Federal Court of Appeal | Cour d'appel fédérale

CANADA

Date: 20101112

Dockets: A-365-09
A-366-09

Citation: 2010 FCA 307

CORAM: **SHARLOW J.A.**
TRUDEL J.A.
STRATAS J.A.

A-365-09

BETWEEN:

LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

Appellant

and

WASYL ODYNSKY and THE ATTORNEY GENERAL OF CANADA

Respondents

A-366-09

BETWEEN:

LEAGUE FOR HUMAN RIGHTS OF B'NAI BRITH CANADA

Appellant

and

VLADIMIR KATRIUK and THE ATTORNEY GENERAL OF CANADA

Respondents

Heard at Toronto, Ontario, on May 4, 2010.

Judgment delivered at Ottawa, Ontario, on November 12, 2010.

REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	SHARLOW J.A. TRUDEL J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

A. Introduction

[1] Shortly after the end of World War II, the respondents Messrs. Odynsky and Katriuk emigrated from war-ravaged Europe. They adopted Canada as their new home. They became citizens. They have lived in Canada ever since, for over half a century.

[2] However, each had a hidden past. Only recently has that past come to light. During World War II, each served with forces, or in association with forces, that committed brutal, inhuman crimes.

[3] Each concealed that past from Canada's immigration and citizenship authorities. Under subsection 10(1) of the *Citizenship Act*, R.S.C. 1985, c. C-29, citizenship can be revoked where it was obtained by false representation or fraud or by knowingly concealing material circumstances. Citizenship revocation proceedings under subsection 10(1) of the Act began against Messrs. Odynsky and Katriuk.

[4] After an exhaustive fact-finding process, described below, the Minister of Citizenship and Immigration (the "Minister") issued reports recommending that the citizenships of Messrs. Odynsky

and Katriuk be revoked. But the Governor in Council decided to reject the Minister's recommendations. As a result, Messrs. Odynsky and Katriuk today remain citizens of Canada.

[5] The appellant is dedicated to bringing war criminals to justice, representing victims of war crimes, and influencing government policy on these subjects. It disagreed with the Governor in Council's decisions. Therefore, it applied for judicial review in the Federal Court, seeking to quash the decisions.

[6] Each application raised four questions for the Federal Court's consideration:

1. Did the appellant have the right, or "standing," to go to the Federal Court and challenge the Governor in Council's decision?

2. If so, did the Governor in Council have the power under subsection 10(1) of the Act to reject the Minister's recommendation?

3. If so, was the Governor in Council's decision to reject the Minister's recommendation reasonable?

4. Was the Governor in Council entitled to reject the Minister's recommendation and decide the matter without receiving the submissions the appellant had made to the Minister?

[7] The Federal Court answered all these questions in the affirmative and dismissed the applications for judicial review. Its reasons in Mr. Odynsky's case are at 2009 FC 647. Its reasons in Mr. Katriuk's case appear in an order dated June 19, 2009 and simply adopt the reasons given in Mr. Odynsky's case.

[8] In this Court, the appellant submits that the Federal Court erred on all these questions. For the reasons set out below, the Federal Court did not err. Therefore, the appeal should be dismissed.

B. The facts

(1) The source of the facts in these cases

[9] The Federal Court dealt with the appellant's challenge largely on the basis of facts found in earlier Federal Court proceedings. These earlier Federal Court proceedings were part of the citizenship revocation process set out in the Act.

[10] An understanding of the citizenship revocation process and how it progressed in the cases of Messrs. Odynsky and Katriuk helps to resolve the questions placed before this Court in this appeal.

(2) The citizenship revocation process

[11] The key sections in the citizenship revocation process under the Act are sections 10 and 18. They read as follows:

10. (1) Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances, (*a*) the person ceases to be a citizen, or (*b*) the renunciation of citizenship by the person shall be deemed to have had no effect, as of such date as may be fixed by order of the Governor in Council with respect thereto.	**10.** (1) Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée: *a*) soit perd sa citoyenneté; *b*) soit est réputé ne pas avoir répudié sa citoyenneté.
(2) A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.	(2) Est réputée avoir acquis la citoyenneté par fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels la personne qui l'a acquise à raison d'une admission légale au Canada à titre de résident permanent obtenue par l'un de ces trois moyens.

18. (1) The Minister shall not make a report under section 10 unless the Minister has given notice of his intention to do so to the person in respect of whom the report is to be made and

(*a*) that person does not, within thirty days after the day on which the notice is sent, request that the Minister refer the case to the Court; or

(*b*) that person does so request and the Court decides that the person has obtained, retained, renounced or resumed citizenship by false representation or fraud or by knowingly concealing material circumstances.

(2) The notice referred to in subsection (1) shall state that the person in respect of whom the report is to be made may, within thirty days after the day on which the notice is sent to him, request that the Minister refer the case to the Court, and such notice is sufficient if it is sent by registered mail to the person at his latest known address.

(3) A decision of the Court made under subsection (1) is final and, notwithstanding any other Act of Parliament, no appeal lies therefrom.

18. (1) Le ministre ne peut procéder à l'établissement du rapport mentionné à l'article 10 sans avoir auparavant avisé l'intéressé de son intention en ce sens et sans que l'une ou l'autre des conditions suivantes ne se soit réalisée:

a) l'intéressé n'a pas, dans les trente jours suivant la date d'expédition de l'avis, demandé le renvoi de l'affaire devant la Cour;

b) la Cour, saisie de l'affaire, a décidé qu'il y avait eu fraude, fausse déclaration ou dissimulation intentionnelle de faits essentiels.

(2) L'avis prévu au paragraphe (1) doit spécifier la faculté qu'a l'intéressé, dans les trente jours suivant sa date d'expédition, de demander au ministre le renvoi de l'affaire devant la Cour. La communication de l'avis peut se faire par courrier recommandé envoyé à la dernière adresse connue de l'intéressé.

(3) La décision de la Cour visée au paragraphe (1) est définitive et, par dérogation à toute autre loi fédérale, non susceptible d'appel.

[12] In summary, these sections set out the following process for citizenship revocation:

(a) The Minister assesses the circumstances. When the Minister is of the view that he or she should issue a report recommending revocation of citizenship, he or she must give notice of this to the citizen: subsection 18(1) of the Act.

(b) After receiving the notice, the citizen may request that the matter be referred to the Federal Court for inquiry: paragraph 18(1)(*a*) of the Act.

(c) The Federal Court then inquires into whether the citizen has obtained citizenship by false representation or fraud or by knowingly concealing material circumstances. The Federal Court, engaged in this inquiry, often called a "reference," does not make any legal determination. Rather, on a reference, it receives evidence adduced by the parties, considers examinations and cross-examinations, engages in fact-finding and, finally, provides a ruling on whether the citizen has obtained citizenship by false representation or fraud or by knowingly concealing material circumstances. This "provides the Minister with the factual basis for her report and in some point in the future may constitute the foundation of a decision by the Governor-in-Council": *Canada (Minister of Citizenship and Immigration) v. Bogutin* (1998), 144 F.T.R. 1 at paragraph 118, 42 Imm. L.R. (2d) 248 (T.D.).

(d) After the Federal Court has acted on the reference and made all of its findings, the Minister may then issue a report to the Governor in Council: subsection 10(1) of the Act.

(e) The Governor in Council then acts under subsection 10(1). Precisely what the Governor in Council may do under subsection 10(1) is a central question in this appeal.

[13] All of these steps happened in the cases of Messrs. Odynsky and Katriuk. Specifically, upon receiving notice that the Minister intended to issue a report recommending the revocation of their citizenships, Messrs. Odynsky and Katriuk requested that the matter be referred to the Federal Court. In each case, the Federal Court inquired into the matter and made many factual findings.

[14] In Mr. Odynsky's case, the Federal Court conducted the reference using procedures akin to an action, with pleadings, pre-trial preparations and oral hearings held in Ukraine and Canada. The Minister and Mr. Odynsky called witnesses. The witnesses were examined and cross-examined. Some of the witnesses served with Mr. Odynsky during the war and had first-hand recollections of his involvements and activities. At the conclusion of the reference, the Federal Court set out its factual findings concerning Mr. Odynsky's case: *Canada (Minister of Citizenship and Immigration) v. Odynsky*, 2001 FCT 138, 196 F.T.R. 1 (T.D.) (the "*Odynsky Reference*"). Its reasons – 229 paragraphs of rich and helpful detail – carefully describe Mr. Odynsky's wartime activities, the

harrowing circumstances in which he was ensnared during the war, the events surrounding his emigration to Canada, and his acquisition of Canadian citizenship.

[15] In Mr. Katriuk's case, the Federal Court conducted the reference by way of application. In that application, the Minister sought a declaration that Mr. Katriuk obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances. The Court conducted sixteen days of hearing. Evidence was available from some who had first-hand recollections about Mr. Katriuk's wartime activities. As was the case in the *Odynsky Reference*, the Federal Court's reasons, 154 paragraphs in length, show great attention to detail and reflection and are a model of careful fact-finding: *Canada (Minister of Citizenship and Immigration) v. Katriuk* (1999), 156 F.T.R. 161 (T.D.) (the "*Katriuk Reference*").

[16] None of the parties in the Federal Court or in this Court have taken issue with the facts found in the references.

[17] In both references, based on the evidence presented, the Federal Court found that Mr. Odynsky and Mr. Katriuk had obtained their citizenship by false representation or fraud or by knowingly concealing material circumstances.

(3) The facts as found in the Federal Court references

[18] What follows is a brief summary of the factual findings of the Federal Court in the *Odynsky Reference* and the *Katriuk Reference*. These findings were available to the Minister and formed the basis of the Governor in Council's decisions in this case.

(a) Mr. Odynsky

[19] When World War II started, Mr. Odynsky was working on his family farm near Beleluja in the Western Ukraine. In June 1941, Beleluja fell under Nazi occupation. Soon afterward, the Nazi occupiers conscripted young men in Ukraine to serve their purposes. Mr. Odynsky was one such young man. In 1943, the Nazis took him from his farm and made him serve with their military and police services.

[20] In the *Odynsky Reference*, the Federal Court found that Mr. Odynsky was forced to serve the Nazi occupiers. Indeed, on one occasion, he defied them, narrowly escaping devastating consequences (at paragraphs 27-29):

> Mr. Odynsky was caught up in the German sweep for younger people to assist their forces. In early February 1943, the mayor of his village was directed to provide a list of young men born in the years 1920 to 1924 and to send those individuals to Snyatyn, which he did. Among those sent to Snyatyn was Mr. Odynsky. There he and four others from Beleluja were selected among many others, and they were told that they were required to serve with the German army forces. They were permitted

> to return home but were ordered to report a few days later, on February 10, at Kolomyja. If they did not return as directed they would be subject to arrest.
>
> The five young men selected from Beleluja returned home. They did not show up on February 10, as they had been directed to do. Rather, they hid in the fields nearby and in the village. In April the Gestapo, with local police, came to the village looking for those who had failed to report in February as ordered. They directed that if those missing young men did not show up in the village within a limited time their families would be taken away.
>
> Mr. Odynsky and the others surrendered. They were all taken by horse and wagon to Snyatyn, and threatened with death if they tried to escape again. After two weeks in the local jail they were taken to Kolomyja where they were imprisoned for two more weeks. While there, they were threatened with death for deserting by not reporting as directed, but a local lawyer, interceding on their behalf, succeeded in having this threat lifted. They were spared, but were warned that any escape would be punished by death when they were caught, or if they were not caught, their families would be sent to concentration camps.

[21] Somewhat later, Mr. Odynsky, with others, was sent to a training camp at Trawniki, in Eastern Poland under the supervision of the Schutz-Staffel, better known as the SS. The SS terrorized Nazi-occupied Europe in many ways. But what it did to the Jews will be remembered as long as there are decent people to remember.

[22] In addition to the training camp at Trawniki, the SS operated a forced labour camp at Trawniki. There, Jews were imprisoned and were forced to produce clothing and other goods for German forces.

[23] After some weeks of basic training at the Trawniki training camp, Mr. Odynsky, with other trainees, was sent to serve as a guard near the grounds of a forced labour camp operated by the SS at Poniatowa. At the Poniatowa camp, Jews, primarily those from the Warsaw ghetto, were

imprisoned and were forced to manufacture uniforms and other supplies, under the direction of German civilian corporations, the military, and SS forces.

[24] On a single day during the fall of 1943, German police and SS forces extinguished the lives of 15,000 men, women and children imprisoned at the Poniatowa camp. In today's terms, this is the murder on a single day of every single man, woman and child in Edmundston, NB, Baie-Comeau, QC, Fort Erie, ON, Portage la Prairie, MB, Yorkton, SK or Prince Rupert, BC.

[25] The Federal Court in the *Odynsky Reference* (at paragraphs 36 and 201) describes this horrific day:

> In the fall of 1943, the operation of the forced labour camp at Poniatowa was suddenly terminated. On November 3 or 4, 1943…[i]n less than a full day German police and SS forces, apparently including some of the Einsatzgruppen or killing squads commanded by the SS, marched the prisoners, men, women and children, to large trenches outside the main camp. These trenches the prisoners had been forced to dig earlier, on the pretence these were to be defence works for the camp. When the prisoners reached the trenches they were ordered to undress and enter the trenches naked, where they were then executed by shooting.
>
> …
>
> [Afterward] there were no longer any labourer-prisoners or their families to be seen at the camp. A few were spared and ordered to burn the corpses which they refused to do, and so they too were executed.

[26] What was Mr. Odynsky's involvement in all of this? On this subject, the Federal Court heard evidence from Mr. Odynsky, those engaged as guards at the Seidlung, and three men at Poniatowa. That evidence showed that Mr. Odynsky did not serve as a guard at the Poniatowa camp. Instead, he served as a guard about a kilometer away, at an area known as the Seidlung. At

the Seidlung, there were apartment buildings for certain favoured prisoners, and for German civilian factory supervisors. Mr. Odynsky patrolled and guarded the perimeter of the Seidlung area and checked the prisoners who left each morning for the Poniatowa camp and who returned at night to the Seidlung from their forced labours.

[27] Mr. Odynsky had no direct personal involvement in the massacre at Poniatowa. In the words of the Federal Court (at paragraphs 36-38):

> On November 3 or 4, 1943, the Trawniki men were confined to their barracks at night and were not permitted to leave until late the next day.
>
> …
>
> Mr. Odynsky's evidence is that he had seen prisoners assembled and marched from the Seidlung, that gunfire was heard all day, and that a Ukrainian officer had told him the Germans were killing the Jews. When he and his fellows were permitted to leave their barracks there were no Jewish labourers to be seen at Poniatowa, either at the Seidlung or at the main camp.
>
> …
>
> There is no evidence that Mr. Odynsky had any extended contact with Jewish labourer-prisoners at Poniatowa, or with guarding them except in guarding the perimeter of the Seidlung. There is no evidence that he or any of his Ukrainian colleagues at the Seidlung had any part in Operation Erntefest, or in the subsequent massacre of those left to burn the corpses.

[28] Importantly, in the *Odynsky Reference*, the Federal Court found (at paragraph 111) that "there was no evidence before the Court of any particular activity of Mr. Odynsky that could be characterized as brutal or criminal, or as directly threatening to any individual." In particular, during his time at Trawniki and Poniatowa, there was "no evidence at trial that Mr. Odynsky participated personally in any incident involving mistreatment of prisoners" (at paragraph 207).

[29] During the two years after the Poniatowa massacre, Mr. Odynsky guarded the facilities against partisan attack and then served in a battalion, known as SS Battalion Streibel.

[30] The Federal Court found that none of his wartime service could be said to be voluntary (at paragraph 206):

> In my opinion there is no doubt that Mr. Odynsky's service at Trawniki and Poniatowa, and even with SS Battalion Streibel was not voluntary. It was urged by the plaintiff that at some stage in 1944 or 1945, with the Russian forces advancing, he made no effort to escape or simply to be absent without leave, and thus his continuing service should be considered voluntary. He believes he would have been shot if captured after leaving and that he would have put his family in jeopardy, at least so long as German forces were in western Ukraine. There was no evidence about a particular time after which his service might be considered voluntary and I am persuaded that it continued to be involuntary until the end of the war.

[31] The Federal Court added (at paragraph 107) that "he did not escape at any time because of his understanding that unsuccessful attempts to escape would result in death or severe punishment, and if he did escape and were not captured, his family would be sent to a concentration camp or worse."

[32] After the end of the war, Mr. Odynsky made his way westward to a portion of Germany occupied by American forces. He ended up in an American POW camp, and later, following release, made his way to a camp for those who did not wish to return to Ukraine, by that time under Soviet occupation. Shortly afterward, he went to another camp for displaced persons. The International Relief Organization took over the operation of that camp with a view to assisting displaced persons to resettle in countries other than their homelands. It was there that in 1948 Mr.

Odynsky learned that Canada was seeking workers for mining and farm work. He decided to emigrate to Canada.

[33] Mr. Odynsky applied for and was accepted for immigration to Canada. He landed in 1949. Later, Mr. Odynsky and his wife moved to Toronto. There they established their home and their family life within the Ukrainian community, and had three children. They became Canadian citizens in 1955. The application record before the Federal Court in this case contains evidence that Mr. Odynsky has been a good and positive citizen since that time.

[34] In the *Odynsky Reference* (at paragraph 227), the Federal Court found that Mr. Odynsky failed to answer questions about his wartime activities when he emigrated to Canada and when he applied for Canadian citizenship:

> This Court finds, on a balance of probabilities in considering certain key factual issues, that the defendant, Wasyl Odynsky, was admitted to Canada for permanent residence in July 1949 on the basis of a visa obtained by reason of false representations by him or by his knowingly concealing material circumstances. Subsequently he obtained citizenship in 1955 when, having been admitted to Canada, on that basis, he is deemed, pursuant to s-s. 10(2) of the *Act*, to have acquired citizenship by false representation or knowingly concealing material circumstances.

[35] Before concluding its reasons, the Federal Court in the *Odynsky Reference* added these final comments (at paragraph 225):

> In considering any report to the Governor General in Council concerning Mr. Odynsky pursuant to s-s. 10(1) of the *Act*, the Minister may wish to consider that:

1) on the evidence before me I find that Mr. Odynsky did not voluntarily join the SS auxiliary forces, or voluntarily serve with them at Trawniki or Poniatowa, or later with the Battalion Streibel;

2) there was no evidence of any incident in which he was involved that could be considered as directed wrongfully at any other individual, whether a forced labourer-prisoner, or any other person;

3) no evidence was presented of any wrongdoing by Mr. Odynsky since he came to Canada, now more than 50 years ago;

4) evidence as to his character from some of those who have known him in Canada, uncontested at trial, commended his good character and reflected his standing within his church and within the Ukrainian community in Toronto.

(b) Mr. Katriuk

[36] When World War II started, Mr. Katriuk was working in the meat trade in an area known as Bukovina, which was then part of Romania. In 1939, troops of the Soviet Union occupied Bukovina. In June 1941, Germany invaded and occupied Bukovina.

[37] Mr. Katriuk was of Ukrainian ancestry. In the fall of 1941, along with many of his Ukrainian compatriots in Bukovina, he joined a volunteer force. That force marched to the Ukraine. It arrived in Kiev, but by that time the Nazis had already taken Kiev. Soon new German battalions were formed. Mr. Katriuk became a member of one of these.

[38] Was this voluntary on Mr. Katriuk's part? The Federal Court reasons in the *Katriuk Reference* (at paragraph 73) tell us that the evidence on this was unclear. The Federal Court did not

find Mr. Katriuk to be “entirely candid” on this topic. It mooted several possibilities based on the evidence before it. Perhaps Mr. Katriuk hoped for better living conditions. Perhaps he wanted to avoid hunger. Perhaps he, like other Ukrainians, preferred the Germans to the Soviets who had first occupied the Ukraine. However, the Federal Court did not find that Mr. Katriuk was motivated by any particular *animus*.

[39] As a member of his battalion, Mr. Katriuk was stationed in places such as Byelorussia, guarding against attacks and sabotage by local partisans and maintaining law and order.

[40] In the *Katriuk Reference*, Mr. Katriuk tried to put the best possible light on his involvement with the battalion. He testified that he did not participate in any important military operations while his battalion was in Byelorussia. The Federal Court rejected this testimony (at paragraphs 51 and 66), finding that he was “certainly engaged in fighting enemy partisans” and “must have participated in at least some of its operations.” However, it is unclear exactly what operations he participated in. The Federal Court noted (at paragraph 72) that if Mr. Katriuk left the battalion, he might have faced the firing squad.

[41] Mr. Katriuk’s battalion committed atrocities and war crimes against the civilian population of Byelorussia. Some evidence in the *Katriuk Reference* suggested that many unarmed persons were killed and many were seized for forced labour. Importantly, however, on the state of the evidence before it, the Federal Court (at paragraph 67) was not prepared to find that Mr. Katriuk was personally involved in any of the atrocities and war crimes.

[42] In August of 1944, his battalion was merged with another, was transported to France and became part of the Waffen S.S. 30th Grenadier Division. One day, Mr. Katriuk and others were informed that they would be fighting the allies the next day. That evening, a majority of men, including Mr. Katriuk, defected to partisans with the French underground.

[43] Soon, Mr. Katriuk and others went to fight at the French front against Germany. During that time, Soviet officers came to visit them with a request that they rejoin the "motherland." Mr. Katriuk did not want to return to Russia, as he feared that he would be sent to Siberia.

[44] As a result of Soviet pressure, Mr. Katriuk and some of his colleagues were removed from the front, sent to the village of Dumblair, and told that they would have to return to Russia. The only way they could avoid this was to join the French Foreign Legion. This Mr. Katriuk did. He fought with the French Foreign Legion on the French front and the Italian front and was wounded in combat.

[45] The Federal Court in the *Katriuk Reference* engaged in an exhaustive review of the evidence concerning the circumstances surrounding Mr. Katriuk's emigration to Canada after the war. It found that Mr. Katriuk entered Canada under a false identity. Later, when applying to change his name, Mr. Katriuk stated that he "took refuge in France." This was not "an accurate and truthful statement." As a result, the Federal Court found that Mr. Katriuk had obtained his Canadian citizenship by false representation or fraud or by concealing material circumstances.

(4) The reports prepared by the Minister

[46] After each of the *Odynsky Reference* and the *Katriuk Reference*, the Minister prepared reports to the Governor in Council. During the preparation of the reports, Messrs. Odynsky and Katriuk were given an opportunity to make submissions regarding why their citizenships should not be revoked.

[47] The report of the Minister concerning Mr. Odynsky consisted of a seven page covering memorandum recommending that his citizenship be revoked, the reasons for judgment in the *Odynsky Reference*, and eight tabs of correspondence and submissions by the Department of Justice and Mr. Odynsky. Included in these materials were policy statements of the Government of Canada concerning war crimes and war criminals living in Canada.

[48] The report of the Minister concerning Mr. Katriuk consisted of a five page covering memorandum recommending that his citizenship be revoked, the reasons for judgment in the *Katriuk Reference*, and ten tabs of correspondence and submissions by the Department of Justice and Mr. Katriuk. As in the case of the report concerning Mr. Odynsky, the materials included policy statements of the Government of Canada concerning war crimes and criminals living in Canada.

[49] In accordance with subsection 10(1) of the Act, the Minister issued these two reports to the Governor in Council for its consideration. At roughly the same time, the Minister sent two other

reports under subsection 10(1) to the Governor in Council. These concerned Messrs. Oberlander and Fast. In these, the Minister also recommended that the citizenships be revoked.

(5) The decisions of the Governor in Council

[50] The Governor in Council considered all four reports together. The Governor in Council decided that the citizenships of Messrs. Odynsky and Katriuk should not be revoked, but the citizenships of Messrs. Oberlander and Fast should be revoked.

[51] In this Court, the respondent Attorney General submitted that the differing results in the four cases show that the Governor in Council carefully considered each case's complex considerations and reached different, fact-based, discretionary conclusions.

(6) The applications for judicial review in the Federal Court

[52] The appellant brought applications for judicial review of the Governor in Council's decisions not to revoke the citizenships of Messrs. Odynsky and Katriuk. Mr. Odynsky moved to strike the application for judicial review in his case on the ground that the appellant did not have standing to bring it.

[53] The Prothonotary granted Mr. Odynsky's motion and dismissed the application for judicial review: 2008 FC 146, 323 F.T.R. 174. The appellant appealed to a judge of the Federal Court. The Court allowed the appellant's appeal. It ruled that while the appellant did not have direct standing to bring the application, it might have standing as a public interest litigant. It ruled that the judge hearing the merits of the application should determine the issue: 2008 FC 732, 334 F.T.R. 63.

[54] The Federal Court heard the merits of the appellant's two applications for judicial review together. It held that the appellant could not relitigate the motions judge's finding that it did not have direct standing to bring the applications for judicial review: 2009 FC 647 at paragraph 9, 349 F.T.R. 35. However, the Federal Court held that the appellant did have standing as a public interest litigant (at paragraphs 11-17). Finally, as mentioned in paragraphs 6-7 above, the Federal Court dismissed the applications for judicial review on their merits. The appellant now appeals to this Court.

(7) The parties' submissions in this Court

[55] The appellant submits that the Governor in Council was bound under subsection 10(1) of the Act to accept the recommendations in the Minister's reports. As a result, the Governor in Council should have revoked the citizenships of Messrs. Odynsky and Katriuk. In the alternative, to the extent that the Governor in Council did have the power to depart from the Minister's recommendations in the reports, the appellant says that the Governor in Council exercised its discretion unreasonably. Finally, the appellant says that, as a matter of procedural fairness, the

Governor in Council should have received the submissions the appellant provided to the Minister. The appellant notes that the Governor in Council had before submissions of the Ukrainian Canadian Congress, but not any of those of the appellant.

[56] The respondents urge this Court to find that the appellant lacked standing to challenge the Governor in Council's decisions. They also say that, properly interpreted, subsection 10(1) of the Act empowered the Governor in Council to reject the Minister's recommendations and that in doing so the Governor in Council exercised its discretion reasonably. Further, the respondents submit that the Governor in Council owed the appellant no duty of procedural fairness and was under no obligation to receive and consider the submissions that the appellant made to the Minister.

C. Analysis

(1) Did the appellant have standing to bring the applications for judicial review?

(a) Direct standing

[57] The appellant submits that it has direct standing to bring the application for judicial review against the decisions of the Governor in Council because it is "directly affected" within the meaning of subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. That subsection provides that those who are "directly affected" may bring an application for judicial review.

[58] The appellant is not "directly affected." In order for it to be "directly affected" by the decisions of the Governor in Council, the decisions must have affected its legal rights, imposed legal obligations upon it, or prejudicially affected it in some way: *Rothmans of Pall Mall Canada Ltd. v. Canada (M.N.R.)*, [1976] 2 F.C. 500 (C.A.); *Irving Shipbuilding Inc. v. Canada (A.G.)*, 2009 FCA 116. There is no evidence before this Court suggesting that the appellant is affected in this way. I adopt the words of the motions judge (2008 FC 732 at paragraph 26):

> Without doubt, the [appellant] and the family members it says it represents deeply care, and are genuinely concerned, about Mr. Odynsky's citizenship revocation process and his past service as a perimeter guard of the Seidlung at the Poniatowa labour camp in German-occupied Poland. However, that interest does not mean that the legal rights of the applicant, or those it represents, are legally impacted or prejudiced by the decision not to revoke Mr. Odynsky's citizenship. Rather, their interest exists in the sense of seeking to right a perceived wrong arising from, or to uphold a principle in respect of, the non-revocation of Mr. Odynsky's citizenship.

(b) Public interest standing

[59] In the alternative, the appellant submits that it has standing as a public interest litigant to challenge the decisions of the Governor in Council. It says that it meets the three fold test for public interest standing set out in the Supreme Court of Canada's reasons for judgment in *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236, namely, that:

(a) a serious issue has been raised;

(b) the party seeking public interest standing has a genuine or direct interest in the outcome of the litigation; and

(c) there is no other reasonable and effective way to bring the issue before the Court.

[60] The applications judge found that the appellant met all three of these requirements: 2009 FC 647 at paragraphs 11-17. In this Court, the respondent Attorney General does not submit that the Federal Court committed fundamental error or somehow misapprehended the evidence before it. It is evident that the applications judge applied proper principles to the facts before him. There is no ground for this Court to intervene.

[61] Before leaving this issue, I would add that the granting of public interest standing in this case is consistent with a significant policy concern mentioned by the Supreme Court of Canada in *Canadian Council of Churches, supra*. At page 256, the Supreme Court expressed concern that an overly restrictive approach to public interest standing would immunize government from certain challenges. This Court has granted public interest standing where the spectre of immunization of government decisions was in play and the *Canadian Council of Churches* criteria for intervention were met: *Harris v. Canada*, [2000] 4 F.C. 37 (C.A.).

[62] The concern about immunization is in play in these cases, just as it was in *Harris, supra*. The Governor in Council's decisions were in favour of Messrs. Odynsky and Katriuk. None of the parties would proceed to Court from the decisions, because the decisions did not adversely affect them. As the applications judge stated (at paragraph 16), "[i]n a case like this one where citizenship is not revoked, the [Governor in Council's] decision will never be judicially reviewed except where a third party seeks to do so." By virtue of its past knowledge, experience and dedicated efforts on issues such as this, the appellant was well placed to test the decisions of the Governor in Council in the courts. If public interest standing were not granted to this appellant, the decisions of the Governor in Council would be immune from review. That is to be avoided.

(2) The interpretation of subsection 10(1) of the Act: did the Governor in Council have the power to reject the Minister's recommendations and decide not to revoke the citizenships of Mr. Odynsky and Mr. Katriuk?

[63] Subsection 10(1) of the Act provides as follows:

10. (1) Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,	**10.** (1) Sous réserve du seul article 18, le gouverneur en conseil peut, lorsqu'il est convaincu, sur rapport du ministre, que l'acquisition, la conservation ou la répudiation de la citoyenneté, ou la réintégration dans celle-ci, est intervenue sous le régime de la présente loi par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels, prendre un décret aux termes duquel l'intéressé, à compter de la date qui y est fixée:

(*a*) the person ceases to be a citizen, or	*a*) soit perd sa citoyenneté;
(*b*) the renunciation of citizenship by the person shall be deemed to have had no effect,	*b*) soit est réputé ne pas avoir répudié sa citoyenneté.

as of such date as may be fixed by order of the Governor in Council with respect thereto.

[64] The plain language of this subsection, if read literally and in isolation, restricts the role of the Governor in Council. Under this interpretive approach, the Governor in Council simply reads the report of the Minister, notes that the Federal Court has found that citizenship has been obtained by false representation or fraud or by knowingly concealing material circumstances, and then sets a date on which the person ceases to be a citizen. Under this interpretative approach, the Governor in Council is just a date-setter. This is the position that the appellant urges us to accept.

[65] The respondent Attorney General, supported by Messrs. Odynsky and Katriuk, disagrees. The Attorney General submits that such a literal reading of subsection 10(1) would reduce the role of the Governor in Council to nothing more than a "rubber stamp." The Governor in Council's only task would be to pick up a calendar and set a date for the revocation of citizenship. The respondent Attorney General says that such a result could not have been what Parliament intended when it enacted this scheme for citizenship revocation.

[66] The applications judge agreed with the Attorney General's position. He noted (at paragraph 31) that, on a literal reading of subsection 10(1) of the Act, "[i]t is true that a material

misrepresentation is the only prerequisite to a revocation decision and that such a finding underpins the entire process of revocation." However, in his view (also at paragraph 31), "it does not necessarily follow that all other factors are thereby excluded from consideration either by the Minister or the [Governor in Council]." He noted (at paragraph 32) that the legislative context supports the position that the Governor in Council's authority under subsection 10(1) is "more than a mere formality" and that the Governor in Council "enjoys a broad discretion" to review the recommendation of the Minister that citizenship be revoked.

[67] I agree with the applications judge, for many of the reasons he offered. In particular, I offer six reasons in support of this conclusion.

– I –

[68] The applications judge was correct to go beyond the literal meaning of subsection 10(1) and instead examine the subsection in light of its context and the purpose of the Act.

[69] Obviously, the literal meaning of a legislative provision is important. That is the starting point in the task of interpretation. But it is not the ending point.

[70] The Supreme Court has repeatedly reminded us not to read provisions in only a literal way, applying only the dictionary meaning of the words. Provisions are not to be read as if they stand

alone, unrelated to other provisions and other laws, and without regard to the overall purpose of the legislation or Parliament's intention. See *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at paragraph 23; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at paragraphs 26-27, [2002] 2 S.C.R. 459.

[71] As will be seen below, an examination of the wider context and the purpose of the Act confirms that Parliament intended a role for the Governor in Council that is much broader than date-setting.

– II –

[72] If the Governor in Council's role under subsection 10(1) were restricted to date-setting, there would be no need for the Governor in Council to receive a formal report from the Minister under subsection 10(1). Rather, a simple notice would suffice.

[73] The requirement that a report be prepared suggests that Parliament intended that the Governor in Council exercise a broader role. In the words of the application judge (at paragraph 35), "[i]t is difficult to think of a purpose that would be served by a ministerial report to the [Governor in Council]" if the Minister were just a date-setter.

– III –

[74] The legislative context surrounding the Minister's report must also be considered. This is not any old report. This is a report that is the end product of a long and intricate process. Subsection 10(1) tells us that before the Minister can send the report to the Governor in Council, the affected person must receive notice and must have an opportunity to ask for a reference to the Federal Court. This suggests that the Minister's report should be shaped and influenced by the Federal Court's factual findings in the reference and other matters raised by the affected person.

[75] Does it make sense that Parliament would require that the Governor in Council receive such a report, shaped and influenced by information gathered after a long and intricate process, but then limit the Governor in Council to date-setting? I think not. Parliament would have to enact clearer words to achieve such a result.

– IV –

[76] In assessing the scope of a decision-maker's discretion, sometimes it is helpful to consider the nature of the body that is exercising the discretion. In subsection 10(1), Parliament has nominated the Governor in Council as the body to receive the report.

[77] The Governor in Council is the "Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada": *Interpretation Act*, R.S.C. 1985, c. I-23, subsection 35(1), and see also the *Constitution Act, 1867*, sections 11 and 13. All the Ministers of the Crown, not just the Minister, are active members of the Queen's Privy Council for Canada. They meet in a body known as Cabinet. Cabinet is "to a unique degree the grand co-ordinating body for the divergent provincial, sectional, religious, racial and other interests throughout the nation" and, by convention, it attempts to represent different geographic, linguistic, religious, and ethnic groups: Norman Ward, *Dawson's The Government of Canada*, 6th ed., (Toronto: University of Toronto Press,1987) at pages 203-204; Richard French, "The Privy Council Office: Support for Cabinet Decision Making" in Richard Schultz, Orest M. Kruhlak and John C. Terry, eds., *The Canadian Political Process*, 3rd ed. (Toronto: Holt Rinehart and Winston of Canada, 1979) at pages 363-394.

[78] In practical terms, then, a statute that vests decision-making in the Governor in Council implicates the decision-making of Cabinet, a body of diverse policy perspectives representing all constituencies within government.

[79] Did Parliament really intend in subsection 10(1) to restrict this body to a narrow date-setting function? Or did Parliament intend this body to review the entirety of the situation, as reflected in the Minister's report, and make a final substantive decision on whether citizenship should be revoked? In my view, the latter seems more plausible given the nature of this legislative scheme and the vesting of final authority in the Governor in Council.

– V –

[80] Revocation of citizenship is a most important matter. Citizenship of Canada gives Canadians certain rights. Some of these are so important that they are guaranteed under our Constitution. These include the right to vote under section 3 of the Charter and the right to enter, remain in, and move about Canada under section 6 of the Charter. Given the consequences of revoking citizenship, it makes sense that Parliament would enact a scheme that provides for judicial fact-finding, a Ministerial recommendation, and then a final level of full review by a broad body representing all constituencies and perspectives within government.

– VI –

[81] It is fair to say that the point raised by the appellant concerning the interpretation of subsection 10(1) has never been put directly to this Court for decision. However, there are authorities that suggest that subsection 10(1) gives the Governor in Council a wide discretion to review the entire situation on all the facts and, if appropriate, to reject the Minister's recommendation:

(a) In *Oberlander v. Canada (A.G.)*, 2009 FCA 330, 313 D.L.R. (4th) 378, this Court remitted the matter back to the Governor in Council for consideration as to whether duress excused Oberlander's complicity in war crimes under Canada's war crimes policy. This Court held (at paragraph 39) that "it is critical that all relevant issues be considered and analyzed." This supports the respondents' view that the Governor in Council's discretion under subsection 10(1) extends beyond date-setting to a broad consideration of whether, in all of the circumstances, the revocation of citizenship is warranted.

(b) In *Oberlander v. Canada (A.G.)*, 2003 FC 944, [2003] F.C.J. 1201, the Federal Court noted (at paragraph 18) that "[a]lthough the rights of the individual are at stake, there are elements of general policy involved in the decision to revoke citizenship" and those elements are considered "by the highest political organ of the Canadian Government," the Governor in Council. This Court reversed the Federal Court's decision, but did not disagree with its views on this point: 2004 FCA 213, [2005] 1 F.C.R. 3. However, as the motions judge in the cases at bar has explained, this Court's decision was affected by a concession made by the Minister in argument: 2008 FCA 732 at paragraphs 40-44.

(c) In *Bogutin supra*, the Federal Court, acting in a reference, offered certain observations concerning the citizenship revocation process under the Act. It clearly contemplated a wide role for the Governor in Council (at paragraph 113):

> The Court in these proceedings is making findings of fact and making a report to the Minister. It does not follow that the Governor in Council is therefore compelled to revoke the citizenship of the respondent. The Minister has to consider a report and send it to the Governor in Council. The Governor in Council has to make a decision whether to revoke citizenship or not.

(d) This Court in *Canada (Secretary of State) v. Luitjens* (1992), 142 N.R. 173 described the Federal Court's role on a reference under the Act – determining whether there has been false representation, fraud or knowing concealment of material circumstances – as "merely one stage of a proceeding which may or may not result in a final revocation of citizenship." The clear implication is that the Minister and the Governor in Council may take into account other matters. In the words of the applications judge in the cases at bar (at paragraph 35), the statement of this Court in *Luitjens* "is difficult to reconcile with the proposition that the sole determinative issue for revoking citizenship is one already conclusively determined by the Federal Court."

(e) The appellant has not cited to this Court any authorities that establish that the Governor in Council's role is limited to date-setting.

[82] For all of the foregoing reasons, I conclude that Parliament gave the Governor in Council a broad discretion under subsection 10(1) to decide whether a person's citizenship should be revoked. The Governor in Council is not forced to accept the Minister's recommendation that the person's citizenship be revoked. The Governor in Council is not just a date-setter.

(3) Was the Governor in Council's decision reasonable?

[83] The applications judge held that it should review the Governor in Council's decisions on the deferential standard of reasonableness. The applications judge found that the decisions were reasonable (at paragraph 44).

[84] The appellant agrees that if the Governor in Council had the authority under subsection 10(1) of the Act not to revoke the citizenships of Messrs. Odynsky and Katriuk, the standard of review is reasonableness. The appellant submits that the applications judge erred: the Governor in Council's decisions were not reasonable.

[85] Under the standard of reasonableness, our task is not to find facts, reweigh them, or substitute our decision for the Governor in Council. Rather, our task is to ask ourselves whether the decision of the Governor in Council fell within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. (See *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paragraph 47, [2008] 1 S.C.R. 190.)

[86] In assessing what range of defensible outcomes was available to the Governor in Council, we must be mindful of the Governor in Council's task and what it involved. In this case, the Governor in Council's task was to consider the record presented to it in the form of the Minister's

report and to consider whether citizenship revocation was warranted in the circumstances. Subsection 10(1) does not provide any specific criteria or formula for the Governor in Council to follow in carrying out this task. It leaves the Governor in Council free to act on the basis of policy, but those policies cannot conflict with the Act or its purposes: *Thamotharem v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198, [2008] 1 F.C.R. 385.

[87] In this case, the Government of Canada has developed war crimes policy. None of the parties in this Court suggests that it was inappropriate or should not have been applied to these cases. Accordingly, in these cases, if the Governor in Council measured the facts contained in the Minister's report against the war crimes policy of the Government of Canada and reached a rationally defensible result in its decisions under subsection 10(1) of the Act, they should be regarded as reasonable. Put another way, in the circumstances of these cases, a rationally defensible application of a previously announced, unchallenged policy should be taken as a badge of reasonableness under *Dunsmuir*.

[88] In both Mr. Odynsky's case and Mr. Katriuk's case, the Minister described the Government of Canada's war crimes policy in its reports. None of the parties suggest that the description is inaccurate. The description as follows:

> The policy of the Canadian Government is unequivocal: Canada is not and will not become a safe haven for persons involved in war crimes, crimes against humanity or other reprehensible acts regardless of when or where they occurred.
>
> The government pursues only those cases for which there is evidence of direct involvement or complicity in war crimes or crimes against humanity. A person may be considered complicit if the person is aware of the commission of war crimes or

> crimes against humanity and contributes directly or indirectly to their occurrence. Membership in an organization responsible for committing the atrocities can be sufficient to establish complicity if the organization in question is one with a limited brutal purpose, such as a death squad.

[89] In these cases, the Governor in Council's decisions not to revoke the citizenships of Mr. Odynsky and Mr. Katriuk are rationally defensible. It was open to the Governor in Council to find that the facts as found in the *Odynsky Reference* and the *Katriuk Reference* do not implicate any of the three main elements of Canada's war crimes policy:

(a) *Direct involvement or complicity.* The Federal Court did not find that Mr. Odynsky and Mr. Katriuk were directly involved or directly complicit in war crimes or crimes against humanity.

(b) *Awareness or contribution.* The Federal Court did not find that Mr. Odynsky and Mr. Katriuk were aware of the commission of war crimes or crimes against humanity, nor did it find that they contributed directly or indirectly to their occurrence.

(c) *Membership.* The policy, as summarized above, simply says, without elaboration, that membership in an organization with a "limited brutal purpose," such as a death squad, "can be sufficient" for revocation of citizenship. But the policy does not identify the circumstances when membership alone would suffice. Under subsection 10(1) of the Act, as interpreted above, that would be left for the Governor in Council

to decide, guided by the purposes of the Act and any jurisprudence on point. In the latter regard, this Court has already decided that although membership in a limited brutal purpose organization creates a presumption of complicity, that presumption can be rebutted by evidence showing that the person had no knowledge of the purpose of the organization or direct or indirect involvement in its acts: *Oberlander* (2009), *supra* at paragraph 18. In my view, in light of the foregoing, the Governor in Council arrived at a rationally defensible outcome concerning the element of membership:

(i) Mr. Odynsky was a member of a team of guards at Poniatowa. However, there was evidence upon which the Governor in Council could find that Mr. Odynsky's membership was involuntary, he was stationed at the Seidlung, he was in no way associated with those who carried out the massacre of 15,000 people, and he was specifically kept away from the camp on the day of the massacre. (See paragraphs 26-31, above.)

(ii) In Mr. Katriuk's case, he was an active member of his battalion and "must have participated in at least some of its operations. However, it is unclear exactly which operations he participated in, and the Federal Court specifically found that no witnesses could link Mr. Katriuk to atrocities committed against the civilian population. While his service was not involuntary in the way that Mr. Odynsky's service was, had he left his

> battalion he might have been found to have deserted and might have faced the firing squad. Finally, the Federal Court did not identify the organizations in which Mr. Katriuk served as having a "limited brutal purpose." (See paragraphs 38-41, above.)

[90] Another way of measuring the Governor in Council's decisions against the deferential standard of review of reasonableness is to review the submissions of the parties that were contained in the reports the Minister sent to the Governor in Council. These submissions reveal sharp divisions on the weight to be given to certain facts, how the policy should be applied to those facts, and how the Governor in Council should exercise its discretion. These are cases where, in the words of the Supreme Court in *Dunsmuir*, *supra* at paragraph 47, the questions for decision "do not lend themselves to one specific, particular result" but instead "give rise to a number of possible, reasonable conclusions."

[91] Under the deferential standard of review of reasonableness, it is not our job to reweigh the evidence that the Governor in Council weighed, grapple with interpretative issues concerning the war crimes policy, and then replace the Governor in Council's discretionary, fact-based conclusions with our own conclusions. On the available facts, law and policy, the Governor in Council's decisions not to revoke the citizenships of Mr. Odynsky and Mr. Katriuk under subsection 10(1) of the Act are defensible.

(4) Should the Governor in Council have received the submissions that appellant had made to the Minister?

[92] The appellant submits that, as a matter of procedural fairness, the Governor in Council should have received the submissions that the appellant had made to the Minister. It complains that submissions of the Ukrainian Canadian Congress to the Minister were included in the Minister's reports and made their way to the Governor in Council. But the appellant's submissions were not included.

[93] Owing to the importance of the decisions to Messrs. Odynsky and Katriuk, the Minister appropriately invited them to make submissions. Counsel for Mr. Odynsky included submissions of the Ukrainian Canadian Congress amongst his submissions to Minister. The Minister appropriately included all of the submissions of Messrs. Odynsky and Katriuk in the reports in order to assist the Governor in Council in making its decisions. The Minister chose not to include any of the appellant's submissions in the reports. As a result, the submissions of the Ukrainian Canadian Congress ended up before the Governor in Council, but those of the appellant did not.

[94] However, a reading of the Minister's reports, especially the Minister's covering memorandum, shows that the Minister robustly put to the Governor in Council many of the viewpoints and perspectives that the appellant had advanced to the Minister. Further, in response to a question during oral argument in this Court, counsel for the applicant confirmed that the appellant's real concern about procedural fairness was that the Governor in Council did not have the appellant's legal submissions concerning how subsection 10(1) should be interpreted. To the extent

that that worked any prejudice, that prejudice has now been cured: both the applications judge and this Court have carefully considered the appellant's legal submissions and have passed judgment upon them.

[95] In any event, given the nature of the issues before the Governor in Council, procedural fairness obligations in favour of the appellant did not arise on these facts under this legislative regime. At common law, the Governor in Council is not subject to procedural fairness obligations where it is deciding matters with significant policy content that affect a wide range of constituencies: *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 at page 670, 106 N.R. 17; *Martineau v. Matsqui Institution*, [1980] 1 S.C.R. 602, 30 N.R. 119; *Canada (M.N.R.) v. Coopers & Lybrand Ltd.*, [1979] 1 S.C.R. 495 at page 504, 24 N.R. 163; *Inuit Tapirisat of Canada v. Canada (A.G.)*, [1980] 2 S.C.R. 735, 33 N.R. 304. On the other hand, there may be some scope for the imposition of procedural fairness obligations where the rights and privileges of an individual or a relatively discrete group of individuals are being directly affected on the basis of provisions that impose objective standards and criteria: David Mullan, *Administrative Law* (Toronto: Irwin Law, 2001) at page 165 and see also *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 at page 653, 16 Admin. L.R. 233. As mentioned in paragraphs 57-58 above in the context of the appellant's submissions on direct standing, the Governor in Council's decisions did not directly affect the rights and privileges of the appellant. Also as mentioned in paragraphs 63-79 above, subsection 10(1) of the Act does not impose objective standards and criteria on the Governor in Council. Rather, it empowers the Governor in Council to exercise a broad discretion that, as we have seen, is guided by a war crimes policy established by the Government of Canada.

D. Disposition

[96] The respondents, the Attorney General of Canada and Vladimir Katriuk, do not seek their costs. The respondent, Wasyl Odynsky, seeks his costs in his appeal. In my view, costs should follow the outcome of that appeal.

[97] Therefore, I would dismiss the appeals, with costs to the respondent, Wasyl Odynsky, in file A-365-09.

"David Stratas"
J.A.

“I agree
K. Sharlow”

“I agree
Johanne Trudel”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-365-09
APPEAL FROM THE JUDGMENT OF THE FEDERAL COURT DATED JUNE 19, 2009 IN FILE NO. T-1162-07	
STYLE OF CAUSE:	League for Human Rights of B'Nai Brith Canada v. Wasyl Odynsky and The Attorney General of Canada
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 4, 2010
REASONS FOR JUDGMENT BY:	Stratas J.A.
CONCURRED IN BY:	Sharlow and Trudel JJ.A.
DATED:	November 12, 2010

APPEARANCES:

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FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-366-09
APPEAL FROM THE JUDGMENT OF THE FEDERAL COURT DATED JUNE 19, 2009 IN FILE NO. T-1191-07	
STYLE OF CAUSE:	League for Human Rights of B'Nai Brith Canada v. Vladimir Katriuk and The Attorney General of Canada
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	May 4, 2010
REASONS FOR JUDGMENT BY:	Stratas J.A.
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APPEARANCES:

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