Court File No. T-1381-15

FEDERAL COURT

B E T W E E N:

THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS and ASAD ANSARI

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE ATTORNEY GENERAL OF CANADA

Respondents

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants British Columbia Civil Liberties Association and the Canadian Association of Refugee Lawyers will make a motion to the Court as soon as the motion can be heard at 180 Queen Street West, Toronto, Ontario, 2nd Floor, in Toronto, or at a location to be set by the Court.

THE MOTION IS FOR an order staying the operation of s. 10(1) of the *Citizenship Act*, R.S.C. 1985, c. C-29 as amended, on an interlocutory basis pending the resolution of the constitutionality and validity of that section in *Monla v. Canada (Citizenship and Immigration)*, Court File No. T-1570-15 and the cases jointly being case managed with it.

THE GROUNDS FOR THE MOTION ARE

The Moving Parties

1. The British Columbia Civil Liberties Association ("BCCLA") is a non-profit, non-partisan, unaffiliated advocacy group. It was incorporated in 1963 pursuant to the *British Columbia Society Act*. The objectives of the BCCLA include the promotion, defence, sustainment and extension of civil liberties and human rights throughout British Columbia and Canada. To that end, the BCCLA prepares position papers, engages in public education, assists individuals to address violations of their rights and takes legal action as both an intervener and a plaintiff.

2. The BCCLA has a long-standing interest in matters of immigrant and refugee rights, and has been extensively involved in advocacy and education in respect of a wide range of issues affecting immigrants and refugees in Canada. The BCCLA has an extensive history of making submissions to courts and government bodies with respect to the impacts of laws and policies on the constitutional rights of non-citizens in Canada.

3. The BCCLA has a strong interest in the issues raised in this proceeding, and has consistently opposed the creation of a class of Canadians who could have their citizenship revoked. When the *Strengthening Canadian Citizenship Act* was first proposed as Bill C-24 in February 2014, the BCCLA, together with the Canadian Association of Refugee Lawyers issued a petition calling for the bill's withdrawal. The over 800-page petition, with over 25,000 signatures, was delivered to the office of Citizenship and Immigration Canada in Vancouver on June 3, 2014. Since the Bill's introduction, the BCCLA has engaged in numerous public education initiatives aimed at informing Canadians about the bill and its impacts through publishing blogs and giving public talks and media interviews.

4. The Canadian Association of Refugee Lawyers ("CARL") was formed and incorporated in September 2011 as a non-profit and non-partisan association of lawyers and academics with

an interest in legal issues related to refugees, asylum seekers, and the rights of immigrants. Its purposes include legal advocacy on behalf of those groups. CARL serves as an informed national voice on refugee law and human rights and promotes just and consistent practices in the treatment of refugees in Canada.

5. Relying on the broad experience of this membership, CARL has a mandate to research, litigate and advocate on refugee rights and related issues. CARL carries out this mandate in the courts, before parliamentary committees, in the media, among its membership *via* bi-annual conferences, and elsewhere in the public sphere. In particular, the association actively engages in public interest litigation, including interventions, on behalf of vulnerable refugees, asylum seekers, permanent residents and other migrants.

6. CARL has a strong interest in the issues raised by this litigation, and has publically expressed its fundamental concern with new citizenship requirements and revocation proceedings. After Bill C-24 was tabled, CARL submitted a brief to the Parliamentary subcommittee studying the bill, engaged in public education activities, published op-eds, and organized and presented at legal education fora. As well, CARL worked with the BCCLA to issue a petition calling for the withdrawal of the legislation.

The Impugned Provision

7. Prior to the June of 2014, the *Citizenship Act* provided that an individual's citizenship could be revoked only if it were established that their citizenship was obtained "by false representation or fraud by knowingly concealing material circumstances," in effect removing the grant of citizenship when improperly made *ab initio*. A finding of fraud could be made only by the Governor in Council on a report prepared by the Minister. Prior to issuing a report, the Minister was required to notify the affected individual, who had a right to require that the matter

be referred to the Federal Court for adjudication. The Court would make a determination as to whether or not the Minister had established on a balance of probabilities that the Applicant had obtained his citizenship by fraud.

8. On June 19, 2014 Royal Assent was given to the *Strengthening Canadian Citizenship Act* ("Bill C-24"). Bill C-24 amended various provisions of the *Citizenship Act* including the process by which the Minister could revoke citizenship on the grounds of fraud and misrepresentation.

9. Under the new revocation process, the decision to revoke citizenship is made through an administrative proceeding involving decision-makers who are not independent of the Minister. There is no absolute right to an oral hearing, nor is there is a right to disclosure of relevant materials in the possession of the Minister.

The Constitutional Challenges

10. On August 20, 2015, the Moving Parties and a private standing litigant – Asad Ansari – issued a Statement of Claim and a parallel Notice of Application for Leave to Commence Judicial Review, challenging the constitutionality of many of the amendments contained in bill C-24, including the new procedural rules for revoking citizenship.

11. A number of additional challenges under the *Charter of Rights and Freedoms* and the *Bill of Rights* were launched by individuals who received notices of intent to revoke citizenship from the Minister. These cases, while more limited in their scope, also challenged the constitutionality of the new revocation provisions.

12. To date, none of these proceedings have been adjudicated on their merits, and are still pending before the Court. All of these proceedings are being case managed by Mr. Justice Zinn.

The Individual Stays and Continued Revocations

13. Various private standing litigants brought motions for injunctions against the Minister to halt the revocation proceedings against them pending the outcome their constitutional challenges.

14. On January 19, 2016, Mr. Justice Zinn released his decision in *Monla v. Canada (Citizenship and Immigration)*, 2016 FC 44, granting the private standing litigants a stay of the pending revocation proceedings against them.

15. In this decision, Zinn J. concluded that the constitutionality of the new process constituted a serious issue to be tried; that being subjected to this process – which might ultimately be held unconstitutional – constituted irreparable harm; and that the balance of convenience favoured granting a stay pending the resolution of the constitutional question on its merits.

16. Since the *Monla* decision, the Minister has continued to issue notices of intention to revoke citizenship under the new process. Although the Minister has indicated to Parliament that he intends to repeal the current process and replace it with a more procedurally fair one, he has refused to voluntarily suspend issuing notices under the current law.

17. Individuals who have received such notices and who have been able to retain counsel and apply to the Court have obtained stays in accordance with *Monla* as a matter of course. However, individuals who have not been able to retain counsel or who are unaware of the *Monla* precedent continue to be subjected to revocation proceedings under the new process.

18. There continues to be a serious issue with respect to the constitutionality of the new revocation process.

19. Any individual who is subjected to this process because, for whatever reason, they are unable to privately obtain an individual stay pursuant to *Monla*, will suffer irreparable harm if the process is ultimately found to be unconstitutional.

20. The balance of convenience favours a stay. The Minister will suffer no irreparable harm by an interlocutory stay of his revocation powers. If the new process is ultimately upheld as constitutional the Minister may still proceed with revocations under that process.

21. The Moving Parties have the public interest standing needed to bring this motion in order to protect the rights and interests of those individuals who have or will receive revocation notices, but who cannot privately avail themselves of the *Monla* decision.

22. The *Canadian Charter of Rights and Freedoms*, being Schedule B to the *Canada Act, 1982* (UK), c. 11, s. 7.

23. The *Federal Courts Act*, RSC 1985, c. F-7, s. 18.2

24. The *Federal Court Rules*, SOR/98-106, rr. 359-364, 373

25. Such further grounds as Counsel may advise and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Laura Track, and the exhibit attached thereto;

2. The affidavit of Mitchell Goldberg, and the exhibits attached thereto; and

3. Such further evidence that Counsel may advise and this Honourable Court may accept.

September 26, 2016

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