Federal Court Cour fédérale

Date: 20250113

Docket: T-1835-21

Citation: 2025 FC 62

Ottawa, Ontario, January 13, 2025

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Plaintiff

and

RAGOORTHAN MAHENDRAN

Defendant

JUDGMENT AND REASONS

I. Overview

[1] In this action, the Minister of Citizenship and Immigration [Minister] seeks a declaration, pursuant to subsection 10.1(1) of the *Citizenship Act*, RSC, 1985, c C-29 [Act] that the Defendant, Ragoorthan Mahendran, obtained his Canadian Citizenship by false representation or fraud, or by knowingly concealing material circumstances. The effect of such a declaration would be to revoke the Defendant's citizenship.

[2] At the time the Defendant took his oath of citizenship, he was subject to a probation order and had been charged with, and convicted of, indictable offences under the *Criminal Code,* RSC 1985, c C-46 [Criminal Code]. It is undisputed that had he disclosed this information to Citizenship and Immigration Canada [CIC] (now Immigration, Refugees and Citizenship Canada), he would have been prohibited by the Act from obtaining citizenship or taking the oath of citizenship (paragraphs 22(1)(a)(i) and 22(1)(b) of the Act). However, he did not disclose the probation order, charges or convictions, instead he indicated on his citizenship forms that the prohibition did not apply to him.

[3] The Minister asserts that the Defendant either intended to mislead Canadian citizenship officials throughout the citizenship application process by failing to make the necessary disclosure, was wilfully blind in the representations that he did make and to the consequences of those representations, or engaged in recklessness throughout the application process by choosing not to understand the effect of his actions.

[4] The Defendant asserts that he did not fail to disclose the information intentionally. Rather, at the time he applied for citizenship he was young, uneducated, only had a basic understanding of the English language, and his citizenship application was being handled by his mother and elder brother with the help of an advisor. The Defendant asserts that he did not read the citizenship forms that he signed and was not aware that his criminal record prohibited him from being granted citizenship. Nor was he verbally advised of the need to disclose this information by any Citizenship Officer during the citizenship process.

[5] The Defendant argues that each element of subsection 10.1(1) of the Act requires that the Minister establish that the Defendant had an intention to deceive and that the Minister has not met their burden of establishing such intention. However, I cannot agree.

[6] For the reasons set out further below, it is my view that the evidence establishes, on a balance of probabilities that the Defendant was both willfully blind in failing to make further inquiries and seek clarification when he knew that he should have done so, and reckless in the manner in which he approached the representations that he did make, which deceived Canadian citizenship officials to allow the Defendant to obtain Canadian citizenship when he was not otherwise entitled to obtain it. In my view, these actions are sufficient to establish that the Defendant obtained his Canadian citizenship by false representation or fraud such that subsection 10.1(1) of the Act is satisfied and accordingly, the action will be granted.

II. **Background**

A. *Legislative Provisions*

[7] The prohibition against obtaining citizenship on the basis of criminal activity in Canada is set out in paragraphs 22(1)(a)(i) and 22(1)(b) of the Act, which reads as follows:

Prohibition	**Interdiction**
22 (1) Despite anything in this Act, a person shall not be granted citizenship under subsection 5(1), (2) or (4) or 11(1) or take the oath of citizenship	22 (1) Malgré les autres dispositions de la présente loi, nul ne peut recevoir la citoyenneté au titre des paragraphes 5(1), (2) ou (4) ou 11(1) ni prêter le serment de citoyenneté :

(a) while the person, under any enactment in force in Canada,	**a)** pendant la période où, en application d'une disposition législative en vigueur au Canada :
(i) is under a probation order	**(i)** il est sous le coup d'une ordonnance de probation,
[…]	[…]
(b) while the person is charged with, on trial for, subject to or a party to an appeal relating to an offence under subsection 21.1(1) or 29.2(1) or (2), or an indictable offence under subsection 29(2) or (3) or any other Act of Parliament, other than an offence that is designated as a contravention under the *Contraventions Act*;	**b)** tant qu'il est inculpé pour une infraction prévue aux paragraphes 21.1(1) ou 29.2(1) ou (2) ou pour un acte criminel prévu par les paragraphes 29(2) ou (3) ou par une autre loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions*, et ce, jusqu'à la date d'épuisement des voies de recours;

[8] The Act sets out the following steps that may be taken by the Minister to revoke citizenship where an individual has obtained citizenship in contravention of these prohibitions, and the requirements for obtaining revocation:

Revocation by Minister — fraud, false representation, etc.	**Révocation par le ministre — fraude, fausse déclaration, 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	**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

concealing material circumstances.	réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.
(2) [Repealed, 2017, c. 14, s. 3]	**(2)** [Abrogé, 2017, ch. 14, art. 3]
Notice	**Avis**
(3) Before a person's citizenship or renunciation of citizenship may be revoked, the Minister shall provide the person with a written notice that	**(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) advises the person of his or her right to make written representations;	**a)** il l'informe qu'elle peut présenter des observations écrites;
(b) specifies the form and manner in which the representations must be made;	**b)** il précise les modalités de présentation des observations;
(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	**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.
[…]	[…]

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).

[…]

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).

[…]

Revocation for fraud — declaration of Court	**Révocation pour fraude — déclaration de la Cour**
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.	**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.
[…]	[…]
Effect of declaration	**Effet de la déclaration**
(3) A declaration made under subsection (1) has the effect of revoking a person's citizenship or renunciation of citizenship.	**(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.

B. *Background to this Proceeding*

[9] The Defendant was born in Sri Lanka in April 1987. He came to Canada in July 2003 with his mother, sister, and two brothers and became a permanent resident.

[10] On November 25, 2007, the Defendant applied for Canadian citizenship along with his mother, older brother, and sister and signed a citizenship application form that was submitted to CIC. The citizenship application form included an attestation indicating that the Defendant read

and understood the prohibitions to obtaining citizenship under the Act and that they did not apply; that he would advise CIC if any information on the citizenship application form, including the information pertaining to prohibitions, changed prior to taking the oath of citizenship; and an acknowledgment that the Defendant understood that if he made a false declaration, or failed to disclose all information material to the application, he could lose his citizenship and be charged under the Act. The prohibitions identified in the application included *inter alia* that the applicant was not on probation and had not been on probation in the 4 years prior to application, that the applicant had not been convicted of an indictable offence (crime) in the 3 years prior to application, and that the applicant had never been charged with a crime.

[11] On January 15, 2008, the Defendant was charged with two counts of theft of a value not exceeding $5,000, contrary to paragraph 334(b)(ii) of the Criminal Code, and two counts of possession, uses or traffics in a credit card or a forged or falsified credit card, contrary to paragraph 342(1)(c)(f) of the Criminal Code. The charges related to offences that had occurred in September 2007.

[12] On March 7, 2008, the Defendant was found guilty of the charges. He was sentenced to complete 75 hours of community service within four months, two years of probation, and was fined $400.

[13] On November 25, 2008, the Defendant wrote the citizenship test and his citizenship application was approved.

[14] On December 16, 2008, the Defendant was charged with three counts of possession, uses or traffics in a credit card or a forged or falsified credit card, contrary to paragraph 342(1)(c)(e) of the Criminal Code and one count of fraud contrary to paragraph 380(1)(b)(i) of the Criminal Code.

[15] In early February 2009, the Defendant received by mail a Notice to Appear to take the Oath of Citizenship. The form included the date and location of the citizenship ceremony, a list of the information the Defendant had to bring with him to the ceremony, and a warning that citizenship could not be obtained if the Defendant was *inter alia*, "under a probation order" or "charged with, or on trial for, …an offence…under the Criminal Code or an indictable offence under any Act of Parliament".

[16] On February 19, 2009, the Defendant attended a citizenship ceremony, signed the Oath or Affirmation of Citizenship form, and took the oath of citizenship to become a Canadian citizen. The Defendant did not disclose during any of these steps, or the steps prior to the ceremony that he was subject to a probation order, that he had pending charges for indictable offences under the Criminal Code, or that he had been subject to criminal proceedings. On the Oath of Citizenship form, the Defendant confirmed that he had "not been subject to any criminal or Immigration proceeding" since he filed his application for Canadian citizenship.

[17] On December 17, 2015, CIC issued a Notice of Intent to Revoke Citizenship to which the Defendant responded. On April 25, 2016, the Defendant's citizenship was revoked. However, the

decision to revoke was quashed following the Court's decision in *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473.

[18] Subsequently, on January 24, 2018, after new revocation and citizenship provisions came into force the Defendant was sent further letters indicating that the Minister believed that the Defendant had obtained citizenship in contravention of the Act. On July 11, 2018, the Defendant's counsel requested that revocation proceedings not be initiated because of the immigration consequences on the Defendant.

[19] On October 9, 2019, CIC advised the Defendant that citizenship revocation proceedings were being initiated under subsection 10(3) of the Act. The Statement of Claim [Claim] for this action was filed on December 1, 2021.

[20] The Minister subsequently brought a motion for summary judgment, arguing that the Defendant had admitted, *inter alia*, to facts that as a matter of law established that he had obtained Canadian citizenship by fraud or false representation. By decision dated January 9, 2024, reported at *The Minister of Citizenship and Immigration v Ragoorthan Mahendran*, 2024 FC 30 [*Mahendran SJ Decision*], this Court dismissed the Minister's motion on the basis that it could not conclude, as a matter of law, that evidence establishing that the Defendant had signed documentation forming part of the citizenship application process, without reading it or being aware of its contents, automatically translated to being wilfully blind or reckless for the purpose of section 10.1 of the Act. The Court held that for wilful blindness, the Minister also had to establish that "the Defendant's suspicions were aroused as to the contents of [the] documentation

(particularly the Oath [of Citizenship] Document in which the misrepresentation was made) and therefore deliberately chose not to inform himself as to its contents." Similarly, for the purpose of recklessness, the Minister also had to establish "that the Defendant was aware of a danger or risk". As there was insufficient evidence on these aspects, the Court concluded that the motion could not be granted and that the action should proceed to trial with the benefit of live testimony from witnesses for both the Minister and the Defendant.

III. **Issue**

[21] The sole issue before the Court on this action is whether the Plaintiff has demonstrated on a balance of probabilities that the Defendant obtained his Canadian citizenship by false representation or fraud, or by knowingly concealing material circumstances.

IV. **Trial Witnesses**

[22] There were two fact witnesses that gave evidence at trial.

A. *Minister's Witness – Neeta Bucktowsing*

[23] The Minister's witness, Neeta Bucktowsing, is an employee of IRCC with 19 years' experience, 15 years of which was as a Citizenship Officer for the Greater Montreal area.

[24] Ms. Bucktowsing described her responsibilities as Citizenship Officer to include analyzing citizenship applications and supporting documents, consulting with partners, interviewing applicants, and after 2014, becoming a final decision-maker. She testified to assisting with approximately 800 citizenship ceremonies, including planning and organizing the

ceremonies, identifying citizenship applicants, having them sign the Oath or Affirmation of Citizenship form, and acting as a moderator during ceremonies.

[25] Ms. Bucktowsing provided background relating to the Citizenship Officer's role in the mandatory steps for obtaining citizenship, including: the citizenship application form and its approval; security, criminal and immigration screening; the information conveyed to an applicant before and after taking the citizenship test; and the general procedures followed before and during citizenship ceremonies, including with respect to the oath of citizenship.

[26] She testified that the screening of an applicant is valid for one year only and that screening relating to criminal convictions and infractions is conducted by the RCMP. She acknowledged that RCMP screening of the Defendant was conducted on April 11, 2009 and did not flag any criminal infractions despite the Defendant having been found guilty of charges under the Criminal Code prior to that time, and noted accepted shortcomings in the screening process which necessitated the need for further confirmations from an applicant as to their criminal history.

[27] She testified to the practice of giving an oral reminder to all applicants taking the citizenship test to discuss "any problems with the police" with a Citizenship Officer, and to the same questions about criminal history being asked during individual interviews that would be conducted following the test. She referred to the Citizenship Application Review and Approval Form [CARF] that had to be completed by the Citizenship Officer after an interview, confirming that an applicant had "read, signed and affirmed his/her understanding of the prohibitions on the

application form and has indicated that he/she is not prohibited", while acknowledging that she was not the Citizenship Officer that completed the Defendant's CARF, that she was not present during the Defendant's test, and that she could not be certain, and could only testify that it was more probable than not, that the Defendant had in fact had an interview following the test.

[28] Ms. Bucktowsing testified about the Notice to Appear for the Oath of Citizenship form that is sent to applicants prior to their citizenship ceremony, which provides an additional warning on the form reminding applicants that Canadian citizenship cannot be granted, or the oath of citizenship taken, if the person is *inter alia* under a probation order, or subject to an indictable offence under an Act of Parliament, and that citizenship may be revoked if it has been obtained by false representation, fraud or by knowingly concealing material circumstances. She testified to the general steps taken at a citizenship ceremony, and the requirement for a Citizenship Officer to confirm the identity of applicants, verify documents, and repeat questions relating to the prohibitions to citizenship, prior to allowing applicants to sign the Oath of Citizenship form. The Oath of Citizenship form requires a separate signature from applicants to confirm that they have not been subject to any criminal or immigration proceedings since the time they filed their application for citizenship.

[29] Ms. Bucktowsing conceded that she was not the Citizenship Officer who was responsible for the Defendant's application, nor was she present for the Defendant's citizenship test or ceremony, and that the Defendant's ceremony was a "special ceremony" that was held at a local elementary school where a larger group of applicants were given the oath of citizenship at the same time.

[30] She acknowledged recognizing the signature of the Citizenship Judge or Citizenship Officer who signed the Defendant's Oath of Citizenship form. However, no explanation was given as to why that Officer had not given direct evidence as to the events that took place on the day of the Defendant's ceremony.

[31] Ms. Bucktowsing acknowledged that certain deviations from the procedures set out in the training materials had been adopted by officers in the Montreal area relating to the manner of conveying information on the day of the citizenship test and the interview process, and with respect to the procedures following on the day of the citizenship ceremony. However, she maintained that any changes were inconsequential and that the spirit of the procedures were always followed. She testified to a continuing obligation on the Citizenship Officer to make sure that all applicants remained eligible for citizenship throughout the citizenship process, by making sure that applicants were aware of the prohibitions and the requirement to disclose any changes to their circumstances. Because of this continuing obligation, Ms. Bucktowsing testified that it would not have been possible for someone to obtain Canadian citizenship without being verbally asked throughout the process whether the prohibitions were applicable.

[32] The Defendant did not dispute the credibility of Ms. Bucktowsing, but argued that her testimony was not helpful to the Court as she was not personally involved in any aspect of the Defendant's citizenship application process and therefore could not provide any direct evidence as to what occurred at the Defendant's citizenship test or ceremony.

[33] While I agree that the lack of direct evidence bears on my ability to discern what specifically happened during the Defendant's citizenship test and ceremony, it is my view that Ms. Bucktowsing's evidence nonetheless sets out reliable evidence as to CIC's standard procedures and the steps typically followed during the citizenship process. I therefore afford some weight to Ms. Bucktowsing's evidence in my analysis, particularly where the Defendant was unable to recall, or had an incomplete or inconsistent recollection of, what happened around a critical step of the citizenship process.

B. *Defendant's Witness – Ragoorthan Mahendran*

[34] The Defendant provided evidence on his own behalf and testified to the events around his citizenship application, test, ceremony, and the Oath of Citizenship. Overall, his testimony was often vague and he struggled with his recollection of specific details relating to the citizenship process, his criminal charges and his compliance with his probation order.

[35] It was the Defendant's evidence that he did not read, understand, or receive any instruction with respect to the citizenship application form. Although he admitted signing the attestation on the form, he asserted that he did not fill out the remainder of the form, including the section on the form indicating that the prohibitions under the Act did not apply to him. Rather, it was filled out by an individual named "Visuvalingam" who was hired by his family to assist with the forms. The Defendant testified that he did not liaise with Visuvalingam with respect to completion of the form, but that this was handled by his mother. He did not have any direct knowledge as to why Visuvalingam did not indicate his involvement in the appropriate section on the form that asked for identification of individuals, firms or organizations who

assisted with the completion of the application, speculating only that this might have been because Visuvalingam did not want to indicate that he was getting paid for his involvement.

[36] Contrary to the testimony of Ms. Bucktowsing, the Defendant had no recollection of being reminded by a Citizenship Officer of the prohibitions to citizenship prior to, or after taking, the citizenship test. Nor did he recall his family being interviewed by a Citizenship Officer after the test. He did not remember the details relating to the day of his test and testified that it was possible that he was interviewed, but that because there were around 60 individuals taking the test on the same day, he would likely have been waiting a long time for his turn and therefore would have recalled being interviewed.

[37] The Defendant acknowledged that a Notice to Appear was sent to his family home with the details of the citizenship ceremony and that the Notice included a warning that citizenship could not be obtained if the applicant was under probation, charged with, or on trial for, an indictable criminal offence. While the Defendant stated that he did not recall reading this mail, and that it was likely opened and read by his mother, this testimony was somewhat inconsistent with other testimony of the Defendant indicating that he was screening his mail from his mother for any government documents relating to his criminal infractions.

[38] Although the Defendant testified that his mother was not aware of his early criminal convictions, I found this testimony difficult to reconcile against other facts relating to the Defendant’s requirement to complete 75 hours of community service within four months of his probation order. Surely, his longer absences during this time period would have been noticed at

home and there would have been some questions raised. He also acknowledged that he was represented by counsel for his criminal matters. It is unclear how and through what means he retained counsel when he had little financial resources and limitations on his English competency.

[39] The Defendant's testimony relating to the citizenship ceremony was also inconsistent with the standard practices discussed by Ms. Bucktowsing. The Defendant testified that there was no official check-in or identification taken at the ceremony, and that all applicants took the oath of citizenship together, without any monitoring as to who had taken the oath. The Defendant could not recall any official reminding him of the prohibitions to citizenship on the day of the ceremony and had no recollection of reading or signing his Oath of Citizenship form, despite verifying his signatures were on the document which bore the same date as his ceremony. He acknowledged only that he read his Citizenship Certificate and noticed an error in his birthdate, which he raised with a citizenship official for correction.

[40] On the basis of the standard practices in place, I find it highly improbable that the Defendant did not receive any verbal instruction at the citizenship ceremony. The single page Oath of Citizenship form includes three signatures, all of which were dated on the date of the ceremony: two affirmations from the Defendant (one under the heading "IMPORTANT : PROHIBITIONS" confirming that the Defendant "had not been subject to any criminal or immigration proceeding since [he] filed [his] application for Canadian citizenship", and the other affirming to the oath of citizenship); along with the signature of the citizenship official

witnessing the affirmations. I accept from the document that the Defendant signed the form on the date of his ceremony in front of a citizenship official.

[41] Overall, while I also accept from the evidence that the Defendant struggled with the English language at the time of his citizenship application and when he wrote the citizenship test, in view of the standard practices in place and the Citizenship Officer's continuing obligations, in my view it is reasonable to infer that at some point during the citizenship process the Defendant was alerted to the fact that having criminal infractions could be problematic to obtaining citizenship, although the fullness of the prohibition may not have been fully understood.

V. **Analysis**

[42] Pursuant to subsection 10.1(1) of the Act, the Minister may obtain a declaration from the Court if the Court is satisfied that the Defendant obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances.

[43] The overall goal of subsection 10.1(1) is to ensure that persons who obtain citizenship by providing false information or by withholding information that is material to their eligibility will not continue to benefit from that status: *Canada (Citizenship and Immigration) v Savic*, 2014 FC 523 [*Savic*] at para 68. This goal is grounded in the overriding duty on a foreign national seeking to obtain citizenship in Canada to candidly disclose all materials facts and to truthfully complete every question asked during the citizenship application process: section 15 of the Act; see also *Canada (Citizenship and Immigration) v Modaresi*, 2016 FC 185 [*Modaresi*] at para 19; *Savic* at para 51.

[44] An inadvertent omission of information that is not material will not be caught by subsection 10.1(1), nor will a technical transgression or truly innocent misrepresentation that is not made through willful blindness: *Canada (Citizenship and Immigration) v Schneeberger*, 2003 FC 970 at para 26; *Savic* at para 57; *Modaresi* at para 17. Both materiality and some form of intention are required.

[45] In this case, while the Minister asserts that each of the three criteria under subsection 10.1(1) are satisfied on the evidence, the Court need only establish that one of these conditions is met for the declaration requested to be justified. As set out in *Wynter v Canada*, 2017 FCA 195 [*Wynter*] at paragraph 11, "[w]hen Parliament uses alternative terms, it is assumed that it intended them to have different meanings." Thus, while knowingly concealing material circumstances, false representation, and fraud each require some level of intent, they mean slightly different things. I will therefore deal with each in turn.

A. *Knowingly concealing material circumstances*

[46] To knowingly conceal material circumstances requires an intention to omit facts that are material to the ultimate issue. While it need not be shown that the person knew or did not know that the facts concealed were material, the Court must be able to find on the evidence, or draw a reasonable inference therefrom, that the person concealed the material facts with the intention of misleading the decision-maker: *Savic* at para 65, citing to *Canada (Citizenship and Immigration) v Rogan*, 2011 FC 1007 [*Rogan*] at para 32.

[47] In this case, it is undisputed that the Defendant failed to raise facts relating to his criminality during the citizenship application process, which were critical to his ability to obtain citizenship. At the time the Defendant applied for citizenship, he had already committed the offences which led to the criminal charges against him. By the time he took the citizenship test, he had been convicted of criminal charges and was under probation, and at the time of the Oath of Citizenship he had also been charged with additional criminal charges. At each stage of the process, the Defendant was required to disclose the details of his criminal infractions, which admittedly would have prohibited him from obtaining citizenship and thus were material to his application. The outstanding issue is therefore whether the evidence establishes that he concealed these material facts knowingly, or with an intention to mislead the CIC.

[48] The Minister argues that the Defendant's assertion that he was unaware that his criminal infractions should be disclosed or that they prohibited him from obtaining citizenship is simply not credible. The Minister points to the inconsistency between the Defendant's evidence and that of Ms. Bucktowsing as to what took place during the day of his testing and at the citizenship ceremony. It also highlights false statements made in the Defendant's affidavit accompanying his initial response to the Minister's revocation notice that he did not have criminal charges at the time he wrote his citizenship test and as to when he wrote the test, and the absence of the Defendant's current argument from this initial response. If the Defendant truly made an innocent misrepresentation on his citizenship forms, the Minister asserts that he would have raised this argument throughout the process and not for the first time in his amendment to the Statement of Defence.

[49] While I agree that the errors in the Defendant's earlier affidavit cast doubt on the accuracy of the details outlined in the affidavit, in my view this does not equate to evidence that the Defendant purposefully concealed his criminal infractions from citizenship officials and in his citizenship documents during the citizenship process.

[50] For the Court to be satisfied that the Defendant had purposeful intent, the evidence would need to demonstrate on a balance of probabilities that the Defendant knew and understood that his criminal infractions should be disclosed, and with this knowledge purposefully omitted to mention his criminal infractions in an effort to deceive the CIC. I do not agree that the evidence rises to this level.

[51] As highlighted by the Defendant, the evidence here is distinct from that in *Canada (Minister of Citizenship and Immigration) v Kljajic*, 2020 FC 570 [*Kljajic*] where there were key admissions establishing a direct intention to conceal material information. In *Kljajic*, the Court found that the defendant had knowingly concealed material circumstances in his permanent residence application by omitting information relating to his prior work history, places of work, and addresses of residence that would have led to Mr. Kljajic's application being screened out, or further inquiries to be made with respect to his potential involvement with the Ministry of Internal Affairs of the Bosnian Serb Republic [RS MUP]. Unlike the present case, in *Kljajic* there was direct evidence from Mr. Kljajic's counsel that he did not want Canadian immigration authorities to know about his link to the RS MUP. Here, there is no direct evidence from either the Minister or the Defendant from which a clear intention can be drawn.

[52] Nor can one be inferred. While I agree that the Defendant had notice of the prohibition to citizenship through attestations on the forms he completed and was very likely reminded about the prohibition during one or both of the citizenship test and ceremony in accordance with standard practices and the Citizenship Officer's continuing obligations, this does not mean that he had a meaningful enough understanding of the prohibition, so as to make a purposeful choice to omit mention of his criminal infractions. Rather, in my view, the evidence demonstrates that the Defendant likely did not understand the prohibition fully. He struggled with the English language and showed an overall disregard for the process, intentionally not paying attention to details in the documents he was signing, despite being aware of the general importance of the documents to the citizenship process as a whole.

[53] Instead of intentionally omitting specific information that was material to his citizenship status for the purpose of deceiving citizenship officials, in my view, a more reasonable inference from the evidence is that the Defendant simply chose not to inquire or ask questions about the warnings and prohibitions to which he was being alerted, which would have provided him with a greater understanding of what they were and the need for their disclosure.

[54] In my view, this evidence while sufficient to satisfy the other arms of subsection 10.1(1) of the Act, does not establish that the Defendant had purposeful intent so as to knowingly conceal material information.

B. *False representation*

[55] To make a false representation requires an intention to mislead or deceive by putting forward information that is known to be untrue: *Canada (Citizenship and Immigration) v Thiara*, 2014 FC 220 at para 49; *Savic* at para 74. While generally innocent falsehoods do not satisfy subsection 10.1(1), misrepresentations put forward as "innocent" must be carefully examined as this Court has emphasized that willful blindness cannot be condoned: *Modaresi* at paras 16-17, citing to *Canada (Minister of Citizenship and Immigration) v Phan* 2003 FC 1194 [*Phan*] at para 33.

[56] As set out in the *Mahendran SJ Decision* (see also *R v Briscoe*, 2010 SCC 13 at para 21; *Sansregret v The Queen*, [1985] 1 SCR 570 [*Sansregret*]; *R v Jorgensen*, [1995] 4 SCR 55), "the doctrine of wilful blindness imputes knowledge to someone whose suspicion is aroused to the point where they see the need for further inquiries but deliberately choose not to make those inquiries" (at para 50). This was described in *Wynter* at paragraph 13 as "deliberate ignorance". In this context, it requires that the Minister establish that the Defendant's suspicions were aroused as to the contents of the documentation he was signing, but that he chose not to inform himself as to the contents.

[57] In my view, these conditions have been satisfied in the present case. Even if I set aside whether the Defendant was reminded verbally that he needed to disclose his criminal infractions as they could be a bar to citizenship, I cannot ignore the fact that the Defendant, who was an adult at the time, signed at least two forms (his citizenship application and his Oath of Citizenship) without making inquiries as to the content of the affirmations he was signing.

[58] The affirmation relating to the prohibition on his Oath of Citizenship, in particular, was separate and apart from his citizenship oath and was clearly sectioned off under a heading titled, “IMPORTANT: PROHIBITIONS” as a separate confirmation that had to be given before citizenship could be conferred.

[59] While the Defendant stated in testimony that he did not read the form and would not have understood what was written in this section, he acknowledged understanding the meaning of the word “IMPORTANT” in the heading to the prohibition section and that he should have made sure that he understood what was written in this section of the form before he signed it (Transcript, p. 185, line 21 – page 185, line 3). Indeed, when looking at the one-page form it is difficult to miss the heading, even on a quick glance, as it appears in larger capitalized font as a heading above the first signature box.

[60] As admitted by the Defendant, he could have read and understood some of the words in this section and asked for assistance with respect to the remainder. Not doing so was reckless and contrary to the expectations of an applicant for citizenship (Transcript, p. 189, line 30 – p. 191, line 21; Exhibit 8, pp 89-90):

> Q. Let's go back to the Examination for Discovery transcript, if we could, Mr. Spykerman.
>
> […]
>
> Mr. Spykerman continues,
>
> *Q. Right, yeah. And so you didn't disclose your criminal charges and convictions and probation orders because you didn't read the form, right?*
>
> *A. Yes*

> *Q. Even though you were aware you didn't understand the form?*
>
> *A. I didn't understand the form?*
>
> *Q Yeah.*

And your answer is,

> *A. It's not like I didn't understand the form. I could have, I could have read, or I could — some of the words. They didn't — let's say — let's put it this way, some of the words if I don't understand them, I could've asked someone for the translation or like I could've asked somebody who will read it for me, but I did not.*
>
> *Q. Right. And so you did not completely understand the form?*
>
> *A. Yes.*
>
> *Q. And you were aware that you completely — didn't completely understand the form?*
>
> *A. Yes.*

MR. KNAPP: Q. Is — do you stand by those answers, sir?

A. Yes.

[61] As described by the Defendant, he was an adult acting like a child who was not serious in his actions, and who was not worrying about consequences (Transcript, p. 154, lines 11-16). When he was similarly asked about the "WARNING" that appeared on the Notice to Appear that was delivered to his family home, he admitted that if it was read at the time, he would have understood that the notice was seeking to convey important information about the citizenship process. However, even with this knowledge he would have nonetheless disregarded the information under the "WARNING" and would not have inquired, or made any effort, to understand the contents of the document (Transcript, p. 176, lines 1-22).

[62] I agree with the Minister, the Defendant's failure to inquire further about the prohibition and the content of the affirmation he was making on his Oath of Citizenship, while being able to clearly recognize that it was important and that he did not fully understand it, amounts to deliberate ignorance and is sufficient to establish willful blindness and the intention requirement for false representation under subsection 10.1(1) of the Act.

[63] While this finding is sufficient to grant this action, I shall nonetheless go on to consider the criteria for fraud, which in my view has also been established on these facts.

C. *Fraud*

[64] Fraud arises in both the criminal and civil context and is generally defined as an "intentional or reckless misrepresentation of fact by words or by conduct that deceives another person and which results in a detriment to that other person": *Savic* at para 70. It can arise from both a misrepresentation and an omission, or from silence in situations where there is an obligation to disclose information: *Savic* at para 70.

[65] Fraud requires four elements (*Hyrniak v Mauldin*, 2014 SCC 7 at para 87; *Bruno Appliance and Furniture Inc v Hryniak*, 2014 SCC 8 [*Bruno*] at para 21): 1) a false representation or omission by the defendant; 2) some level of knowledge of the falsehood of the representation or omission on the part of the defendant; 3) the false representation or omission causing the plaintiff to act; and 4) the plaintiff's action resulting in a loss. As set out in *Savic*, the requisite intention for fraud may be satisfied by the demonstration of recklessness (at para 71).

[66] In the criminal context, recklessness has been described as “knowledge of a danger of risk and persistence in a course of conduct which creates a risk that the prohibited result will occur…”: *Sansregret* at para 22. While willful blindness is grounded on a deliberate failure to inquire, the culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it: *Sansregret* at para 22.

[67] In the non-criminal context, recklessness has been described by the Federal Court of Appeal as “acts that disregard or show indifference for the consequences such that the conduct is done wantonly or heedlessly” (*Canada (Attorney General) v Douglas*, 2021 FCA 89 at para 8), and by the Tax Court as making a statement “without caring whether it was true or false”, where actual knowledge indifference to the truth is required (*Garber v The Queen*, 2014 TCC 1 [*Garber*] at para 328, citing to *Motkoski Holdings Ltd v Yellowhead (County)*, 2010 ABCA 72 [*Motkoski*] at para 58).

[68] In this case, the Defendant knew the importance of the citizenship process and in being truthful on his citizenship forms. He knew that in taking the oath of citizenship he was making a solemn declaration to the country. In cross-examination, the Defendant admitted that providing affirmations in his citizenship forms without understanding their content was reckless behaviour (Transcript, p. 191, line 22 – p. 192, line 11):

> Q. Okay. So essentially if I can, if I can distill that evidence down. What you're saying is, you signed something again without completely understanding it, is that right?
>
> A. Yes.
>
> Q. Okay. And again, you'll agree with me that signing something without understanding it is reckless behaviour?

A. Yes.

Q. Especially a form like the oath or affirmation which is making a solemn affirmation to the country …

A. Yes.

Q. ...that you are now being made a citizenship of — citizen of? Because Canadian Citizenship is an extraordinary right and privilege, would you agree with that?

A. Yes.

Q. And it beholds an applicant for citizenship to be truthful when they are applying for citizenship, is that correct?

A. Yes.

[69] The Defendant asserts that he was acting negligently and that negligence is distinct from recklessness and is insufficient to satisfy subsection 10.1(1) of the Act. He relies on *Garber* at paragraph 328, citing to paragraph 58 of *Motkoski*, which comments on the relationship between recklessness and negligence:

> Under the second branch, it is sufficient if the defendant did not actually know the statement was false, so long as the statement was made recklessly. "Recklessly" in this context means that the statement was made "without caring whether it was true or false". "Recklessly" does not just mean the statement was made with "very great negligence", nor that it was made in a highly risky context, such that the probability of someone relying on the statement to their detriment was enhanced. As Lord Herschell said in *Derry v Peek* at p. 375, "making a false statement through want of care falls short of, and is a very different thing from, fraud, and the same may be said of a false representation honestly believed though on insufficient grounds". Under neither branch of the test is it sufficient that the defendant "should have known" the truth, or should have been more careful and made further inquiries; actual knowledge or actual indifference to the truth is required.

[70] As set out in this passage, negligence is the act of failing to take proper care in doing something. However, in this case, I do not agree that the actions of the Defendant can simply be described as failing to take proper care.

[71] As stated earlier, the Defendant admittedly was not worrying about consequences. Here, the Defendant did not just lack care in his actions, but he made a conscious choice to act heedlessly and to be indifferent to whether the attestations he was giving were true or false.

[72] While the Defendant contests that he was acting by choice, I do not find this argument persuasive. In my view, a reasonable inference can be drawn from the evidence that the Defendant, who was seeking to hide his criminal charges and infractions from his family with whom he was applying for citizenship, made a conscious choice not to inquire or ask questions about the warnings and prohibitions to which he was being alerted, which might have led to a greater understanding of the need to disclose this information.

[73] Similarly, I find no authority for the Defendant's assertions that he cannot be indifferent to consequences because he was not aware of the consequences; nor can he satisfy the definition of fraud because he was not allegedly aware of his obligation for disclosure. I agree with the Minister, self-imposed ignorance cannot act as a shield.

[74] By consciously stopping short of understanding the details of the document he was signing despite understanding its importance to the process, it is my view that the Defendant's actions satisfy the definition of recklessness.

VI. **Conclusion**

[75] For all of these reasons, it is my view that subsection 10.1(1) of the Act has been satisfied and that the action should be granted with a declaration issued in accordance with subsection 10.1(1) of the Act.

VII. **Request for Certification**

[76] Pursuant to section 10.7 of the Act, the parties proposed that should the Court not find that the Defendant knowingly concealed material circumstances in the process of becoming a citizen, the following question meets the test for certification:

> In assessing whether to revoke a person's citizenship under s. 10(1) or s. 10.1(1) of the *Citizenship Act*, can the decision-maker find that reckless conduct, negligent conduct, or willful blindness in the process of becoming a citizen is sufficient to establish that citizenship was obtained, retained or resumed by "false representation" or "fraud"?

[77] The requirements for certification were set out by the Federal Court of Appeal in *Nguesso v Canada (Citizenship and Immigration)*, 2018 FCA 145 at paragraph 21:

> … a question cannot be certified unless it is determinative of the appeal and transcends the interests of the immediate parties to the litigation such that it has general application: *Canada (Citizenship and Immigration) v. Liyanagamage* (1994), 176 N.R. 4 at paragraph 4, [1994] F.C.J. No. 1637 (QL) (F.C.A.); *Varela v. Canada (Citizenship and Immigration)*, 2009 FCA 145 at paragraph 28, [2010] 1 F.C.R. 129 [*Varela*]; *Lunyamila v. Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paragraph 3, 419 D.L.R. (4th) 566; *Sran v. Canada (Citizenship and Immigration)*, 2018 FCA 16 at paragraph 3. Consequently, the question must have at the very least been raised and examined by the trial judge. It would be difficult to claim that a question is determinative or important if it was not argued in Federal Court or if the trial judge did not consider it necessary to examine the question: *Canada (Minister of Citizenship and Immigration) v.*

> *Zazai*, 2004 FCA 89 at paragraphs 11–12, 318 N.R. 365 [*Zazai*]; *Lai v. Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 at paragraph 4, 467 N.R. 198 [*Lai*].

[78] The question must be dispositive and must have been dealt with by the Federal Court and necessarily arise from the case itself (as opposed to arising out of the way in which the Federal Court may have disposed of the case): *Sran v Canada (Citizenship and Immigration)*, 2018 FCA 16 at paras 3 and 5.

[79] In this case, the question of whether reckless conduct, or willful blindness in the process of becoming a citizen is sufficient to establish that citizenship was obtained, retained or resumed by “false representation” or “fraud” is dispositive of the appeal, transcends the interest of the immediate parties, and is of general importance to all those whose citizenship may be challenged. It is the issue that was central to this action.

[80] While this Court has considered that willful blindness can satisfy the requirements for citizenship revocation (*Savic* at para 57; *Kljajic* at para 95; *Rogan* at para 35; *Phan* at para 33; *Modaresi* at para 17) and that recklessness can satisfy the requirement for fraud (*Savic* at paras 70-71; *Bruno* at para 18), whether willful blindness and recklessness can form the basis for the requirements under subsection 10.1(1) of the Act has not been considered by the Federal Court of Appeal. I therefore find that this subject-matter is appropriate for certification.

[81] Although the Federal Court of Appeal has also not considered whether negligent conduct can satisfy the requirements of fraud, as I did not find this question determinative of the action, I

did not answer this question in my reasons. Therefore, in my view, it cannot be included in any question for certification.

[82] As noted in *Lai v Canada (Public Safety and Emergency Preparedness)*, 2015 FCA 21 at paragraph 10 and *Canada (Minister of Citizenship and Immigration) v Zazai*, 2004 FCA 89 at paragraphs 12-13, an issue that need not be decided, or that has not been addressed at first instance, cannot ground a properly certified question.

[83] Here, when considering the issue of fraud, I found that the Defendant's conduct did not amount to mere negligence but rather that the Defendant's conduct satisfied the definition of recklessness. Accordingly, whether negligence amounts to fraud was not a necessary determination for the action.

[84] It is therefore my view that the following modified question should be presented for certification:

> In assessing whether to revoke a person's citizenship under s. 10(1) or s. 10.1(1) of the *Citizenship Act*, can the decision-maker find that reckless conduct, or willful blindness in the process of becoming a citizen is sufficient to establish that citizenship was obtained, retained or resumed by "fraud" or "false representation"?

VIII. **Costs**

[85] As the successful party on this action, the Plaintiff shall be entitled to costs. Should the parties not be able to come to an agreement as to quantum, the parties shall be provided with 15 days from the date of this Judgment to provide their respective submissions, which shall be limited to 5 pages each.

JUDGMENT IN T-1835-21

THIS COURT'S JUDGMENT is that:

1. The action is allowed.

2. Pursuant to subsection 10.1(1) of the *Citizenship Act*, the Court declares that Ragoorthan Mahendran obtained his Canadian citizenship by false representation or fraud.

3. The following question is certified:

> In assessing whether to revoke a person's citizenship under s. 10(1) or s. 10.1(1) of the *Citizenship Act*, can the decision-maker find that reckless conduct, or willful blindness in the process of becoming a citizen is sufficient to establish that citizenship was obtained, retained or resumed by "fraud" or "false representation"?

4. Costs are awarded to the Plaintiff. Should the parties not be able to come to an agreement on quantum, the parties shall have fifteen (15) days from the date of this Judgment to provide their respective submissions on costs, which shall not exceed five (5) pages each.

"Angela Furlanetto"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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