

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20260223**

**Docket: A-169-24**

**Citation: 2026 FCA 36**

**CORAM: WOODS J.A.  
MONAGHAN J.A.  
WALKER J.A.**

**BETWEEN:**

**NAN TAN**

**Appellant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

Heard at Toronto, Ontario, on May 26, 2025.

Judgment delivered at Ottawa, Ontario, on February 23, 2026.

**REASONS FOR JUDGMENT BY:**

**WALKER J.A.**

**CONCURRED IN BY:**

**WOODS J.A.  
MONAGHAN J.A.**

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**REASONS FOR JUDGMENT**

**WALKER J.A.**

[1] On May 30, 2022, an authorized delegate of the Minister of Immigration, Refugees and Citizenship (the Minister) revoked Ms. Nan Tan's Canadian citizenship pursuant to subsection 10(1) of the *Citizenship Act*, R.S.C., 1985, c. C-29 (*Citizenship Act*), on the basis that it had been obtained by false representation or fraud or by knowingly concealing material circumstances (the

Minister's Decision). Ms. Tan concedes that she entered into a marriage of convenience to obtain permanent residence status, which enabled her to become a Canadian citizen, but argued in her submissions to the Minister that her personal circumstances warranted special relief from revocation.

[2] In a decision dated April 18, 2024, the Federal Court dismissed Ms. Tan's application for judicial review of the Minister's Decision: *Tan v. Canada (Citizenship and Immigration)*, 2024 FC 600 (*per* St-Louis J.) (the FC Decision). These Reasons for judgment address Ms. Tan's appeal of the FC Decision.

[3] Ms. Tan's main arguments contesting the revocation of her citizenship are (1) that the process set out in section 10 of the *Citizenship Act* for the revocation of Canadian citizenship violates paragraph 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44 (*Bill of Rights*) and section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 (*Charter*); and (2) that, in any event, the Minister's Decision was unreasonable. In this latter regard, Ms. Tan submits that the Minister's delegate (Delegate) failed to reasonably balance the seriousness of the misrepresentation she now acknowledges against her mitigating personal circumstances.

[4] In dismissing Ms. Tan's application for judicial review, the Federal Court certified the following question in accordance with paragraph 22.2(d) of the *Citizenship Act*:

Does section 10 of the *Citizenship Act*, by which citizenship that was obtained by "false representation or fraud or by knowingly concealing material circumstances" may be revoked, violate paragraph 2(e) of the *Canadian Bill of Rights*?

[5] For the reasons that follow, I would answer the certified question in the negative and dismiss Ms. Tan's appeal.

I. Background

[6] Ms. Tan's immigration history in Canada is not in dispute. Briefly, Ms. Tan came to Canada in 2002 as a temporary resident to study. In 2004, she married a Canadian citizen who then sponsored her for permanent resident status in the family class. Ms. Tan's application was approved and she became a permanent resident of Canada in 2005, and a Canadian citizen in 2009.

[7] Ms. Tan and her first husband divorced and Ms. Tan remarried. She has two children from her second marriage.

[8] In 2011, Canada Border Services Agency (CBSA) undertook an investigation of potential marriages of convenience and identified Ms. Tan as having entered into a fraudulent marriage. In the course of CBSA's investigation, Ms. Tan's first husband and sponsor provided a statutory declaration in which he confirmed that he had been paid to marry and sponsor Ms. Tan, that their marriage was fraudulent and that he had had no contact with her after their staged wedding.

[9] In 2015, Immigration, Refugees and Citizenship Canada (IRCC) initiated a first citizenship revocation proceeding against Ms. Tan under the then-current revocation provisions of the *Citizenship Act: Citizenship Act*, R.S.C. 1985, c. C-29, as amended by the *Strengthening*

*Canadian Citizenship Act*, S.C. 2014, c. 22. For clarity, I will refer to this version of the legislation as the “*2015 Citizenship Act*”. IRCC sent a Notice of Intent to Revoke Citizenship to Ms. Tan on August 6, 2015. Ms. Tan provided written representations in response denying the allegations made by her first husband. She also submitted that the revocation regime contemplated in the *2015 Citizenship Act* was unconstitutional and illegal.

[10] In 2017, in a separate challenge to the constitutionality of the revocation regime as it then existed, the Federal Court found that subsections 10(1), 10(3) and 10(4) of the *2015 Citizenship Act* violated paragraph 2(e) of the *Bill of Rights* and declared the provisions inoperative: *Hassouna v. Canada (Citizenship and Immigration)*, 2017 FC 473 (*Hassouna*).

[11] Unsurprisingly, IRCC cancelled its revocation proceeding against Ms. Tan following the *Hassouna* decision.

[12] In 2018, Parliament brought into force the current citizenship revocation provisions, being sections 10 to 10.7 of the *Citizenship Act: An Act to amend the Citizenship Act and to make consequential amendments to another Act*, S.C. 2017, c. 14. Sections 10 and 10.1 of the *Citizenship Act* are reproduced in full in Schedule A to these Reasons.

[13] The same year, IRCC sent two request for information letters to Ms. Tan, advising her that IRCC was in possession of information indicating she may have obtained Canadian citizenship by false representation, fraud or knowingly concealing material circumstances. The

second request letter offered Ms. Tan the opportunity to make written representations before revocation proceedings commenced and, on May 24, 2018, she did so.

[14] On October 30, 2019, IRCC sent Ms. Tan a Notification letter in accordance with subsection 10(3) of the *Citizenship Act* advising her that it was initiating a second citizenship revocation proceeding. The Notification summarized the information in Ms. Tan's file and stated that IRCC had concluded, on a balance of probabilities, that Ms. Tan may have falsely represented herself in the course of her application for permanent residence by entering into a marriage of convenience, thereby fraudulently obtaining permanent resident status and Canadian citizenship. Ms. Tan was again offered the opportunity to make written representations in response, including representations related to her personal circumstances, and to provide documentary evidence: subsections 10(3) and 10(3.1) of the *Citizenship Act*. IRCC attached a Request to Have Your Case Decided by the Minister of Immigration, Refugees and Citizenship Canada form to the Notification which Ms. Tan could complete and submit with her response to the Notification if she wished to have her case decided by the Minister. Otherwise, her file would be referred to the Federal Court for decision: paragraph 10(3)(d) and subsections 10(4.1) and 10.1(1) of the *Citizenship Act*.

[15] Ms. Tan provided written representations concerning her personal circumstances and documents in support of her case on January 24, 2020, and elected to have the Minister decide her case. Ms. Tan admitted the fraudulent nature of her first marriage in her 2020 representations but stated that she had been "scammed" into the marriage as a young woman and was remorseful. In addition, Ms. Tan requested an oral hearing before the Minister on the ground that

credibility would be a central issue requiring oral testimony, citing *Hassouna* at para. 91. She did not challenge the constitutionality of the new citizenship regime.

## II. The Minister's Decision

[16] The Delegate revoked Ms. Tan's Canadian citizenship under subsection 10(1) of the *Citizenship Act* in the circumstances described in section 10.2. The Delegate found that Ms. Tan had concealed the fact she had entered into a marriage of convenience to obtain immigration status in Canada and, on a balance of probabilities, had obtained Canadian citizenship by false representation, fraud or knowingly concealing material information. Upon revocation, Ms. Tan became a foreign national, a status defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*) to mean "a person who is not a Canadian citizen or a permanent resident, and includes a stateless person".

[17] Having set out details of Ms. Tan's immigration history, the Delegate addressed Ms. Tan's request for a hearing. Subsection 10(4) of the *Citizenship Act* permits the Minister to hold a hearing if they are of the opinion one is required based on prescribed factors listed in section 7.2 of the *Citizenship Regulations*, S.O.R./93-246 (Regulations). One of those factors is the existence of evidence that raises a serious issue of credibility: paragraph 7.2(a). The Delegate considered the prescribed factors and the facts of Ms. Tan's case and concluded that a hearing was not required.

[18] The Delegate next considered the intentional nature and consequences of Ms. Tan's misrepresentation. The Delegate stated that Ms. Tan had misrepresented key aspects of her application for permanent residence by not disclosing she had entered into a marriage of convenience for the sole purpose of obtaining immigration status in Canada. In the Delegate's opinion, had immigration officials known of the misrepresentation, her application would not have been approved and she would not have become a permanent resident. Further, despite multiple opportunities to be truthful, Ms. Tan maintained her misrepresentation through many interactions with CBSA and IRCC officials, which undermined her claim of strong remorse.

[19] Ms. Tan relied on five factors to argue that her Canadian citizenship should not be revoked in light of her personal circumstances: her remorse, the best interests of her two children, establishment in Canada, statelessness and hardship in China. The Delegate addressed each of the five factors in detail but concluded that those factors were insufficient to warrant special relief from revocation in light of Ms. Tan's repeated false representation.

### III. The FC Decision

[20] At the Federal Court, Ms. Tan argued that sections 10 and 10.1 of the *Citizenship Act* violate paragraph 2(e) of the *Bill of Rights* and section 7 of the *Charter*, and that the Minister's Decision was unreasonable. As Ms. Tan had requested that her case be decided by the Minister, the Federal Court concluded that section 10.1 was not at issue and, therefore, considered only the constitutional validity of section 10, with references to section 10.1 as required.

[21] The Federal Court first determined that Ms. Tan had not raised the constitutional validity of section 10 of the *Citizenship Act* before the Delegate. The Court concluded that the constitutional issues should have been put before the Delegate and that it was not appropriate to address those issues for the first time on judicial review, citing *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 (*Alberta Teachers*) and *Goodman v. Canada (Public Safety and Emergency Preparedness)*, 2022 FCA 21 (*Goodman*).

[22] The Federal Court nevertheless undertook a detailed analysis of the process established in section 10 for the revocation of Canadian citizenship and addressed Ms. Tan's constitutional arguments. The Federal Court first found that the personal circumstances of an individual subject to revocation would always be considered in the revocation process, whether the individual elects to have their case determined by the Minister under paragraph 10(3.1)(b) of the *Citizenship Act* or, by default, their case is decided by the Federal Court pursuant to section 10.1. The Federal Court stated that subsection 10(4.1) requires the Minister, in all cases in which an individual makes representations under paragraph 10(3.1)(a), to consider those representations and determine whether the individual's personal circumstances warrant special relief. If the Minister concludes that they do, the revocation process is at an end. Only if the representations do not warrant relief does the Minister make the revocation decision or refer the matter to the Federal Court.

[23] With respect to Ms. Tan's argument that section 10 of the *Citizenship Act* violates the principles of procedural fairness contrary to paragraph 2(e) of the *Bill of Rights*, the Federal Court considered the conditions necessary for the revocation process to be procedurally fair

(*Hassouna* at para. 91): (1) an oral hearing before a Court, or before an independent administrative tribunal, where there is a serious issue of credibility; (2) a fair opportunity to state the case and know the case to be met; and (3) the right to an impartial and independent decision maker.

[24] Ms. Tan argued that the revocation process contemplated in sections 10 and 10.1 lacks independence in part because an individual facing revocation has an incentive to request their case be decided by the Minister. Only then will their personal circumstances be considered and, therefore, the individual's right of access to the Federal Court by way of action does not cure the lack of independence and impartiality inherent in the process. The Federal Court disagreed, repeating its conclusion that the individual's personal circumstances are assessed by the Minister in every case, including those that proceed before the Federal Court.

[25] The Federal Court also found that the individual's access to an action in the Federal Court would include the right to disclosure and discovery and ensure adequate disclosure to the affected individual. Also, Ms. Tan had not demonstrated that the Minister's disclosure obligation is inadequate or that she herself had received inadequate disclosure that compromised her ability to meet the case against her. With respect to Ms. Tan's argument that the process is unfair due to the restriction placed on the Minister's ability to hold a hearing, the Federal Court stated that *Hassouna* does not require a hearing in all cases, only in those involving serious issues of credibility. Section 7.2 of the Regulations specifically contemplates a hearing in such cases.

[26] The Federal Court then considered whether the citizenship revocation process engages section 7 of the *Charter*. Relying on the analysis in *Hassouna*, the Federal Court concluded that section 7 is not engaged as the revocation of citizenship for fraud or misrepresentation does not itself interfere with a person's right to life, liberty or security of the person. The Federal Court noted Ms. Tan's position that a law that is not compliant with paragraph 2(e) of the *Bill of Rights* is equally not compliant with the requirements of fundamental justice under section 7 but found that the jurisprudence of this Court does not support Ms. Tan's argument.

[27] Finally, the Federal Court determined that the Minister's Decision was not unreasonable. The Court found no error in the Delegate's conclusion that an oral hearing was not required and assessed whether the Delegate reasonably considered the personal circumstances raised by Ms. Tan. The Court concluded that Ms. Tan's arguments on judicial review amounted to a disagreement with the Delegate's weighing of the evidence and that Ms. Tan had pointed to no evidence that had been ignored by the Delegate.

#### IV. Issues and standard of review

[28] The Federal Court properly certified the question set out in paragraph 4 of these Reasons in accordance with paragraph 22.2(d) of the *Citizenship Act*. Therefore, it is open to this Court to address all issues arising in the appeal as the certification procedure performs a gatekeeping role to ensure a matter is sufficiently important to merit an appeal: *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras. 49-52 (*Mason*) and *Canada (Citizenship and Immigration)*

*v. Galindo Camayo*, 2022 FCA 50 at para. 37 (*Galindo Camayo*) in the context of a question certified pursuant to paragraph 74(d) of the *IRPA*, a provision that parallels paragraph 22.2(d).

[29] The issues in this appeal are:

- A. Did the Federal Court err in concluding that it did not have jurisdiction to examine Ms. Tan's constitutional challenge?
- B. Did the Federal Court correctly interpret section 10 of the *Citizenship Act*?
- C. Did the Federal Court err in finding that section 10 of the *Citizenship Act* does not violate paragraph 2(e) of the *Bill of Rights*?
- D. Did the Federal Court err in finding that section 10 of the *Citizenship Act* does not engage section 7 of the *Charter*?
- E. Did the Federal Court err in concluding that the Minister's Decision was not unreasonable?

[30] On appeal of a decision of the Federal Court sitting in judicial review, this Court typically determines whether the Federal Court identified the proper standard of review and correctly applied that standard. In effect, we step into the shoes of the Federal Court and focus on the administrative decision under review, in this case the Minister's Decision: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47 (*Agraira*); *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at paras. 10-12 (*Horrocks*). This approach

accords no deference to the reviewing judge's application of the standard of review: *Horrocks* at para. 12.

[31] However, the Federal Court acted as a decision maker of first instance when considering its jurisdiction to examine Ms. Tan's constitutional arguments and interpreting section 10 of the *Citizenship Act*, and when addressing whether the revocation process mandated in section 10 of the *Citizenship Act* violates paragraph 2(e) of the *Bill of Rights* and section 7 of the *Charter* (Issues A-D above). Accordingly, the Federal Court's analysis and findings regarding those issues are subject to the appellate standards of review set out in *Housen v. Nikolaisen*, 2002 SCC 33 (*Housen*): *Horrocks* at para. 12; *Aracil-Morin v. Enoch Cree Nation*, 2025 FCA 21 at paras. 20-22; *Power Workers' Union v. Canada (Attorney General)*, 2024 FCA 182 at paras. 45-46, leave to appeal to SCC refused, 41628 (May 29, 2025). Where the *appellate* standards apply, questions of law are reviewed on a correctness standard and questions of fact or mixed fact and law are reviewable for palpable and overriding error: *Housen* at paras. 8, 10; *Prairies Tubulars (2015) Inc. v. Canada (Border Services Agency)*, 2022 FCA 92 at para. 7, leave to appeal to SCC refused, 40334 (March 16, 2023).

## V. Analysis

A. *Did the Federal Court err in concluding that it did not have jurisdiction to examine Ms. Tan's constitutional challenges?*

[32] The Federal Court made two preliminary findings regarding Ms. Tan's constitutional arguments:

1. The constitutional validity of sections 10 and 10.1 of the *Citizenship Act* was not raised before the Delegate; and
2. It would be inappropriate for the Federal Court to consider Ms. Tan's constitutional arguments for the first time on judicial review.

[33] I agree with the Federal Court that Ms. Tan did not put the constitutional validity of sections 10 and 10.1 of the *Citizenship Act* before the Delegate. Although Ms. Tan referred to the *Bill of Rights* and the *Charter* in support of her submissions to the Delegate, she did not request a declaration that the two provisions are constitutionally invalid. As the Federal Court stated, Ms. Tan's 2015 written representations, in which she did raise a constitutional issue, were made in the course of her application for judicial review of a decision made under the citizenship revocation regime of the *2015 Citizenship Act*, which regime was declared invalid in *Hassouna*. The 2015 submissions do not challenge the constitutionality of sections 10 and 10.1 of the current *Citizenship Act*. The Federal Court correctly concluded that Ms. Tan raised the constitutional issues at the heart of this appeal for the first time on judicial review.

[34] I do not, however, agree with the Federal Court's second preliminary finding.

[35] Citing the Supreme Court's decision in *Alberta Teachers*, the Federal Court found that a reviewing court will not in most cases exercise its discretion to consider a new issue in favour of an applicant on judicial review where the applicant did not argue the issue before the administrative decision maker. The Federal Court was not persuaded by the Respondent's

argument that the Court could address Ms. Tan’s constitutional arguments because the Delegate did not have jurisdiction to do so.

[36] It is well settled that a reviewing court has discretion “not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so” and, generally, will not exercise its discretion “where the issue could have been but was not raised before the tribunal”: *Alberta Teachers* at paras. 22-23. A party cannot bypass an administrative process by applying for relief in a court of law where the particular decision maker has the jurisdiction to address the issue, including a constitutional issue: *Okwuobi v. Lester B. Pearson School Board*; *Casimir v. Quebec (Attorney General)*; *Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16 at paras. 38-40 (*Okwuobi*); *Zoghbi v. Air Canada*, 2024 FCA 123 at para. 30 (*Zoghbi*), leave to appeal to SCC refused, 41471 (April 17, 2025); *Erasmus v. Canada (Attorney General)*, 2015 FCA 129 at paras. 33, 38 (*Erasmus*).

[37] Conversely, if an administrative decision maker does not have the power or jurisdiction to decide constitutional questions, the general rule prohibiting a reviewing court from considering those questions at first instance is subject to an exception and the constitutional issue or issues may be raised before the reviewing court: *Zoghbi* at para. 30; *Erasmus* at paras. 33-38. The contrary result is untenable. If the administrative decision maker had no jurisdiction to consider a constitutional issue and it is not appropriate to raise the issue for the first time on judicial review, an applicant has no recourse and the legislation in question is not subject to efficient, independent oversight.

[38] In *Zoghbi*, this Court stated:

[30] [...] Where the issue is one of constitutional law and the administrative decision-maker has the jurisdiction to deal with it, the administrative decision-maker, as the merits-decider, is the forum to raise it. In those circumstances, an applicant on judicial review cannot bypass the power of a tribunal to decide an issue, and proceed directly to the reviewing court: *Okwuobi v. Lester B. Pearson School Board*; *Casimir v. Quebec (Attorney General)*; *Zorrilla v. Quebec (Attorney General)*, 2005 SCC 16, [2005] 1 S.C.R. 257 at paras. 28-55.

[Emphasis added.]

[39] To similar effect, this Court has previously stated that “a direct challenge in Court to the constitutionality of legislation is possible as long as the challenge is not ‘circumventing the administrative process’ or tantamount to a collateral attack on an administrator’s power to decide the issue...”: *Forest Ethics Advocacy Association v. Canada (National Energy Board)*, 2014 FCA 245 at paras. 46-47, citing *Okwuobi* at para. 54; see also *Benito v. Immigration Consultants of Canada Regulatory Council*, 2019 FC 1628 at paras. 55-56. This Court has also stated that the objection to first raising constitutional issues before a reviewing court, “would not lie if the [administrative tribunal] did not have the jurisdiction to decide the constitutional issues”: *Toussaint v. Canada (Attorney General)*, 2011 FCA 213 at para. 49, leave to appeal to SCC refused, 34446 (April 5, 2012), citing *Okwuobi* at paras. 28-34 and 38, and *Nova Scotia (Workers' Compensation Board) v. Martin*; *Nova Scotia (Workers' Compensation Board) v. Laseur*, 2003 SCC 54 (*Martin*).

[40] In *Goodman*, a brief decision issued from the bench, this Court found that the appellant’s constitutional arguments regarding a 2013 amendment to section 25 of the *IRPA* should not have

been considered by the Federal Court because they had not been raised before the administrative decision maker. It is not at all evident from the Court's reasons that the jurisdiction of the decision maker was argued in the appeal and the decision in *Goodman* does not address whether the original decision maker was empowered to consider constitutional arguments. As a result, I do not read *Goodman* as stating that a reviewing court should not entertain a new constitutional issue on judicial review even where the administrative decision maker did not have jurisdiction to consider the issue.

[41] The question is then whether the Delegate was competent to hear Ms. Tan's constitutional arguments. In other words, could the arguments have been addressed by the Delegate?

[42] Administrative tribunals with the power to decide questions of law by virtue of their enabling statute have presumptive jurisdiction to determine issues of constitutional law, including the constitutional validity of a provision of their enabling statutes: *Martin* at para. 34; *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 at para. 87, citing *R. v. Conway*, 2010 SCC 22 at para. 22. Presumptive jurisdiction to consider constitutional questions can only be rebutted "by an explicit withdrawal of authority to decide constitutional questions or by a clear implication to the same effect, arising from the statute itself rather than from external considerations": *Martin* at para. 42.

[43] The grant of jurisdiction to consider questions of law can be explicit or implicit: *Martin* at paras. 35-41, 48; *Zoghbi* at para. 43. Explicit authority is set out in the terms of the tribunal's

statutory grant of authority. The existence of implied jurisdiction requires consideration of the governing statute as a whole: *Covarrubias v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 365 at para. 49 (*Covarrubias*). In *Martin*, the Supreme Court stated:

[48] ... Relevant factors will include the statutory mandate of the tribunal in issue and whether deciding questions of law is necessary to fulfilling this mandate effectively; the interaction of the tribunal in question with other elements of the administrative system; whether the tribunal is adjudicative in nature; and practical considerations, including the tribunal's capacity to consider questions of law. Practical considerations, however, cannot override a clear implication from the statute itself. [...] If the tribunal is found to have jurisdiction to decide questions of law arising under a legislative provision, this power will be presumed to include jurisdiction to determine the constitutional validity of that provision under the *Charter*.

[44] Under section 10 the *Citizenship Act*, the Minister (typically a delegate of the Minister) is empowered to revoke a person's citizenship if satisfied on a balance of probabilities that the person has obtained their citizenship by false representation or fraud or by knowingly concealing material circumstances. The section does not contain an express grant of jurisdiction to consider questions of law and, considering the citizenship revocation provisions of the *Citizenship Act* as a whole and the Minister's statutory mandate, I cannot discern an implied grant of jurisdiction.

[45] Subsection 10(1) limits the Minister's power to determining whether a person obtained their citizenship by false representation or fraud and, if so, whether the person's personal circumstances warrant special relief. In my view, the Minister's task is factual. Although the Minister makes a final determination of revocation in some cases, they are not required to decide questions of law in fulfilling their role. Rather, the Minister applies substantive rules to a set of facts.

[46] In terms of the Minister's relationship with other actors in the statutory framework of revocation, a person faced with the revocation of their citizenship can forego the opportunity to have the revocation determined by the Minister, in which case the determination is made by the Federal Court (subsection 10(4.1) and section 10.1 of the *Citizenship Act*), thereby providing an alternate adjudicative avenue for consideration of constitutional issues. I would add that neither the Minister nor their delegate in a given case may have legal training. Practically, they may not have the capacity or expertise to assess and determine questions of law, including *Charter* questions: see, e.g. *Covarrubias* at paras. 51-56, and the Court's consideration of the same questions in relation to an officer entrusted with the determination of a pre-removal risk assessment under the *IRPA*, a role that is similar to that of a delegate under section 10 of the *Citizenship Act*.

[47] I find that the Delegate was not empowered to adjudicate constitutional or *Charter* issues and that Ms. Tan cannot be said to be circumventing the administrative process by raising such issues before the reviewing court. It follows that Ms. Tan was not prohibited from making her constitutional arguments and requesting a declaration of invalidity for the first time before the Federal Court.

[48] Despite reaching the opposite conclusion, the Federal Court nonetheless considered the constitutional issues raised by Ms. Tan. This Court has the benefit of the Federal Court's analysis and the parties' extensive written and oral submissions regarding those issues and I find that it is appropriate and fair to consider Ms. Tan's constitutional arguments on appeal.

[49] A note of caution. By far the better practice for an applicant is to raise all issues, including constitutional issues, before the administrative decision maker who can then determine if they have jurisdiction to address those issues. If the applicant fails to do so and the decision maker had the necessary jurisdiction, the applicant risks the reviewing court's refusal to exercise its discretion to act as a decision maker of first instance.

B. *Did the Federal Court correctly interpret section 10 of the Citizenship Act?*

[50] The Federal Court's interpretation of section 10 of the *Citizenship Act* centres on the interplay between subsections 10(3.1) and 10(4.1), and the division of decision-making authority between the Minister and the Federal Court. The lynchpin of Ms. Tan's arguments, both before the Federal Court and on appeal, is that section 10 contemplates two mutually exclusive decision-making regimes in which an individual's personal circumstances are only considered if the individual elects to have the Minister as the decision maker pursuant to paragraph 10(3.1)(b). If the individual does not so elect, Ms. Tan argues that the Federal Court determines whether citizenship will be revoked in a purely fact-finding process that does not allow for the consideration of whether the individual's personal circumstances warrant special relief.

[51] Ms. Tan requests on appeal that the Court declare both sections 10 and 10.1 unconstitutional as contrary to paragraph 2(e) of the *Bill of Rights* and section 7 of the *Charter*. I find, however, that the Federal Court properly limited its constitutional analysis to section 10 for the reasons set out in the FC Decision. My analysis is similarly focussed on section 10, with references to section 10.1 as necessary.

[52] The Federal Court disagreed with Ms. Tan's interpretation of the section 10 revocation process and concluded:

[72] So, a simple reading of the relevant provision confirms that the assessment of whether personal circumstances militate against the revocation of citizenship is available even in the cases where the person has not elected for the Minister to make the revocation decision. If the Minister determines that the personal circumstances warrant special relief, the matter is concluded and the person retains their citizenship. Otherwise, on the person's election, the matter of whether or not to revoke citizenship is decided by the Minister under subsection 10(1) or by the Court under section 10.1. Ms. Tan's incorrect premise, repeated throughout her arguments, understandably weakens her constitutional challenge.

[53] A brief overview of the revocation process established in section 10 of the *Citizenship Act* is necessary to understand the parties' opposing interpretations of the section and the Federal Court's analysis and conclusion.

[54] The Minister may revoke a person's citizenship if the Minister is satisfied, on a balance of probabilities, that the person has obtained their citizenship by false representation or fraud or by knowingly concealing material circumstances: subsection 10(1).

[55] Subsection 10(3) requires the Minister to provide the person with written notice before making any revocation decision. The written notice must (a) advise the person of their right to make written representations; (b) specify the manner in which the representations must be made; (c) set out the specific grounds and reasons, including reference to materials, on which the Minister relies; and (d) advise the person that their case will be referred to the Federal Court

unless they request that revocation be decided by the Minister. The Court is the default decision maker.

[56] Subsection 10(3.1) provides that a person may:

...	[...]
<p><b>(a)</b> make written representations with respect to the matters set out in the notice, including any considerations respecting his or her personal circumstances — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless; and</p>	<p><b>a)</b> présenter des observations écrites sur ce dont il est question dans l’avis, notamment toute considération liée à sa situation personnelle — tel l’intérêt supérieur d’un enfant directement touché — justifiant, vu les autres circonstances de l’affaire, la prise de mesures spéciales ainsi que le fait que la décision la rendrait apatride, le cas échéant;</p>
<p><b>(b)</b> request that the case be decided by the Minister.</p>	<p><b>b)</b> demander que l’affaire soit tranchée par le ministre.</p>

[57] The Minister must consider any representations made by the person requesting special relief before making a decision and may hold a hearing if, based on certain prescribed factors, the Minister is of the opinion that a hearing is required: subsections 10(3.2) and 10(4) of the *Citizenship Act* and section 7.2 of the Regulations.

[58] Subsection 10(4.1) reads as follows:

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

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

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

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

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

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

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

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

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

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

[59] If the person does not choose to have the revocation decision made by the Minister, the person's citizenship may be revoked if the Minister commences an action in the Federal Court seeking a declaration that the person has obtained their citizenship by false representation or

fraud or by knowingly concealing material circumstances: subsection 10.1(1). A declaration made by the Court has the effect of revoking the person's citizenship: subsection 10.1(3).

[60] As stated above, Ms. Tan submits that the Federal Court incorrectly interpreted sections 10 and 10.1 of the *Citizenship Act* by combining what are properly viewed as two distinct decision-making processes. She insists that, while either the Minister or the Federal Court may revoke a person's citizenship, a decision by the Minister under subparagraph 10(4.1)(a)(ii), "that considerations respecting the person's personal circumstances warrant special relief in light of all the circumstances of the case", is only possible if the person elects to have the Minister determine revocation. Ms. Tan argues that the Minister cannot make a decision regarding special relief if the person chooses to proceed via the Federal Court, with the result that section 10 improperly limits the right of a person facing revocation to have their personal circumstances evaluated against the alleged misrepresentation or fraud.

[61] I disagree with Ms. Tan and find that the Federal Court correctly interpreted section 10 of the *Citizenship Act*.

[62] The modern principle of statutory interpretation requires the Court to consider the words of section 10 "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": *Vavilov* at para. 117; *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para. 23. The context for section 10, contained in Part II of the *Citizenship Act* (Loss of Citizenship), includes its legislative history and the amendments made to the section in 2018 following the

Federal Court’s declaration of invalidity of the citizenship revocation provisions in the *2015 Citizenship Act* in *Hassouna*. There, the Federal Court emphasized that a person facing revocation proceedings should be afforded “an opportunity to have their special circumstances considered when such circumstances exist”: *Hassouna* at para. 195.

[63] Ms. Tan’s submissions focus on subsection 10(3.1) of the *Citizenship Act*. She submits that Parliament’s use of the word “and” between paragraphs 10(3.1)(a) and (b) means that a person may make submissions regarding the matters set out in the subsection 10(3) notice, including their personal circumstances (paragraph 10(3.1)(a)), only if they also request that their case be decided by the Minister (paragraph 10(3.1)(b)). If the person does not request a decision be made by the Minister, Ms. Tan argues that the Minister is not empowered to consider the person’s submissions regarding their personal circumstances (and nor is the Federal Court pursuant to section 10.1).

[64] Subsection 10(3.1) is permissive. A person may: (a) make representations to the Minister and (b) request that their case be decided by the Minister. Grammatically, “may” is properly read as applying to both (a) and (b). In addition, the word “and” can be interpreted conjunctively and disjunctively depending on the drafting context: Ruth Sullivan, *The Construction of Statutes*, 7th Ed., LexisNexis Canada Inc., June 2022, § 4.05 [19]. I find that the use of “and” to connect paragraphs 10(3.1)(a) and (b) in the subsection is not determinative and must be read more like “and/or” based on the text of the subsection itself and section 10 when read in its entirety, including subsection 10(4.1).

[65] Ms. Tan characterizes subsection 10(4.1) as merely a statement of the decisions the Minister is authorized to make if a person chooses the Minister as the decision maker. This characterization ignores the text of the subsection.

[66] Parliament uses mandatory language in subsection 10(4.1) to delineate the division of decision-making authority between the Minister and the Federal Court. The subsection requires the Minister to refer a person's case to the Federal Court under subsection 10.1(1) unless:

(a) the person has made written representations pursuant to paragraph 10(3.1)(a) and the Minister is satisfied of one of two possibilities:

(i) on a balance of probabilities, the person has not obtained their citizenship by false representation or fraud or by knowingly concealing material circumstances; or

(ii) considerations respecting the person's personal circumstances warrant special relief; or

(b) the person has requested that the Minister decide their case.

[67] It is clear that subsection 10(4.1) does not merely lay out a series of possible decisions by the Minister. Contrary to Ms. Tan's assertion, the subsection requires the Minister to perform an assessment of personal circumstances prior to any referral of the case to the Federal Court (assuming the person made representations under paragraph 10(3.1)(a)). Reading the permissive language of subsection 10(3.1) and the mandatory language of subsections 10(3.2) and (4.1), I

find that subsection 10(3.1) permits a person facing revocation to make representations requesting special relief from revocation and/or to choose the decision maker; subsection 10(4.1) then requires the Minister to make a series of decisions. If the person chooses the Minister as decision maker, the Minister determines whether the person's personal circumstances warrant special relief and whether the person obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances (the revocation decision). If, on the other hand, the person makes no election pursuant to paragraph 10(3.1)(b), the Minister determines whether they are satisfied that the person's personal circumstances warrant special relief or whether the person has not obtained their citizenship by false representation or fraud. Only if the Minister concludes that the answer to both questions is no, can the Minister refer the case to the Federal Court for a declaration of revocation.

[68] I conclude that the Minister must in every case consider any representations made by the affected person regarding their personal circumstances in accordance with subsection 10(3.2) to determine whether revocation is warranted and proportionate in "all the circumstances of the case". This interpretation of the two provisions does not create redundancy and is consistent with section 10, its interplay with section 10.1 and the context of the citizenship revocation scheme of the *Citizenship Act*. The Federal Court correctly arrived at the same conclusion and I find no error in its interpretation of section 10.

C. *Did the Federal Court err in finding that section 10 of the Citizenship Act does not violate paragraph 2(e) of the Bill of Rights?*

[69] Paragraph 2(e) of the *Bill of Rights* requires that parties to a proceeding before a tribunal or administrative body that determines individual rights and obligations be given a “fair hearing in accordance with the principles of fundamental justice”: *Authorson v. Canada (Attorney General)*, 2003 SCC 39 at paras. 58-59 (*Authorson*). Paragraph 2(e) is one of two provisions of the *Bill of Rights* that remains operative following the enactment of the *Charter*, the other being paragraph 1(a): *Authorson* at para. 34. A statute that fails to comply with the requirements of paragraph 2(e) will be declared inoperative: *Northwest Territories v. Public Service Alliance of Canada*, 2001 FCA 162; *MacBain v. Lederman*, [1985] 1 FC 856 at p. 882-883, citing *The Queen v. Drybones*, [1970] SCR 282.

[70] The text of paragraph 2(e) is as follows:

**Construction of law**

2 Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

**Interprétation de la législation**

2 Toute loi du Canada, à moins qu’une loi du Parlement du Canada ne déclare expressément qu’elle s’appliquera nonobstant la *Déclaration canadienne des droits*, doit s’interpréter et s’appliquer de manière à ne pas supprimer, restreindre ou enfreindre l’un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s’interpréter ni s’appliquer comme

...

[...]

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations

e) privant une personne du droit à une audition impartiale de sa cause, selon les principes de justice fondamentale, pour la définition de ses droits et obligations;

[71] Four conditions must be met for paragraph 2(e) to apply to the citizenship revocation regime of the *Citizenship Act*:

1. the person must be a “person” within the meaning of paragraph 2(e);
2. the revocation process must constitute a “hearing [...] for the determination of [the person’s] rights and obligations”;
3. the revocation process must be found to violate the principles of fundamental justice; and
4. the alleged defect in the revocation process must arise as a result of a law of Canada which has not been expressly declared to operate notwithstanding the *Bill of Rights*.

[*Canadian National Railway Company v. Western Canadian Coal Company*, 2007 FC 371 at para. 22.]

[72] The parties have not appealed the Federal Court’s finding that the citizenship revocation regime of the *Citizenship Act* meets conditions 1, 2 and 4 and I see no error in that finding. Ms. Tan is a person within the meaning of paragraph 2(e), the citizenship revocation process is a hearing that determines Ms. Tan’s right to citizenship, and the *Citizenship Act* is a law of Canada and contains no declaration that it operates notwithstanding the *Bill of Rights*.

[73] The sole condition at issue in this appeal is the third: whether the citizenship revocation process established in section 10 violates the principles of fundamental justice.

[74] A person facing revocation of their Canadian citizenship is owed a high degree of procedural fairness: *Hassouna* at para. 85, relying on *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras. 23, 31 (*Baker*). A decision to revoke can only be described as hugely important to the affected person, fundamentally affecting their status and life in Canada. The person not only loses their status as a Canadian citizen, they may also, as in Ms. Tan's case, lose their status as a permanent resident and be rendered stateless under the *IRPA*. It is clear that the person must be afforded "a meaningful opportunity to present the various types of evidence relevant to their case and have it fully and fairly considered": *Baker* at para. 32.

[75] Before turning to Ms. Tan's arguments, it is useful to summarize the relevant amendments made to the *Citizenship Act* in 2018. First, the Minister must now give notice of "the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision": paragraph 10(3)(c). The prior version of this provision required only that the person be informed of the grounds on which the Minister would rely. Second, either the Minister or the Federal Court, at the citizen's election, may determine that a person has obtained their citizenship by false representation or fraud or by knowingly concealing material circumstances: paragraph 10(3.1)(b) and subsection 10.1(1). Previously, the person had no recourse to the Federal Court. Lastly, the Minister may grant special relief from revocation in consideration of the citizen's personal circumstances in all cases in which the person makes

representations requesting such relief: subsections 10(3.1) and (3.2) and subparagraph 10(4.1)(a)(ii).

[76] The availability of a hearing before the Minister is unchanged since *Hassouna*: subsection 10(4); section 7.2 of the Regulations. An oral hearing is, of course, available in every case in which the Federal Court is the decision maker.

[77] The Federal Court in *Hassouna* held:

[91] In order for the revocation process to be procedurally fair, the applicants ought to be entitled to: (1) an oral hearing before a court, or before an independent administrative tribunal, where there is a serious issue of credibility; (2) a fair opportunity to state the case and know the case to be met; and (3) the right to an impartial and independent decision maker. None of these are guaranteed under the [2015 *Citizenship Act*].

[78] Ms. Tan submits that the amendments made to section 10 in response to *Hassouna* fail to incorporate the necessary safeguards of a fair hearing and that the section continues to provide for a procedurally unfair process that deprived her of a fair hearing contrary to the principles of fundamental justice and paragraph 2(e) of the *Bill of Rights*.

[79] Ms. Tan's submissions can be summarized as follows:

- A revocation decision by the Minister:
  - i. Does not provide for an independent or impartial decision-maker,
  - ii. Does not provide for a right to documentary disclosure, and
  - iii. Does not provide for the right to an oral hearing in all cases.
- A revocation decision by the Federal Court does not provide for an assessment of a person's personal circumstances.

[80] Ms. Tan's last submission is premised on her position that section 10 establishes a dual decision-making process in which a person may only request special relief based on their personal circumstances if they choose the Minister as the decision maker. I have addressed and rejected this argument in the previous section of these reasons. Correctly interpreted, section 10 of the *Citizenship Act* requires the Minister to make a decision concerning special relief in all cases in which a person makes written representations regarding their personal circumstances. This conclusion defeats Ms. Tan's argument that a person is encouraged or has an incentive to choose the Minister as the decision maker because only then will their personal circumstances be considered.

[81] Ms. Tan also argues that a lack of clarity in section 10 means that few individuals faced with revocation will avail themselves of the combined ministerial/Federal Court process. In her

view, the Minister's ability to take into consideration personal circumstances in every case is therefore illusory.

[82] I do not find this argument persuasive. Section 10 is not drafted in a misleading or unduly complicated manner. The same is true of section 10.1 and the process set out for a revocation decision by way of action in the Federal Court. The fact that a person does not take advantage of an available course of action under section 10 does not render the provision unconstitutional or procedurally unfair.

- (1) Revocation by the Minister - the right to an independent and impartial decision maker

[83] In the current revocation process, the Minister delegates their authority to make a decision regarding revocation of a person's citizenship to a senior analyst. Ms. Tan submits that neither the Minister nor their delegate is an independent and impartial decision maker. She points to the fact that senior analysts are employees of IRCC and work in the same IRCC branch that identifies individuals whose citizenship may be subject to revocation, investigates the case and makes the decision as to whether the individual's citizenship should be revoked. Ms. Tan relies on the Federal Court's finding in *Hassouna* at paragraph 102 that an "adjudicator who must decide on a balance of probabilities whether a misrepresentation has occurred" and who "has already determined on a balance of probabilities that a misrepresentation occurred by virtue of having sent out the initial notice" may be perceived as biased and lacking independence and impartiality.

[84] In *Hassouna*, the Federal Court was faced with a revocation process in which the Minister was the investigator and decision maker in every case. As a result, the Court's analysis of independence and impartiality focussed on the delegate's dual role. Unlike the citizenship revocation process at issue in *Hassouna*, an affected person now may choose to have the revocation of their citizenship determined by the Federal Court, an independent judicial body.

[85] Ms. Tan's argument that the current revocation process lacks judicial independence and impartiality is in large part answered by the amendments to section 10 and the ability of a person facing revocation to have the Federal Court decide their case. Contrary to Ms. Tan's submission, this amendment to the *Citizenship Act* is a material change from the previous regime. Where the Federal Court is the decision maker, the determination of whether fraud or misrepresentation occurred in obtaining Canadian citizenship is not made by the same entity that identified and investigated the case.

[86] On appeal, Ms. Tan does not question the independence and impartiality of the Federal Court and its judges. She narrows her argument to the Minister's assessment of a person's request for special relief based on personal circumstances. Ms. Tan argues that the availability of the Federal Court process does not respond to her contention that the Minister and his delegates lack the independence and impartiality necessary to ensure a procedurally fair decision in response to a request for special relief, undermining the procedural fairness of that determination contrary to paragraph 2(e) of the *Bill of Rights*.

[87] I agree with Ms. Tan that the Minister and their delegates do not enjoy security of tenure and remuneration, nor do they control their own administrative process, three conditions of judicial independence: *Democracy Watch v. Canada (Attorney General)*, 2024 FCA 75 at para. 14; *Valente v. The Queen*, [1985] 2 SCR 673. However, full judicial independence is not required of every tribunal or decision maker, in respect of every decision, in order to establish a fair hearing in accordance with the principles of fundamental justice and paragraph 2(e) of the *Bill of Rights: Bell Canada v. Canadian Telephone Employees Association*, 2003 SCC 36 at paras. 21-22. Otherwise, any number of tribunals and decision makers entrusted by Parliament with significant decision-making responsibilities would be prevented from discharging their mandates. This is an untenable and impractical result.

[88] In my view, regard must be had in each case to the particular decision maker and the decision in question to properly assess whether the procedures followed by the Minister or a delegate respect the duty of procedural fairness and whether the affected person had a meaningful opportunity to present their case fully and fairly: *Baker* at para. 30.

[89] Ms. Tan attacks the independence and impartiality of a Minister's delegate in respect of the determination of an affected person's request for special relief from revocation.

[90] However, in this role, the delegate is tasked with making a discrete decision and the decision-making process begins if and when the affected person makes submissions to the Minister in response to the notice required under subsection 10(3) of the *Citizenship Act*. There is no prior investigation of the person's special circumstances. Ms. Tan's argument that a delegate

lacks impartiality centre on IRCC's prior investigation of revocation for possible fraud or misrepresentation but an affected person can choose have the revocation decision made by the Federal Court. In my view, a person who elects to have their case decided by the Minister pursuant to paragraph 10(3.1)(b) cannot subsequently claim they have not been afforded procedural fairness when the Federal Court process by way of action before an independent and impartial court with its attendant rights to full disclosure and an oral hearing was available to them for the revocation decision: *Chelsea (Municipality) v. Canada (Attorney General)*, 2024 FCA 89 at para. 36, leave to appeal to SCC refused, 41368 (March 6, 2025); *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 90; *Sigalas v. Sigalas Selas*, 2025 ONCA 75 at para. 28. This was the Federal Court's conclusion and I find no error in the FC Decision in this regard.

[91] While not independent of IRCC, a delegate does not inherently lack impartiality in deciding a request for special relief from revocation. It is always open to an applicant to allege a lack of impartiality or a perception of partiality on the part of a particular delegate but Ms. Tan has not raised this allegation other than in one brief reference. I find no evidence in the record that would support such an allegation. Ms. Tan's concerns regarding the senior analyst's decision regarding her personal circumstances are addressed later in these reasons and do not, in any event, speak to a lack of impartiality.

[92] In summary, I find no error in the Federal Court's conclusion that the revised structure for revocation of a person's citizenship pursuant to section 10 of the *Citizenship Act* does not lack independence and impartiality. The ability of an affected person to have the revocation of

their citizenship determined by the Federal Court, and to have an assessment of their personal circumstances made by an impartial decision maker in every case if special relief is requested, fully responds to Ms. Tan's arguments.

(2) The right of disclosure

[93] Ms. Tan submits that the ministerial process in section 10 of the *Citizenship Act* does not provide for full disclosure of evidence to the affected person, contrary to the common law rules of natural justice and procedural fairness, citing *R. v. Stinchcombe*, [1991] 3 SCR 326 and *R. v. O'Connor*, [1995] 4 SCR 411 at para. 6. She argues that paragraph 10(3)(c) does not entitle the person to documentary disclosure as the Minister is only required to provide notice of "the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision". Ms. Tan accepts that a person who elects the Federal Court process is entitled to full disclosure but insists that the fact disclosure is limited in the ministerial process undermines the person's right to know and meet the case against them, contrary to paragraph 2(e) of the *Bill of Rights*.

[94] Under the *2015 Citizenship Act*, a person facing revocation of their citizenship had no access to judicial proceedings and no access to full disclosure of all relevant documents: *Hassouna* at para. 96. However, section 10 of the amended *Citizenship Act* establishes the Federal Court as the default decision maker for revocation. A person who proceeds through the Federal Court process by way of action is entitled to full discovery and disclosure: *Federal Courts Rules*, S.O.R./98-106, Rules 223 and 228. If the person elects to proceed via the

ministerial process, they do so on their own initiative with notice of the extent of the Minister's disclosure obligations pursuant to paragraph 10(3)(c).

[95] I find no error in the Federal Court's conclusion that the current legislative regime for revocation in section 10 of the *Citizenship Act*, with the availability of an action before the Federal Court, meets the requirement for fair disclosure discussed in *Hassouna*. I further find that the revocation regime in section 10 does not deprive a person of their right to a fair hearing in accordance with the principles of fundamental justice, including the right to know the case against them.

(3) Availability of an oral hearing

[96] Ms. Tan submits that the regime set out in section 10 violates paragraph 2(e) of the *Bill of Rights* because an oral hearing is not required in every revocation case determined by the Minister. She argues that subsection 10(4) of the *Citizenship Act* and subsection 7(2) of the Regulations together provide for a purely discretionary decision by the Minister as to whether to hold an oral hearing and whether a person's case raises a serious issue of credibility. Ms. Tan states that this discretionary regime does not meet the requirements of procedural fairness because the question of fraud and the assessment of personal circumstances necessarily involve the evaluation of a person's credibility. In her view, the importance of Canadian citizenship and the consequences of any revocation of that citizenship require the full procedural protection of an oral hearing in every case. Ms. Tan relies on the Supreme Court decisions in *Singh v. Minister of*

*Employment and Immigration*, [1985] 1 SCR 177 (*Singh*) and *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 (*Charkaoui*), both decisions under the *IRPA*.

[97] Again, I find that the availability of the Federal Court process addresses Ms. Tan's constitutional arguments insofar as the revocation decision is concerned. However, Ms. Tan argues that an oral hearing before the Minister must also be available to an affected person in every case in which the person requests special relief based on personal circumstances.

[98] I do not agree with Ms. Tan that every request for relief due to personal circumstances involves as a central issue the requesting person's credibility. The jurisprudence Ms. Tan cites does not support her position; in each case, the question of an oral hearing hinges on whether there is a serious question of credibility. In the passage from *Singh* she cites, the Supreme Court stated (at 213):

I should note, however, that even if hearings based on written submissions are consistent with the principles of fundamental justice for some purposes, they will not be satisfactory for all purposes. In particular, I am of the view that where a serious issue of credibility is involved, fundamental justice requires that credibility be determined on the basis of an oral hearing.

[Emphasis added.]

[99] I note that an oral hearing is not a general requirement for humanitarian and compassionate (H&C) decisions under subsection 25(1) of the *IRPA*: *Baker* at para. 94; *A.B. v. Canada (Citizenship and Immigration)*, 2020 FC 498 at para. 94. H&C decisions and decisions on requests for special relief from revocation due to personal circumstances involve similar types of submissions and evidence and parallel assessments. Oral hearings are reserved for cases in

which an H&C application raises a serious question of credibility. I find that the same reservation raises no issue of procedural fairness in respect of the special relief process under section 10 of the *Citizenship Act*.

[100] In Ms. Tan's case, it is clear in the Minister's Decision that the absence of documentary proof in support of her request for special relief was central to the Delegate's negative decision; the decision did not turn on an assessment of her credibility. The Delegate weighed Ms. Tan's submissions and evidence regarding her personal circumstances against the repeated misrepresentation she admitted to making in order to obtain permanent residence and citizenship and concluded that special relief was not available.

[101] I conclude that the limited right to an oral hearing before the Minister does not deprive a person of their right to a fair hearing of their request for special relief from revocation contrary to paragraph 2(e) of the *Bill of Rights*. The Minister is required to exercise their discretion and to consider whether the evidence in a case gives rise to a serious issue of credibility. If the Minister or a delegate does not do so, the failure to grant an oral hearing can be contested on judicial review, as Ms. Tan has done here. I acknowledge Ms. Tan's argument that, in such a case, the person may have already lost their citizenship. Nonetheless, recourse remains available.

(4) Summary: Paragraph 2(e) of the *Bill of Rights*

[102] I find that the citizenship revocation process set out in section 10 of the *Citizenship Act* complies with the requirements of paragraph 2(e) of the *Bill of Rights*. The section 10 revocation

regime, read with the provisions of section 10.1 and the availability of an action before Federal Court, safeguards a person's right to a fair hearing, to know and meet the case against them, and to be heard, orally or in writing, all in accordance with the principles of fundamental justice. Whether revocation is determined by the Minister or the Federal Court, a person's submissions regarding personal circumstances, and whether those circumstances warrant special relief from revocation, must in every case be considered by the Minister. There is no tacit encouragement in the legislation for an affected person to forego the judicial process and its guarantees of independence, full disclosure and an oral hearing.

D. *Did the Federal Court err in finding that section 10 of the Citizenship Act does not engage section 7 of the Charter?*

[103] Ms. Tan submits that the revocation of her Canadian citizenship deprived her of her protected section 7 rights in a manner contrary to the principles of fundamental justice. In her Notice of constitutional question, Ms. Tan sought a declaration pursuant to subsection 52(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982 c. 11*, that sections 10 and 10.1 of the *Citizenship Act* are unconstitutional and cannot be saved by section 1 of the *Charter*, and are of no force and effect. Ms. Tan does not request relief pursuant to subsection 24(1) of the *Charter*.

[104] Due to the absence of an evidentiary record on the effect of a decision under section 10.1, the Federal Court correctly limited its consideration of Ms. Tan's constitutional arguments to section 10 of the *Citizenship Act*: *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 at paras. 13, 146 (*Canadian Council for Refugees*). These reasons

similarly consider only the constitutional validity of section 10, with references to section 10.1 as required to inform my analysis of section 10.

[105] Section 7 of the *Charter* provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. To succeed in her claim of a violation of section 7, Ms. Tan must establish that (1) her rights under section 7 are engaged by the revocation of citizenship (“engagement”), and (2) the deprivation of those rights is not in accordance with the principles of fundamental justice: *Canadian Council for Refugees* at para. 56, citing *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 55 and *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 57-58, 90 and 111 (*Bedford*); *Kreishan v. Canada (Citizenship and Immigration)*, 2019 FCA 223 at para. 80, leave to appeal to SCC refused, 38864 (March 5, 2020) (*Kreishan*), referencing *Ewert v. Canada*, 2018 SCC 30 at para. 68 and *Bedford* at para. 58.

[106] At the first stage of what I will refer to in these reasons as the *Bedford* analysis, Ms. Tan must establish that her life, liberty or security of the person has been or may be negatively affected or limited by the revocation of her citizenship and that there is a “sufficient causal connection” between the revocation and the harm suffered: *Canadian Council for Refugees* at para. 60; *Bedford* at paras. 58, 74-76. The causation element need not be direct but must be real and not speculative: *Kreishan* at para. 83, citing *Bedford* at para. 76. If Ms. Tan establishes engagement of one or more of her section 7 rights, she must then show that the deprivation of those right(s) is contrary to the principles of fundamental justice: *Kreishan* at para. 84.

[107] The Supreme Court has considered the meaning of “causal connection” in the engagement analysis of section 7 on numerous occasions, including its recent decision in *Canadian Council for Refugees*, a case challenging the validity of section 159.3 of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227 (IRPRs) and the designation of the United States under that section as a safe third country for purposes of the *Safe Third Country Agreement: Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries*, Can. T.S. 2004 No. 2.

[108] Section 159.3 is one part of the statutory regime set out in the *IRPA* (see sections 101 and 102) and the IRPRs that bars refugee claimants from seeking protection in Canada if they have arrived here from a designated country. Currently, the United States is the only designated safe country under section 159.3. The Supreme Court addressed the requirement of a causal connection as follows:

[60] This Court has long recognized that, to succeed, a Charter claim must show a causal link between state action and the violation of the relevant right or freedom (see, e.g., *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 447, per Dickson J., as he then was). In *Bedford*, this Court held that a “sufficient causal connection” must be established, which does not require that the impugned state action “be the only or the dominant cause of the prejudice suffered by the claimant” (para. 76). As a result, the mere fact that other forms of state action may also have a causal connection to the harms alleged does not mean that a challenge to legislation — such as s. 159.3 of the *IRPR* — is improperly constituted.

[109] The second stage of the *Bedford* analysis requires a determination of whether any deprivation of the section 7 rights engaged by the impugned provision occurred in accordance

with the principles of fundamental justice. The principles of fundamental justice have both substantive and procedural elements: *Kreishan* at para. 85, citing *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para. 138; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para. 113. They are not confined to procedural unfairness; they reflect “the minimum requirements that a law that negatively impacts on a person’s life, liberty, or security of the person must meet” (*Bedford* at para. 94) and are concerned with arbitrariness, overbreadth and gross disproportionality of the legislative provision(s) at issue: *Bedford* at para. 96; *Kreishan* at para. 87.

[110] Consistent with the foregoing jurisprudence, the Federal Court correctly disagreed with Ms. Tan’s submission that a federal law that is not compliant with paragraph 2(e) of the *Bill of Rights* is similarly not compliant with section 7 of the *Charter*: FC Decision at paras. 98-99. The two provisions are not co-extensive: *Goodman* at para. 6. Paragraph 2(e) of the *Bill of Rights* is limited to a consideration of whether the application of a federal law would deprive a person of the right to a fair hearing in accordance with the principles of natural justice. Section 7 of the *Charter* encompasses both substantive and procedural fairness principles tied to “life, liberty and security of the person”. In other words, a substantive right to life, liberty or security of the person must be engaged before any consideration of the principles of fundamental justice.

[111] Ms. Tan states on appeal that her arguments in relation to paragraph 2(e) and the procedural deficiencies of section 10 are in any event equally applicable to her section 7 *Charter* challenge but adds that an oral hearing is required in all cases in which section 7 rights are

engaged. She also includes in her appeal memorandum very brief submissions referring to the substantive principles of arbitrariness, overbreadth and gross disproportionality.

[112] Ms. Tan's submissions regarding engagement of section 7 relate primarily to the rights to liberty and to security of the person. Ms. Tan relies on *Taylor v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1053 at para. 232 (*Taylor FC*) and *Oberlander v. Canada (Attorney General)* (2004), 69 OR (3d) 187 (ONSC) at para. 45, in support of her submissions.

[113] Citizenship is not a right guaranteed by the *Charter*. Indeed, a person who is not automatically a citizen of Canada has no inherent right to citizenship. They must obtain and retain Canadian citizenship in compliance with the relevant statutory provisions of the *Citizenship Act* which interact in certain cases with provisions of the *IRPA*. I note in this regard that the Federal Court's decision in *Taylor FC*, which focussed on the requirements of due process and the application of historic amendments to the *Citizenship Act* affecting children "born out of wedlock", was appealed and the appeal allowed: *Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 (*Taylor FCA*). In *Taylor FCA* (at para. 50) this Court stated "Canadian citizenship is a creature of federal statute and has no meaning apart from statute and ... in order to be a Canadian citizen, a person must satisfy the applicable statutory requirements."

[114] Ms. Tan does not take issue with the preceding paragraph. Instead, she argues that her rights under section 7 are engaged not as a result of the revocation of her citizenship itself but due to consequential harms that have occurred or may befall her, including the loss of ancillary

rights either protected by other sections of the *Charter* or that an individual enjoys because they are a Canadian citizen and permanent resident.

[115] For the following reasons, I do not agree with Ms. Tan's submissions and find that she has failed to establish the necessary causal connection between the loss of her Canadian citizenship, and the consequential rights and privileges lost and potential harms she describes.

[116] Ms. Tan begins by stating that the right to liberty is defined expansively in the jurisprudence and is not limited to mere freedom from physical restraint: *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para. 49 (*Blencoe*). She submits that Canadian citizens enjoy a series of liberty rights under the *Charter* which they lose if citizenship is revoked, including the right to vote or hold public office under section 3, their mobility rights and ability to pursue a livelihood under section 6, and their section 23 minority language rights. Ms. Tan argues that there is a sufficient causal link between her loss of citizenship and these otherwise independent *Charter* rights to engage section 7.

[117] The section 7 liberty interest protects a person's right to make important and fundamental life choices free from state interference but such autonomy is not synonymous with unconstrained freedom: *Blencoe* at paras. 49, 54. The Supreme Court has construed the word "everyone" in section 7 to include every person who is physically present in Canada and thus amenable to Canadian law: *Kreishan* at para. 78, citing *Singh*. In contrast, sections 3, 6 and 23 of the *Charter* protect distinct rights and privileges, each of which is extended solely to Canadian citizens (and permanent residents under subsection 6(2)). The rights protected by those

*Charter* provisions are not afforded to persons present in Canada but who are not citizens and, for purposes of subsection 6(2), permanent residents. In *Kamel v. Canada (Attorney General)*, 2013 FCA 103 (*Kamel*), this Court distinguished the right to enter or leave Canada protected by subsection 6(1) of the *Charter* from the guarantees provided by section 7: *Kamel* at para. 23. I would similarly distinguish the rights protected by sections 3 and 23 of the *Charter* from a person's section 7 rights. I agree with the Federal Court's observation in *Hassouna* that "[t]he purpose of section 7 is not to protect other fundamental rights enshrined in the Charter": *Hassouna* at para. 138.

[118] Canadian citizenship is gained and lost through the application of the *Citizenship Act*. The normal consequence of a loss of citizenship is the forfeiture of certain distinct protected rights and privileges reserved for citizens of Canada. Ms. Tan now fails to meet the statutory condition entitling her to insist on the rights set out in sections 3, 6 and 23 of the *Charter* and finds herself in the same position as every other person who has never enjoyed the rights enshrined in those sections.

[119] The right to security of the person under section 7 protects against physical punishment and the threat thereof, imprisonment and detention, and serious and profound psychological distress, a requirement far beyond the normal stress and anxiety that may arise because of state action: *Canadian Council for Refugees* at para. 90; *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 SCR 46 at para. 60.

[120] Ms. Tan's submissions regarding the right to security of the person again centre on the consequences of her loss of citizenship and changes in her immigration status that have occurred or may occur. She submits that, if loss of citizenship is accompanied by loss of permanent residence, the affected person loses the ability to work, to access social services, to study or to otherwise live legally in Canada, all harms that have major impacts on the person's security. Ms. Tan argues strenuously that the Court must take into account the fact that with the loss of Canadian citizenship, a person may also become stateless and may be subject to indefinite detention and removal under the provisions of the *IRPA*. This is her situation. If removed, she would be prohibited from re-entering Canada for a period of five years: paragraphs 40(1)(a) and (2)(a) of the *IRPA*. Ms. Tan describes herself as stuck in Canada in limbo as a "non-entity". All of these arguments, according to Ms. Tan, demonstrate that there is no doubt that her life, liberty and security of the person are engaged by the revocation of her Canadian citizenship.

[121] The Federal Court has found that section 7 rights are not engaged by the revocation of a person's citizenship: *Canada (Citizenship and Immigration) v. Houchaine*, 2014 FC 342 at para. 69; *Montoya v. Canada (Attorney General)*, 2016 FC 827 at para. 50; *Parvez v. Canada (Citizenship and Immigration)*, 2024 FC 705 at paras. 17-21. This Court has concluded that findings of inadmissibility do not engage section 7: *Revell v. Canada (Citizenship and Immigration)*, 2019 FCA at para. 38, leave to appeal to SCC refused, 38891 (April 2, 2020) (*Revell*), citing numerous prior Federal Court of Appeal decisions. Revocation under the *Citizenship Act* and a finding of inadmissibility under the *IRPA* share one characteristic: both are distinct statutory proceedings that occur independent of and before any deportation or removal from Canada.

[122] Ms. Tan emphasizes that she is at risk of deportation or removal due to the loss of her citizenship (and loss of permanent resident status). She focuses on the fact that she is stateless and has no right to remain in Canada, and that she may be arrested and detained prior to any removal. Ms. Tan has not indicated that she has been arrested and detained or that she has been threatened with removal, nor do those consequences flow inevitably from the loss of citizenship.

[123] Ms. Tan argues that the risk of removal engages section 7 but there is consistent jurisprudence to the contrary.

[124] Section 7 rights are not automatically infringed or engaged by removal without more (for example, the prospect of removal to torture): *Medovarski v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paras. 45-46 (*Medovarski*); *Charkaoui* at para. 17; *Kreishan* at paras. 98-99. In *Medovarski*, one of the appellants who had been ordered deported from Canada due to serious criminality asserted that deportation engaged section 7 because it removed her freedom to make fundamental life decisions, including the choice to remain with her partner. She also argued that her right to security of the person was infringed due to the psychological stress of being deported. The Supreme Court responded as follows:

[46] The most fundamental principle of immigration law is that non-citizens do not have an unqualified right to enter or remain in Canada: *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711, at p. 733. Thus the deportation of a non-citizen in itself cannot implicate the liberty and security interests protected by s. 7 of the *Canadian Charter of Rights and Freedoms*.

[125] In *Revell*, a case addressing inadmissibility and the issuance of a deportation order, this Court stated, “the decision of the Supreme Court in *Medovarski* remains: deportation and its attendant psychological stresses do not engage the section 7 security of the person interest”: *Revell* at para. 78. If removal does not automatically engage section 7, nor does the possibility of removal. There is no basis to accept Ms. Tan’s position that revocation of her citizenship, and potential deportation or removal, satisfies the causal connection required to engage her right to security of the person under section 7.

[126] The Court in *Revell* spoke to the nature of the causal connection required in the *Bedford* analysis and the multi-layered processes of the *IRPA*:

[45] ...The Supreme Court and this Court have held in a long line of cases that the nexus between the ineligibility determination and deportation is not close enough to trigger the right to life, liberty, and security. As mentioned earlier, an admissibility hearing is but one step in a complex, multi-tiered inadmissibility determination and removal regime under the *IRPA*. Section 7 of the Charter cannot be interpreted as requiring that an assessment of a person’s right be made at every step of the process. In a nutshell, I am of the view that *Bedford* has not displaced the extensive jurisprudence affirming that an inadmissibility finding is distinct from effecting removal.

[127] The same analysis applies to Ms. Tan’s arguments that seek to establish engagement of section 7 in a process that is completed under the *Citizenship Act* and occurs independent of the issuance of any removal order under the *IRPA*. Ms. Tan’s arguments, including her reliance on statelessness, ignore the suite of protections under the *IRPA* that a person may invoke to delay or prevent removal, including an application for permanent residence based on H&C considerations under section 25 of the *IRPA*, a pre-removal risk assessment (PRRA) that addresses foreign

hardship and *non-refoulement* immediately prior to removal, a request for deferral of removal and, eventually, a stay of removal from the Federal Court.

[128] I next find that the revocation of citizenship under section 10 of the *Citizenship Act* does not engage a person's rights to life, liberty and security of the person under section 7 of the *Charter* on the basis that the person may subsequently face immigration detention. Ms. Tan has not been detained and her submission is speculative. There is no evidence before the Court that detention will or is likely to result from a loss of citizenship, even where permanent residence is also lost. Apart from raising the spectre of indefinite detention, Ms. Tan has established no link between this possibility and her loss of citizenship. It is also important to bear in mind that, should a person be placed in immigration detention, their detention will be subject to frequent and rigorous review under the relevant provisions of the *IRPA*, at which stage it may be open to the individual to contest the circumstances of their detention in reliance on section 7 of the *Charter*: see e.g. *Brown v. Canada (Citizenship and Immigration)*, 2020 FCA 130 at paras. 89 *et seq.*, leave to appeal to SCC refused, 39408 (March 11, 2021); *Hemond v. Canada (Citizenship and Immigration)*, 2024 FC 1980 at para. 36.

[129] Ms. Tan raises the stress that revocation of her citizenship has caused her and her family because of her uncertain status and inability to work legally in Canada and submits that “the attendant mental stress and anxiety can be assumed to be enormous”. However, there is no medical or psychological evidence or affidavit evidence in the record that provides details of Ms. Tan's mental state or that demonstrates profound mental distress that exceeds the normal stresses inherent in a change to immigration status. The evidentiary burden of sustaining a *Charter*

challenge is Ms. Tan's: *Canadian Council for Refugees* at paras. 56, 159. In the absence of a sufficient evidentiary record, the Court will not assume adverse effects. The psychological stress asserted by Ms. Tan is indistinguishable from the ordinary stresses of uncertain immigration status and fear of removal and does not engage section 7: *Kreishan* at para. 100, citing *Medovarski*.

[130] Finally, Ms. Tan submits that her right to security of the person and right to life are engaged by her loss of Canadian citizenship because she is unable to work in Canada, has no access to social services, including health care, and is vulnerable to the actions of the state.

[131] The ancillary impacts listed by Ms. Tan in the form of ability to work and social benefits are not the inevitable consequences of revocation. They result from the change in her status under the *IRPA*, the statutory requirements of other federal and provincial legislation and the actions of other state entities that determine entitlement to rights and services. Above all, many of the harms alleged are described by Ms. Tan in general terms only and are not supported by a sufficiently robust evidentiary basis on which the Court can or should proceed. For example, Ms. Tan has filed no evidence of her inability to work or to access alternative programs that may permit her to work in Canada on a temporary basis, and no evidence of any denial of health care for her or her family. Having considered the submissions and evidence before the Court, I find that Ms. Tan has failed to demonstrate a sufficient proximate nexus between her loss of citizenship and the risk of loss of social benefits and has not established the causal connection required to engage section 7 of the *Charter*.

[132] In summary, the nexus between the impugned measure, here section 10 of the *Citizenship Act*, and the deprivation of a person's section 7 interests is critical to the engagement analysis: *Kreishan* at para. 90. Ms. Tan's causation arguments attempt to broaden the consequences of a loss of citizenship to events that may or may not occur in order to rely on section 7. Her change in citizenship status may eventually lead to adverse consequences that engage her protected section 7 rights but it is not the change in citizenship that engages section 7.

[133] Accordingly, I find that Ms. Tan has not established a sufficient causal connection between the revocation of her Canadian citizenship and the harms or deprivations she alleges sufficient to engage section 7 of the *Charter*. Ms. Tan's constitutional challenge to section 10 of the *Citizenship Act* in reliance on section 7 must fail. I see no error in the Federal Court's conclusion to the same effect.

[134] As I have concluded that the revocation of Ms. Tan's Canadian citizenship does not engage her rights to life, liberty and security of the person under section 7, it is not necessary to address whether the revocation process in section 10 deprived Ms. Tan of her citizenship in accordance with the principles of fundamental justice or whether the revocation scheme is justified under section 1 of the *Charter*.

E. *Did the Federal Court err in concluding that the Minister's Decision was not unreasonable?*

[135] The Federal Court concluded that Ms. Tan had not shown the Minister's Decision to be unreasonable. Before this Court, Ms. Tan disagrees and maintains that the Minister's Decision was unreasonable because the Delegate failed to consider the seriousness of Ms. Tan's initial misrepresentation and the mitigating circumstances she detailed in her written representations to the Minister. More specifically, Ms. Tan states that the Delegate completely disregarded the best interests of her two Canadian children, dismissed her evidence of establishment in Canada and failed to consider the impact of being rendered stateless. Ms. Tan also states that the Delegate unreasonably rejected her request for an oral hearing without explanation.

[136] The Federal Court correctly identified reasonableness as the standard to be applied in reviewing the Delegate's assessment of whether Ms. Tan's personal circumstances warrant special relief from the application of section 10 of the *Citizenship Act: Mason* at paras. 48-53; *Canada (Public Safety and Emergency Preparedness) v. Weldemariam*, 2024 FCA 69 at paras. 27-29.

[137] Ms. Tan's arguments are in large part an invitation to this Court to reweigh the evidence. It is a mischaracterization of the Minister's Decision to state that the Delegate failed to consider the serious nature of Ms. Tan's misrepresentation and her mitigating circumstances, or that they completely disregarded the best interests of her two children and the issue of statelessness. The Delegate addressed each of the factors and the evidence raised by Ms. Tan in her written submissions, in the course of which the Delegate made factual findings and weighed the

aggravating circumstances (Ms. Tan's initial and continued misrepresentation) against her mitigating personal circumstances. Absent exceptional circumstances, this Court must refrain from reweighing and reassessing the evidence before the Delegate: *Vavilov* at para. 125. The fact that Ms. Tan strenuously disagrees with the Delegate's conclusions does not mean that her submissions were ignored or not considered.

[138] I find that the Minister's Decision was reasonable. I am mindful that a decision to revoke a person's citizenship has serious consequences for the individual. In these circumstances, the Delegate's duty to explain and justify their decision is heightened to reflect those impacts: *Galindo Camayo* at para. 50, citing *Vavilov* at para. 133; *Xu v. Canada (Citizenship and Immigration)*, 2021 FC 1102 at para. 72 (*Xu*). I am of the opinion that the Delegate discharged their heightened duty of responsiveness and justification and thoroughly considered the relevant consequences to Ms. Tan of the decision to revoke, including Ms. Tan's return to the status of foreign national and possible statelessness.

[139] Ms. Tan first argues that the Delegate unreasonably rejected her request for an oral hearing pursuant to subsection 10(4) of the *Citizenship Act* without explanation. I agree with Ms. Tan that the Delegate did not set out an analysis of the evidence but it is clear that the Delegate's assessment of Ms. Tan's evidence in their decision was not based on adverse credibility findings. In denying Ms. Tan's request, the Delegate explained that they had considered whether the evidence in Ms. Tan's case raised a serious issue of credibility, the relevant factor in paragraph 7.2(a) of the Regulations, in light of the facts of the case. The absence of a robust explanation in

the section of the Decision specific to the request for an oral hearing does not warrant this Court's intervention.

[140] I turn now to the Delegate's analysis of the five factors raised by Ms. Tan in her request for special relief and her arguments that the Delegate unreasonably failed to consider those factors and their impacts on her and her family.

[141] Remorse: The Delegate found no evidence in the record that Ms. Tan had attempted to legitimately acquire permanent residence at any point before resorting to a fraudulent marriage. The Delegate gave little weight to Ms. Tan's claim of remorse despite her submission that she committed this mistake when she was young and immature and did not understand the consequences of her action. Ms. Tan's youth and immaturity at the time was not overlooked. The Delegate referred to these considerations but, critical to the Delegate, was the fact that Ms. Tan maintained her misrepresentation over a long period of time. During that period, she had multiple opportunities to be honest with Canadian immigration and citizenship officials but chose to insist on her innocence despite convincing evidence of her misrepresentation.

[142] Best interests of the children: The Delegate thoroughly reviewed the specifics of Ms. Tan's evidence regarding her children, with references to their school and extracurricular activities, but concluded that the best interests of Ms. Tan's children did not warrant special relief for two reasons. First, Ms. Tan failed to document her claims that she: was the sole caregiver to the children; was divorced from her second husband who refused to pay child support; and was not welcome in China with her husband and parents. Second, Ms. Tan's

submissions focused primarily on the effects on the children of her possible removal from Canada. The Delegate explained that citizenship revocation does not automatically result in removal and that any removal from Canada would involve a separate process dependent on post-revocation decisions made by other decision makers pursuant to the *IRPA*. The Delegate did not err in so stating: *Xu* at paras. 63-64. A loss of citizenship does not mean that a person must leave Canada even if the person also loses permanent resident status: *Xu* at para. 67.

[143] Statelessness: The Delegate acknowledged Ms. Tan's representation that she lost Chinese citizenship upon acquiring Canadian citizenship but found that restoration of her Chinese citizenship was available under the laws of China. Ms. Tan has not demonstrated any error in the Delegate's finding. The Delegate emphasized that Ms. Tan had submitted no evidence in support of her claim that losing Canadian citizenship would necessarily render her stateless. The Delegate stated that Canada's obligation to not deprive an individual of nationality and render them stateless does not extend to an individual whose nationality or citizenship was obtained by misrepresentation or fraud. The Delegate did not use the *United Nations Convention on the Reduction of Statelessness* to lessen their obligation to consider statelessness, as Ms. Tan argues.

[144] Establishment in Canada: The Delegate reviewed Ms. Tan's long establishment in Canada, her claim of an untenable situation in China with her parents and the additional mitigating facts set out in Ms. Tan's submissions. The Delegate stated that Ms. Tan's long establishment in Canada and financial growth while here were positive factors in her favour. Against these submissions, the Delegate emphasized that there was no evidence in the file that Ms. Tan applied for permanent resident status using any of the available legitimate avenues

before resorting to a fraudulent marriage and misrepresenting the marriage in her application, and that she maintained the misrepresentation through the majority of her time in Canada.

[145] Ms. Tan's arguments of unreasonableness in the Delegate's analysis of her personal circumstances are not persuasive. Unlike the decision at issue in *Xu*, the Delegate considered each of Ms. Tan's submissions and the evidence she provided in support of those submissions. They did not focus exclusively on the seriousness of Ms. Tan's conduct. The Delegate weighed Ms. Tan's submissions and evidence and the positive elements of Ms. Tan's personal circumstances against Ms. Tan's false representation, her insistence on the misrepresentation, and its central role in Ms. Tan's ability to become a Canadian citizen. The Delegate explained transparently why the initial misrepresentation to obtain permanent resident status, exacerbated over a long period of time by Ms. Tan's insistence on the misrepresentation, outweighed her establishment in Canada and the possibility of statelessness. The Delegate also fully explored the best interests of Ms. Tan's Canadian children. Ms. Tan's argument that the Delegate made a series of baseless credibility findings and concluded that she would be welcomed back to China is not consistent with the Delegate's reasons.

[146] I conclude that it was open to the Delegate to arrive at the conclusion that Ms. Tan's personal circumstances did not warrant special relief in light of the public interest in upholding and maintaining the integrity of Canada's immigration and citizenship program. The Delegate fully explained and justified their analysis and conclusions. I see no basis for this Court to intervene, allow the appeal of the FC Decision and set aside the Minister's Decision for unreasonableness.

VI. Costs and conclusion

[147] For these reasons, I would dismiss the appeal without costs. I would answer the certified question as follows:

Does section 10 of the *Citizenship Act*, by which citizenship that was obtained by “false representation or fraud or by knowingly concealing material circumstances” may be revoked, violate paragraph 2(e) of the *Canadian Bill of Rights*?

No.

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“Elizabeth Walker”

J.A.

“I agree.

Judith Woods J.A. ”

”I agree.

K.A. Siobhan Monaghan J.A. ”

**SCHEDULE A**

***Citizenship Act, R.S.C. 1985, c. C-29***

**Revocation by Minister – fraud, false representation, etc.**

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

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

**Notice**

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

- (a)** advises the person of his or her right to make written representations;
- (b)** specifies the form and manner in which the representations must be made;
- (c)** sets out the specific grounds and reasons, including reference to materials, on which the Minister is relying to make his or her decision; and

***Loi sur la citoyenneté, L.R.C. (1985), ch. C-29***

**Révocation par le ministre – fraude, fausse déclaration, etc.**

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

**(2)** [Abrogé, 2017, ch. 14, art. 3]

**Avis**

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

- a)** il l'informe qu'elle peut présenter des observations écrites;
- b)** il précise les modalités de présentation des observations;
- c)** il expose les motifs et les justifications, notamment les éléments de preuve, sur lesquels il fonde sa décision;

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

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

### **Representations and requests for decision by Minister**

### **Observations et demande que l'affaire soit tranchée par le ministre**

(3.1) The person may, within 60 days after the day on which the notice is sent, or within any extended time that the Minister may allow for special reasons,

(3.1) Dans les soixante jours suivant la date d'envoi de l'avis, ce délai pouvant toutefois être prorogé par le ministre pour motifs valables, la personne peut :

(a) make written representations with respect to the matters set out in the notice, including any considerations respecting his or her personal circumstances — such as the best interests of a child directly affected — that warrant special relief in light of all the circumstances of the case and whether the decision will render the person stateless; and

a) présenter des observations écrites sur ce dont il est question dans l'avis, notamment toute considération liée à sa situation personnelle — tel l'intérêt supérieur d'un enfant directement touché — justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales ainsi que le fait que la décision la rendrait apatride, le cas échéant;

(b) request that the case be decided by the Minister.

b) demander que l'affaire soit tranchée par le ministre.

### **Consideration of representations**

### **Obligation de tenir compte des observations**

(3.2) The Minister shall consider any representations received from the person pursuant to paragraph (3.1)(a) before making a decision.

(3.2) Le ministre tient compte de toute observation reçue au titre de l'alinéa (3.1)a) avant de rendre sa décision.

### **Hearing**

### **Audience**

(4) A hearing may be held if the Minister, on the basis of prescribed factors, is of the

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

opinion that a hearing is required.

### **Referral to Court**

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

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

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

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

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

### **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; 2017, c. 14, s. 3.

### **Renvoi à la Cour**

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

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

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

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

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

### **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; 2017, ch. 14, art. 3

**Revocation of fraud –  
declaration of Court**

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

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

**Effect of declaration**

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

**Proof**

**(4)** For the purposes of subsection (1), if the Minister seeks a declaration that the person has 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 sections 34, 35, 35.1 or 37 of the Immigration and Refugee

**Révocation pour fraude –  
déclaration de la Cour**

**10.1 (1)** Sauf si une personne fait une demande en vertu de l'alinéa 10(3.1)b), la citoyenneté de la personne ou sa répudiation ne peuvent être révoquées que si, à la demande du ministre, la Cour déclare, dans une action intentée par celui-ci, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

**(2)** [Abrogé, 2017, ch. 14, art. 4]

**Effet de la déclaration**

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

**Preuve**

**(4)** Pour l'application du paragraphe (1), il suffit au ministre — qui demande à la Cour de déclarer 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

Protection Act, 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; 2017, c. 14, s. 4; 2023, c. 19, s. 14.

de faits essentiels concernant des faits visés à l'un des articles 34, 35, 35.1 et 37 de la Loi sur l'immigration et la protection des réfugiés — de prouver que 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; 2017, ch. 14, art. 4; 2023, ch. 19, art. 14.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 26, 2025

**REASONS FOR JUDGMENT BY:** WALKER J.A.

**CONCURRED IN BY:** WOODS J.A.  
MONAGHAN J.A.

**DATED:** FEBRUARY 23, 2026

**APPEARANCES:**

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FOR THE APPELLANT

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