Federal Court  Cour fédérale

Date: 20160211

Docket: T-1892-13

Citation: 2016 FC 185

Ottawa, Ontario, February 11, 2016

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Plaintiff

And

KAMRAN MODARESI (aka KAMRAN LADBON)

Defendant

JUDGMENT AND REASONS

I. Nature of the Matter and Procedural History

[1] These are motions for summary trial of an action under Rule 216 of the *Federal Courts Rules*, SOR/98-106 [the Rules], brought by both the Minister of Citizenship and Immigration [the Plaintiff or the Minister] and by Kamran Modaresi [the Respondent or the Defendant]. The Minister seeks a declaration pursuant to paragraph 18(1)(b) of the *Citizenship Act*, RSC 1985, c C-29, as repealed [*Citizenship Act*], that the Defendant obtained his Canadian citizenship by false

representation or fraud or by knowingly concealing material circumstances. The Minister brings his motion in the context of an action pursuant to section 18 of the then *Citizenship Act*, and Rule 169(a) of the *Federal Courts Rules*, SOR/2004-283. The Minister pleads and relies on sections 10, 18 (repealed) and 22 of the *Citizenship Act*. The Respondent, who represented himself, asks for summary judgment that the Minister's "charges be dismissed".

[2] On or about April 13, 2012, the Minister served a Notice on the Defendant that he intended to make a report to the Governor in Council within the meaning of section 10 of the *Citizenship Act*, recommending that the Defendant's Canadian citizenship be revoked on the grounds that he obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances.

[3] On or about May 3, 2012, the Defendant requested, pursuant to para 18(1)(b) of the *Citizenship Act*, that his case be referred to this Court. Accordingly, this action was commenced by the Plaintiff Minister on November 15, 2013.

Procedural Note

[4] At the outset of the hearing, I raised with the parties whether the new Prime Minister's mandate letter to the new Minister of Immigration, Refugees and Citizenship would render this proceeding moot. The Minister's motion and this action are steps in a process by which the government may strip a dual national of his or her Canadian citizenship. The Prime Minister's mandate letter of November 2015 indicated an expectation that the new Minister would "[w]ork with the Minister of Justice and the Minister of Public Safety and Emergency Preparedness to

repeal provisions in the *Citizenship Act* that give the government the right to strip citizenship from dual nationals." On this basis, the Defendant made what I took to be a motion to adjourn. However, after hearing submissions, I proceeded with the motions for summary trial but directed counsel for the Minister to seek instructions and advise. This he did by letter dated December 11, 2015, which reported that the Attorney General of Canada had no information or expectation that any proposed legislative changes to the *Citizenship Act* referred to in the mandate letter would apply to the Defendant or to this proceeding, and that any such amendment would apply to those convicted of offences relating to national security or for engaging in armed conflict with Canada as enacted in Bill C-24. On this basis, it does not appear this case is moot and therefore the Court will proceed to consider and decide the same.

Summary of the Case and Disposition

[5] The Defendant was born in Iran. He first arrived in Canada from Switzerland in May 1988 under the name Kamran Ladbon, which is a false name. His real name is Kamran Modaresi as is shown in the style of cause. He applied for refugee status in 1988. It was denied on June 10, 1994 on the basis that he lacked credibility in part because of discrepancies in his names. During the refugee process, his true name was discovered to be Kamran Modaresi. Not only did his two names differ, the associated birth dates differed by five years. Over the course of his many dealings with Canadian officials, both federal and provincial, the Defendant has used several other names being close variants and/or combinations of his false and true names.

[6] The Defendant is on full disability pension and is 55 years old. He has a son with his second wife, and a daughter who is in her teens, with his third wife.

[7] The Defendant basically admits making numerous false representations. Indeed, after his dual identities were discovered, he pleaded guilty to charges under section 94(1)(*b*) of the former *Immigration Act*, RSC 1985, c I-2 [*Immigration Act*], for knowingly making false or misleading statements in connection with his application for permanent residence and on his return to Canada. The statements he made on his application for permanent residence form one of the two bases for this action, and are relevant under subsection 10(2) of the *Citizenship Act*. The statements the Defendant made in his application for Canadian citizenship are the other basis for this action.

[8] The Defendant denies allegations of false representation or fraud and/or knowingly concealing material circumstances in connection with both his permanent residence and his Canadian citizenship applications. For the reasons that follow, I reject the various defences he raised on whether what he said was true or false, because his arguments are illogical and specious.

[9] I also reject his request for a stay of proceedings based on abuse of process, because there was neither state-caused inordinate delay nor did the Defendant suffer substantial prejudice; in other words he failed to establish the legal basis for a stay based on abuse of process.

[10] His immigration and criminal history are lengthy and outlined in detail below with my analysis. Suffice it to say that I find the Defendant obtained both his permanent residency and Canadian citizenship by false representations or fraud or by knowingly concealing material circumstances. Therefore, the Plaintiff is granted both summary trial and the relief and

declaration requested. The Defendant's motion for summary trial is granted but his substantive request is dismissed.

[11] I propose to outline the applicable legal principles, and then apply them to the facts at hand to arrive at a decision.

No Genuine Issue Requiring Trial of an Action: Both Motions for Summary Trial are Granted

[12] In my view, there are no genuine issues for trial in respect of the facts or law of either the Minister's or the Defendant's positions. The material facts are essentially admitted by the Defendant. The case falls almost entirely to be determined on the basis of documentary evidence, including the affidavits and exhibits filed by the parties. The law is not in dispute, although its application to the facts is of course contested. Therefore, the motions by both parties for summary judgment are granted.

II. Legal Principles Concerning Subsection 10(1) of the *Citizenship Act*

[13] This action is brought pursuant to section 10 of the *Citizenship Act* material parts of which read at the time:

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	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

concealing material circumstances, …	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, …	a) soit perd sa citoyenneté;
as of such date as may be fixed by order of the Governor in Council with respect thereto.	….
10(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.	10(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.

[14] In order to be entitled to the relief he seeks, the Minister must establish, on a balance of probabilities, that the Defendant obtained his Canadian citizenship through false representations or fraud or by knowingly concealing material circumstances on his permanent residence application (subsection 10(2)) and/or on his citizenship application (subsection 10(1)): *Canada (Minister of Citizenship and Immigration) v Laroche*, 2008 FC 528, at para 20; *Canada (Minister of Citizenship and Immigration) v Schneeberger*, 2003 FC 970 [*Schneeberger*] at paras 20-26, and *Canada (Minister of Citizenship and Immigration) v Houchaine*, 2014 FC 342 at paras 17-

18. Insofar as subsection 10(2) is concerned, the Minister must establish on a balance of probabilities that the Defendant obtained his Canadian citizenship because the Defendant was lawfully admitted as a permanent resident by false representations or fraud or by knowingly concealing material circumstances. The balance of probabilities standard is satisfied if the evidence establishes that it is more probable than not that something occurred. That is, the Court must be satisfied that an event or fact in dispute is not only possible, but probable: *Rogan v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1007 [*Rogan*] at paras 27-29: "[t]hat said, because of the seriousness of the allegations that have been made and the significant negative consequences that revocation of citizenship may have for Mr. Rogan, the evidence must be scrutinized with great care: *Canada (Minister of Citizenship and Immigration) v. Schneeberger*, 2003 FC 970, [2004] 1 F.C.R.280, at para. 25; *Canada (Minister of Citizenship and Immigration) v. Coomar* (1998), 159 F.T.R. 37, [1998] F.C.J. No. 1679 at para. 10 (F.C.T.D.); *Skomatchuk*, above, at para. 24".

[15] The Supreme Court confirmed that a misrepresentation of a material fact includes an untruth, the withholding of truthful information or a misleading answer that has the effect of foreclosing or averting further inquiries: *Canada (Minister of Manpower and Immigration) v Brooks*, [1974] SCR 850 [*Brooks*] at 873:

> Lest there be any doubt on the matter as a result of the Board's reasons, I would repudiate any contention or conclusion that materiality under s. 19(1)(*e*)(viii) requires that the untruth or the misleading information in an answer or answers be such as to have concealed an independent ground of deportation. The untruth or misleading information may fall short of this and yet have been an inducing factor in admission. Evidence, as was given in the present case, that certain incorrect answers would have had no influence in the admission of a person is, of course, relevant to materiality. But also relevant is whether the untruths or the misleading answers had

> the effect of foreclosing or averting further inquiries, even if those inquiries might not have turned up any independent ground of deportation.

[16] False representations must be significant, which is a matter that depends on their context: *Brooks* at para 52, *Rogan* at paras 31, 34, 35; generally innocent falsehoods do not entitle the Minister to the declaration he or she might seek under section 10 of the *Citizenship Act*: see *Schneeberger* at paragraph 26:

> More must be established than a technical transgression of the Act. Innocent misrepresentations are not to result in the revocation of citizenship: *Canada (Minister of Multiculturalism and Citizenship) v. Minhas* (1993), 66 F.T.R. 155 (T.D.).

[17] But misrepresentations put forward as "innocent" must be carefully examined. "Willful blindness", when occasioned by an applicant for Canadian citizenship in the pursuit of his or her application, is not to be condoned: *Canada (Minister of Citizenship and Immigration) v Phan*, 2003 FC 1194 at para 33:

> I agree with the foregoing concern about the application of *Minhas*. I am concerned that the principle drawn from that decision by Justice Dawson that "innocent representations are not to result in the revocation of citizenship" is overly broad. I am satisfied that misrepresentations put forward as "innocent" must be carefully examined. "Willful blindness", when practised by an applicant for Canadian citizenship in the pursuit of his or her application, is not to be condoned. The applicant is seeking a significant privilege. In those circumstances, he or she, when faced with a situation of doubt, should invariably err on the side of full disclosure to a citizenship judge or citizenship official.

[18] An innocent failure to provide material information may result in a finding of inadmissibility: *Baro v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1299 [*Baro*] at para 15 on the duty of candour says:

> …Even an innocent failure to provide material information can result in a finding of inadmissibility; for example, an applicant who fails to include all of her children in her application may be inadmissible: *Bickin v. Canada (Minister of Citizenship and Immigration)*, [2000] F.C.J. No. 1495(F.C.T.D.) (QL). An exception arises where applicants can show that they honestly and reasonably believed that they were not withholding material information: *Medel v. Canada (Minister of Employment and Immigration)*, [1990] 2 F.C. 345, [1990] F.C.J. No. 318 (F.C.A.) (QL).

[19] It is well-established that a foreign national seeking to enter Canada has a "duty of candour" which requires disclosure of material facts. This duty is informed by the surrounding circumstances. This duty requires the Defendant to truthfully and completely answer every question asked of him in his applications for permanent residence and citizenship. This duty is legislatively reinforced by subsection 9(3) of the former *Immigration Act* which requires that "every person shall answer truthfully all questions put to that person by the visa officer and shall produce such documentation as may be required by the visa officer for the purpose of establishing that his admission would not be contrary to the Act or the regulations." See *Canada (Minister of Citizenship and Immigration) v Savic*, 2014 FC 523 at para 51:

> The purpose of the provision is to ensure that applicants do not benefit by obtaining permanent resident status and citizenship as a result of failing to provide essential information or from providing false information. The information provided is relied on by the decision maker. Applicants have a duty to provide the information requested and to be truthful and ought to know that the information will be relied upon and may foreclose further lines of inquiry.

And see *Immigration Act*, subsection 9(3) (see also subsection 12(4) regarding the duty to answer questions in applications for landing); *Bodine v Canada (Minister of Citizenship and Immigration)*, 2008 FC 848 at paras 41-42; and *Baro* at para 15.

[20] I note that the Governor in Council is not precluded from considering the current circumstances of the Defendant, including any humanitarian and compassionate considerations that may be relevant to the exercise of the Council's discretion whether to revoke his citizenship. However, such factors do not affect the analysis required by this Court under section 10 of the *Citizenship Act*. This Court stated in *Canada (Minister of Citizenship and Immigration) v Dinaburgsky*, 2006 FC 1161 [*Dinaburgsky*] at para 58 that such decisions are only for the Minister of Citizenship and Immigration and the Governor in Council:

> Canada does not allow persons convicted of serious criminal offences to become permanent residents. It is not the role of the Court to condone or forgive persons who misrepresent or conceal material facts about their past criminality. That is a decision only for the Minister of Citizenship and Immigration and the Governor in Council.

And see *Savic* at paras 7-9:

> [7] Although the defendant in this case submits that the findings of the Court are invariably accepted by the Governor in Council and will lead to revocation, the defendant will have an opportunity to make submissions to the Governor in Council. The Governor in Council is not precluded from considering the current circumstances of the defendant which may be relevant to the exercise of discretion whether to revoke his citizenship, but which do not change the facts as established by the plaintiff with respect to section 10 of the Act.
>
> [8] As noted by Justice Kelen in *Canada (Minister of Citizenship and Immigration) v Dinaburgsky*, 2006 FC 1161, [2006] FCJ No 1460:

> 58 Canada does not allow persons convicted of serious criminal offences to become permanent residents. It is not the role of the Court to condone or forgive persons who misrepresent or conceal material facts about their past serious criminality. That is a decision for only the Minister of Citizenship and Immigration and the Governor in Council. Nor is it the Court's role to determine whether, as a matter of policy, it is appropriate to render stateless citizens of Canada who choose not to disclose criminal convictions pre-dating their admission to Canada. That is a decision left to Parliament acting through the Governor in Council.

> [9] Justice Kelen's point is equally applicable in the present case; it is not the role of this Court to determine if the defendant, now elderly and in poor health, should suffer the consequences of revocation of his citizenship. That is the role of the Governor in Council. The Court's role is focused on determining whether the declaration pursuant to section 10 of the Act should be made.

III. Outline of the Facts

[21] The following in chronological order are the facts, and my findings regarding false representation and knowingly concealing material circumstances and fraud as interpreted above, for the purposes of section 10 of the *Citizenship Act*.

[22] The Defendant admits his true legal name is Kamran Modaresi. He left Iran in or about 1986 and arrived in Switzerland, where he filed a claim for refugee status. He left Switzerland for Canada before his refugee claim was determined.

[23] The Defendant first entered Canada at Vancouver International Airport in May 1988. He gave his name as "Kamran Ladbon" (a false name) and said his birthdate was October 9, 1965 (also false). Citizenship and Immigration Canada [CIC] opened a file in its online Field

Operations Support System [FOSS] under the name "Kamran Ladbon" and the 1965 birthdate using FOSS identification number (FOSS ID No.) 2426-4719. The Defendant has admitted in this proceeding that both this name and date of birth are false, and I so find.

[24] The Defendant then filed a claim for Convention refugee status in 1988. While he filed two Personal Information Forms [PIF] using the name "Kamran Ladbon" (his false name), before the Refugee Division [RD] of the Immigration and Refugee Board, he said his true name was "Kamran Modaressi". The RD rejected his claim citing numerous credibility issues including discrepancies regarding his use of two names: "Kamran Ladbon" (false) and "Kamran Modaressi" (a false name albeit a variant of his true last name which is Modaresi) with differing birth years, 1965 and 1960. He is quoted in the Board's reasons as admitting and apologizing for lying about his identification when he arrived in Canada and filed with the RD.

[25] The Defendant using the false name "Kamran Ladbon" married an Iranian national, Vida Dara on August 6, 1989, in Vancouver, British Columbia. He divorced Ms. Dara on August 20, 1989.

[26] In 1992, and pending the hearing of his refugee claim, the Defendant filed his first of three applications for permanent residence, under the false name "Kamran Ladbon" with a birthdate of October 9, 1965, also false.

[27] In December 1992, the Defendant under the false name "Kamran Ladbon" was charged in the State of Washington, U.S.A., with possession of marijuana and failing to appear before the

court after released on personal recognizance. Those charges remain outstanding. The Defendant later denied the existence of outstanding charges: see paras 41F and 47F.

[28] In December 1992, in a separate incident in Canada, the Defendant using the false name "Kamran Ladbon" was convicted of possession of a narcotic (marijuana) contrary to subsection 3(1) of the former *Narcotic Control Act*, RS 1985, c N-1, and therefore found inadmissible to Canada pursuant to para 19(2)(a) of the former *Immigration Act*. This becomes relevant because the Defendant later denied having been convicted: see para 41F. I note that the Defendant used the false name "Ladbon" with the police and convicting court.

[29] In May 1993, the Defendant, under the false name "Kamran Ladbon-Modaresi" married Mary-Ann Morley in Vancouver, British Columbia. The Defendant and Ms. Morley had a son born in Vancouver in October 1994. The fact the Defendant was married and had a child are relevant because the Defendant later denied both being married and having children: see paras 41D and 41E.

[30] As noted above, the RD rejected the Defendant's claim for refugee status on June 10, 1994.

[31] The Defendant under the false name "Kamran Ladbon" was issued a Conditional Departure Order [CDO] on June 16, 1994, pursuant to subsection 32.1(5) of the former *Immigration Act*. The CDO became a Departure Order and was effective pursuant to para 32.1(6)(c) of that Act when the Defendant was notified of the RD's decision that he was not a

Convention refugee. The Departure Order subsequently was deemed to be a Deportation Order pursuant to subsection 32.02(1) of the former *Immigration Act*. This is relevant because the Defendant later denied being subject to a Deportation Order - see para 41I.

[32] In November 1994, the Defendant filed an application (his first of three) for a permanent residence visa on humanitarian and compassionate [H&C] grounds. In his application, the Defendant stated that:

A. His name was "Kamran Modaresi", with a birth date of October 9, 1960;

B. He had lived in Canada since May 2, 1988;

C. He was married to Mary-Ann Morley;

D. He had been convicted of a crime in Canada for which he had not received a pardon;

E. He had been charged with a crime or offence in Canada; and

F. He had been refused admission to, or ordered to leave, Canada or any other country.

[33] The application was refused on April 21, 1995, because of the Defendant's misrepresentations and lack of credibility manifested at the hearing. This is relevant because the Defendant later denied having applied for (para 41G) or having been refused a visa (see para 41H).

[34] On July 1, 1995, the Defendant under the false name "Kamran Ladbon", was charged with assaulting his second wife, Mary-Ann Morley. On September 22, 1995, he was deemed not

guilty on the charge of assault but convicted of failing to comply with a condition of an undertaking or recognizance, contrary to subsection 145(3) of the *Criminal Code*, RS, 1985 c C-46, and sentenced to probation for one year, with conditions. This is relevant because the Defendant later denies being charged or convicted: see para 41F, I note he used his false name with the authorities including the police and convicting court.

[35] On November 30, 1995, the Defendant, again under the false name "Kamran Ladbon", was convicted on charges of:

- Criminal harassment of Ms. Morley pursuant to section 264 of the *Criminal Code*;
- Failure to comply with the terms of a probation order, pursuant to subsection 740(1) of the *Criminal Code*; and
- Possession of a narcotic, pursuant to subsection 3(1) of the *Narcotic Control Act*.

[36] I note the use of his false name with the police and courts. On March 15, 1996, the Defendant was sentenced to three (3) months in prison and three (3) years of probation for these convictions. This is relevant because the Defendant later denied being charged, convicted or under probation: see paras 41F and 47E.

[37] Two months later, on or about May 6, 1996, the Defendant, using the false name "Kamran Modaressi Ladbon" (combination false and true names, two "s's" not one) filed an application for leave to apply for judicial review in this Court, from the Departure Order issued on June 16, 1994, then scheduled to be executed on May 16, 1996. The Defendant concurrently

filed a Notice of Motion to stay the execution of the Order for his removal from Canada. In the affidavit supporting this motion, the Defendant swore that, among other things:

A. He arrived in Canada in 1988;

B. He made a refugee claim in Switzerland prior to arriving in Canada;

C. In Canada, he had been convicted of possession of marijuana;

D. He was married to Mary-Ann Morley and had a son;

E. He was charged with breaching a Probation Order restraining him from contact with Ms. Morley; and

F. He was convicted of criminal harassment of Ms. Morley pursuant to section 264 of the *Criminal Code*.

[38] Justice McKeown, a Judge of this Court denied the Defendant's motion for a stay by Order dated May 23, 1996. However, the Court ordered CIC to prepare a new Post Determination Refugee Claimants in Canada [PDRCC] determination and to not take further steps to remove the Defendant pending completion of the PDRCC process. CIC determined that the Defendant was not a member of the PDRCC class on or about December 18, 1996.

[39] The Defendant voluntarily departed Canada for Switzerland in December 1996 or January 1997. In April 1997, CIC issued a warrant for the Defendant's arrest, under the name "Kamran Modaressi-Ladbon", pursuant to subsection 103(1) of the former *Immigration Act*. The Defendant says he was not informed of this. His lawyer advised immigration officials that the Defendant had left Canada.

[40] In or about July 1997, the Defendant, under his true name "Kamran Modaresi", married Mhenowah Meyhar, a Canadian citizen, in Turkey. Two years later, on July 20, 1999, the Defendant married Ms. Meyhar again, this time in Canada, but using the false name "Kamran Ladbon". This is relevant because he continued to use a false name in addition to his true name; false name in Canada, his true name in Turkey.

[41] On or about November 17, 1997, the Defendant, under his true name "Kamran Modaresi", filed another (his second) application for permanent residence. He says he made this application at the Canadian Embassy in Iran, although the Minister says it was in Damascus, Syria. His application was sponsored by his wife, Mhenowah Meyhar. In his application dated November 9, 1997, the Defendant claimed the following facts. He later pled guilty to charges of knowingly making false or misleading statements on this application:

A. His name was "Kamran Modaresi", with a date of birth of October 9, 1960; this was true.

B. He had used no other names; this was in my view, a significant false representation and also constituted material concealment because inquiries into the history and records of "Kamran Ladbon" were averted by denying he used that name. He had used many other names including principally "Kamran Ladbon".

C. He had been a barber in Iran for the previous 10 years; this too was a significant false representation and I also consider that it constituted material concealment because inquiries were thereby averted into who he really was and what he had been doing in Canada between 1988 and 1996.

D. He had no children; this was a significant false representation and also a constituted material concealment in that inquiries were averted into his previous marriage to Mary-Ann Morley with whom he had a son, see para 29. For the purposes of that marriage, he used the false name "Kamran Ladbon-Modaresi".

E. He had not been married prior to his marriage to Ms. Meyhar, in fact, he had been married twice before, once to Ms. Dara (see para 25) and then to Mary-Ann Morley (see para 29): on the first he married in the false name "Kamran Ladbon", and on the second marriage he used the false name "Kamran Ladbon-Modaresi". This was a significant false representation and also constituted material concealment because inquiries were averted into his records and activities as "Kamran Ladbon", i.e., his life and record under the false "Ladbon" name.

F. He had never been convicted of, nor was currently charged with, any crime or offence: this was an egregiously false representation. By this time, he had been charged with six crimes or offences and convicted of five, all under the false name "Kamran Ladbon", see paras 27, 28, 34, 35 and 36. This statement constituted a significant false representation and also constituted material concealment in that inquiries were averted into the activities and records of "Kamran Ladbon".

G. He had never previously applied for an immigrant or visitor visa to Canada or any other country; this was a false representation in that he had applied to Canada for an immigrant visa in November 1994, see para 32. Both permanent resident applications were made under the true "Modaresi" name.

H. He had never been refused an immigrant or visitor visa to Canada or any other country; this was an additional and in my view a significant false representation because his 1994 application, see para 33, was rejected due to his misrepresentations and lack of credibility. In my view, this constituted material concealment in that it attempted to avert inquiries into the rejection of his previous application and its underlying reasons.

I. He had never been refused admission to, or ordered to leave, Canada or any other country; this was not true. He knew of the CDO (see para 31) which is why he left Canada. This was a significant false representation and also constituted material concealment because inquiries were averted into the circumstances leading to the CDO issued against him under his false name of "Kamran Ladbon". By such material concealment, inquiries were averted into the records and activities of the Defendant under the false "Ladbon" name.

[42] In his application for permanent residence, the Defendant made the following declaration:

> *I declare that the information I have given in this application is truthful, complete and correct.*
>
> *I understand that any false statements or concealment of a material fact may result in exclusion from Canada, and even though I should be admitted to Canada for permanent residence, a fraudulent entry on this application may be grounds for my prosecution and/or removal.*
>
> …
>
> *I understand all the foregoing statements, having asked for and obtained an explanation on every point which was not clear to me.*

[43] In my view, this permanent residence declaration constituted a false representation, and a material concealment to the extent it certified the truthfulness of the false representations and material concealment outlined in the previous paragraphs of these Reasons.

[44] Based on these falsehoods, the Defendant's application for permanent residence was approved on March 25, 1998, and CIC opened a file for "Kamran Modaresi", date of birth October 9, 1960, with FOSS ID No. 3466-4468.

[45] The Defendant subsequently arrived at Vancouver International Airport on May 2, 1998, and obtained his permanent residence status. Upon landing, the Defendant answered "no" to the question, "Have you ever been convicted of a crime or an offence; refused admission to Canada; Required to Leave Canada?" This is relevant because his answer was false; by then he had accumulated six charges and five convictions (see paras 27, 28, 34, 35 and 36). This was a significant false representation and also constituted material concealment in that inquiries were averted into the records and activities of "Kamran Ladbon" in whose name those charges and convictions were recorded. Moreover, it averted inquiries into the fact that the Defendant under the name "Kamran Ladbon" was issued the CDO in 1994 (see para 31). This material concealment averted investigation into the records and activities of the Defendant accumulated under the false "Ladbon" name. The Defendant later pleaded guilty to charges of knowingly making false or misleading statements on this occasion as well.

[46] In 1999, the Defendant, under his false name "Kamran Ladbon", was detained and charged in Hope, British Columbia, on drug possession and production charges. He was also

arrested and detained for a period of time under his outstanding immigration warrant issued under the name "Kamran Modaressi-Ladbon". On or about June 9, 1999, the Defendant under the name "Kamran Ladbon" was convicted of the indictable offence of production of marijuana under subsection 7(1) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 [CDSA], and sentenced to one (1) day in prison. As "Kamran Ladbon", FOSS ID No. 2426-4719, he was released on certain conditions, including a requirement that he report regularly to CIC. I note that production of marijuana is a pure indictable offence, not a hybrid offence. Again, the Defendant used a false name with police and the convicting Court. This was his sixth conviction in Canada.

[47] The Defendant under the true name "Kamran Modaresi", FOSS ID No. 3466-4468, then applied for Canadian citizenship on or about May 8, 2001. In his application for citizenship, the Defendant declared the following; my findings follow each:

A. He had not used other names and aliases: this was an egregious falsehood. He had used at least three other names. This was a significant false representation and also constituted material concealment in that inquiries were averted into the records and activities of "Kamran Ladbon";

B. He first arrived in Canada in 1998: this was equally untrue; he first arrived in Canada ten years earlier in 1988 and did so under the false name "Kamran Ladbon" (see para 23). This was a significant false representation and also constituted material concealment in that inquiries were averted into "Kamran Ladbon" and his records and activities under the false Ladbon name;

C. He lived in Tehran, Iran, from May 1965 to May 1998; this was not true because he lived in Canada for eight years between 1988 and 1996. This was a significant

false representation and also constituted material concealment in that inquiries were averted into the records and activities of "Kamran Ladbon" and because it averted inquiries into his activities in Canada between 1988 and 1996;

D. He had not been convicted of an indictable offence in the past three years; this was not true. The Defendant had been convicted of an indictable offence less than two years previously, namely production of marijuana under subsection 7(1) of the CDSA, an indictable offence (see para 46). This was a significant false representation and also constituted material concealment because inquiries were averted into his false identity as "Kamran Ladbon" in whose name that conviction was entered;

E. He had not been on probation within the last four years; this was not true. His probation for the 1996 convictions referred to in para 36 ran for three years and ended March 15, 1999, i.e., within four years of March 8, 2001, when he made this false representation on his citizenship application. In my view, this was a significant false representation and also constituted material concealment in that inquiries were averted into the records and activities of "Kamran Ladbon";

F. He did not have outstanding criminal charges against him; this was not true because of the outstanding charges from the State of Washington (para 27), in respect of which however, and while it is borderline, I give the benefit of doubt to the Defendant in terms of it being a significant false representation or a material concealment; and

G. He was not, nor ever had been, under a deportation order from Canada; this was not true. The Defendant knew of the CDO (see para 31) which was why he left

> Canada. This was a significant false representation and constituted material concealment because inquiries were averted into the records and activities of "Kamran Ladbon" in whose name and against whom the CDO was issued.

[48] In his application for citizenship, the Defendant made the following declaration:

> *I agree to inform Citizenship and Immigration Canada if any information on this form changes before I take an oath of citizenship. I understand the contents of this form. I declare that the information is true and correct, and that the photographs enclosed are a true likeness of me. I understand that if I make a false declaration, I could lose my Canadian citizenship and be charged under the Citizenship Act.*

[49] In my view, this declaration constituted both a false representation, and a material concealment to the extent it certified the truthfulness of the false representations and material concealment outlined in the previous paragraph of these Reasons.

[50] On or about November 15, 2001, the Defendant's application for Canadian citizenship was approved, and on or about December 19, 2001, he swore the oath of citizenship and became a Canadian citizen.

[51] In summary, between the years 1988 and 2010, the Defendant maintained two immigration identities while in Canada. As "Kamran Modaresi", FOSS ID No. 3466-4468, he became a Canadian citizen in 2001, obtained a Canadian passport and enjoyed and still enjoys the privileges of Canadian citizenship. As "Kamran Ladbon", FOSS ID No. 2426-4719, he is an Iranian national with no status in Canada who eventually became subject to a Deportation Order, and who was required to report regularly to CIC and the CBSA which he did failed to do.

[52] On December 9, 2009, the Defendant under the true name "Kamran Modaresi" entered Canada at Vancouver International Airport. CBSA officers found and seized, among other things, documents and items containing or labelled with his false name "Kamran Ladbon". The Defendant denied that these items belonged to him. However, subsequent investigation by the CBSA, including fingerprint analysis, established that "Kamran Modaresi" and "Kamran Ladbon" were the same person. The two FOSS ID numbers were linked in CIC's and CBSA's databases.

[53] After completing its investigation, immigration authorities laid charges for knowingly making false or misleading statements to them. On March 9, 2012, the Defendant pled guilty to, and was convicted on two counts under para 91(1)(h) of the former *Immigration Act*, for knowingly making false or misleading statements in connection with his application for permanent residence in the period September 10, 1997 to March 26, 1998 (for an outline of these false or misleading statements, see para 41), and on or about May 2, 1998 (see para 45). The Defendant was given a nine (9) month conditional sentence, to be served at his home. I emphasize the Defendant admitted to "knowingly" making these false and misleading statements because this is relevant in my finding of fraud. These were his seventh and eighth convictions in Canada.

IV. The Defendant's Position

[54] As noted, the facts of this case in terms of section 10 of the *Citizenship Act* are not in dispute. As has been seen above, the Defendant made numerous false representations and knowingly concealed material circumstances in his dealings with Canadian authorities.

Notwithstanding he admits his statements were not true and pleaded guilty to charges in relation to some of them, as best I can understand it, he offers the following defences. I am grouping them in two types: defences under section 10 of the *Citizenship Act*, and abuse of process arguments.

Citizenship Act Defences

[55] First, the Defendant claims to have two names, namely Kamran Ladbon (his false name) and Kamran Modaresi (his true name). This argument is of no merit because he admits his legal name is Kamran Modaresi.

[56] Second, he says that while he said and wrote things that were not true, he did not make untrue statements because Canada knew he had two identities since as early as 1992. He repeatedly asks how he could have made false statements when Canadian officials knew they were false. This argument is specious. His many false representations and material concealments remain false representations and material concealments, regardless of what Canadian authorities did or did not know about his true and false identities. The conduct of Canadian authorities is dealt with under abuse of process later in these Reasons.

[57] Third, while he admits telling untruths in the Canadian offices abroad in 1997 (see para 41), he claimed at the hearing to have done so out of fear for his life caused by his belief that spies of Iran would find him which could lead to his being punished or killed. He claimed his past refugee status was privileged and could not be given to Iran. On this basis, he argues his false statements were not false. His argument collapses when one appreciates the scope and

persistence of his false representations and material concealments together with the fact that most were made to Canadian officials in *both* Iran (or Turkey) and Canada. He offered no evidence-based air of reality to support his alleged fear of Iranian spies in Canadian offices in Canada, leading me to conclude that this aspect of his defence is without merit. In any event, his statements were false as he has admitted.

Conclusions on Subsections 10(1) and 10(2) of the *Citizenship Act*

[58] Given my findings above, and based on the evidence, I am satisfied on a balance of probabilities that the Defendant obtained his Canadian citizenship through false representations or by knowingly concealing material circumstances on his citizenship application. Given this and the extensive repeated and persistent falsehoods and material concealments he made as detailed in paras 47 to 49 of these Reasons, I also find on a balance of probabilities that his Canadian citizenship was obtained by fraud. The Minister's allegations under subsection 10(1) of the *Citizenship Act* are therefore established on a balance of probabilities. I add that for the reasons set out in the following paragraph and on the facts of this case, the Defendant is also deemed to have obtained his citizenship by false representations or fraud or by knowingly concealing material circumstances, by virtue of the operation of subsection 10(2) of the *Citizenship Act*.

[59] Turning to subsection 10(2) of the Citizenship Act, I am satisfied on a balance of probabilities that the Minister is entitled to the relief sought under this subsection as well. I find on a balance of probabilities that the Defendant was lawfully admitted to Canada for permanent residence by false representation or by knowingly concealing material circumstances for the reasons set out in paras 41 to 45 of these Reasons. I further find the Defendant's permanent

residence was obtained by fraud given the extent of the false representations and knowing concealment of material circumstances referred to in paras 41 to 44 of these Reasons. In addition, I am satisfied on a balance of probabilities that because of the Defendant's admission to Canada as a permanent resident, the Defendant subsequently obtained his Canadian citizenship. The Defendant used his improperly-acquired but apparently lawful permanent residence status as the basis for his citizenship application, and I also find on a balance of probabilities that Canadian citizenship authorities based the grant of citizenship on his having lawfully acquired such permanent residence status. I have no reason to doubt and every reason to accept on a balance of probabilities that his having permanent residence status led directly to his obtaining Canadian citizenship.

[60] Therefore, the Minister is entitled to the declaration requested subject to the Defendant's abuse of process arguments, which are considered next.

Abuse of Process

[61] The Defendant has a second defence, namely abuse of process. Procedurally, he did not raise this either in his written or oral submissions. However, he filed a decision of this Court dealing with citizenship revocation in his motion record, which decision resulted in a stay of proceedings based on abuse of process. Accordingly, I raised the issue of abuse of process with counsel at the hearing. While I was initially inclined not to hear argument on this point from the Minister because the decision was in the material, albeit without argument on the point by the self-represented Defendant, in fairness to both parties I subsequently invited submissions from both parties to ensure this issue was fully dealt with.

[62] The law in connection with a stay of a revocation proceeding based on abuse of process is stated in two decisions of this Court which I will apply. In *Canada (Minister of Citizenship and Immigration) v Parekh*, 2010 FC 692 [*Parekh*] this Court said:

> [26] In order for delay to amount to abuse of process, "the delay must have been unreasonable or inordinate." (*Blencoe*, above, at par. 121.) Delay must not only be greater than normal, but also have caused the defendant a substantial prejudice. In other words, it must be "unacceptable to the point of being so oppressive as to taint the proceedings." (*Ibid*.)

And in *Beltran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 516 [*Beltran*], this Court held:

> ABUSE OF PROCESS
>
> [35] The leading case on this subject is *Blencoe*, above. Mr. Blencoe, while serving as a Minister in the British Columbia Government, was accused by one of his assistants of sexual harassment. In July and August of that year, further complaints of discriminatory conduct in the form of sexual harassment were filed with the British Columbia Human Rights Commission by two other women, alleging events which occurred between March 1993 and March 1995. The hearing was scheduled for March 1998, some two and a half years after the filing of the original complaint. Mr. Blencoe was removed from Cabinet, media attention was intense, he did not stand for re-election and suffered from depression. He moved to have the complaints stayed on the basis that the Commission lost jurisdiction due to an unreasonable delay which amounted to an abuse of process and a denial of natural justice.
>
> [36] On the facts of the case, the Supreme Court held that the *Charter* was not engaged, and that an administrative law remedy was not available to him. A state caused delay, without more, will not warrant a stay as an abuse of process at common law. There must be proof of significant prejudice.

[63] On the point of abuse of process, the Supreme Court of Canada put the test this way: the delay must have caused actual prejudice of such a magnitude that the public's sense of decency and fairness is affected: see *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 33. It also posited a test that asks "whether the community's sense of fairness would be offended by the delay": *Blencoe* at paras 121-122.

[64] Therefore I will deal with the delay issue, and then with the prejudice issue.

(1) Delay

[65] The following is a summary of that delay drawn for the most part from the Defendant's post-hearing submissions. I include the Plaintiff's position and my analysis under each:

- On December 12, 1991, the Defendant's brother informed immigration officials that "Kamran Modaresi" and "Kamran Ladbon" were one and the same. Comment: the Defendant did not admit these facts to Canadian immigration officials. The record does not disclose what if any action was taken in this regard. The delay could not have started at this time because in my view, delay only starts where the authorities are fully aware of the fraud and the facts. The Defendant at the time was using two identities. The Defendant did not have Canadian citizenship, thus there was no Canadian citizenship to revoke;

- In 1992, immigration authorities requested the RCMP to do a fingerprint check because they had information he had made a refugee claim in Switzerland under the name Modaresi. Comment: while this confirmed that Ladbon and Modaresi

were one and the same, there is no evidence that his deceit was fully appreciated. The Defendant himself had still not disclosed his dual identities to Canadian officials. Nor is there evidence that the authorities were fully aware of his fraud. Again, at this point there was no Canadian citizenship to revoke;

– The RD dismissed his refugee application on June 10, 1994, in part on credibility grounds noting his use of these two names. Comment: I note the RD operated with some independence from departmental officials. Canadian immigration authorities could not have commenced revocation proceedings because there was no citizenship status to revoke;

– In November 1994, the Defendant used the name "Kamran (Modaresi) Ladbon" in his H&C application. Comment: however, neither he nor his lawyer at the time explicitly brought the fact that he used two names to the attention of Canadian authorities. There is no merit to the suggestion that this proves the government knew his as yet undisclosed dual identities. Nor does this filing come close to establishing full awareness of the legal facts on which authorities might have commenced revocation proceedings;

– In his post-hearing filing, the Defendant submits Canadian immigration authorities "elected" to give him permanent residence status in 1997, thereby allegedly fully accepting the truth of the content in his application. Comment: although he now admits he did not apply under his true name but instead used his false Ladbon identity, this does not meet the test set out. Instead it illustrates the Defendant's failure to take responsibility for his egregious falsehoods, and

illustrates his misguided "blame Canadian authorities" approach for his own web of falsehoods;

– In the same post-hearing filing he places the onus of truth-finding for his own misrepresentations on Canadian authorities when they gave him Canadian citizenship, saying, "[k]nowing that I was also known as Kamran Ladbon CIC elected to grant me citizenship in 2001." Comment: in reality, the Defendant once again fails to mention that it was his application that was based on the false representations, concealments and misleading omissions cited above;

– On June 21, 2007 immigration authorities expressed suspicion in an internal email that the Defendant was in fact under a removal order under a different date of birth (which was the case). The Defendant says this is "at worst" when authorities could have started revocation proceedings. Comment: I disagree because there is no evidence of sufficient full awareness on the part of authorities at this point in time;

– Immigration officials began to take proceedings against the Defendant in seriousness when officials found his two identities as a result of searching his bags on entering Canada on December 9, 2009. By December 15, 2009, an email shows immigration authorities started their investigation into revoking the Defendant's Canadian citizenship. Comment: in my view, this date - December 15, 2009 - is when Canadian immigration authorities became fully aware of the facts on which they might commence revocation proceedings.

[66] The delay therefore ran from December 15, 2009 to April 13, 2012, when the Defendant was given notice of the Minister's intentions, and November 15, 2013, when this action was commenced.

(2) No Unreasonable Delay

[67] The Defendant has the burden of establishing that the delay was unreasonable. In my view, the delay was not unreasonable. This is because, in my respectful view, it was the Defendant himself who caused the delay by his numerous false representations and material omissions reported above.

[68] Further, once action to revoke was started in December 2009, it moved with reasonable dispatch. Authorities assembled the necessary material (going back 21 years it should be noted), including laying charges, obtaining guilty pleas and the subsequent convictions, such that they were ready to proceed with this revocation all within approximately 28 months, i.e., from December 15, 2009 to April 12, 2012 when the Defendant was given notice of intended application for revocation of his Canadian citizenship.

[69] In this connection, two significant processes were undertaken after immigration authorities discovered his two identities. First, authorities investigated and built the case against the Defendant and laid what were eventually successful charges under the *Immigration Act*. That in my view required a very significant amount of work, including archival research going back to 1988, review of microfilmed data and information, and its presentation to federal prosecutors in a form suitable for introduction in a criminal court where a conviction required proof beyond a

reasonable doubt. The fact the Defendant pleaded guilty to *Immigration Act* charges, does not detract from the effort underlying that successful prosecution; instead, his guilty pleas justify that effort. Convictions were secured on March 9, 2012.

[70] Thereafter, resources were directed at assembling the facts for the notice of which was given one month after the convictions, and the subsequent commencement of this action.

[71] In summary, this is not a case of state-caused unreasonable delay; it is a case of delay caused by the Defendant's false and misleading applications for permanent residence and citizenship. It is trite to observe that the Defendant may not benefit from delay he caused himself. In my view, the community's sense of fairness would not be offended by the delay in this case, particularly given most if not all of it derives from the Defendant's misconduct in maintaining two identities. In truth, the Defendant cannot complain of delay in commencing citizenship proceedings for the period in which he was actively engaged in concealing his identity from Canadian immigration and law enforcement officials.

(3) Substantial or Significant Prejudice

[72] In any event, establishing unreasonable delay is not enough for the Defendant to succeed on abuse of process; he also has the burden of establishing that he suffered substantial or significant prejudice.

[73] Technically, it is not necessary to review the prejudice issue because the Defendant's failure to establish delay precludes access to the abuse of process remedy. However, prejudice is

considered for the sake of completeness. The prejudice the Defendant allegedly suffered is outlined in his post-hearing submissions:

- He established a life for himself in Canada between 2001 and 2012, including having a daughter in 2001;
- His daughter has lived her whole life in Canada; she was five in 2007 and is now 15 years old and cannot be moved to an Islamic Republic;
- He says "[h]ad CIC not committed an abuse of process they would have never given me citizenship, or they would have revoked it a long time ago. I could have had the opportunity to move my family to another country, or I could have made other applications to normalize my status in Canada.";
- He "could have made an application to restore legal status in Canada, perhaps with a Humanitarian and Compassionate application. That application would probably have already been decided, now I will have to wait another 1 or 2 years."

[74] On these facts, and in my view, the Defendant has neither been seriously nor substantially prejudiced by delay even if that delay is attributable to the state, which I found it not to be. In fact, the Defendant has been able to lead a life in Canada since first arriving some 28 years ago. Except in regards to his excessively numerous run-ins with the law – eight convictions, including imprisonment - he has had a good life in Canada. What delay there was allowed the Defendant to access privileges and resources he otherwise would not have been able to access. He came here when he was 28; now he is 55. He is in receipt of a disability pension. He has a wife and a teenage daughter in Canada (and a son, although little is said of him in the record). The Defendant fails to mention he could have admitted at any time his many false representations and

material omissions and thus start a process to normalize his status in Canada, but chose not to do so. He cannot lay the blame for his misconduct and subsequent inaction on Canadian officials. Instead, the evidence demonstrates he actively sought to deceive immigration and law enforcement officials over many years.

[75] I find the Defendant has not suffered prejudice of the type found in *Parekh*, where the Defendants were denied citizenship rights, such as passport issuance and ability to sponsor their daughter, for many years because of what this Court found to be "administrative indolence". I do not see evidence of such administrative indolence here, nor do I find the degree of prejudice that occurred in *Parekh*. Nor is this case analogous to *Beltran*, where the delay denied the applicant a basic right to procedural fairness by making it nearly impossible for him to find adequate witnesses to answer a twenty-year old charge against him.

[76] As to his daughter, she is a Canadian citizen and is free to stay with her mother here in Canada. The Defendant has filed no evidence that he has sole custody of his daughter. There is no evidence that his daughter would likely return with him to Iran if he is removed from Canada. In fact, the daughter's letter in the Defendant's motion record says she would be separated from the Defendant if he is removed from Canada.

[77] In any event, and while such humanitarian and compassionate factors fall short of establishing serious or substantial prejudice for the purpose of the abuse of process argument, they may be factors the Minister and Governor in Council may consider under section 10 of the *Citizenship Act*, as this Court noted in *Dinaburgsky*.

[78] I conclude the Defendant has not satisfied either the test of unreasonable delay, or the test of serious and substantial prejudice. Therefore I am unable to find merit in his abuse of process allegation.

V. Conclusions

[79] The Minister is entitled to the relief requested. I see no reason to depart from the normal rule that costs follow the cause; therefore the Minister is entitled to his costs of this action.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The motions by the Plaintiff and by the Defendant for summary trial are granted.

2. It is declared that the Defendant obtained Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, including the circumstances set out in subsection 10(2) of the *Citizenship Act*.

3. The Defendant shall pay to the Minister the Minister's costs of these proceedings.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	THE MINISTER OF CITIZENSHIP AND IMMIGRATION v KAMRAN MODARESI (A.K.A. KAMRAN LADBON)
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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JUDGMENT AND REASONS:	BROWN J.
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APPEARANCES:

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Kamran Modaresi	SELF-REPRESENTED FOR THE DEFENDANT

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