

Federal Court



Cour fédérale

Date: 20161025

Docket: T-1584-15

Citation: 2016 FC 1189

Ottawa, Ontario, October 25, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ABDULLA AHMAD HASSOUNA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] This is one of the Lead Cases on which the Court will rule on three constitutional questions arising out of the amendments to revocation of Canadian citizenship as a consequence of the *Strengthening Canadian Citizenship Act*, SC 2014, c 22: See *Monla v Canada (Minister of Citizenship and Immigration)*, Court File T-1570-15, Order dated February 23, 2016, amended March 29, 2016.

[2] The Applicant seeks to strike parts of three of the affidavits filed by the Respondent on the basis that the impugned parts are based on information and belief and not on direct knowledge, they rely on hearsay, and/or they make legal conclusions.

[3] The Respondent opposes the motion. The Minister submits that the motion should not be entertained at this time, but left to the judge hearing the constitutional challenge, which is scheduled over three days in Toronto commencing November 15, 2016. To the extent that the Court considers the motion, he submits that it ought to be dismissed as the impugned parts of the affidavits are not objectionable.

[4] I agree with the Respondent's submission that the general rule is that motions such as this ought to be left to the hearing judge, as was stated by the Federal Court of Appeal in *Canadian Tire Corp v PS Partsource Inc*, 2001 FCA 8 at para 18:

Nonetheless, I would emphasize that motions to strike all or parts of affidavits are not to become routine at any level of this Court. This is especially the case where the question is one of relevancy. Only in exceptional cases where prejudice is demonstrated and the evidence is obviously irrelevant will such motions be justified. In the case of motions to strike based on hearsay, the motion should only be brought where the hearsay goes to a controversial issue, where the hearsay can be clearly shown and where prejudice by leaving the matter for disposition at trial can be demonstrated.

[5] As set out below, I find that none of the impugned paragraphs fall within the exceptions above-stated. However, having heard the parties submissions on the motion, I am of the view that it is in the interest of an efficient hearing, that I set out those paragraphs challenged by the Applicant that I have found are not objectionable, and leave the few remaining challenges for the hearing Judge.

[6] I do not agree with the Applicant that Amélie Laporte-Lestage, in paragraphs 23 – 25 of her affidavit, is expressing a legal opinion. Although she uses the terms ‘independence’ and ‘impartial’ she explains in the impugned paragraphs what she means by those terms by giving examples of her work. The weight to be given to those statements is a matter for the hearing Judge.

[7] The Applicant objects to large portions of the affidavit of Michelle Tremblay because on cross-examination (Motion Record pages 311-312) she states that the source of her information before she assumed her position in April 2015 as Assistant Director of the Citizenship and Passport Cases Division, was by reading an affidavit of her predecessor, Rosemary Redden and from “discussions ... had over the years with other managers and colleagues.” When asked, she stated that these sources of information are no longer in the “Revocations Unit” of the Ministry.

[8] In *Smith Kline & French Laboratories Ltd v Novopharm Ltd*, (1984), 53 NR 68 (FCA), the Federal Court of Appeal instructed that “personal knowledge” of an affiant is to be assessed “in the reality of the surrounding circumstances” including the affiant’s position:

I accept that when an affidavit attests to facts to "the best of" the deponent's knowledge, it is legitimate to question whether that is properly to be construed as tantamount to saying "to the best of my knowledge, information and belief". The answer to that is not, in my view, to be found in an abstract analysis of dictionary definitions. It is rather to be found in the reality of the surrounding circumstances. It depends, among other things, on the office or qualifications of the deponent and whether it is probable that a person holding such office or having such qualifications would, of his own knowledge, be aware of the particular facts. If such a probability is apparent on the face of the affidavit, its exhibits and the application to which it pertains, I think the Commissioner is quite entitled, in a proper exercise of his discretion, to accept the evidence as being facts within the deponent's personal knowledge.

[9] The impugned paragraphs fall under the following headings: Overview of the Government's Goals for IRCC and Operational Planning; Overview of Citizenship Grants and Applications Program; Citizenship Application Processing for Permanent Residents Under the Former Legislation; Structure of the Citizenship Revocation Operations Prior to the Amendment of the Citizenship Act; Citizenship Program Audit in 2010; Citizenship, Investigations and Revocations Unit (CIR) 2010 Restructuring; and Citizenship Litigation.

[10] Ms. Tremblay attests that she has knowledge of the current citizenship program, has consulted with colleagues who were responsible for reviewing citizenship revocations under the former provisions, and has reviewed audits of the citizenship program. It is on these bases that she has "knowledge" of the matters she attests to except where she states her knowledge to be based on information and belief. The only portions of her affidavit she says are based on information and belief is set out at paragraph 22 of her affidavit:

My knowledge of citizenship revocation operations prior to my involvement with the CPCD is based on information and belief as I was not directly involved with citizenship prior to August 2013.
[emphasis added]

[11] In my view, it may be that parts of paragraphs 27, 30 - 37, and 38 - 44 provide information regarding "citizenship revocation operations" of the Department prior to August 2013 and thus it may be, as the affiant acknowledges, that her statements are not within her knowledge. However, I agree with the Respondent that whether these paragraphs ought to be considered will depend on the use, if any, the Respondent puts them to in his memorandum, which has yet to be filed. This is a question best left for the hearing Judge. On the other hand, the other paragraphs objected to by the Applicant (paragraphs 5 - 26, 28 - 29, 45 - 64, and 70, in

my view, are statements within her knowledge as a senior employee of the Respondent and cannot be struck.

[12] Teny Dikranian is the Director of Citizenship Legislation and Program Policy, and has been so since February 19, 2015. Prior to that date and since March 2014, she was the Assistant Director of Citizenship Legislation and Program Policy. She has been with the Respondent's department since 2005.

[13] She was asked if she had personal knowledge of anything that happened prior to 2014. She explained that while she was not involved in revocation matters prior to 2014, she has "knowledge" of what happened because she is "aware of what went on prior to my time" (Motion Record pages 385-386). Her affidavit speaks to the various matters under the following headings: History of Citizenship Revocation Legislation in Canada; Prioritization of Granting Citizenship; Fair and Objective Criteria to Obtain Citizenship; Canadian Citizenship Provides a Number of Benefits; Enhanced Program Integrity Through Legislative Reform and Business Practices; Fraud Identified in the Citizenship Program; Road to Legislative Reform; 2012-2103; Parliament Enacted the *Strengthening Canadian Citizenship Act*; Transitional Provisions; Procedural Fairness is Integral to the Administrative Process; and The Government Must Pursue its Objective of Program Integrity in a Timely Manner.

[14] Given her position, it is hardly surprising that she has "knowledge" of the current and former legislation and the legislative processes that were undertaken. It is also to be expected that she would know why, in the Department's view, changes were required and what changes

were made. The only problematic paragraph, in my view, is paragraph 32 where she references, based on information and belief, that there were “problems identified with record keeping over the years” and other issues within IRCC. Whether that paragraph should be struck is best left to the hearing Judge; however, the remainder of the impugned paragraphs (3 – 18, 23 – 31, 33 - 47, and 56 – 57) are not objectionable as they are within this affiant’s knowledge given her position within the Respondent’s Department.

ORDER

THIS COURT ORDERS that this motion to strike parts of the affidavits of Amélie Laporte-Lestage, Michelle Tremblay, and Teny Dikranian, is dismissed, in accordance with these Reasons.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1584-15

STYLE OF CAUSE: ABDULLA AHMAD HASSOUNA v THE
MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 21, 2016

ORDER AND REASONS: ZINN J.

DATED: OCTOBER 25, 2016

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