



ID File No. / N° de dossier de la SI : 0001-B9-000206

Client ID No. / N° ID client : 90062596

Reasons and Decision – Motifs et décision (on Minister's Application for Adjournment)

Between	The Minister of Public Safety and Emergency Preparedness	Entre
and		et
Person(s) Concerned	Timothy Craig DURKIN	Intéressé(e)(s)
Date(s) of Hearing	December 7, 2020 & December 8, 2020	Date(s) de l'audience
Place of Decision	Vancouver, BC	Lieu de l'audience
Date of Decision	December 17, 2020	Date de la décision
Panel	Trent Cook	Tribunal
Counsel for the Person(s) Concerned	E. Olmstead	Conseil(s) pour l'intéressé(e)/les intéressés
Designated Representative(s)	N/A	Représentant(e)(s) désigné(e)(s)
Counsel for the Minister	M. Cooke	Conseil du (de la) ministre

REASONS FOR DECISION

INTRODUCTION

[1] This decision and reasons are in response to the Minister's application to adjourn Mr. Durkin's admissibility hearing until such time that the Department of Immigration, Refugees and Citizenship Canada ("IRCC") decides on Mr. Durkin's application for Canadian citizenship. In reviewing the circumstances of the case and the positions of the parties, the Minister's application is **GRANTED**.

[2] Mr. Durkin's admissibility hearing will be adjourned until IRCC renders a decision on his citizenship application or until further order of the Immigration Division. Periodic case conferences for the parties to advise the Immigration Division of the status of Mr. Durkin's application will be scheduled.

[3] Mr. Timothy Craig Durkin is the subject of an admissibility hearing where the Minister alleges that he is a person described in paragraphs 37(1)(a) and 36(1)(c) of the Immigration and Refugee Protection Act. The Minister's referral to the Immigration Division requesting this hearing was made on 04 July 2018. A number of applications and case conferences followed, culminating in a two-day admissibility hearing that took place on December 07-08, 2020. Both parties filed documents that were entered as exhibits and the hearing itself consisted only of Mr. Durkin providing affirmed testimony. The parties agreed that the voluminous material, the complicated subject matter, and the lengthy testimony of Mr. Durkin made it prudent to proceed with arguments by way of written submissions. Amidst discussions about arranging dates for the parties to submit their written arguments information arose that Mr. Durkin had made an application for Canadian citizenship. He advised that this application was filed with IRCC sometime in January 2020, but a decision had yet to be rendered. When questioned as to the type of application that had been filed, Mr. Durkin's counsel advised that this was a "complex application" consisting of three different prongs. Mr. Durkin is claiming that he is a Canadian citizen under section 3 of the Citizenship Act, that (if he is not already a citizen) he should be granted Canadian citizenship under section 5 of the Citizenship Act and that the interpretation of the term "citizenship" is contrary to the Canadian Charter of Rights and Freedoms in some fashion, the basis of which was not put before this Tribunal.

[4] The information about an eleven-month-old citizenship application had never been previously communicated to the Immigration Division or the Minister. When asked to explain, Mr. Durkin's position was that disclosure of this information was not required as the Minister had the burden of proof to establish that Mr. Durkin was a permanent resident and not a Canadian citizen. Mr. Durkin stated that he was going to argue this point in his written submissions based on material submitted in an affidavit on the record. While Mr. Durkin may technically be correct in asserting that he was under no obligation to bring his citizenship application forward to the Minister or the Immigration Division, the practical implications of withholding it dictates that another course of action may have been preferable in this set of circumstances. A section 3 citizenship application is an assertion of Canadian

citizenship. Put another way, Mr. Durkin asserts that he is a Canadian citizen and is seeking confirmation of this fact through a citizenship official at IRCC.

[5] Upon hearing this information, Minister's counsel took the position that the admissibility hearing should be adjourned, pending a decision on Mr. Durkin's application by IRCC. The Minister indicated that their department believed it unreasonable and impractical to continue enforcement proceedings against someone who may be a Canadian citizen. The Minister's counsel also stated that had he been made aware of Mr. Durkin's citizenship application he would have sought to adjourn the matter before the proceedings commenced. Mr. Durkin did not take a position on the Minister's application to adjourn. He reiterated that lack of Canadian citizenship is an element that the Minister is required to establish, and he was prepared to argue this in written submissions.

[6] The Immigration Division is satisfied that granting the Minister's application and adjourning Mr. Durkin's admissibility hearing is reasonable and in the interests of justice. The Minister, and the Division, learned of Mr. Durkin's citizenship application only near the end of his admissibility hearing. The parties' written submissions at the admissibility hearing are expected to be lengthy, given the volume of evidence and the nature of the issues. The IRCC has experience and expertise in determining citizenship issues. Mr. Durkin's application was filed with IRCC approximately 11 months ago in January 2020 and it is reasonable to allow the IRCC time to determine Mr. Durkin's citizenship application before proceeding further with his admissibility hearing. The outcome of Mr. Durkin's citizenship application may help to determine the admissibility hearing. If the IRCC finds that Mr. Durkin is a Canadian citizen, the Minister may withdraw their report and request for an admissibility hearing. If IRCC finds that Mr. Durkin is not a Canadian citizen, this information could be put before this Division at a resumption of the admissibility proceedings.

[7] Mr. Durkin's admissibility hearing will be adjourned until IRCC renders a decision on his citizenship application or until further order of the Immigration Division. It is reasonably expected that a Citizenship officer will have the level of experience and expertise required to render a decision on such a complicated application.

[8] The next sitting of this matter will be a mid-hearing conference to be held on a mutually agreeable date in April 2021. The parties are directed to provide the Immigration Division with an update as to the status of Mr. Durkin's citizenship application at that conference. Parties are required to provide the Immigration Division Registry with their calendar of availability for April 2021 by close of business on 23 December 2020.

[9] Should a decision by IRCC be rendered before the mid-hearing conference it is expected that the parties advise the Immigration Division of that decision in a timely manner.

(signed)

“Trent Cook”

TRENT COOK

17 December 2020

Date