (*Canada (Minister of Citizenship and Immigration) v Odynsky*, 2001 FCT 138 at para 156, [2001] FCJ No 286 (QL) [*Odynsky*]). In order to find that citizenship was obtained by an individual “knowingly concealing material circumstances” within the meaning of former section 10 of the CA, “the Court must find on evidence, and/or reasonable inference from the evidence, that the person concerned concealed circumstances material to the decision, whether he knew or did not know that they were material, with the intent of misleading the decision-maker” (*Odynsky*, above, at para 159).

[74] Moreover, the Minister had to establish on a balance of probabilities that the defendant acted intentionally by concealing material circumstances and making false representations (*Canada (Minister of Citizenship and Immigration) v Savic*, 2014 FC 523 at paras 66-76, [2014] FCJ No 562 (QL)).

[75] This case law was essentially codified in the new subsection 10.1(4) of the CA, which sets out the following requirement regarding proof:

<b>Proof</b>	<b>Preuve</b>
<p>(4) For the purposes of subsection (1), the Minister need prove only that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances.</p>	<p>(4) Pour l'application du paragraphe (1), il suffit au ministre de prouver que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.</p>

[76] I feel that there is no reason to diverge from the case law on subsections 10(1) and 18(1) of the former CA when the interpretation of the new provisions at section 10.1 of the CA is involved. Therefore, to establish that an individual has obtained citizenship by false representation or by knowingly concealing material circumstances with respect to a fact described in section 34, 35 or 37 of the IRPA (other than a fact also described in paragraph 36(1)(a) or (b) or 36(2)(a) or (b) of the IRPA), the Minister must establish on a balance of probabilities that the false representation, fraud or knowing concealment was with regard to a fact described in the sections of the IRPA noted above. He must also show that the defendant

acted deliberately. Lastly, he must show that if the true information had been known, a more thorough investigation would have been conducted by the Canadian authorities to determine whether the individual was excluded under article 34, 35, or 37 of the IRPA.

[77] The burden of proving the above-noted elements is not lessened in a motion for default judgment. In such a proceeding, every allegation is treated as denied and the onus is on the plaintiff to prove his claims (*Halindintwali*, above, at para 34; *Teavana Corporation v Teayama Inc.*, 2014 FC 372 at para 4, [2014] FCJ No. 393; *Louis Vuitton Malletier S.A. v Lin*, 2007 FC 1179 at para 4, [2007] FCJ No. 1528 (QL)).

[78] An issue arises regarding the admissibility of the transcripts of the interviews conducted with witnesses who did not sign affidavits, which were filed before this Court as attachments to Corporal Gravelle's affidavit. It must be determined whether the Minister may use these transcripts to meet his burden of proof, despite the fact they are considered hearsay.

[79] The Minister noted that evidence provided in support of a default judgment must be in affidavit form, unless there is a Court order to the contrary, pursuant to subsection 210(3) of the Rules. Moreover, under rule 81, affidavits may contain statements on information and belief:

**Contents of affidavits**

**81.** (1) 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,

**Contenu**

**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

may be included.

déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

Affidavits on belief

Poids de l'affidavit

(2) Where an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts.

(2) Lorsqu'un affidavit contient des déclarations fondées sur ce que croit le déclarant, le fait de ne pas offrir le témoignage de personnes ayant une connaissance personnelle des faits substantiels peut donner lieu à des conclusions défavorables.

[80] Therefore, under Rules 210(3) and 81(1), hearsay is admissible. However, the Court is not required to grant it significant weight (or even minimal weight) as provided under rule 81(2).

[81] This Court has often found that when a plaintiff in a default proceeding is unable to show why the hearsay is reliable and necessary, this hearsay will have little weight in the assessment of the evidence. The affidavit containing the hearsay must explain why the best evidence is not available unless this is otherwise apparent. However, failure to provide the best evidence has an effect on the probative value of the affidavit rather than on its admissibility (*Stephens v Canada (Minister of Citizenship and Immigration)*, 2013 FC 609 at para 30, [2013] FCJ No. 639 (QL); *Canada (Minister of Citizenship and Immigration) v Huntley*, 2010 FC 1175 at para 270, 375 FTR 250; *Tataskweyak Cree Nation v Sinclair*, 2007 FC 1107 at para 26, 320 FTR 1).

[82] In his affidavit, Corporal Gravelle did not offer any explanation as to why the witnesses who did not sign an affidavit were unable to do so.

[83] Similarly, Svetlana Krittenko did not explain why the witnesses did not sign an affidavit at the time they were questioned by the investigators. She merely provided a summary of the costs that would be involved to send two counsel to Rwanda to obtain these sworn statements.

[84] In his memorandum, the plaintiff attempts to establish that obtaining sworn statements from these witnesses would have been an excessively costly burden in an uncontested proceeding. The same argument was rejected by Justice Marie-Josée Bédard in *Halindintwali*, which is similar in many ways to this case. The fact it is a default proceeding does not in any way reduce the Court's responsibility, the burden on the Minister or the need to present reliable evidence to support the allegations (*Halindintwali*, above, at paras 109-111).

[85] I will take the transcripts into consideration to the extent that they help establish that the defendant used the names Fulgence Munyengango and Gervais Ndahayo in Rwanda, rather than "Maurice Rubuga," because these facts are corroborated by the documentary evidence submitted by the plaintiff and by the sworn testimony of ND-05.

[86] I will not grant any probative value to the transcripts regarding the other facts they relate. These facts are extremely prejudicial to the defendant and are not corroborated by any other evidence entered in the record. Additionally, the plaintiff did not establish why it was necessary to proceed in such a manner rather than obtaining sworn statements at the time the interviews took place.

[87] As indicated below, the Minister nonetheless met his burden of proof with the other evidence in support of his motion, in particular the information in the affidavits of deponents who had direct knowledge and the documents attached to these affidavits as exhibits. When the deponents themselves obtained the documents attached to their affidavits, it is not considered hearsay evidence.

[88] With regard to the documents from the ICTR records, attached to Mr. Nduwamungu's affidavit, this Court has consistently held that documents from that tribunal are admissible as evidence under the authority of section 23 of the *Canada Evidence Act*, RSC 1985, c C-5, even if they are from an international tribunal and not from a foreign country (*Halindintwali* at para. 95). Moreover, these documents are admissible under the authority of article 2822 of the *Civil Code of Québec*, LQ-1991, c 64, and section 40 of the *Canada Evidence Act* (*Halindintwali*, above, at para. 96).

## VI. Analysis of the evidence

[89] The evidence to which I granted probative value establishes that, on a balance of probabilities, much of the information provided by the defendant regarding his name, marital status, education, prior employment and places of residence was false. In light of these facts, it is clear that the defendant acted deliberately.

### A. *Identity*



[90] The evidence collected during the investigation establishes that, on a balance of probabilities, the defendant did not use the name Maurice Rubuga in Rwanda.

*The defendant did not use the name Maurice Rubuga in Rwanda*

[91] The following evidence establishes that the defendant never used the name Maurice Rubuga in Rwanda and that no person with this name attended the Groupe scolaire St-André or NUR:

- In his affidavit, Corporal Gravelle indicated that during a visit to Rwanda in 2007, he could find no documents in the Groupe scolaire St-André archives under the name Maurice Rubuga, born September 3, 1966 in Mukingo, Ruhengeri. A similar search in the NUR archives did not uncover any documents in Maurice Rubuga's name (Corporal Gravelle's Affidavit at paras 24, 27);
- Similarly, Corporal Gravelle did not find any documents or information on Maurice Rubuga in the documents at the Collège Adventiste de Rwankeri, where Mr. Rubuga allegedly taught from 1990 to 1993, or in the Rwanda Social Security Board archives (Corporal Gravelle's affidavit at paras 30-32);
- Additionally, the documents obtained from the RSSB indicate that no person with the name Maurice Rubuga, born September 3, 1966, in Mukingo, Ruhengeri, or Fulgence Munyengango, made any contributions to the RSSB (Mr. Nduwamungu's affidavit at paras 20-21);
- Mr. Nduwamungu's searches at the Vital Statistics Office in the Busogo sector did not reveal any documents in the name of Maurice Rubuga, born September 3, 1966 (Mr. Nduwamungu's affidavit at para 7).

*The defendant used the names Fulgence Munyengango and Gervais Ndahayo in Rwanda*

[92] The evidence presented by the Minister indicates that the defendant instead used the names Fulgence Munyengango and Gervais Ndahayo in Rwanda:

- Mr. Nduwamungu's searches at the Vital Statistics Office in the Busogo sector resulted in the discovery of an excerpt from the population registry indicating that an individual named Munyengango, whose father's and mother's names are identical to those the defendant indicated in his application for refugee status, was born in 1965 in the Mucaca cell, Mukingo commune (Mr. Nduwamungu's affidavit, at para 7);
- The plaintiff submitted the personal census record of J.D. Serubingo, whom the defendant declared as his brother in his refugee claim. This record indicates that J.D. Serubingo's father was Munyarubuga and his mother was Bavugabwose, the same as the parents the defendant declared (Mr. Nduwamungu's affidavit at paras 10-11; J. Stebelsky's affidavit at para 8; Plaintiff's Record at p 636 [PR]);
- Corporal Gravelle's search of the Groupe scolaire St-André's archives led him to find the name of Gervais Ndahayo, born in Mukingo in 1966, who obtained his diploma on June 23, 1998, on the list of students in fifth and sixth grade in 1986-1987 and 1987-1988 (Corporal Gravelle's affidavit at para 41);
- Similarly, Corporal Gravelle discovered a file in the name of Gervais Ndahayo, born in 1966 in Mucaca in the Mukingo commune, in the NUR archives. The file included a photo of Gervais Ndahayo and indicated that the father of Gervais Ndahayo was Munyarubuga and his mother was Bavugabwose. Gervais Ndahayo failed his first

- school year, which explains why Mr. Gravelle did not find his name on the list of graduates (Corporal Gravelle's affidavit at para 42);
- The expert witness François-Pierre Déry, senior identity documents analyst and facial comparison specialist, indicated in his affidavit that in October 2013 he conducted a facial comparison analysis to determine whether Maurice Rubuga was the same individual as Gervais Ndahayo. He compared the photo from the Rwandan school record of Gervais Ndahayo and those from the Citizenship and Immigration Canada and Passport Canada files of Maurice Rubuga. He found that there is a high probability that these photos were of the same individual (F.-P. Déry's affidavit at paras 5-6);
  - Witness ND-05, in a sworn affidavit, declared that he knew the defendant in Rwanda, and crossed paths with him in Ottawa. After seeing a photo of Maurice Rubuga, ND-05 declared that it was Gervais Ndahayo (ND-05's affidavit at paras 6, 8).

B. *Marital status*

[93] The defendant falsely claimed that he was a widower after his wife, Agnès Mahoro, died in 1998. The evidence submitted by the plaintiff establishes that, in fact, the defendant is married to Catherine Mukakayange:

- The marriage certificate from Kenya establishes that the defendant married Ms. Mukakayange on August 19, 1995, in Nairobi (J. Stebelsky's affidavit at para 29; PR at 93);

- The personal information form of Catherine Mukakayange, the defendant's wife, indicates that Gervais Ndahayo is her husband (see: Question 15) (J. Stebelsky's affidavit at para 28; PR at p 78);
- Moreover, the birth certificate of her daughter Jeneffer, born in Canada on April 11, 1997, establishes that her family name is Ndahayo (J. Stebelsky's affidavit at para 30; PR at p 95).

C. *Education*

[94] The defendant falsely declared that he earned a high school diploma from the Groupe Scolaire St-André under the name Maurice Rubuga when in reality, he earned this diploma under the name Gervais Ndahayo.

[95] The plaintiff established that the copy of the high school diploma the defendant provided in support of his refugee claim was a forgery. The two diplomas have identical dates of issue and the same serial number. Despite this, the signatures of the panel members on each of the diplomas are different. Additionally, the date and place of issuance were typed with a typewriter on Gervais Ndahayo's diploma, whereas the information is handwritten on Maurice Rubuga's false diploma. Lastly, the defendant gave himself a higher average than that indicated on Gervais Ndahayo's genuine diploma, going from "Satisfactory (64.9%)" to "Honours (75.62%)" (J. Stebelsky's affidavit at para 5; M. Nduwamungu's affidavit at para 15; PR at pp 20, 667).

[96] Moreover, the defendant falsely alleged that he earned a bachelor's degree in African Arts, Languages and Literature from the NUR as Maurice Rubuga, when in reality, he studied in this university program for only one year as Gervais Ndahayo.

[97] A comparison of the official NUR transcript provided by the defendant in support of his refugee claim and that of Gervais Ndahayo allows for the conclusion that the transcript the defendant submitted is a forgery. Slight differences in the number of rows in the transcript's table and the format of the date at the bottom of the page allow for a distinction to be made between the genuine document and the forgery. (J. Stebelsky's affidavit at para 5; N. Nduwamungu's affidavit at para 15; PR at pp 24, 670).

[98] The same can be said for the copy of the university diploma the defendant provided in support of his refugee claim. Gervais Ndahayo did not earn a university diploma, having only completed one year at NUR, but a comparison with the other diploma in the plaintiff's evidentiary record leads to the conclusion that the defendant submitted a forgery. The layout of the text on the forged diploma differs considerably from the genuine diploma. Moreover, the signatures of the NUR Rector and the Chair of the Deliberation Panel are different on each diploma, although they both have the same delivery date (J. Stebelsky's affidavit at para 5; N. Nduwamungu's affidavit at para 15; PR at pp 22, 646).

[99] The above-noted evidence clearly establishes that the defendant lied about his education.

D. *Employment history*

[100] The defendant falsely claimed that he taught in Rwankeri from 1990 to 1993. As noted above, the searches conducted in this investigation did not reveal any documents or information that establish the defendant was a teacher during this period or that he made any contributions to the RSSB.

[101] In his refugee claim, the defendant answered “no” to question 21 of the Notification of Claim to be a Convention Refugee (“In periods of either peace or war, have you ever been involved in the commission of a war crime or crime against humanity?”) (PR at p 12). He gave the same answer in his application for permanent residence (Question L(8), PR at p 58). In his application for Canadian citizenship, the defendant indicated that the section “Prohibitions under the Citizenship Act” did not apply to him (Section 8, PR at p 68).

[102] Similarly, in response to Question I (“Organizations to which you have belonged”) of his application for permanent residence (PR at p 57), the defendant did not indicate he had been a member of the FAR.

[103] The evidence establishes that the defendant lied by indicating he was never a member of the FAR. Two documents called [TRANSLATION] “Situation of Officers in the Rwandan Army” were published by Rwanda’s Ministry of Defence on January 1, 1993, and March 5, 1994, and later submitted before the ICTR during the *Setako* case. These documents indicate that Gervais Ndahayo was a platoon chief at the second lieutenant rank with the 2nd Company of the

Commando Ruhengeri Battalion, at Camp Mukamira in January 1993 and March 1994 (M. Nduwamungu's affidavit at para 26; PR at pp 886 and 924).

[104] Additionally, a record of contributions made to the RSSB by Gervais Ndahayo, born in 1966, whose father and mother were, respectively, Munyarubuga and Bavugabwose, shows that Gervais Ndahayo made contributions from 1991 to the end of 1993 as a member of the FAR (M. Nduwamungu's affidavit at para 22; PR at p 810).

E. *Place of Residence*

[105] The defendant falsely claimed to have lived at the Katale refugee camp in Zaire from July 1994 to September 1996. His marriage certificate dated August 19, 1995, shows he was in Kenya in 1995 (J. Stebelsky's affidavit at para 29; PR at p 93).

VII. Conclusion

[106] In this case, it was established on a balance of probabilities that the defendant made many false representations about his identity, marital status, education and employment history, and that he hid the fact he was a second lieutenant with the FAR.

[107] The fact these false representations affect almost all of the information provided in the defendant's refugee claim and application for permanent resident status leads to the conclusion that the defendant acted knowingly.

[108] The defendant's false representations, in particular those denying any past membership in the FAR, were directly relevant to the issue of his eligibility as a Convention refugee and the issue of his admissibility for permanent residence pursuant to the *Immigration Act* then in force. This led Canadian authorities to not conduct further inquiries into the defendant's involvement in the organization and perpetration of the Rwandan genocide, thereby severely limiting the ability of Canadian authorities to make a decision on the relevance of clause 1F(a) of the Convention and paragraph 19(1)(j) of the *Immigration Act*.

[109] I find that these false representations were with regard to material circumstances, and furthermore, that the defendant's subsequent acquisition of Canadian citizenship was directly dependent upon his admission as a Convention refugee.

[110] As a result, I find that Maurice Rubuga acquired Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances with regard to facts described in section 35 of the IRPA. As a result, the declaration the Minister is seeking shall be issued, which will have the effect of revoking Maurice Rubuga's Canadian citizenship pursuant to paragraph 10.1(3)(a) of the CA.

[111] The Minister did not ask the Court to certify that a serious question of general importance is involved under the new section 10.7 of the CA. Therefore no question arises in this case.



[112] The Minister asked the Court to order the defendant to pay costs related to the default judgment. I deem it appropriate to order the defendant to pay the plaintiff \$2,000, an amount that corresponds to costs that would be set according to the mid-point of Column III of Tariff B, under the Rules.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the defendant, Maurice Rubuga, acquired Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances within the meaning of subsection 10.1(1) of the *Citizenship Act*. This declaration has the effect of revoking the defendant's Canadian citizenship.

**THE COURT ORDERS** the defendant, Maurice Rubuga, to pay the defendant \$2,000 in costs

“Mary J.L. Gleason”

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Judge

Certified true translation  
Elizabeth Tan, translator

**APPENDIX “A”**

*Citizenship Act*, RSC 1985, c C-29 (in force prior to May 28, 2015):

**Order in cases of fraud**

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

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

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

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

**Presumption**

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

**Décret en cas de fraude**

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

a) soit perd sa citoyenneté;

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

**Présomption**

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

subsequently obtained citizenship.

1974-75-76, c. 108, s. 9.

**Notice to person in respect of revocation**

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

(a) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court; or

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

**Nature of notice**

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

**Decision final**

(3) A decision of the Court made under subsection (1) is

1974-75-76, ch. 108, art. 9.

**Avis préalable à l'annulation**

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

a) l'intéressé n'a pas, dans les trente jours suivant la date d'expédition de l'avis, demandé le renvoi de l'affaire devant la Cour;

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

**Nature de l'avis**

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

**Caractère définitif de l'annulation**

(3) La décision de la Cour visée au paragraphe (1) est

final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

1974-75-76, c. 108, s. 17.

définitive et, par dérogation à toute autre loi fédérale, non susceptible d'appel.

1974-75-76, ch. 108, art. 17.

*Strengthening Canadian Citizenship Act*, RS, c C-29:

**Revocation cases – sections 34, 35 and 37 of *Immigration and Refugee Protection Act***

**40.** (2) Any proceeding with respect to allegations that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the *Immigration and Refugee Protection Act* other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act, that is pending before the Federal Court immediately before the day on which section 8 comes into force, as a result of a referral under section 18 of the *Citizenship Act* as that section 18 read immediately before that day, is to be continued as a proceeding under subsection 10.1(1) of the *Citizenship Act*, as enacted by section 8

**Révocation – articles 34, 35 et 37 de la *Loi sur l'immigration et la protection des réfugiés***

**40.** (2) Les instances en cours relatives à des allégations portant que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels — concernant des faits visés à l'un des articles 34, 35 et 37 de la *Loi sur l'immigration et la protection des réfugiés*, autre qu'un fait également visé à l'un des alinéas 36(1)a) et b) et (2)a) et b) de cette loi —, à l'entrée en vigueur de l'article 8, devant la Cour fédérale à la suite d'un renvoi visé à l'article 18 de la *Loi sur la citoyenneté*, dans sa version antérieure à cette entrée en vigueur, sont continuées sous le régime du paragraphe 10.1(1) de cette loi, édicté par l'article 8.

*Citizenship Act*, RSC 1985, c C-29 (now in force):

**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.

**Revocation by Minister —  
convictions relating to  
national security**

(2) The Minister may revoke a person's citizenship if the person, before or after the coming into force of this subsection and while the person was a citizen,

(a) was convicted under section 47 of the Criminal Code of treason and sentenced to imprisonment for life or was convicted of high treason under that section;

(b) was convicted of a terrorism offence as defined in section 2 of the Criminal Code — or an offence outside Canada that, if committed in Canada, would constitute a terrorism offence as defined in

**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.

**Révocation par le ministre —  
condamnations relatives à la  
sécurité nationale**

(2) Le ministre peut révoquer la citoyenneté d'une personne si celle-ci, avant ou après l'entrée en vigueur du présent paragraphe, et alors qu'elle était un citoyen, selon le cas :

a) a été condamnée au titre de l'article 47 du Code criminel soit à l'emprisonnement à perpétuité pour une infraction de trahison soit pour haute trahison;

b) a été condamnée à une peine d'emprisonnement de cinq ans ou plus soit pour une infraction de terrorisme au sens de l'article 2 du Code criminel, soit, à l'étranger, pour une infraction qui, si elle était

that section — and sentenced to at least five years of imprisonment;

(c) was convicted of an offence under any of sections 73 to 76 of the National Defence Act and sentenced to imprisonment for life because the person acted traitorously;

(d) was convicted of an offence under section 78 of the National Defence Act and sentenced to imprisonment for life;

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

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

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

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

commise au Canada, constituerait une infraction de terrorisme au sens de cet article;

c) a été condamnée, au titre de l'un des articles 73 à 76 de la Loi sur la défense nationale, à l'emprisonnement à perpétuité pour s'être conduit en traître;

d) a été condamnée, au titre de l'article 78 de la Loi sur la défense nationale, à l'emprisonnement à perpétuité;

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

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

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

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

### **Notice**

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

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

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

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

### **Hearing**

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

### **Notice of decision**

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

R.S., 1985, c. C-29, s. 10;  
2014, c. 22, s. 8.

### **Revocation for fraud — declaration of Court**

**10.1.** (1) If the Minister has reasonable grounds to believe that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the

### **Avis**

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

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

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

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

### **Audience**

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

### **Communication de la décision**

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

L.R. (1985), ch. C-29, art. 10;  
2014, ch. 22, art. 8.

### **Révocation pour fraude — déclaration de la Cour**

**10.1.** (1) Si le ministre a des motifs raisonnables de croire que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de



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

**Revocation for engaging in armed conflict with Canada — declaration of Court**

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

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

**Révocation pour avoir été engagé dans un conflit armé avec le Canada — déclaration de la Cour**

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

subsection and while they were a citizen, and the Court makes such a declaration.

### **Effect of declaration**

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

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

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

### **Proof**

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

2014, c. 22, s. 8.

### **No appeal unless question stated**

**10.7.** An appeal to the Federal Court of Appeal may be made from a judgment under section 10.1 or 10.5 only if, in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.

2014, c. 22, s. 8.

paragraphe, a ainsi servi alors qu'elle était un citoyen.

### **Effet de la déclaration**

(3) A pour effet de révoquer la citoyenneté de la personne ou sa répudiation :

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

b) soit celle visée au paragraphe (2).

### **Preuve**

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

2014, ch. 22, art. 8.

### **Question aux fins d'appel**

**10.7.** Le jugement rendu au titre des articles 10.1 ou 10.5 n'est susceptible d'appel devant la Cour d'appel fédérale que si le juge certifie que l'affaire soulève une question grave de portée générale et énonce celle-ci.

2014, ch. 22, art. 8.

*Immigration Act, RSC 1985, c I-2:***2. (1)**

...

“Convention refugee” means any person who

(a) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(i) is outside the country of the person’s nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of that country, or

(ii) not having a country of nationality, is outside the country of the person’s former habitual residence and is unable or, by reason of that fear, is unwilling to return to that country, and

(b) has not ceased to be a Convention refugee by virtue of subsection (2),

but does not include any person to whom the Convention does not apply pursuant to section E or F of Article 1 thereof, which sections are set out in the schedule to this Act.

...

**19. (1)** No person shall be granted admission who is a member of any of the

**2. (1)**

...

« réfugié au sens de la Convention » Toute personne :

a) qui, craignant avec raison d’être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

(i) soit se trouve hors du pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays;

(ii) soit, si elle n’a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ou, en raison de cette crainte, ne veut y retourner;

b) n’a pas perdu son statut de réfugié au sens de la Convention en application du paragraphe (2).

Sont exclues de la présente définition les personnes soustraites à l’application de la Convention par les sections E ou F de l’article premier de celle-ci dont le texte est reproduit à l’annexe de la présente loi.

...

**19. (1)** Les personnes suivantes appartiennent à une catégorie non admissible :

following classes:

...

(j) persons who there are reasonable grounds to believe have committed an act or omission outside Canada that constituted a war crime or a crime against humanity within the meaning of subsection 7(3.76) of the Criminal Code and that, if it had been committed in Canada, would have constituted an offence against the laws of Canada in force at the time of the act or omission.

***Annex, (paragraph 2(1))***

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

...

j) celles dont on peut penser, pour des motifs raisonnables, qu'elles ont commis, à l'étranger, un fait constituant un crime de guerre ou un crime contre l'humanité au sens du paragraphe 7(3.76) du Code criminel et qui aurait constitué, au Canada, une infraction au droit canadien en son état à l'époque de la perpétration.

***Annexe (paragraph 2(1))***

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;

b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

*Criminal Code*, RSC 1985, c C-46:

(3.76) For the purposes of this section.

“crime against humanity” means murder, extermination, enslavement, deportation, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group of persons, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at the time and in that place, constitutes a contravention of customary international law or conventional international law or is criminal according to the general principles of law recognized by the community of nations;

“war crime” means an act or omission that is committed during an international armed conflict, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission, and that, at that time and in that place, constitutes a contravention of the customary international law or conventional international law applicable in international armed conflict;

...

(3.77) In the definitions “crime against humanity” and “war crime” in subsection (3.76), “act or omission” includes, for

(3.76) Les définitions qui suivent s’appliquent au présent article.

« crime contre l’humanité »  
Assassinat, extermination, réduction en esclavage, déportation, persécution ou autre fait – acte ou omission – inhumain d’une part, commis contre une population civile ou un groupe identifiable de personnes – qu’il ait ou non constitué une transgression du droit en vigueur à l’époque et au lieu de la perpétration – et d’autre part, soit constituant, à l’époque et dans ce lieu, une transgression du droit international coutumier ou conventionnel, soit ayant un caractère criminel d’après les principes généraux de droit reconnus par l’ensemble des nations.

« crime de guerre » Fait – acte ou omission – commis au cours d’un conflit armé international – qu’il ait ou non constitué une transgression du droit en vigueur à l’époque et au lieu de la perpétration – et constituant, à l’époque et dans ce lieu, une transgression du droit international coutumier ou conventionnel applicable à de tels conflits.

...

(3.77) Sont assimilés à un crime contre l’humanité ou un crime de guerre, selon le cas, la tentative, le complot, la

greater certainty, attempting or conspiring to commit, counselling any person to commit, aiding or abetting any person in the commission of, or being an accessory after the fact in relation to, an act or omission.

complicité après le fait, le conseil, l'aide ou l'encouragement à l'égard d'un fait visé aux définitions de ces termes au paragraphe (3.76).

*Immigration and Refugee Protection Act, SC 2001, c 27:*

**Human or international rights violations**

**35.** (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the Crimes Against Humanity and War Crimes Act; or

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure

**Atteinte aux droits humains ou internationaux**

**35.** (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la Loi sur les crimes contre l'humanité et les crimes de guerre;

b) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la Loi sur les crimes contre l'humanité et les crimes de guerre;

c) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou le séjour au Canada est limité au titre d'une décision, d'une

of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

résolution ou d'une mesure d'une organisation internationale d'États ou une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert avec cette organisation ou association.

*Crimes Against Humanity and War Crimes Act*, SC 2000, c 24:

**OFFENCES OUTSIDE CANADA**

**Genocide, etc., committed outside Canada**

6. (1) Every person who, either before or after the coming into force of this section, commits outside Canada

- (a) genocide,
- (b) a crime against humanity, or
- (c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

**Conspiracy, attempt, etc.**

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an

**INFRACTIONS COMMISES À L'ÉTRANGER**

**Génocide, crime contre l'humanité, etc., commis à l'étranger**

6. (1) Quiconque commet à l'étranger une des infractions ci-après, avant ou après l'entrée en vigueur du présent article, est coupable d'un acte criminel et peut être poursuivi pour cette infraction aux termes de l'article 8 :

- a) génocide;
- b) crime contre l'humanité;
- c) crime de guerre.

**Punition de la tentative, de la complicité, etc.**

(1.1) Est coupable d'un acte criminel quiconque complotte ou tente de commettre une des infractions visées au paragraphe (1), est complice

offence referred to in subsection (1) is guilty of an indictable offence.

...

### **Definitions**

(3) The definitions in this subsection apply in this section.

#### **“crime against humanity”**

“crime against humanity” means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

#### **“war crime”**

“war crime” means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts,

après le fait à son égard ou conseille de la commettre.

...

### **Définitions**

(3) Les définitions qui suivent s’appliquent au présent article.

#### **« crime contre l’humanité »**

« crime contre l’humanité » Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d’une part, commis contre une population civile ou un groupe identifiable de personnes et, d’autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l’humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d’après les principes généraux de droit reconnus par l’ensemble des nations, qu’il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

#### **« crime de guerre »**

« crime de guerre » Fait — acte ou omission — commis au cours d’un conflit armé et constituant, au moment et au lieu de la perpétration, un crime de guerre selon le droit international coutumier ou le droit international conventionnel applicables à



whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

**“genocide”**

“genocide” means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

ces conflits, qu’il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

**« génocide »**

« génocide » Fait — acte ou omission — commis dans l’intention de détruire, en tout ou en partie, un groupe identifiable de personnes et constituant, au moment et au lieu de la perpétration, un génocide selon le droit international coutumier ou le droit international conventionnel, ou en raison de son caractère criminel d’après les principes généraux de droit reconnus par l’ensemble des nations, qu’il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1839-14

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION v MAURICE RUBUGA

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** APRIL 14, 2015

**JUDGMENT AND REASONS:** GLEASON J.

**DATED:** SEPTEMBER 14, 2015

**APPEARANCES:**

Anne-Renée Touchette, Counsel  
Ion Stancu, Counsel

FOR THE PLAINTIFF

**SOLICITORS OF RECORD:**

William F. Pentney  
Deputy Attorney General of Canada  
Montréal, Quebec

FOR THE PLAINTIFF