Federal Court  Cour fédérale

Date: 20150206

Docket: T-75-14

Citation: 2015 FC 156

Ottawa, Ontario, February 6, 2015

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

ZUNERA ISHAQ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter and Background

[1] Ms. Zunera Ishaq [Applicant] is a Pakistani national and a devout Sunni Muslim who voluntarily follows the Hanafi school of thought. When she is in public, the Applicant says that her religious beliefs obligate her to wear a *niqab*, a veil that covers most of her face. She also says that she will unveil herself to a stranger only if it is absolutely necessary to prove her identity or for purposes of security, and even then only privately in front of other women. She

now comes to this Court to challenge a government policy that she claims will deny citizenship to her unless she betrays that conviction.

[2] The Applicant became a permanent resident of Canada on October 25, 2008 and her application for citizenship was approved by a citizenship judge on December 30, 2013. She was granted citizenship three days later pursuant to subsection 5(1) of the *Citizenship Act*, RSC 1985, c C-29 [*Act*]. However, she is not considered a citizen under paragraph 3(1)(c) of the *Act* until she takes the oath of citizenship, the words of which are set out in the schedule to the *Act*:

> I swear (*or* affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.

The Applicant agrees with the content of the oath. She objects, however, to the manner by which she is being compelled to take it.

[3] Subsection 19(2) of the *Citizenship Regulations*, SOR/93-246 [the *Regulations*] provides that, "[u]nless the Minister otherwise directs, the oath of citizenship shall be taken at a citizenship ceremony." The Applicant was scheduled for such a ceremony on January 14, 2014, at the office of Citizenship and Immigration Canada [CIC] in Scarborough, Ontario. Prior to this ceremony, the Applicant had taken her citizenship test on November 22, 2013, whereat she had removed her *niqab* for purposes of identification in accordance with section 13.2 of CIC's policy manual, *CP 15: Guide to Citizenship Ceremonies* (as amended to 21 December 2011) [the Manual]. This section stipulates as follows:

> **13.2. Full or partial face coverings**
>
> Candidates for citizenship wearing a full or partial face covering must be identified. When dealing with these female candidates it is

> the responsibility of a citizenship official to confirm the candidate's identity. This should be done in private, by a female citizenship official. The candidate must be asked to reveal her face to allow the CIC official to confirm the identity against the documents on file.
>
> The candidates must be advised at this time that, they will need to remove their face covering during the taking of the oath. Failure to do so will result in the candidates not receiving their Canadian citizenship on that day.

The Applicant had no objection to this requirement and she unveiled herself so that the official could confirm her identity before taking the citizenship test.

[4] The Applicant is worried, however, that she will be forced to unveil in public at the citizenship ceremony she is required to attend. She became concerned about that following publicity surrounding CIC's introduction of Operational Bulletin 359 [the Bulletin] on December 12, 2011, the contents of which were shortly thereafter incorporated into section 6.5 of the Manual. This section 6.5 is set out in Annex A to this decision.

[5] In summary, section 6.5 of the Manual [the Policy] provides that citizenship "[c]andidates wearing face coverings are required to remove their face coverings for the oath taking portion of the ceremony." If they do not, they will not receive their citizenship certificates and will have to attend a different ceremony. If they again do not comply, then their application for citizenship will be ended.

[6] The Applicant objects to the requirement to remove her *niqab* at the citizenship ceremony. Since the ceremony is public and removing her veil is unnecessary for the purposes of identity or security, she says the following:

> My religious beliefs would compel me to refuse to take off my veil in the context of a citizenship oath ceremony, and I firmly believe that based on existing policies, I would therefore be denied Canadian citizenship. I feel that the governmental policy regarding veils at citizenship oath ceremonies is a personal attack on me, my identity as a Muslim woman and my religious beliefs.

[7] By a letter dated January 8, 2014, the Applicant initially requested that her citizenship ceremony be rescheduled. The next day she filed the present application for judicial review in this Court, and the day after that she moved for an order enjoining the Respondent from applying the Policy at her citizenship ceremony scheduled for January 14, 2014.

[8] In response to such motion, the Respondent agreed to postpone the citizenship ceremony for the Applicant and subsequently offered to seat the Applicant in either the front or back row and next to a woman at the ceremony, so that other participants could not easily see her face if she removes her veil. The Applicant refused this arrangement since the citizenship judge and officers could still be male, and there could potentially be photographers.

[9] The Applicant's application pursuant to subsection 18.1(1) of the *Federal Courts Act*, RSC 1985, c F-7, identified the original Bulletin as the problematic document, but she essentially seeks the following relief:

1. a declaration that the Policy infringes paragraph 2(a) 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*];
2. a declaration that the Policy infringes section 15(1) of the *Charter*;

3. a declaration that the Policy is inconsistent with the governing legislation and is therefore beyond the powers of the Respondent;
4. a declaration that the Policy unduly fetters the discretion of citizenship judges;
5. an order enjoining the Respondent and any officials of the Respondent from refusing citizenship to the Applicant on the basis of the Bulletin; and
6. her costs.

II. Is the Notice of Constitutional Question valid?

[10] At the outset of the hearing in respect of this matter, it was determined that proper notice of the constitutional questions raised by the Applicant had not been given within the required timeline due to an inadvertent administrative error.

[11] The relevant portions of section 57 of the *Federal Courts Act* provide as follows:

57. (1) If the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of a province, or of regulations made under such an Act, is in question before the Federal Court of Appeal or the Federal Court or a federal board, commission or other tribunal, other than a service tribunal within the meaning of the *National Defence Act*, the Act or regulation shall not be judged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney	57. (1) Les lois fédérales ou provinciales ou leurs textes d'application, dont la validité, l'applicabilité ou l'effet, sur le plan constitutionnel, est en cause devant la Cour d'appel fédérale ou la Cour fédérale ou un office fédéral, sauf s'il s'agit d'un tribunal militaire au sens de la *Loi sur la défense nationale*, ne peuvent être déclarés invalides, inapplicables ou sans effet, à moins que le procureur général du Canada et ceux des provinces n'aient été avisés conformément au paragraphe (2).

general of each province in accordance with subsection (2).	
(2) The notice must be served at least 10 days before the day on which the constitutional question is to be argued, unless the Federal Court of Appeal or the Federal Court or the federal board, commission or other tribunal, as the case may be, orders otherwise.	(2) L'avis est, sauf ordonnance contraire de la Cour d'appel fédérale ou de la Cour fédérale ou de l'office fédéral en cause, signifié au moins dix jours avant la date à laquelle la question constitutionnelle qui en fait l'objet doit être débattue.

[12] Non-compliance with section 57 can deprive the Court of jurisdiction to hear a constitutional question (see: *Bekker v Canada*, 2004 FCA 186 at paragraphs 8-9, 323 NR 195 [*Bekker*]; *Ardoch Algonquin First Nation v Canada (Attorney General)*, 2003 FCA 473, [2004] 2 FCR 108 at paragraph 50; *Eaton v Brant County Board of Education* (1996), [1997] 1 SCR 241 at paragraph 54, 142 DLR (4th) 385). Whether a section 57 notice is even required, however, depends on the nature of the remedy being sought in a particular case: *Canada (Minister of Canadian Heritage) v Mikisew Cree First Nation*, 2004 FCA 66 at paragraphs 75-78, [2004] 3 FCR 436, Sharlow JA, dissenting, but not on this point, rev'd on other grounds 2005 SCC 69, [2005] 3 SCR 388; *Thompson v Canada (National Revenue)*, 2013 FCA 197 at paragraph 67, 366 DLR (4th) 169.

[13] In that regard, there is some authority to suggest that notice under section 57 does not need to be given when the constitutional challenge is to a ministerial policy and does not allege the invalidity, inapplicability, or inoperability of a statute or regulation *per se* (see: e.g. *Enabulele v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 641 at paragraphs 12-14, 347 FTR 309). However, there is also authority to the opposite effect. For example, in

Husband v Canada (Canadian Wheat Board), 2006 FC 1390 at paragraph 12, 304 FTR 55, aff'd 2007 FCA 325, Mr. Justice Strayer said that:

> Section 57 of the *Federal Courts Act*, R.S., 1985, c. F-7, requires that notice be given to the Attorney General of Canada and the Attorney General of each province before this Court can judge an Act or regulation to be constitutionally invalid, inapplicable or inoperable. No such notice was given in this case to the provincial Attorneys General. The Applicant insists that he is not attacking the "constitutional validity, applicability or operability" of any Act of Parliament or regulation. But he is attacking, he says, the policy of the CWB. I accept that to the extent that he is arguing that such policy is not authorized by the Act or the regulations he is not raising a constitutional issue. But when he argues that such policy is contrary to the Charter, in my view he is arguing that the Act cannot be applied in this way consistently with the constitution. To my mind that is an issue of "constitutional operability" and cannot be addressed without proper notice under section 57. See *Canada (Information Commissioner) v. Canada (Prime Minister)*, [1993] 1 F.C. 427 at paras. 90-92.)

[14] For the purposes of this case, it is unnecessary to resolve the conflicting cases noted above. By virtue of subsection 57(2), the Court may excuse late service of the notice in this case by extending the time for service and, thereby, decide that proper notice was given irrespective of whether notice was or was not required.

[15] The test for granting extensions of time generally has been set out in *Canada (Attorney General) v Larkman*, 2012 FCA 204 at paragraph 61, 433 NR 184 [*Larkman*]:

(1) Did the moving party have a continuing intention to pursue the application?

(2) Is there some potential merit to the application?

(3) Has the Crown been prejudiced from the delay?

(4) Does the moving party have a reasonable explanation for the delay?

Not all of these factors are always relevant nor do they all need to favour the moving party, and the "overriding consideration is that the interests of justice be served" (*Larkman* at paragraph 62). The same test should be applied here for purposes of subsection 57(2).

[16] In this case, the hearing was held on October 16, 2014, and according to the meaning of "at least" in subsection 27(1) of the *Interpretation Act*, RSC 1985, c I-21, the time for service of the notice of constitutional question thus expired on Sunday, October 5, 2014. As every Sunday is a holiday pursuant to subsection 35(1), section 26 of the *Interpretation Act* provides that the deadline for service was Monday, October 6, 2014. The Applicant served the notice of constitutional question on October 7, 2014, so it was one day late.

[17] The Applicant sought the Court's direction prior to the hearing of this matter as to how to rectify late filing of the notice. Counsel for the Applicant was directed by the Court to obtain the consents of the Attorneys General for the late service and filing of the Applicant's notice of constitutional question. Written consents from all of the Attorneys General were thus filed with the Court before the hearing commenced.

[18] The Applicant is seeking declaratory and injunctive relief in respect of the Policy on the basis that, amongst other things, it infringes paragraph 2(a) and subsection 15(1) of the *Charter*. She is not directly or explicitly impugning any specific provision of the *Act* or the *Regulations*. The Policy at issue here was not promulgated under sections 27(g) and 27(h) of the *Act*, which permit the Governor in Council to make regulations "(g) prescribing the ceremonial procedures to be followed by citizenship judges" and "(h) respecting the taking of the oath of citizenship",

nor was it published in the Canada Gazette. On the contrary, the Policy originated as the Bulletin issued by CIC on December 12, 2011 and later was embodied in section 6.5 of the Manual dated December 21, 2011. There is potential merit to some of the issues raised and the relief requested by the Applicant in her application for judicial review.

[19] In view of the written consents to the late filing of the notice from all of the Attorneys General, and also that the four *Larkman* factors all favour the Applicant, it is in the interests of justice that the service date for the Applicant's notice of constitutional question should be and is hereby extended until the date of such service on October 7, 2014.

III. The Parties' Arguments

A. *The Applicant's Arguments*

[20] The Applicant says she is entitled to declaratory relief at this stage notwithstanding the fact that the Policy has not been applied to her yet since she has not attended a citizenship ceremony (citing *Canada (AG) v Downtown Eastside Sex Workers United Against Violence*, 2012 SCC 45 at paragraphs 44-52, [2012] 2 SCR 524; *Moresby Explorers Ltd v Canada (AG)*, 2006 FCA 144 at paragraphs 15-16, 350 NR 101).

[21] The Applicant argues that the Policy infringes paragraph 2(a) of the *Charter*, which requires her to prove two things: (1) wearing the *niqab* is a religious practice in which she sincerely believes; and (2) the Policy interferes with that practice in a manner that is more than trivial or insubstantial. She claims both requirements are satisfied here. The Applicant states that,

even though some sects of Islam do not consider it mandatory to wear a *niqab*, there is no need to show widespread agreement before finding a violation of her *Charter* rights. Rather, the Applicant says it is enough that her belief is sincere and has a nexus to religion (*Syndicat Northcrest v Amselem*, 2004 SCC 47 at paragraph 52, [2004] 2 SCR 551; *Multani v Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6 at paragraph 39, [2006] 1 SCR 256), something which the Applicant contends she has proven by her affidavit and corresponding cross-examination.

[22] The Applicant further states that the Policy infringes her religious belief in a more than trivial way. She contends that the purpose of the Policy is to compel her and others like her to temporarily abandon a religious practice, and such a purpose will always be unconstitutional regardless of its effects (*R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at 334, 18 DLR (4th) 321 [*Big M*]). Indeed, although the Policy purports to be about allowing visual confirmation that the oath has been taken, the Applicant submits that various public statements made by the Minister of Citizenship and Immigration [Minister] at the time the Policy was introduced, as well as the language used by the Policy, disclose that its true target is Muslim women like her.

[23] Alternatively, the Applicant submits that the effects of the Policy are enough to violate paragraph 2(a) of the *Charter*, since she must abandon either her religious beliefs or her dream of becoming a citizen, for which she has already made significant sacrifices. Offering citizenship as a prize for such a choice is a significant violation since it denigrates her deeply-held beliefs, and she says that the accommodation offered by the Respondent does not solve the problem; it only serves to stigmatize her for her convictions (*McAteer v Canada (AG)*, 2013 ONSC 5895 at

paragraphs 32-33, 117 OR (3d) 353, var'd on other grounds, 2014 ONCA 578, 121 OR (3d) 1; *Zylberberg v Sudbury Board of Education*, [1988] OJ No 1488 (QL) at paragraph 39, 65 OR (2d) 641, 52 DLR (4th) 577 (CA); *Big M* at 336).

[24] The Applicant further submits that the Policy is contrary to subsection 15(1) of the *Charter*, which prohibits discrimination on the grounds of religion and sex. Although the language of the Policy is neutral, according to the Applicant it disproportionately affects Muslim women like her and perpetuates the stereotyping and prejudices against them recognized by the Ontario Court of Appeal in *R v NS*, 2010 ONCA 670 at paragraph 79, 102 OR (3d) 161 [*NS* (ONCA)], aff'd 2012 SCC 72, [2012] 3 SCR 726 [*NS* (SCC)].

[25] The Applicant contends that these violations under paragraph 2(a) and subsection 15(1) cannot be justified under section 1 of the *Charter*. Visually confirming that the oath was taken was, the Applicant submits, not even important enough to be included in the *Act* or *Regulations*, and so cannot be a pressing and substantial objective. Furthermore, the Applicant states that there is no rational connection between ensuring that the oath was taken and visual inspection, since such a method could only confirm that the participants' mouths were moving; citizenship officials are not lip readers. Indeed, the Applicant notes that every new citizen is already required to sign a declaration that they took the oath (see form CIT 0049 (02-2008)), which binds them to it. The Respondent will get her signed declaration in any event, and the Applicant says that watching her lips move provides no real assurance that she took the oath.

[26] Moreover, the Applicant argues that the Policy does not minimally impair her rights and freedoms. The evidence before the Court suggests that the Policy affects about 100 women per year, and that the oath takes less than a minute to recite. According to the Applicant, it would be easy for a female citizenship judge or official to take those women's oaths in private if there was doubt that they recited the oath, which is what used to be done before the Policy was adopted. Alternately, women like the Applicant could be seated closer to the officials or have a microphone attached to them, so that the officials could hear them taking the oath. The Applicant says that these methods are significantly less intrusive and better at ensuring that a woman wearing a *niqab* took the oath, and the Respondent has offered no justification for adopting a much stricter Policy which requires removal of face coverings.

[27] Finally, the Applicant says that her interests outweigh those of the government. Citizenship is important to her; non-citizens are politically powerless (*Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 152, 56 DLR (4th) 1 [*Andrews*], Wilson J), and the status "not only incorporates rights and duties but serves a highly important symbolic function as a badge identifying people as members of the Canadian polity" (*Andrews* at 196, La Forest J). Denying this to the Applicant so long as she wears the *niqab* makes her feel worthless and as if she does not belong in the Canadian family.

[28] The Applicant also contends that the Policy is unlawful on administrative law grounds. The Policy purports to be mandatory, and in this regard the Applicant points to correspondence between officials at CIC which emphasizes that no substantive accommodation should ever be given. As such, the Applicant submits that the Policy unduly fetters the discretion of citizenship

judges and is therefore unlawful (*Thamotharem v Canada (Citizenship and Immigration)*, 2007 FCA 198 at paragraphs 62-64, [2008] 1 FCR 385 [*Thamotharem*]).

[29] Furthermore, the Applicant says that the Policy is inconsistent with the legislation in several important respects. First, the *Act* requires people to take the oath, not to be seen taking the oath. According to section 21 of the *Regulations*, the proof that they did take the oath is their signature on the declaration form (CIT 0049), and the Policy is inconsistent with that by prescribing that only visual confirmation can serve that function. Second, paragraph 17(1)(b) of the *Regulations* specifically requires citizenship judges to "administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof". According to the Applicant, the Policy forces citizenship judges to violate that mandate and unduly fetters their discretion in this regard. Finally, paragraphs 3(2)(c) and 3(2)(f) of the *Canadian Multiculturalism Act*, RSC 1985, c 24 (4th Supp), state that federal institutions should enhance respect for the diversity of Canadian society and be sensitive to Canada's multicultural reality, and the Policy does not satisfy those criteria. Consequently, the Applicant argues that the Policy is unlawful and should be disregarded (*Pourkazemi v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1665 (QL) at paragraph 11, 161 FTR 62 (TD)).

IV. The Respondent's Arguments

[30] The Respondent argues that this application is premature. In its view, the Policy is not mandatory and citizenship judges are free not to apply it. As such, there is no way to know what would have happened had the Applicant attended the ceremony and refused to uncover her face.

Until she does so, the Respondent says any violation of the Applicant's *Charter* rights is speculative and there is no factual foundation for any constitutional challenge. Indeed, according to the Respondent, the absence of such factual foundation is problematic since it deprives the citizenship judge of the deferential standard of review that would otherwise be owed on the *Charter* determination according to *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 [*Doré*].

[31] The Respondent acknowledges that there is nothing in the *Act* or the *Regulations* which requires that one be "seen" taking the oath. However, the Policy is not, according to the Respondent, *de facto* legislation. The Minister has the prerogative to make such policies and no legislative authority is needed because the Policy is just that – a policy.

[32] The Respondent says that, as a non-binding guideline, the Policy can only give rise to an expectation that it will be followed (*Thamotharem* at paragraph 66). It cannot fetter the discretion of citizenship judges, who are quasi-judicial decision-makers statutorily mandated to administer citizenship ceremonies. Indeed, the Respondent submits that the Policy is directed more to CIC staff and not really addressed to citizenship judges. According to the Respondent, it is impossible to tell whether a citizenship judge would have regard to it or consider him or herself bound by it.

[33] Even if a citizenship judge does apply the Policy to the Applicant, the Respondent says that would be reasonable and proportionate to the *Charter* interests at stake.

[34] With respect to paragraph 2(a) of the *Charter*, a violation only occurs if the Applicant's religious practice "might reasonably or actually be threatened" (*R v Edwards Books and Art Ltd*, [1986] 2 SCR 713 at 759, 35 DLR (4th) 1). According to the Respondent, the Applicant has asserted nothing more than a subjective belief that her freedom of religion would be interfered with if she uncovered her face, and she has removed her veil in the past. In the Respondent's view, the Applicant has not proven anything more than a trivial violation, as the oath takes less than a minute to recite.

[35] Moreover, the Respondent submits that this case is not like *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 SCR 567, where failure to obtain a driver's licence would seriously affect the colony's ability to live up to one of its core tenants of communal self-sufficiency. Rather, if the Applicant chooses not to remove her face covering and is denied citizenship, she nevertheless retains all the benefits of her status as a permanent resident. The Respondent argues that any impact on her religious freedom is therefore minimal.

[36] With respect to subsection 15(1) of the *Charter*, the Respondent concedes that the Policy mostly affects Muslim women. However, the Respondent contends that distinction is not discriminatory. There is no proof of any pre-existing disadvantage, stereotype or prejudice that is perpetuated by requiring the Applicant to show her face while she takes the citizenship oath. The effects are not onerous, and the Applicant has taken her veil off in public for a driver's licence even though she does not drive. Furthermore, the Respondent submits that the accommodations offered to the Applicant and the fact that she only needs to remove the veil once during the

ceremony corresponds to the Applicant's actual needs and circumstances, while still satisfying the important objective of ensuring the oath is said aloud by all new citizens.

[37] Even if the Applicant's *Charter* rights are engaged, the Respondent argues that any interference with them is justified under section 1 of the *Charter*. As this would be an administrative decision, the approach to *Charter* review set out in *Doré* applies and the standard of review is reasonableness. According to the Respondent, the Policy was created because of concerns that some citizenship candidates were not actually reciting the oath. Relying on the concurring judgment of Mr. Justice Louis LeBel in *NS* (SCC) at paragraphs 77-78, the Respondent argues that taking the oath is a public act and it reasonably advances an important objective to expect all candidates to come together and recite the oath openly and equally.

[38] The Respondent argues that requiring the Applicant to uncover her face is not a serious limitation on her religious freedom; she has done it before for identity and security purposes. Wearing the *niqab* is just a personal choice, not a basic sacrament. Indeed, the Respondent contends that it is unclear why a citizenship ceremony, which happens once in a lifetime, is not one of those rare instances where it is absolutely necessary for the Applicant to remove her *niqab*.

[39] In any event, the Respondent says that citizenship is a privilege, not a right. If the Applicant is opposed to baring her face, then the Respondent says that she should just accept the consequences of not becoming a citizen; she will still retain all the benefits of permanent residence. Given all those factors and the accommodation that the Applicant has been offered,

the Respondent says that it would be reasonable for a citizenship judge to find that the balancing exercise favours the Respondent.

V. Issues and Analysis

[40] The following issues emerge from the parties' written submissions and oral arguments:

1. Is the application for judicial review premature?
2. Does the Policy fetter any discretion citizenship judges have?
3. Is the Policy otherwise inconsistent with the legislation or regulations?
4. If the Policy is otherwise unlawful, should the *Charter* issues be decided?
5. Does the Policy infringe paragraph 2(a) of the *Charter*?
6. Does the Policy infringe subsection 15(1) of the *Charter*?
7. If *Charter* rights are infringed, is the Policy saved by section 1 of the *Charter*?

A. *Is the application for judicial review premature?*

[41] I disagree with the Respondent's contention that this application for judicial review is premature. In *May v CBC/Radio Canada*, 2011 FCA 130 at paragraph 10, 420 NR 23 [*May*], Mr. Justice Marc Nadon said the following:

> While it is true that, normally, judicial review applications before this Court seek a review of decisions of federal bodies, it is well established in the jurisprudence that subsection 18.1(1) permits an application for judicial review "by anyone directly affected by the matter in respect of which relief is sought". The word "matter" embraces more than a mere decision or order of a federal body, but applies to anything in respect of which relief may be sought: *Krause v. Canada*, [1999] 2 F.C. 476 at 491 (F.C.A.). Ongoing policies that are unlawful or unconstitutional may be challenged at any time by way of an application for judicial review seeking, for

> instance, the remedy of a declaratory judgment: *Sweet v. Canada* (1999), 249 N.R. 17. [Emphasis added]

[42] Case law has established that not all policies are equal and some may be binding law (see: *Thamotharem* at paragraph 65; *Greater Vancouver Transportation Authority v Canadian Federation of Students — British Columbia Component*, 2009 SCC 31 at paragraphs 58-65, [2009] 2 SCR 295). As the Federal Court of Appeal recognized in *Thamotharem* at paragraph 63: "the validity of a rule or policy itself has sometimes been impugned independently of its application in the making of a particular decision." Indeed, part of the reason that policies are published is so that people can know of them and organize their affairs accordingly, and the Policy in this case could be dissuading women who wear a *niqab* from even applying for citizenship. In such circumstances, a direct challenge to the Policy is appropriate.

[43] Furthermore, there are internal limits to a typical judicial review application that could actually interfere with the Court's ability to examine the constitutionality of the Policy. Most notably, the record would usually be limited to only that material actually before a citizenship judge (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at paragraphs 19-20, 428 NR 297), which likely would not include much of the material submitted as part of the record in this case. Since a notice to appear is usually sent about two weeks before the ceremony, and the Applicant only received her notice six days in advance of her ceremony, she would not even have had enough time to give notice of a constitutional question pursuant to section 57(2) of the *Federal Courts Act*, which would likely preclude any review of the constitutional issues by both the citizenship judge and this Court

(*Bekker* at paragraph 11). Accordingly, despite the Respondent's arguments in this regard, this application is not premature.

B. *Does the Policy fetter any discretion citizenship judges have?*

[44] The Respondent contends that it is impossible to determine in advance whether the Policy will fetter a citizenship judge's discretion. According to the Respondent, citizenship judges must make an adjudicative decision about whether to apply the Policy, presumably complete with consideration of *Charter* values and a factual inquiry into the sincerity of every candidate who wears a veil. In the Respondent's view, the Policy is only a guideline that is not even directed at citizenship judges and which they are free to disregard.

[45] However, section 1 of the Manual states, amongst other things, that it is about: "the roles and protocols that different participants (citizenship judge, volunteer presiding officials, clerk of the ceremony, special guests, etc.) must respect during ceremonies" (emphasis added). Although section 2 of the Manual states that it is a "…guide…to help Citizenship and Immigration Canada (CIC) staff plan and deliver citizenship ceremonies," no such permissive language is employed in the operative sections of the Policy. On the contrary, at section 6.5.1, the Policy says that citizenship "candidates are required to remove their face coverings for the oath taking portion of the ceremony." If they do not remove their face coverings, then section 6.5.2 dictates that "…the certificate is NOT to be presented" (emphasis in original). Such a candidate is given one last chance to take the oath at another citizenship ceremony, but "should that person again NOT be seen taking the oath, or fail to remove a full or partial face covering, the procedures outlined above for refusal are to be followed" (emphasis in original). The candidate would then be forced

to reapply for citizenship and face the same Policy again or else abandon his or her quest for citizenship. A refusal to remove a face covering, therefore, precludes receipt of a citizenship certificate and will deny that person citizenship, even if the officials are confident that the person actually took the oath by hearing it recited.

[46] Furthermore, internal correspondence between CIC officials demonstrates an intention that removal of a face covering be mandatory at public citizenship ceremonies. For instance, in an e-mail dated November 8, 2011 (certain portions of which have been redacted), one CIC official wrote that:

> In looking over the hand written comments from the Minister, it is pretty clear that he would like the changes to the procedure to 'require' citizenship candidates to show their face and that these changes be made as soon as possible. … My interpretation is that the Minister would like this done, regardless of whether there is a legislative base and that he will use his prerogative to make policy change.

[47] Similarly, in response to some queries about potential accommodations, another CIC official wrote in an email dated December 13, 2011, that:

> Under the new directive [Operational Bulletin 359] …all candidates for citizenship must be seen taking the oath of citizenship at a citizenship ceremony. For candidates wearing full or partial face coverings, face coverings must be removed at the oath taking portion of the ceremony in order for CIC officials and the presiding official (Citizenship Judge) to ensure that the candidate has in fact taken the Oath of Citizenship. Under this new directive there are no options for private oath taking or oath taking with a female official as all candidates for citizenship are to repeat the oath together with the presiding official. [Emphasis added]

[48] During an interview with CBC Radio on December 13, 2011, a Toronto-area citizenship judge took a different view and suggested that: "If [veiled women] don't take the face covering off, there is an opportunity for them to come in front of the judge again after the ceremony and take the oath. … [T]hey don't have to remove the veil right there in front of all these people." Subsequent email correspondence between CIC media officials indicated that these comments by this citizenship judge were "problematic" as they "contradict our lines."

[49] Indeed, the intention that it be mandatory for people to remove face coverings is also evident in public statements about the new directive when it was introduced. The Minister at the time said during an interview with the CBC on December 12, 2011, that the Policy was adopted after one of his colleagues told him about a citizenship ceremony where four women had been wearing *niqabs*. The Minister stated in this interview that taking the citizenship oath "is a public act of testimony in front of your fellow citizens, it's a legal requirement, and it's ridiculous that you should be doing so with your face covered"; and also that: "[y]ou're standing up in front of your fellow citizens making a solemn commitment to respect Canada's laws, to be loyal to the country, and I just think it's not possible to do that with your face covered."

[50] Despite the mandatory intentions behind the Policy though, it is the *Act* and the *Regulations* that ultimately determine whether a citizenship judge has any discretion with respect to applying the Policy. The relevant provisions of the *Act* and *Regulations* are set out in Annex B to this decision.

[51] Most pertinently, subsection 26(2) of the *Act* says that "a citizenship judge shall perform such other duties as the Minister prescribes for carrying into effect the purposes and provisions of this Act". The term "shall" is imperative (*Interpretation Act*, s 11), and the Policy thus requires citizenship judges to ensure that candidates for citizenship have been seen, face uncovered, taking the oath. Unlike in *Thamotharem*, this requirement in the Policy is not merely an interpretive guideline. It is mandatory and tantamount to a law made pursuant to the Minister's statutory authority to assign duties to citizenship judges who preside at citizenship ceremonies.

[52] Contrary to the Respondent's submissions in this regard therefore, the Policy does constrain a citizenship judge's scope of action. This conclusion is reinforced by section 1 of the Manual in which the Policy is now contained, wherein it is stated that the Manual is about "the roles and protocols that different participants (citizenship judge, volunteer presiding officials, clerk of the ceremony, special guests, etc.) must respect during ceremonies" (emphasis added). Moreover, the language of the Policy contains directives and commands that read much like a statute or regulation, and the statements of CIC officials and the Minister at the time of the Policy's implementation are evidence that it is regarded as if it were akin to a statute or regulation.

[53] Insofar as a citizenship judge has no discretion but to apply the Policy, the imposition of this mandatory duty upon a citizenship judge is contrary to paragraph 17(1)(b) of the *Regulations*, which requires a citizenship judge to "administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or

the solemn affirmation thereof" (emphasis added). In this regard, "religious solemnization" is not just about the mere act of taking the oath itself, allowing candidates to swear the oath on the holy book of their choice or, in the case of a solemn affirmation, on no book at all. Rather, it extends also to how the oath is administered and the circumstances in which candidates are required to take it. Further, the Respondent concedes that in this respect, citizenship judges are "quasi-judicial decision makers who have a statutory mandate to administer the oath ceremony."

[54] Citizenship judges cannot exercise that function to determine what degree of freedom is possible if they instead obey the Policy's directive to ensure that candidates for citizenship have been seen, face uncovered, taking the oath. How can a citizenship judge afford the greatest possible freedom in respect of the religious solemnization or solemn affirmation in taking the oath if the Policy requires candidates to violate or renounce a basic tenet of their religion? For instance, how could a citizenship judge afford a monk who obeys strict rules of silence the "greatest possible freedom" in taking the oath if he is required to betray his discipline and break his silence? Likewise, how could a citizenship judge afford a mute person the "greatest possible freedom" in taking the oath if such person is physically incapable of saying the oath and thus cannot be seen to take it?

[55] As a citizenship judge cannot comply with both the Policy and paragraph 17(1)(b) of the *Regulations*, it is necessary to determine which prevails. Subordinate legislation cannot conflict with its parent legislation (*Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3 at 38, 88 DLR (4th) 1), but here there is a conflict between the *Regulations* and the Policy, both of which are subordinate to the same *Act*. However, regulations

enacted by the Governor in Council generally have a higher legal status than guidelines and policies (*Thamotharem* at paragraph 98).

[56] It is also significant that it was the Governor in Council, not the Minister, to whom Parliament expressly granted authority pursuant to section 27(f) to (h) of the *Act* to make regulations concerning "the procedures to be followed by citizenship judges in the performance of their duties", the "ceremonial procedures to be followed by citizenship judges", and "the taking of the oath of citizenship". Although that does not preclude the possibility that the Minister could assign duties to citizenship judges in those areas, general provisions typically yield to specific ones in the event of a conflict (*Lalonde v Sun Life Assurance Co of Canada*, [1992] 3 SCR 261 at 278-279, 143 NR 287; *National Bank Life Insurance v Canada*, 2006 FCA 161 at paragraphs 9-10, 381 NR 117). Thus, the mandatory directive in a guideline such as the Policy, by which citizenship judges must ensure that candidates for citizenship have been seen, face uncovered, taking the oath, cannot trump the *Act* or the *Regulations*.

[57] Accordingly, I find that the Policy is inconsistent with the duty given to citizenship judges by the *Regulations* and is therefore invalid. On this basis alone, therefore, the application for judicial review should succeed. However, it is useful to address some of the other issues noted above.

C. *Is the Policy otherwise inconsistent with applicable legislation or regulations?*

[58] Sections 19(1) and 21 of the *Regulations* provide as follows:

19. (1) Subject to subsection 5(3) of the Act and section 22 of these Regulations, a person who has been granted citizenship under subsection 5(1) of the Act shall take the oath of citizenship by swearing or solemnly affirming it before a citizenship judge.	**19.** (1) Sous réserve du paragraphe 5(3) de la Loi et de l'article 22 du présent règlement, la personne qui s'est vu attribuer la citoyenneté en vertu du paragraphe 5(1) de la Loi doit prêter le serment de citoyenneté par un serment ou une affirmation solennelle faite devant le juge de la citoyenneté.
…	[…]
21. Subject to section 22, a person who takes the oath of citizenship pursuant to subsection 19(1) or 20(1) shall, at the time the person takes it, sign a certificate in prescribed form certifying that the person has taken the oath, and the certificate shall be countersigned by the citizenship officer or foreign service officer who administered the oath and forwarded to the Registrar.	**21.** Sous réserve de l'article 22, la personne qui prête le serment de citoyenneté aux termes des paragraphes 19(1) ou 20(1) doit, au moment de la prestation du serment, signer un certificat selon la formule prescrite pour certifier qu'elle a prêté le serment, et le certificat doit être contresigné par l'agent de la citoyenneté ou l'agent du service extérieur qui a fait prêter le serment et transmis au greffier.

[59] Although the Policy does not directly contradict these provisions of the *Regulations*, the requirement imposed by the Policy that a candidate for citizenship be seen taking the oath does appear to be superfluous.

[60] Subsection 19(1) of the *Regulations* requires that a candidate take the oath of citizenship "by swearing or solemnly affirming it before a citizenship judge"; it does not require that there be visual confirmation that the oath was said aloud. This is confirmed by the following testimony during cross-examination of the Respondent's representative, Ms Cronier-Gabel, who is the Assistant Director of Citizenship Program Delivery at CIC:

> Q. But there wasn't a specific provision about witnessing the oath being taken and seeing people take the oath. That was added in in December of 2011; is that correct?
>
> A. That's right.
>
> Q. Right. So the difference was that prior to December 2011 the requirement was the judge be satisfied that people had taken the oath and in December 2011 the policy was changed to require the judge to witness the person taking the oath as opposed to hear the person taking the oath, for example.
>
> A. That's right.
>
> Q. …And you don't know of any legislative authority for that requirement; is that correct?
>
> A. That's correct.
>
> Q. …since that time, according to this policy, if a person is not seen taking the oath by some official, their certificate can be removed…from the pile; is that correct?
>
> A. That's correct. [Emphasis added]

[61] Indeed, as noted above, any requirement that a candidate for citizenship actually be seen taking the oath would make it impossible not just for a *niqab*-wearing woman to obtain citizenship, but also for a mute person or a silent monk.

[62] Section 21 of the *Regulations* requires that candidates sign a certificate in prescribed form certifying that the person has taken the oath or affirmation of citizenship. That form

contains the exact same language as set forth in the schedule to the *Act*. According to section 16.13 of the Manual, after candidates have taken the oath or affirmation of citizenship in the formal part of the ceremony as contemplated by section 16.7 of the Manual, and received their certificates of citizenship as contemplated by section 16.8, "they go to the certificate table to sign the Oath of Citizenship form… [and] then return to their seats." I agree with the Applicant that it is the candidate's signature beneath this written oath or affirmation of citizenship form, rather than a visual confirmation of the candidate saying the oath, that is the only proof needed that a candidate has sworn or affirmed the oath of citizenship that is required by section 24 of the *Act*.

[63] The Applicant also relies upon paragraphs 3(2)(c) and 3(2)(f) of the *Canadian Multiculturalism Act*, RSC 1985, c 24 (4th Supp) [*CMA*] to support her argument that the Policy is inconsistent with applicable legislation or regulations. These paragraphs provide that:

3. (2) It is further declared to be the policy of the Government of Canada that all federal institutions shall	**3.** (2) En outre, cette politique impose aux institutions fédérales l'obligation de :
…	…
(c) promote policies, programs and practices that enhance the understanding of and respect for the diversity of the members of Canadian society;	*c)* promouvoir des politiques, programmes et actions permettant au public de mieux comprendre et de respecter la diversité des membres de la société canadienne;
…	…
(f) generally, carry on their activities in a manner that is sensitive and responsive to the multicultural reality of Canada.	*f)* généralement, conduire leurs activités en tenant dûment compte de la réalité multiculturelle du Canada.

[64] These provisions are incorporated into the Manual in section 3.4, which provides that: "Any comments made and actions taken at a citizenship ceremony must respect and promote a better understanding and appreciation of Canada's diverse cultures."

[65] I disagree with the Applicant on this point. The *CMA* cannot be interpreted so broadly that any government policy must be invalidated if it in any way might derogate from the objectives of section 3(2). On the contrary, when it comes to specifically implementing the policies set out in the *CMA*, subsection 6(1) says that "ministers of the Crown, other than the Minister, shall, in the execution of their respective mandates, take such measures as they consider appropriate to implement the multiculturalism policy of Canada". In this case, the Minister did not consider allowing women to wear *niqabs* while taking the oath of citizenship to be an appropriate way to implement multiculturalism policy and, in my view, that does not infringe the *CMA*.

D. *If the Policy is otherwise unlawful, should the* Charter *issues be decided?*

[66] In circumstances where a constitutional case can be decided on a non-constitutional ground, Peter Hogg has advised that "[t]he course of judicial restraint is to decide the case on the non-constitutional ground. That way, the dispute between the litigants is resolved, but the impact of a constitutional decision on the powers of the legislative or executive branches of government is avoided" (Peter W Hogg, *Constitutional Law of Canada*, 5th ed, vol 2 (Toronto: Thomson Reuters, 2007) (loose-leaf update to 2014), ch 59 at 59.5 [Hogg]). The Supreme Court has also cautioned that "unnecessary constitutional pronouncements may prejudice future cases, the

implications of which have not been foreseen" (*Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at paragraph 9, 124 DLR (4th) 129).

[67] Although there may be cases where it is appropriate to decide the constitutional issues raised by a case (*Law Society of Upper Canada v Skapinker*, [1984] 1 SCR 357 at 383-384, 9 DLR (4th) 161; Hogg, vol 2, ch 59 at 59.5), this case is not among them. While the evidentiary record was adequate to decide the matter, it was not voluminous and the hearing itself was relatively brief. Thus, judicial economy is not a major consideration, and there is no compelling need for certainty since the Policy will be set aside regardless of its constitutionality. Therefore, it would be imprudent to decide the *Charter* issues that arose in this application and I decline to do so.

VI. Conclusion

[68] For the reasons stated above, the Applicant's application is allowed. To the extent that the Policy interferes with a citizenship judge's duty to allow candidates for citizenship the greatest possible freedom in the religious solemnization or the solemn affirmation of the oath, it is unlawful.

[69] Accordingly, this Court hereby declares that: Sections 6.5.1 to 6.5.3 of the Policy, as well as the second paragraph of section 13.2 of the Manual and the reference to "those wearing a full or partial face covering that now is the time to remove it" in section 16.7 of the Manual, are unlawful. If the Policy has been updated from the Manual being assessed in this application, this order shall extend to any similar directives in the most up-to-date version of the Manual.

[70] The Applicant has requested her costs of this application in her prayer for relief, and as she has been substantially successful, I award costs to the Applicant in the amount of $2,500.00.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted and allowed;
2. The portions of the Policy and Manual that require citizenship candidates to remove face coverings or be observed taking the oath are unlawful. Specifically, sections 6.5.1 to 6.5.3 of the Policy, as well as the second paragraph of section 13.2 of the Manual and the reference to "those wearing a full or partial face covering that now is the time to remove it" in section 16.7 of the Manual, are unlawful; and,
3. The Applicant shall have her costs of this application fixed in the amount of $2,500.00.

"Keith M. Boswell"
Judge

ANNEX A

6.5. Administration of the oath of citizenship

This is a solemn and significant part of the citizenship ceremony. As per subsection 19(1) of the Regulations, subject to subsection 5(3) of the Act and section 22 of the Regulations, a person who has been granted citizenship under subsection 5(1) of the Act shall take the Oath of Citizenship by swearing, or solemnly affirming before a citizenship judge. Subsection 19(2) of the Regulations indicates that unless the Minister otherwise directs, the Oath of Citizenship shall be taken at a citizenship ceremony.

Candidates for citizenship who are 14 years of age and older **must** take the oath of citizenship.

6.5.1. Witnessing the oath

It is the responsibility of the presiding official and the clerk of the ceremony to ensure that all candidates are seen taking the Oath of Citizenship.

To facilitate the witnessing of the oath taking by CIC officials, all candidates for citizenship are to be seated **together**, as close to the presiding official as possible.

- For larger ceremonies (50 or more candidates), additional CIC officials will be required to assist in the witnessing of the oath. The CIC officials will need to observe the taking of the oath by walking the aisles.

Candidates wearing face coverings are required to remove their face coverings for the oath taking portion of the ceremony.

6.5.2. Candidates not seen taking the oath

In some circumstances, it is difficult to ascertain whether candidates are taking the oath (sometimes due to a face covering). When a candidate is not seen taking the oath by a presiding official or CIC official(s), the clerk of the ceremony must be notified **immediately** following the oath taking portion.

- The candidate's certificate is to be removed from the pile.
- The candidate's name is NOT to be called and the certificate is NOT to be presented.

Note: If there is a minor child associated with the application of the candidate who is not seen taking the oath, that minor child will not be called nor will he or she receive a citizenship certificate, unless the child has another parent who is already a Canadian citizen, or who takes the oath on the same day. This will have to be ascertained following the ceremony.

Immediately following the ceremony, the clerk will approach the candidate and explain that the candidate:

- was not seen taking the oath (if this is due to not removing a face covering, it must be explained);
- will not receive his/her citizenship certificate that day; and
- can return for the next available citizenship ceremony where they will need to be seen taking the oath (and if applicable, remove their face covering during oath taking).

6.5.3. Candidate returns for another ceremony

Should the candidate accept to return to take the oath at a future ceremony, the candidate will:

- be scheduled to attend the next available citizenship ceremony;
- receive another notice to appear;
- need to be seen taking the Oath of Citizenship;
- be reminded that if wearing a face covering, it will need to be removed for the oath taking portion of the ceremony.

When the candidate attends the second ceremony, should that person again NOT be seen taking the oath, or fail to remove a full or partial face covering, the procedures outlined above for refusal are to be followed.

Note: The opportunity to return to take the oath at another citizenship ceremony applies only **once**.

6.5.4. Candidate refuses to return for another ceremony

Should the candidate refuse to take the Oath of Citizenship at a future ceremony, the clerk must advise the candidate that:

- he/she will not become a citizen or receive his/her certificate of citizenship;

- he/she can chose [*sic*] to withdraw his/her application for citizenship or his/her file will be closed permanently;

- should he/she wish to become a Canadian citizen in the future, he/she will have to reapply.

Local offices must follow standard procedures for application withdrawal or closing a file. In the section "other reasons" in GCMS, the CIC official indicates that the reason is due to: refusal to take the oath or to remove a face covering during the oath taking.

If there is a minor child associated with this application, standard procedures apply.

6.5.5. Candidate advises CIC official, prior to the ceremony, of refusal to take the oath

When a candidate advises CIC officials, prior to the ceremony, that he/she will not take the oath of citizenship or sign the Oath of Citizenship form (e.g. for religious reasons or not wishing to swear allegiance to Her Majesty Queen Elizabeth the Second):

- The citizenship officer must remind the candidate that under the *Citizenship Act* and *Regulations* the oath is a mandatory requirement to become a canadian [*sic*] citizen.

- Should the candidates decides [*sic*] to proceed with the ceremony, CIC officials should ensure that this candidate is, in fact, seen taking the oath. See section 6.5.1.

- The candidates may choose to withdraw his/her application for Canadian citizenship. In that case, he or she will not become a canadian [*sic*] citizen and the local office will follow the procedure for file closure.

Also see section 13.2, Full or partial face coverings. [Emphasis in original]

ANNEX B

Citizenship Act, RSC 1985, c C-29

24. Where a person is required under this Act to take the oath of citizenship, the person shall swear or affirm in the form set out in the schedule and in accordance with the regulations.	**24.** Le serment de citoyenneté est prêté dans les termes prescrits par l'annexe et selon les modalités fixées par règlement.
…	**…**
26. … (2) In addition to his other duties set out in this Act, a citizenship judge shall perform such other duties as the Minister prescribes for carrying into effect the purposes and provisions of this Act.	**26.** […] (2) En plus des fonctions que lui attribue la présente loi, le juge de la citoyenneté s'acquitte de celles que lui confie le ministre en vue de la mise en oeuvre de la présente loi.
27. The Governor in Council may make regulations	**27.** Le gouverneur en conseil peut, par règlement :
…	…
(f) prescribing the procedures to be followed by citizenship judges in the performance of their duties;	*f)* fixer la procédure à suivre par le juge de la citoyenneté;
(g) prescribing the ceremonial procedures to be followed by citizenship judges;	*g)* prévoir le cérémonial à suivre par le juge de la citoyenneté;
(h) respecting the taking of the oath of citizenship;	*h)* régir la prestation du serment de citoyenneté;
…	…

Citizenship Regulations, SOR/93-246

17. (1) The ceremonial procedures to be followed by citizenship judges shall be appropriate to impress on new citizens the responsibilities and privileges of citizenship and, without limiting the generality of the foregoing, a citizenship judge shall, during a ceremony held for the presentation of certificates of citizenship,

(a) emphasize the significance of the ceremony as a milestone in the lives of the new citizens;

(b) subject to subsection 22(1), administer the oath of citizenship with dignity and solemnity, allowing the greatest possible freedom in the religious solemnization or the solemn affirmation thereof;

(c) personally present certificates of citizenship, unless otherwise directed by the Minister; and

(d) promote good citizenship, including respect for the law, the exercise of the right to vote, participation in community affairs and intergroup understanding.

(2) Unless the Minister otherwise directs, a certificate of citizenship issued to a person who has been granted citizenship under subsection

17. (1) Le cérémonial à suivre par les juges de la citoyenneté doit être de nature à sensibiliser les nouveaux citoyens aux responsabilités et privilèges attachés à la citoyenneté. Le juge de la citoyenneté doit, notamment, lors d'une cérémonie de remise de certificats de citoyenneté :

a) souligner l'importance de la cérémonie en tant qu'une étape clé dans la vie des nouveaux citoyens;

b) sous réserve du paragraphe 22(1), faire prêter le serment de citoyenneté avec dignité et solennité, tout en accordant la plus grande liberté possible pour ce qui est de la profession de foi religieuse ou l'affirmation solennelle des nouveaux citoyens;

c) remettre personnellement les certificats de citoyenneté, à moins de directives contraires du ministre;

d) promouvoir un bon sens civique, notamment le respect de la loi, l'exercice du droit de vote, la participation aux affaires de la collectivité et la compréhension entre les groupes.

(2) À moins de directives contraires du ministre, le certificat de citoyenneté délivré au nom d'une personne qui s'est vu attribuer la

5(l) of the Act shall be presented at a ceremony described in subsection (l).

citoyenneté en vertu du paragraphe 5(1) de la Loi doit lui être remis lors de la cérémonie visée au paragraphe (1).

…

…

19. (1) Subject to subsection 5(3) of the Act and section 22 of these Regulations, a person who has been granted citizenship under subsection 5(1) of the Act shall take the oath of citizenship by swearing or solemnly affirming it before a citizenship judge.

19. (1) Sous réserve du paragraphe 5(3) de la Loi et de l'article 22 du présent règlement, la personne qui s'est vu attribuer la citoyenneté en vertu du paragraphe 5(1) de la Loi doit prêter le serment de citoyenneté par un serment ou une affirmation solennelle faite devant le juge de la citoyenneté.

(2) Unless the Minister otherwise directs, the oath of citizenship shall be taken at a citizenship ceremony.

(2) À moins de directives contraires du ministre, le serment de citoyenneté doit être prêté lors d'une cérémonie de la citoyenneté.

(3) If a person is to take the oath of citizenship at a citizenship ceremony, a certificate of citizenship shall be forwarded by the Registrar to a citizenship officer of the appropriate citizenship office, who shall notify the person of the date, time and place at which the person is to appear before the citizenship judge to take the oath of citizenship and receive the person's certificate of citizenship.

(3) Lorsqu'une personne doit prêter le serment de citoyenneté lors d'une cérémonie de la citoyenneté, le greffier fait parvenir le certificat de citoyenneté à l'agent de la citoyenneté du bureau de la citoyenneté compétent, lequel avise la personne des date, heure et lieu auxquels elle doit comparaître devant le juge de la citoyenneté pour prêter le serment de citoyenneté et recevoir son certificat de citoyenneté.

20. (1) Subject to subsection 5(3) of the Act and section 22 of these Regulations, a person who is 14 years of age or older

20. (1) Sous réserve du paragraphe 5(3) de la Loi et de l'article 22 du présent règlement, la personne qui a 14

on the day on which the person is granted citizenship under subsection 5(2) or (4) or 11(1) of the Act shall take the oath of citizenship by swearing or solemnly affirming it

ans révolus à la date à laquelle elle se voit attribuer la citoyenneté en vertu des paragraphes 5(2) ou (4) ou 11(1) de la Loi doit prêter le serment de citoyenneté par un serment ou une affirmation solennelle fait :

(a) before a citizenship judge, if the person is in Canada; or

a) au Canada, devant le juge de la citoyenneté;

(b) before a foreign service officer, if the person is outside Canada.

b) à l'étranger, devant l'agent du service extérieur.

(2) Where a person is to take the oath of citizenship pursuant to subsection (1), the Registrar shall forward a certificate of citizenship to

(2) Lorsqu'une personne doit prêter le serment de citoyenneté en vertu du paragraphe (1), le greffier doit :

(a) a citizenship officer of the citizenship office that the Registrar considers appropriate in the circumstances, if the oath is to be taken in Canada; or

a) si le serment doit être prêté au Canada, transmettre le certificat de citoyenneté à l'agent de la citoyenneté du bureau de la citoyenneté qu'il juge compétent en l'espèce;

(b) a foreign service officer in the country in which the person is living, if the oath is to be taken outside Canada.

b) si le serment doit être prêté à l'étranger, transmettre le certificat de citoyenneté à l'agent du service extérieur dans ce pays.

(3) A citizenship officer or foreign service officer mentioned in paragraph (2)*(a)* or *(b)* shall notify the person of the date, time and place at which the person is to appear and take the oath of citizenship.

(3) L'agent de la citoyenneté ou l'agent du service extérieur visé aux alinéas (2)*a)* ou *b)* avise la personne des date, heure et lieu auxquels elle doit comparaître pour prêter le serment de citoyenneté.

21. Subject to section 22, a person who takes the oath of citizenship pursuant to

21. Sous réserve de l'article 22, la personne qui prête le serment de citoyenneté aux

subsection 19(1) or 20(1) shall, at the time the person takes it, sign a certificate in prescribed form certifying that the person has taken the oath, and the certificate shall be countersigned by the citizenship officer or foreign service officer who administered the oath and forwarded to the Registrar.

termes des paragraphes 19(1) ou 20(1) doit, au moment de la prestation du serment, signer un certificat selon la formule prescrite pour certifier qu'elle a prêté le serment, et le certificat doit être contresigné par l'agent de la citoyenneté ou l'agent du service extérieur qui a fait prêter le serment et transmis au greffier.

22. (1) The Minister or a person authorized by the Minister in writing to act on the Minister's behalf may administer the oath of citizenship to any person who has been granted citizenship and, in such case, the Registrar shall make all necessary arrangements for the purpose of administering the oath.

22. (1) Le ministre ou la personne qu'il a déléguée par écrit peut faire prêter le serment de citoyenneté à toute personne qui s'est vu attribuer la citoyenneté. En pareil cas, le greffier prend les dispositions nécessaires pour la prestation du serment.

(2) Where the Minister or a person authorized by the Minister in writing to act on the Minister's behalf administers the oath of citizenship, a citizenship officer who is authorized to do so by the Registrar shall countersign the certificate and forward it to the Registrar.

(2) Lorsque le ministre ou la personne qu'il a déléguée par écrit fait prêter le serment de citoyenneté à une personne, l'agent de la citoyenneté autorisé par le greffier contresigne le certificat et le transmet à ce dernier.

…

…

24. Subject to sections 19 to 22, any oath, solemn affirmation or declaration that is made for the purposes of the Act or these Regulations may be taken before

24. Sous réserve des articles 19 à 22, tout serment prêté ou toute affirmation ou déclaration solennelle faite pour l'application de la Loi ou du présent règlement peut l'être :

(a) the Registrar, a citizenship judge, a citizenship officer, a

a) au Canada, devant le greffier, le juge de la

commissioner for taking oaths, a notary public or a justice of the peace, if made in Canada; or

(b) a foreign service officer, a judge, a magistrate, an officer of a court of justice or a commissioner authorized to administer oaths in the country in which the person is living, if made outside Canada.

citoyenneté, l'agent de la citoyenneté, le commissaire aux serments, le notaire ou le juge de paix;

b) à l'étranger, devant l'agent du service extérieur, le juge, le magistrat, l'agent d'une cour de justice ou le commissaire autorisé à faire prêter les serments dans le pays où réside la personne.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-75-14
STYLE OF CAUSE:	ZUNERA ISHAQ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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JUDGMENT AND REASONS:	BOSWELL J.
DATED:	FEBRUARY 6, 2015

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
Negar Hashemi	FOR THE RESPONDENT

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