

Federal Court



Cour fédérale

Date: 20160927

Docket: T-1584-15

Citation: 2016 FC 1084

Ottawa, Ontario, September 27, 2016

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ABDULLA AHMAD HASSOUNA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION CANADA**

Respondent

ORDER AND REASONS

[1] The Minister moves, pursuant to Rule 369 of the *Federal Courts Rules*, for an Order striking the affidavit of the Applicant's proposed expert, Robert Andrew Vineberg, sworn June 2, 2016, or alternatively striking a number of the paragraphs of that affidavit.

[2] This application is one of the Lead Cases challenging the constitutionality of the revocation or proposed revocation of citizenship on grounds of fraud or misrepresentation under

the *Citizenship Act*, RSC 1985, c C-29, as amended by the *Strengthening Canadian Citizenship Act*, SC, 2014, c 22.

[3] The Minister submits that the affidavit at issue ought to be struck in its entirety because, as a proposed expert, Mr. Vineberg's "expertise in relation to the subject matter of the litigation is neither current nor specific to citizenship revocation" and "his affidavit contains opinions that are irrelevant to the common legal issues and that are without factual foundation."

[4] The applicant submits that this motion is premature "because the Court does not yet know the purpose of the affidavit [as the Applicant's memorandum of argument has not yet been filed] in order to establish its relevance and also in order to ascertain whether or not the deponent has the required expertise."

[5] The Applicant in response to the motion informs the Court that "Mr. Vineberg is being put forward for his expertise on the structure and operations of the Case Management Branch ("CMB") of Citizenship and Immigration Canada, now Immigration, Refugee, Citizenship Canada ("IRCC")." It is asserted that he is being put forward "not as an expert regarding the citizenship revocation process in particular, but in relation to how the CMB and IRCC functions and the extent to which the decision makers are free from influence and would appear to a reasonable person to act independently and impartially." It is submitted that "Mr. Vineberg is clearly qualified, having served as Director General / Director of IRCC, for 14 years, namely from 1994 to 2008."

[6] As the Minister concedes, it is generally the case that whether all or part of an affidavit ought to be struck, is a question best left to the judge hearing the application on the merits. Nonetheless, a decision may be made by a motions judge where the affidavit or parts thereof are “clearly irrelevant:” *GlaxoSmithKline Inc v Apotex Inc*, 2003 FC 920 at para 4; or “where prejudice is demonstrated and the evidence is obviously irrelevant:” *Canadian Tire Corp. v P.S. Partsource Inc*, 2001 FCA 8.

[7] In this case, the Minister submits that I, as the case management judge, am in a position to make a decision on the relevance of the affidavit in light to the questions to be addressed in the upcoming hearing on the Lead Cases.

[8] Having reviewed the submissions of both parties and read the affidavit and the transcript of the cross-examination of Mr. Vineberg, I have determined that it is not appropriate to strike the affidavit in its entirety. Mr. Vineberg’s evidence as to “how the CMB and IRCC functions and the extent to which the decision makers are free from influence” is arguably relevant to the common issues. His knowledge and “expertise” in this area may well be dated, but that goes to weight, not admissibility. I fail to see that he has any expertise to offer an opinion on the circumstances where a reasonable person would view CMB or IRCC officials to be acting independently and impartially. This is reinforced by his admission on cross-examination that he “is no better placed than a Federal Court Judge with a proper factual foundation to reach a conclusion on the fairness of this [revocation] process.”

[9] The Applicant admits that Mr. Vineberg is not being put forward as an expert on the citizenship revocation process. However, he attests, in part, to the former and current processes for revocation of citizenship, and also expresses opinions thereon. He appears to have knowledge of the process involved under the former revocation regime. His evidence on the current regime appears to be based on hearsay, and thus the hearing judge will determine what weight it is to be given. Nevertheless, as he is not being put forward as an expert in revocation, his opinion evidence in this regard is inadmissible (and thus clearly irrelevant) and ought to be struck. The following portions of the affidavit are struck on this basis: the last sentence of paragraph 14, paragraph 22, paragraph 26, paragraph 27, the first two sentences and last sentence of paragraph 28, paragraph 33, paragraph 37, and paragraph 39.

[10] Paragraphs 29 and 30, which the Minister seeks to have struck, deal with the Pre-Removal Risk Process. It is not apparent at this time that these paragraphs have any relevance to the determination of the common issues; however, I find it would be premature to strike them without having the benefit of the Applicant's memorandum of argument.

ORDER

THIS COURT ORDERS that the last sentence of paragraph 14, paragraph 22, paragraph 26, paragraph 27, the first two sentences and last sentence of paragraph 28, paragraph 33, paragraph 37, and paragraph 39, of the Affidavit of Robert Andrew Vineberg sworn June 2, 2016, are struck.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1584-15

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

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, WITHOUT
APPEARANCE OF THE PARTIES**

ORDER AND REASONS: ZINN J.

DATED: SEPTEMBER 27, 2016

WRITTEN REPRESENTATIONS BY:

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Mary Matthews FOR THE RESPONDENT

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