Federal Court  Cour fédérale

Date: 20160727

Docket: T-1445-15

Citation: 2016 FC 879

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 27, 2016

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

VALENZUELA, JUAN LUIS

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Is it sufficient for a citizenship application to have been sent to Canadian authorities in order for it to be considered as having been "présentée" prior to the effective date of the new statutory requirements for obtaining Canadian citizenship contained in the *Strengthening*

Canadian Citizenship Act, S.C. 2014, chapter 22 [*Strengthening Canadian Citizenship Act*]? That is the question raised by the application for judicial review filed by Juan Luis Valenzuela in this case.

[2] Mr. Valenzuela is a citizen of Chile, and has been a permanent resident of Canada since August 2010. According to a decision rendered on August 10, 2015, by Citizenship and Immigration Canada (CIC), CIC denied Mr. Valenzuela's application for Canadian citizenship on the ground that it was incomplete, since Mr. Valenzuela had used an outdated version of the citizenship application form.

[3] On June 9, 2015, Mr. Valenzuela had sent his citizenship application from Chile by private courier. However, his application was not received by CIC at its offices in Sydney, Canada, until June 12, 2015. In the interim (that is to say on June 11), legislative provisions amending the requirements for obtaining citizenship came into force, which, according to CIC, rendered ineligible any applications made on the basis of the former provisions and using the earlier forms, which were now invalid.

[4] Mr. Valenzuela is requesting judicial review of this CIC decision. He argues that in rendering its decision, CIC erred in its interpretation of the transitional provision contained in subsection 31(1) of the *Strengthening Canadian Citizenship Act*, which establishes that an application must be "présentée" before the coming into force of the new provisions in order to be processed under the old system. Mr. Valenzuela adds that in pre-emptively denying his application in this way, CIC breached the rules of procedural fairness. Mr. Valenzuela therefore

asks the Court to set aside CIC's decision and refer the matter back to CIC so that his application may be assessed on the basis of the file submitted and under the provisions applicable at the time his application was sent.

[5] This matter deals with the interpretation of the transitional provision contained in subsection 31(1) of the *Strengthening Canadian Citizenship Act*. There are two issues raised by Mr. Valenzuela. First, did CIC err in determining that Mr. Valenzuela's application, which was received by CIC on June 12, 2015, was "présentée" on that date for the purposes of subsection 31(1) of the *Strengthening Canadian Citizenship Act*? Second, did CIC's decision to deny Mr. Valenzuela's application breach procedural fairness?

[6] For the following reasons, Mr. Valenzuela's application for judicial review must be dismissed. I cannot identify any error in CIC's decision or in its statutory interpretation that would justify the Court's intervention. Rather, I am of the opinion that CIC's interpretation is not only reasonable and clearly falls within the range of possible acceptable outcomes under the circumstances, but that it is also eminently correct. Furthermore, the application for judicial review does not raise any procedural fairness issues.

II. Background

A. *The Facts*

[7] The supporting evidence can be summarized simply. In December 2010, Mr. Valenzuela began working for the Canadian company Fordia in Montreal. In January 2012, he was transferred to the company's offices in Chile. In the winter of 2015, Mr. Valenzuela began preparing his application for Canadian citizenship. He was unable to assemble all of the supporting documentation for his application until June 8, 2015. On June 9, he sent his completed citizenship application to CIC using the private courier company Globex. However, CIC did not receive the application until June 12, 2015.

[8] In early July 2015, Mr. Valenzuela received a notice from CIC indicating that citizenship applications received from June 11, 2015 onward would be assessed using the new legislative provisions that came into force on that date, and that his application would therefore have to be re-submitted using the new forms. Mr. Valenzuela asked CIC to reconsider its decision. On August 10, 2015, CIC denied Mr. Valenzuela's application for reconsideration and indicated that his citizenship application would have to be completed using the new forms.

[9] CIC's decision was brief and minimal. CIC simply said that Mr. Valenzuela's citizenship application was considered to be [TRANSLATION] "incomplete and was not processed" since Mr. Valenzuela had used and filed [TRANSLATION] "an outdated version of the citizenship application form." Mr. Valenzuela was invited to re-submit his application using the current version of the form.

B. *Relevant applicable legislation*

[10] On June 19, 2014, the *Strengthening Canadian Citizenship Act* received royal assent. One of the provisions of this new act, namely subsection 3(1), amended the "residency" obligation found in paragraphs 5(1)(*c*) to (*e*) of the *Canadian Citizenship Act*, R.S.C., 1985, c. C-29 [*Citizenship Act*], and thus replaced the residency requirements for obtaining Canadian citizenship with a new system.

[11] Paragraph 5(1)(*c*) of the *Citizenship Act* is the cornerstone of the basis for access to Canadian citizenship. Previously, before the amendments made by the *Strengthening Canadian Citizenship Act* came into force, it was sufficient to "reside" in Canada for at least three out of four years (that is to say 1,095 days) to be eligible for citizenship. Physical presence in Canada was not necessarily required. Pursuant to the case law developed by this Court, there were three options available to citizenship judges tasked with assessing whether a citizenship applicant met the residency requirement. The citizenship judge could have applied either (i) the test set out in *Re Pourghasemi*, [1993] FCJ No. 232, whereby residency is determined based on a strict calculation of the number of days the applicant was actually in Canada (which must be at least 1,095 days of residency during the four years immediately before the date of the application); (ii) the test set out in *Re Papadogiorgakis*, [1978] 2 FC 208, which is more flexible and recognizes that a person may reside in Canada even if he or she is temporarily absent so long as he or she maintains solid ties with Canada; or (iii) the test set out in *Re Koo*, [1993] 1 FC 286, which defines residence as the place where a person "regularly, normally or customarily lives" and the place where he has "centralized his existence."

[12] Subsection 3(1) of the *Strengthening Canadian Citizenship Act* modifies the residency obligation contained in section 5 of the *Citizenship Act*, specifically by replacing paragraph 5(1)(*c*). Now, under the *Strengthening Canadian Citizenship Act*, an individual must have resided in Canada for four out of six years (that is to say 1,460 days) to be eligible for citizenship, and he or she must also have been physically present in Canada for at least 183 days per year during four of the six years. In addition, an individual must demonstrate that he or she "intends to reside" in Canada.

[13] The transitional provision in subsection 31(1) of the *Strengthening Canadian Citizenship Act* provides, for its part, as follows:

31. (1) Subject to subsections (2) and (3), **an application that was made** under subsection 5(1), (2), or (5), 5.1(1), (2) or (3), 9(1) or 11(1) of the Citizenship Act before the day on which subsection 3(7) comes into force and was not finally disposed of before that day is to be dealt with and disposed of in accord-ance with	31. (1) Sous réserve des paragraphes (2) et (3), **la demande qui a été présentée** en vertu des paragraphes 5(1), (2) ou (5), 5.1(1), (2) ou (3), 9(1) ou 11(1) de la Loi sur la citoyenneté avant la date d'entrée en vigueur du paragraphe 3(7) et dont il n'a pas été décidé définitivement avant cette date est régie à la fois par :
(a) the provisions of that Act — except section 3, subsection 5(4), sections 5.1 and 14 and paragraph 22(1)(f) — as they read immediately before that day; and	a) cette loi, dans sa version antérieure à cette date, exception faite de l'article 3, du paragraphe 5(4), des articles 5.1 et 14 et de l'alinéa 22(1)f);
(b) the following provisions of that Act as they read on that day:	b) les dispositions ci-après de cette loi, dans leur version à cette date:
(i) section 3,	(i) l'article 3,
(ii) paragraph 5(2)(b) and	(ii) l'alinéa 5(2)b) et le

subsection 5(4),	paragraphe 5(4),
(iii) section 5.1 other than paragraph (1)(c.1),	(iii) l'article 5.1, exception faite de l'alinéa (1)c.1),
(v) paragraphs 22(1)(a.1), (a.2), (b.1), (e.1), (e.2) and (f) and subsections 22(1.1), (3) and (4).	(v) les alinéas 22(1)a.1), a.2), b.1), e.1), e.2) et f) et les paragraphes 22(1.1), (3) et (4).

(Emphasis ours.)

[14] Under subsection 46(2) of the *Strengthening Canadian Citizenship Act*, the changes to the residency obligations contained in subsection 3(1) of the Act must come into force on the date set by order of the Governor in Council. Although the *Strengthening Canadian Citizenship Act* received royal assent on June 19, 2014, subsection 3(1) did not come into force immediately on that date. It was not until June 4, 2015, that the Government of Canada issued an order setting June 11, 2015, as the effective date for subsection 3(1), and therefore for the new paragraph 5(1)(*c*) of the *Citizenship Act* modifying the residency requirements for obtaining Canadian citizenship. In a press release dated June 5, 2015, the government informed the public that these provisions of the *Strengthening Canadian Citizenship Act* pertaining to residency requirements would come into effect on June 11, 2015. On June 11, 2015, the new provisions of the Act therefore came into force in accordance with the order and, on June 17, 2015, the order was published in the *Canada Gazette*.

C. *Standard of review*

[15] The first issue raised by Mr. Valenzuela is one of statutory interpretation, and is, more specifically, a question of the meaning to be given to the transitional measures contained in the *Strengthening Canadian Citizenship Act*.

[16] There is no doubt that the *Strengthening Canadian Citizenship Act*, and the *Citizenship Act* that it modifies, are among the enabling statutes that CIC is mandated to administer and apply. However, since *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, the Supreme Court of Canada has many times recalled that "when an administrative tribunal interprets or applies its home statute, there is a presumption that the standard of review applicable to its decision is reasonableness" (*Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, at paragraph 32; *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, at paragraph 25; *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 47, at paragraph 17; *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2015 SCC 45, at paragraph 28; *Tervita Corp. v. Canada (Commissioner of Competition)*, 2015 SCC 3, at paragraph 35).

[17] Of course, this presumption is not unchallengeable. It can be overruled and the standard of correctness can be applied, in the presence of one of the factors first set out by the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9 [Dunsmuir], at paragraphs 43–64 and recently reiterated in *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, at paragraphs 46–48. Such is the case when a contextual analysis reveals a clear intent of

Parliament not to protect the tribunal's authority with respect to certain issues; when several courts have concurrent and non-exclusive jurisdiction on a point of law; when an issue raised is a general question of law that is of central importance to the legal system as a whole and outside the area of expertise of the specialized administrative tribunal; or when a constitutional question is at play.

[18] It is clear that none of these scenarios exist here and that the presumption established by *Alberta Teachers* is therefore not rebutted in this case. The question of interpretation that is raised by Mr. Valenzuela's application pertains to an Act that is closely linked to CIC's mandate and it is not among the limited range of questions for which *Dunsmuir* and its descendants indicate that the standard of correctness should be applied. The applicable standard of review is therefore that of reasonableness. According to this standard, the Court must show deference to CIC's decision.

[19] Reasonableness is concerned mostly with the existence of "justification, transparency and intelligibility within the decision-making process." But it is also concerned with whether the decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at paragraph 47). The reasons for a decision are considered to be reasonable "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [*Newfoundland Nurses*], at paragraph 16). In this context, the Court must show restraint toward the tribunal's decision and cannot substitute its own reasons.

However, it may, if necessary, look to the record for the purpose of assessing the reasonableness of the decision (*Newfoundland Nurses*, at paragraph 15).

[20] In some cases, the range of acceptable outcomes will be broad, whereas in other cases, it will be more narrow (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at paragraphs 37–41; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, at paragraphs 17, 18 and 23; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 [*Khosa*], at paragraph 59). The Supreme Court has also quite recently recalled in *obiter* that even the interpretive exercise will usually attract a wide range of reasonable outcomes (*Wilson v. Atomic Energy of Canada Ltd.*, 2016 SCC 29, at paragraph 34). However, rare occasions can of course arise whereupon only one interpretation of the facts and the law is defensible and whereupon no other outcome is among the acceptable outcomes (*McLean*, at paragraphs 26–27; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53, at paragraph 22).

[21] The second issue raised by Mr. Valenzuela's appeal is one of procedural fairness and, in this regard, the applicable standard of review is that of correctness (*Khosa*, at paragraph 43; *Mission Institution v. Khela*, 2014 SCC 24, at paragraph 79). The question therefore is not so much whether the decision was "correct," but rather whether the process followed by the decision-maker was fair (*Majdalani v. Canada (Citizenship and Immigration)*, 2015 FC 294, at paragraph 15; *Krishnamoorthy v. Canada (Citizenship and Immigration)*, 2011 FC 1342, at paragraph 13).

III. Analysis

A. *Did CIC err in determining that Mr. Valenzuela's application, which was received by CIC on June 12, 2015, was "présentée" on that date for the purposes of subsection 31(1) of the* Strengthening Canadian Citizenship Act*?*

[22] Mr. Valenzuela maintains that section 31 of the *Strengthening Canadian Citizenship Act* applies to an application that was "présentée" (in English, an "application that was made"), with no distinction regarding the date on which the application was received. He argues that this transitional provision in no way suggests that applications sent before the coming into force of the new paragraph 5(1)(*c*) of the *Citizenship Act* must have been received to be acceptable. Mr. Valenzuela also claims that, since his citizenship application was indeed mailed prior to June 11, 2015, it meets the requirements of the transitional measures and he has the right to be processed under the citizenship system that was in effect in Canada prior to this date.

[23] Mr. Valenzuela adds that the transitional provisions must be interpreted broadly and that, in keeping with this approach, an application "présentée" before June 11, 2015, must simply mean an application *déposée* (filed) or *envoyée* (sent) before June 11, 2015, and not an application *reçue* (received) before this cut-off date. Mr. Valenzuela argues that the Minister's literal interpretation is inadequate and unreasonable: the word *présenter* can also mean *exprimer* (to express) or *formuler* (to formulate), and it does not necessarily imply receipt of the object by the interlocutor. According to him, the meaning of the term "présentée" cannot be narrower than its English translation "made" used in the *Strengthening Canadian Citizenship Act*.

[24] Mr. Valenzuela also argues that it would have been absurd to give applicants barely two business days (Monday, June 8, and Tuesday, June 9) to get their affairs in order after the government press release issued on Friday, June 5, and to require that citizenship applications reach CIC within 48 hours following the order announcing the coming into force of the amendments. According to Mr. Valenzuela, such a requirement is in sharp contrast to many other types of immigration applications involving tight deadlines. Mr. Valenzuela refers, in this regard, to applications for pre-removal risk assessments, for which it is of judicial note that the postmark is evidence of the date of filing, and to humanitarian and compassionate applications (H&C applications) made by Haitian nationals following the end of the moratorium on removals to Haiti, for which the same approach was adopted in regard to postmarks. Mr. Valenzuela argues that, based on these precedents, CIC should have considered a citizenship application as being "présentée" at the time it was filed.

[25] Lastly, Mr. Valenzuela argues that the intent of Parliament cannot have been to disqualify a large number of citizenship applicants by imposing extremely strict deadlines. The objective of the amendments was, rather, to ensure with certainty that the new provisions would be implemented. Deeming applications sent prior to June 11, 2015, as applications "présentées" prior to June 11, 2015, would not have decreased the effectiveness of the new provisions or the certainty of their implementation. On the contrary, states Mr. Valenzuela, this interpretation would have allowed applications sent prior to June 11, 2015, to be processed fairly.

[26] I do not share Mr. Valenzuela's position and I am not convinced by his arguments. The question raised is one of interpretation of a transitional legislative provision within CIC's field of expertise, and it is sufficient for CIC's decision to be reasonable and to fall within a range of possible, acceptable outcomes to be upheld. I find that that is clearly the case here.

[27] It is well established that in statutory interpretation, one must follow the modern contextual approach recognized by the Supreme Court in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, at paragraph 21. This approach requires that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament, in accordance with the "modern principle" of statutory interpretation prescribed by Drieger (*Construction of Statutes*, 2nd edition, 1983, page 87). This requires that "[t]he interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole" (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, at paragraph 10). The Federal Court of Appeal has incidentally recognized recently that this approach must prevail when interpreting section 5.1 of the *Citizenship Act* (*Canada (Citizenship and Immigration) v. Young*, 2016 FCA 183, at paragraph 8).

[28] Furthermore, when the interpretation involves bilingual legislation, it is also necessary to determine whether both versions of the legislation share a common meaning. If one version has a broader meaning than the other, the narrower meaning must be used, provided that this version is consistent with the intent of Parliament. Thus, "differences between two official versions of the same enactment are reconciled by deducing the meaning common to both." (*R. v. Daoust*,

2004 SCC 6 [*Daoust*], at paragraph 26, citing Pierre-André Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 324). Interpreting a bilingual text therefore involves first finding the meaning that is common to both versions of the legislation and, where their scope differs, choosing the narrowest meaning that is common to both versions (*Daoust*, at paragraph 29). The second step is to determine whether the common or dominant meaning is, according to the ordinary rules of statutory interpretation, consistent with Parliament's intent (*Daoust*, at paragraph 30).

[29] On the basis of these principles, it is undeniable that the interpretation held by CIC is not outside of the range of possible, acceptable outcomes in respect of the facts and law. If we first look at the text of subsection 31(1) of the *Strengthening Canadian Citizenship Act*, it uses the word "présentée" in its French version and "made" in its English version. I would like to pause for a moment to point out that many other provisions of the *Citizenship Act* also translate "une demande a été présentée" as "an application was made." For instance, this is the case in the following passages of this Act: 3(1)(*f*), 5.2, 5(2)(*a*), 9(2.1), 9(2.2), 11(1)(*d*), 11(1.1)(*b*) and 13.

[30] Elsewhere, among the definitions of the word *présenter* identified by the *Petit Robert de la langue française*, we find "remettre (qqch.) à qqn en vue d'un examen, d'une vérification, d'un jugement, etc. *Présenter la note. Présenter un devis, un projet. Présenter (une) requête à qqn. Présenter sa candidature à un poste*." And the word *remettre* conveys with it the idea of receipt: it means "mettre en la possession ou au pouvoir de qqn. *Remettre un paquet en mains propres, au destinataire. Je vous remets une lettre de sa part.*" The word *présenter* therefore implies the concept of delivery, of receipt.

[31] Second, in this case, the word “présentée” used in the French version is clearly narrower in meaning than the word “made” used in the English version, which has a broader meaning. There is therefore a certain discrepancy between the two versions of the Act, which is difficult to reconcile since they can lead to different tangible outcomes. Since the principles for interpreting bilingual legislation dictate that the narrower meaning common to both versions must be used, it is therefore the French version, which implies the concept of delivery and receipt, that must take precedence.

[32] Furthermore, another textual argument supports the interpretation associating the word “présentée” with the concept of receipt. Indeed, the new section 13 of the *Citizenship Act* enacted by section 11 of the *Strengthening Canadian Citizenship Act* clearly stipulates that citizenship applications are henceforth accepted for processing only if a certain number of conditions are satisfied. These conditions include, in subsection 13(a) of the *Citizenship Act*, the condition that applications must be “made in the form and manner and at the place required under this Act.” By specifying that applications “présentées” must be made “au lieu” required under the Act (the English version says “at the place”), Parliament has clearly associated the concept of making an application with a requirement of receipt. This section 13 therefore supports an interpretation whereby, under the new *Citizenship Act*, citizenship applications that are “présentées” are indeed applications that have been received.

[33] Incidentally, a government order set August 1, 2014, as the effective date of this new section 13 of the *Citizenship Act* dealing with the criteria to be met when applications are made, and therefore, as of August 2014, it was already established that, to be valid, applications made under the new Canadian citizenship system had to be made at the place required under the Act.

[34] It remains to be determined if such an interpretation of the text is consistent with the intent of Parliament. I find that it is. The summary of the *Strengthening Canadian Citizenship Act* states that the amendments made to the eligibility criteria for citizenship aim, in particular, to clarify the meaning of residence in Canada and to amend the period during which a permanent resident must reside in Canada before being able to apply for citizenship. The Act seeks therefore to promote certainty and, in this case, the transitional provision contributes to this by allowing CIC to determine which version of the Act must govern each citizenship application. Associating the making of an application with receipt, as CIC did in its decision, therefore aligns seamlessly with this intent of Parliament. In other words, an interpretation whereby any application received after a certain date will be processed in accordance with the new provisions regardless of the date or method of sending fosters such certainty for applicants.

[35] As for the case law, the decisions to which Mr. Valenzuela refers (*Mou v. Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 108; *Wong v. Minister of Employment and Immigration* (1986), 64 NR 309 (FCA); *Hamid v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 217) are not that useful to his case, since they tend rather to establish that a “demande présentée” can be equated with a “demande reçue.” In fact, the most relevant precedent is this Court’s decision in *Salahova v. Canada (Citizenship and Immigration)*,

2010 FC 352 [*Salahova*], which supports CIC's decision and the Minister's position in all respects—it explicitly confirms that an application mailed before but received after the coming into force of new provisions is not made before that date. In *Salahova*, the legislation used the term "faite" and the issue was whether an application mailed on February 25 but received by Canadian authorities on March 3 was made (or "faite" in French) on or before the cut-off date of February 27. In his decision, Mr. Justice Harrington found that the words "présentées," "reçues" and "faites" all meant the same thing, and that the concept of making an application implied receipt (*Salahova*, at paragraph 20).

[36] Thus, the textual, contextual and purposive analyses as well as the case law all compel the conclusion that CIC's interpretation, which led to the rejection of Mr. Valenzuela's application, is obviously among the range of reasonable outcomes. In fact, I am of the opinion that this is the correct interpretation of the scope of subsection 31(1) of the *Strengthening Canadian Citizenship Act*. In these circumstances, the Court has no reason to intervene and must show deference to CIC.

[37] Lastly, I would add that, contrary to Mr. Valenzuela's arguments, there exists no legal principle stating that transitional provisions must be interpreted more broadly than other legislative provisions. In support of his position, Mr. Valenzuela cites paragraph 32 of *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 634. I do not concur with his interpretation of this precedent. As the Minister pointed out, the argument put forth by Mr. Valenzuela on the basis of the trial decision was not upheld by the Supreme Court in *Medovarski v. Canada (Minister of Citizenship and Immigration)* or *Esteban v. Canada*

(Minister of Citizenship and Immigration), 2005 SCC 51, at paragraph 15. The Supreme Court reaffirms the opposite—that transitional provisions are not subject to special rules of interpretation: in statutory interpretation, states the Court, the intent of Parliament must always be sought, and the purpose of the legislation must be taken into consideration, whether it is a transitional provision or any other legislative provision.

[38] Lastly, on a practical level, I cannot overlook the fact that the *Strengthening Canadian Citizenship Act* received royal assent nearly one full year before Mr. Valenzuela filed his application, that is to say on June 19, 2014. Although Mr. Valenzuela is up in arms over the fact that the government gave applicants a timeframe of just a few days between announcing the coming into force of the new paragraph 5(1)(c) of the *Citizenship Act* and the effective date of this entry into force, this argument does not stand up to analysis.

[39] Once a bill receives royal assent, it becomes law. And ignorance of the law is no excuse. Mr. Valenzuela therefore knew, or should have known, that once the *Strengthening Canadian Citizenship Act* was enacted, the coming into force of the new provisions for citizenship applications was imminent and could occur at any time. He could have made his citizenship application as early as June 2014 if it was imperative that he be processed under the provisions of the old system.

[40] The government is under no obligation to notify the public of the effective date of an order. From the moment royal assent is received, legislative provisions may be implemented immediately, without any required notice. In fact, by having certain provisions of the

Strengthening Canadian Citizenship Act come into force later than others, the government indirectly provided applicants with a bit of leeway and allowed individuals like Mr. Valenzuela to benefit from a bit of a grace period before the coming into force of the new provisions. Mr. Valenzuela therefore had plenty of time to make a citizenship application under the old citizenship system, and he has no one to blame but himself for having failed to do so before the new provisions came into force.

[41] For all of these reasons, I find that CIC's decision regarding Mr. Valenzuela is entirely reasonable.

B. ***Did CIC's decision to deny Mr. Valenzuela's application breach procedural fairness?***

[42] Second, Mr. Valenzuela maintains that CIC's decision breaches the rules of procedural fairness. Mr. Valenzuela specifies that he is not arguing the validity of the order and is not claiming that he was entitled to advance notice of the coming into force of the *Strengthening Canadian Citizenship Act*. Rather, he argues that the interpretation whereby "présentée" refers to an application received before June 11, 2015, breaches procedural fairness.

[43] Similarly, Mr. Valenzuela asks the Court to grant an equitable remedy, on the basis of its jurisdiction pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7. Since Mr. Valenzuela is ineligible for Canadian citizenship under the new requirements, re-applying is not an option for him. Mr. Valenzuela argues that such an outcome is unfair and unjust, considering the extremely short notice given by the government of the coming into force of the *Strengthening Canadian Citizenship Act*. Mr. Valenzuela claims more specifically that the Court has significant

jurisdiction with regard to equity under paragraph 18.1(4)(*b*) of the *Federal Courts Act*, and that the Court can in fact grant the remedies set out in subsection 18.1(3) if a federal board, commission or other tribunal has failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe.

[44] I am certainly aware of the unfortunate and regrettable situation in which Mr. Valenzuela finds himself. However, in law, I cannot endorse his position as to an alleged breach of procedural fairness. Despite the laudable efforts made by Mr. Valenzuela and his counsel to find a procedural fairness issue in CIC's decision, there are none there. No matter how many different ways I look at it, I fail to see how this case raises an issue of procedural fairness. Furthermore, this Court does not have the jurisdiction with regard to equity with which Mr. Valenzuela would like to see it equipped.

[45] The duty to act fairly does not apply to the merit or the content of an outcome; rather, it applies to the process followed. This duty has two components: the right to an impartial hearing and the right to be heard (*Therrien (Re)*, 2001 SCC 35, at paragraph 82). The nature and scope of the duty of procedural fairness can vary depending on the attributes of the administrative tribunal and its enabling statute, but in every case, its requirements refer to the procedure and not to the substantive rights determined by the tribunal. The principle of procedural fairness can never create substantive rights. It simply protects individuals, and allows the Court to intervene if needed, when a decision does not respect a person's right to a fair and equitable procedure.

[46] However, CIC's decision not to accept Mr. Valenzuela's citizenship application did not breach either of the two elements of procedural fairness. There is no indication here that the decision-maker was biased or that Mr. Valenzuela was not heard, or any suspicion that CIC treated him unfairly.

[47] Mr. Valenzuela is also requesting an equitable remedy, without clearly indicating the statutory basis for his request. The Federal Court is certainly a court of "equity" as expressly stipulated in section 3 of the *Federal Courts Act*. However, this provision does not confer upon the Court a general power to grant a [TRANSLATION] *fair and equitable remedy* or to guarantee an [TRANSLATION] *equitable outcome*. If Mr. Valenzuela thought he had found in section 3 the basis for the Court's jurisdiction in equity (in the sense of an equitable outcome), he was wrong.

[48] Section 3 of the *Federal Courts Act* in no way grants the Court residual or inherent jurisdiction in which Mr. Valenzuela could find the legal basis for the type of [TRANSLATION] "fair and equitable" remedy to which he claims to be entitled. The equity that Mr. Valenzuela seeks is not the same equity that is within the Court's jurisdiction. Indeed, the Court clearly stated as such in *Maplesden v. The Queen*, [1997] FCJ No 1709, at paragraph 27, by describing the nature of its jurisdiction with regard to equity as follows:

> [27] . . . That section continues the Court as a court of equity and authorizes the application of equitable principles. That jurisdiction has its roots in the pre-1873 Judicature Act days when the courts in England were not unified. "Equity" in section 3 does not mean what is just and fair. It refers to those principles of law that were administered before 1873 by the Courts of Equity (mainly the Court of Chancery). Tax laws were never part of that regime. Tax laws were within the jurisdiction of the Courts of Exchequer. The Federal Court has equitable jurisdiction in many areas. See Sgayias et al., *Federal Court Practice*, 1997 at 53. But this does not include

> authority to grant the kind of remedy the plaintiff (appellant) seeks. An explanation of equitable principles and when they apply can be found in Spry, *Equitable Remedies* (3rd ed., 1984).
>
> (Emphasis ours.)

[49] Thus, section 3 in no way authorizes the Court, in the context of an application for judicial review, to render a [TRANSLATION] "fair and equitable" decision when a reasonable interpretation of the provision by the administrative tribunal involved would result in an opposing or different outcome. In other words, the Court's jurisdiction with regard to "equity" does not allow it to grant a remedy that would appear to be fair and equitable but that would incidentally be contrary to a reasonable interpretation of fact and law or would not be provided for in law.

[50] Also, regardless of whether Mr. Valenzuela's argument is one of a breach of procedural fairness or one claiming entitlement to an equitable remedy, I find that it is without merit.

IV. Conclusion

[51] For the foregoing reasons, Mr. Valenzuela's application for judicial review is dismissed. CIC's decision and its interpretation of the *Strengthening Canadian Citizenship Act* are justified, transparent and intelligible, and they are within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. This is not a situation wherein it is appropriate for the Court to intervene. Furthermore, CIC's decision also in no way breaches the rules of procedural fairness.

[52] The parties did not raise any questions for certification in their written and oral representations, and the Court agrees that there are none in this case.

JUDGMENT

THE COURT ORDERS that:

1. Mr. Valenzuela's application for judicial review is dismissed, without costs;

2. No serious questions of general importance were certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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