CROWN COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF CANADA)

BETWEEN:

Helena KADARE

Halit KADARE

Appellants

and:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

APPELLANTS' MEMORANDUM OF ARGUMENT

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Counsel for the Appellants

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OVERVIEW

1. This is a case about an abuse of process where the Minister of Public Safety and Emergency Preparedness ("Minister") perpetrated an unreasonable delay of 12 years in bringing vacation proceedings against the Appellants. It would be an affront to the public interest and the integrity of the justice system to allow the Minister to proceed with this application. The Minister's delay is egregious, unexplained, and entirely due to its own bureaucratic indolence. The Appellants in no way contributed to the delay and are entirely innocent of any wrongdoing or misrepresentation.
2. The Appellants have been prejudiced significantly by the delay. The Appellants were not afforded basic elements of procedural fairness, such as notice within a reasonable timeframe. The Minister's delay resulted in the loss of the record and essential witnesses, prejudicing the Appellants' ability to answer the vacation application against them. Furthermore, the Minister's delay caused significant personal prejudice to the Appellants in terms of prejudice to their ability to seek judicial remedies to remain in Canada should a vacation proceeding succeed against them, and prejudice in the form of allowing them to establish themselves in Canada for over 20 years while simultaneously losing all ties to their country of citizenship, Albania. Both the prejudice to trial fairness and personal prejudice to the Appellants are sufficient, together or severally, to establish an abuse of process. The certified question should therefore be answered in the affirmative. A stay of proceedings is the only available remedy in this case and is warranted to address the harm done to the Appellants and the public interest.

PART I: FACTS

3. The Appellants are citizens of Albania and permanent residents of Canada. The Appellants came to Canada as children in May 1998 when Halit Kadare was five years old, and Helena Kadare was seven years old. The Appellants were granted permanent residence in August 2001.[1]

4. The Appellants fled to Canada with their parents, Resmi Kadare and Alba Kadare, as a result of a blood feud between the Taho and Kadare families. The blood feud led to escalating violence and the deaths of Kadare family members. In 1998, the Committee of Nationwide Reconciliation ("CNR"), an organization tasked with resolving blood-feud conflicts in Albania, failed to resolve the conflict between the Taho and Kadare families.[2]

5. The Appellants' father, Resmi Kadare, was the principal claimant of the family's refugee claims. Resmi Kadare alleged that he was the focus of threats and attacks by the Taho family between February and April 1998. The Kadare family's refugee claims were heard and accepted in June 1999.[3]

6. In 2005, Alba Kadare disclosed to Immigration, Refugees and Citizenship Canada ("IRCC") that the family resided in Norway between January to April 1998, not Albania, when she applied to renew her permanent residence card. The IRCC and the Canada Border Services Agency ("CBSA") initiated an inadmissibility investigation into the suspected misrepresentation. Norwegian authorities confirmed the Kadare family's residence in

[1] Reasons of RPD Board Member E. Henrique, Refugee Law Moot Problem at paras 1, 6, 12, 41 [Vacate Member's Reasons].
[2] *Ibid* at paras 7-9.
[3] *Ibid* at paras 8, 10, 12.

Norway later in 2005. Despite this confirmation, the Minister did not initiate vacation proceedings for another 12 years.[4]

7. On December 10, 2017, the Minister applied to vacate the Appellant's status pursuant to s. 109 of the *Immigration and Refugee Protection Act* ("*IRPA*").[5] On March 10, 2018, the Appellants filed an abuse of process claim based on the Minister's 12-year delay in bringing the vacation application.[6]

8. The RPD Board Member Ellie Henrique ("Vacate Member") found that the Appellants obtained refugee protection in 1999 as the result of Resmi Kadare's misrepresentations. However, she concluded that there was an abuse of process due to the inordinate 12-year delay. The Appellants were prejudiced in their ability to respond to the allegations due to the loss of witnesses and record, and the delay caused serious personal prejudice. The Vacate Member stayed the proceeding.[7]

9. Justice Sivakumar reversed the Vacate Member's decision on review, and certified the following question:

> In the context of an application to vacate refugee status pursuant to s. 109 of the Immigration and Refugee Protection Act, can an abuse of process be found where a material, but indirect misrepresentation has been conceded or otherwise established and where the only alleged prejudice is personal prejudice that is a direct result of this material misrepresentation?[8]

PART II: POINTS IN ISSUE

10. The Appellant submits that the appeal raises the following issues:

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[4] Vacate Member's Reasons, *supra* note 1 at paras 14-15.
[5] *Immigration and Refugee Protection Act,* SC 2001, c 27, s 109 [*IRPA*].
[6] Vacate Member's Reasons, *supra* note 1 at paras 17, 19, 68.
[7] *Ibid* at paras 51, 65, 69.
[8] Reasons of Justice P. Sivakumar, Moot Problem at para 30 [Sivakumar J's Reasons].

1) Did the Minister's 12-year delay in bringing the application to vacate constitute an abuse of process?

    A. Was the delay inordinate?

    B. Did the 12-year delay cause prejudice to the fairness of the vacation proceedings?

    C. Did the 12-year delay cause significant personal prejudice to the Appellants such that the certified question should be answered in the affirmative?

2) If an abuse of process is established, do the Appellants' circumstances demonstrate a case for a stay of proceedings?

PART III: ARGUMENT

1. The Minister's delay in bringing the application to vacate constituted an abuse of process

11. Both parties agree that the appropriate standard of review is correctness.[9]

12. The Supreme Court of Canada in *Blencoe v British Columbia (Human Rights Commission)* [*Blencoe*] held that an abuse of process can be found either (1) when an administrative delay causes prejudice to the fairness of the hearing, or (2) when an inordinate delay causes significant personal prejudice that brings the administration of justice into disrepute.[10]

13. The Minister's delay in bringing the vacation application constitutes an abuse of process. First, the 12-year delay is inordinate. Second, the inordinate delay caused prejudice to the fairness of the vacation proceedings, which constitutes an abuse of process under the first prong of the *Blencoe* analysis. Third, the inordinate delay caused significant personal prejudice of such a magnitude that the immigration and refugee system is brought into

[9] Sivakumar J's Reasons, *supra* note 8 at paras 10-11.
[10] *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras 102, 115-116 [*Blencoe*].

disrepute, which in the alternative constitutes an abuse of process under the second prong of the *Blencoe* analysis.

A. The Minister's 12-year delay in bringing vacation application is inordinate

14. The Minister's lengthy delay of 12 years is inordinate. The determination of whether a delay is inordinate is based on factual and contextual factors.[11] There are three main factors to be balanced: (1) the time taken compared to the inherent time requirements of the matter, (2) the causes of delay beyond the inherent time requirements of the matter, and (3) the impact of the delay.[12]

i. The delay is 12 years

15. The delay started in the year 2005 when the Minister learned of and confirmed the misrepresentation. It is common in the administrative context to calculate the delay from the time when Canadian authorities become aware of alleged wrongdoing.[13] For example, In *Chabanov v Canada (MCI)* [*Chabanov*], the Federal Court calculated the delay from the moment when the IRCC became aware of the misrepresentations.[14] Case law in the vacation proceedings context also illustrates that the IRB followed the same approach.[15] Therefore, case law suggests that the Minister has an obligation to bring applications in a timely manner,

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[11] *Blencoe*, *supra* note 10 at para 122.
[12] *Ibid* at para 160, Lebel J, dissenting on other grounds; *Canada (Citizenship and Immigration) v Parekh*, 2010 FC 692 at para 28 [*Parekh*].
[13] *Chabanov v Canada (Citizenship and Immigration)*, 2017 FC 73 at paras 52-54 [*Chabanov*]; *Hassouna v Canada (Citizenship and Immigration)*, 2017 FC 473 at para 54; *Parekh*, *supra* note 12 at para 30. See also *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81 at para 149, leave to appeal to SCC granted, 39340 (25 February 2021) ("It is common in the context of a complaint to the regulator of a profession to calculate time…from the date the complaint was received by the regulator").
[14] *Chabanov*, *supra* note 13 at paras 54.
[15] *X (Re)*, 2012 CanLII 71598 (CA IRB) at paras 34-35 [*X (Re)*].

and this obligation is engaged as soon as the Minister becomes aware of a possible vacation application.

16. The Minister's obligation to act promptly is also informed by the statutory objectives of *IRPA* which require establishing fair and efficient procedures.[16] Fair and efficient procedures are especially important in the immigration and refugee context. Courts have highlighted refugee claimants as a vulnerable, poor, and disadvantaged group.[17] Ensuring fair, efficient, and timely access to administrative procedures is crucial to the integrity of the refugee protection system, especially when vulnerable individuals' rights and interests are at stake.

17. The Vacate member correctly identified that the delay is 12 years. It is calculated from 2005, when the Minister first became aware of the potential misrepresentation from Alba Kadare's permanent residence card renewal application, to 2017, when the Minister filed an application to vacate the refugee status of the Kadare family.[18]

18. Even if the delay is not measured from the day of Alba Kadare's disclosure, it should nevertheless be calculated from 2005. The Minister was in possession of all evidence necessary to initiate the application in 2005. Investigators received confirmation of the misrepresentation from Norwegian consulate officials in the same year. Not a single piece of new information was brought forward by the Minister after 2005.[19] Therefore, whether the delay is calculated from when the Minister first learned of the misrepresentation or when the Minister had sufficient information to initiate the application, the delay is nevertheless 12 years.

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[16] *IRPA*, *supra* note 5, ss 3(1)(f.1), 3(2)(e).
[17] *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651 at para 13 [*Canadian Doctors*]; *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 at para 36.
[18] Vacate Member's Reasons, *supra* note 1 at paras 17, 55-57.
[19] *Ibid* at paras 14, 55.

ii. The 12-year delay is significantly beyond the inherent time requirements

19. The inherent time requirements of the matter depend on legal complexities (including the presence of any especially complex systemic issues), factual complexities (including the need to gather large amounts of information or technical data), as well as reasonable periods of time for procedural safeguards that protect the parties or the public.[20]

20. The Appellants' case is simple and the Minister's delay in bringing the vacation application is not a result of factual or legal complexities. The Minister learned of the misrepresentation in 2005 and all investigative steps were completed in the same year. There is no evidence of ongoing investigation after 2005. There is also no evidence suggesting complex legal issues. It is apparent from the facts that the Minister just sat on the application to vacate for 12 years.[21]

21. Vacation case law has regularly found delays shorter than 12 years to be inordinate. For example, the IRB in *Canada (MPSEP) and X, Re* recognized that a 9-year delay is inordinate for commencing a vacation application.[22] Similarly, in *X (Re)*, the IRB concluded that a 4-year delay was in excess of the inherent time requirements of the matter. The panel in *X (Re)* specified that in Ms. X's circumstances, a reasonable timeframe for the Minister to bring a vacation application was 18 months.[23] Although it is not unreasonable for the Minister to take some time to prepare the vacation application, it cannot justify an excessive 12-year gap.

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[20] *Blencoe, supra* note 10 at para 160.
[21] Vacate Member's Reasons, *supra* note 1 at paras 15, 30-32, 34.
[22] *Canada (Minister of Public Safety and Emergency Preparedness) and X, Re*, 2018 CarswellNat 4262, 2018 CarswellNat 4263 at para 43.
[23] *X (Re), supra* note 15 at para 38.

iii. The delay was caused solely by the Minister

22. The Appellants did not contribute to the 12-year delay. On the contrary, the Appellants had no knowledge of the Minister's investigation. Despite making inquiries, the Appellants were never informed of the suspension of their citizenship applications.[24] The Minister did not provide any explanation for the 12-year delay. The lack of transparency in the Minister's investigation left the Appellants completely in the dark as time elapsed.

23. The 12-year delay is unexplained, unreasonable, and inordinate. It is not the consequence of the complexity of the case or of any tactics employed by the Appellants or their parents. It was caused solely by the Minister's "bureaucratic indolence and failure to give the matter the attention it deserved given the rights and interests at stake."[25]

B. The Minister's 12-year delay caused a defect in the fairness of the vacation proceeding constituting an abuse of process

24. The delay rendered the vacation proceedings unfair, which constitutes an abuse of process under the first prong of the *Blencoe* analysis. A duty of procedural fairness applies to vacation proceedings.[26] It is a fundamental principle of natural justice that parties be given a fair opportunity to answer the case brought against them.[27] Where administrative delay has compromised the parties' ability to answer the allegations brought against them and construct defence against those allegations, an abuse of process can be found.[28]

25. The Appellants were unable to make a proper answer to the vacation application. Under s. 109(2) of the *IRPA*, the RPD has the discretion to reject the Minister's vacation application

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[24] Vacate Member's Reasons, *supra* note 1 at para 6.
[25] *Parekh, supra* note 12 at para 56.
[26] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 243 NR 22 at para 20 [*Baker*].
[27] *Beltran v Canada (Minister of Citizenship & Immigration)*, 2011 FC 516 at para 54 [*Beltran*].
[28] *Blencoe*, *supra* note 10 at para 102.

when it is satisfied that other sufficient evidence can justify the claimants' refugee protection. The Appellants are unable to ascertain what "other sufficient evidence" was before the original RPD decision-maker ("Board Member") to reconstruct their refugee claim because the 12-year delay has led to (1) loss of the record, transcript, and recordings of the original hearing, (2) loss of essential witnesses, and (3) a lack of effective means to reconstruct the refugee record.

i. The Appellants cannot properly respond to the vacation application due to the loss of the record, transcripts, and recordings

26. The loss of evidence from the original RPD hearing is devastating to the Appellants' s.109(2) inquiry because vacation applications are completely fact-driven. The Minister failed to provide a full and adequate record such that the Appellants are denied the opportunity to properly answer the vacation application. Specifically, the Minister did not provide the list of supporting documents, the text of the supporting letters, the country condition evidence, the transcript, or the recording of the original RPD hearing. [29]

27. First, the Appellants cannot properly respond to the vacation application based on the available record provided, which includes the text of the original decision, the PIF and the testimony of Resmi Kadare. The available record fails to provide an effective summary of the Appellants' refugee record. It does not summarize the evidence in detail or make specific findings about the contents of supporting documents, and there is no helpful information on the supporting letters (i.e., how many there were, who wrote them, etc.).[30]

[29] Vacate Member's Reasons, *supra* note 1 at paras 18, 43.
[30] Vacate Member's Reasons, *supra* note 1 at paras 18, 44.

28. An absence of record can constitute a denial of natural justice and amount to a breach of procedural fairness if a reviewing court is unable to properly dispose of the issues raised.[31] The test is whether the applicant raises an issue that affects the outcome of the case that can only be determined on the basis of the record at the hearing, such that its absence prevents the court from addressing the issue properly.[32] The same test applies when the available evidence contains a defect or a gap.[33]

29. In the context of the Appellants, the issue raised is whether "other sufficient evidence" can justify their refugee protection for the purpose of s. 109(2) of the *IRPA*. A reviewing court is unable to properly address this issue because the Appellants' s. 109(2) inquiry can only be based on a careful assessment of a complete record of the documents or the hearing transcript and/or recording. Without knowing what supporting documents were before the Board Member, a reviewing court is unable to determine if the original decision was based on the details in the supporting letters or other evidence, such as evidence from the Appellants' family members or from the CNR. Without knowing how the evidence was assessed, a reviewing court is unable to determine if the 1997 events alone can justify the Appellants' refugee protection. Therefore, because a reviewing court is left to speculate about the adequacy of the Appellants' s. 109(2) inquiry, the vacation application cannot be disposed of, and the absence of the complete record constitutes a breach of procedural fairness.

30. Secondly, there is a reasonable possibility that "other sufficient evidence" can justify the Appellants' refugee protection under s. 109(2) of *IRPA*. The available record illustrates how a complete record of the supporting documents and hearing transcript can meaningfully assist

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[31] *Toussaint v Canada (Minister of Citizenship and Immigration*), 2011 FC 216 at para 6.
[32] *Nweke v Canada (Minister of Citizenship and Immigration)*, 2017 FC 242 at para 34; *Agbon v Canada (Minister of Citizenship and Immigration)*, 2004 FC 356 at para 3 [*Agbon*].
[33] *Agbon, supra* note 32 paras 2-3.

the Appellants' s. 109(2) inquiry. The original decision mentions that the Board Member relied on the supporting letters to corroborate Resmi Kadare's testimony.[34] A complete record of the documents and hearing transcript would clarify the contents of the supporting letters and whether there were letters from the CNR that confirmed the blood feud. Once a family is involved in a blood feud, all the family members can potentially be at risk.[35] Therefore, even absent Resmi Kadare's testimony, the CNR or other supporting letters could have confirmed that the blood feud had affected Resmi Kadare's personal safety to the extent that the Kadare family qualified for refugee protection under the *IRPA*. The original decision also clearly indicates that the Board Member based his decision on events alleged to have occurred in both 1997 and 1998.[36] Therefore, the 1997 events alone, such as the deaths of Kadare family members, corroborated with supporting letters, could have justified their refugee protection. Such possibilities were suppressed by the loss of record.

31. Finally, the Minister's argument that the credibility of the entire claim was tainted by the misrepresentation must fail.[37] The supporting documents were not tainted by the misrepresentation. The Federal Court in *Canada (MCI) v Singh Gondara* held that negative credibility cannot be imputed to evidence in the supporting documents when the evidence itself does not arise from the misrepresentation.[38] In the Appellants' context, the supporting documents are independent evidence that did not arise from Resmi Kadare's testimony and their authenticity remains unaffected.

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[34] Vacate Member's Reasons, *supra* note 1 at para 10.
[35] United Kingdom Home Office, "Country Policy and Information Note: Albania, Blood Feuds" (February 2020) at 26, online (pdf): *United Kingdom* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865400/Albania_-_Blood_feuds_-_CPIN_-_v.4__pdf.pdf>.
[36] Vacate Member's Reasons, *supra* note 1 at para 10.
[37] Vacate Member's Reasons, *supra* note 1 at para 35.
[38] *Canada (Citizenship and Immigration) v Singh Gondara*, 2011 FC 352 at para 47.

32. In summary, the inadequate record substantially impacts the Appellants' ability to respond to the vacation application. The text of the original decision fails to provide an effective summary of the Appellants' refugee record. It is reasonably possible that other untainted evidence could justify the Appellants' refugee status, but such possibilities are suppressed due to the defect in the record.

ii. The Appellants were unable to properly respond to the vacation application due to a loss of witnesses

33. The Federal Court has held repeatedly that the passage of time can prejudice a party's defence when it compromises a party's ability to locate witnesses to answer the case against them.[39] For example, in *Canada (MPSEP) v Najafi* [*Najafi*], the Federal Court found the delay prejudiced Mr. Najafi because his ability to meet the case was comprised by the fact that he could no longer recall details and locate witnesses regarding his involvement with a terrorist organization.[40]

34. Similarly, the 12-year delay prejudiced the Appellants in their ability to locate witnesses who can testify with respect to "other sufficient evidence" under s. 109(2). Neither of their parents is available to testify. Their mother, Alba Kadare, passed away in 2016. The Appellants have also lost contact with their father, Resmi Kadare, since their parents' separation in 2001.[41] The Appellants have no meaningful way to ascertain his whereabouts.

35. The parents' testimony is vitally important. The Appellants themselves have no knowledge regarding the original hearing as they were young children at the time and did not participate

[39] *Canada (Minister of Public Safety and Emergency Preparedness) v Najafi*, 2019 FC 594 at para 45 [*Najafi*]; *Beltran, supra* note 27 at paras 40, 43.
[40] *Najafi, supra* note 39 at para 45.
[41] Vacate Member's Reasons, *supra* note 1 at paras 13, 16.

in any oral testimony.[42] The parents have firsthand knowledge about the contents of the supporting documents and the details of the refugee hearing. They are best suited to advise on the contents of "other sufficient evidence" that can potentially justify the Appellants' refugee status under s. 109(2) of the *IRPA*. Had this vacation application been filed by the Minister 12 years ago, the Appellants would have been in a much better position to locate their father, and their mother would have been available to testify.

iii. The Appellants' ability to reconstruct their refugee record was compromised due to the delay

36. The 12-year delay prejudiced the Appellants in their ability to reconstruct their refugee record. The admissibility of evidence for the purpose of s. 109(2) is codified in the *IRPA*, and only evidence that was considered "at the time of the first determination" can be included. In the security inadmissibility case of *Beltran v Canada (MCI)* [*Beltran*], the Federal Court held that the delay affected hearing fairness, partially because Mr. Beltran's ability to lead evidence regarding his involvement with an alleged terrorist organization was compromised by the delay.[43] Similarly, due to the delay, the Appellants have lost all ties with Albania. Their ability to collect evidence from their relatives in Albania and the CNR is significantly compromised.

37. Due to the passage of time, there is no realistic chance that the Appellants would be able to obtain evidence from their remaining relatives in Albania. When the vacation application was filed in 2017, it had been more than 18 years since the Appellants left Albania when they were children. They no longer have any relationship with any of their family members

[42] Vacate Member's Reasons, *supra* note 1 at para 41.
[43] *Beltran*, *supra* note 27 at para 51.

there.[44] Asking the Appellants to go back in time to the year 1999 and retrace their parents' footsteps in Albania, a country they have no link to nor memories of, to find their relatives would most likely be unfruitful. Even if they tried, it is unlikely their relatives will have usable evidence. Their present recollection of the evidence from more than 18 years ago would hardly be credible.

38. There is no realistic chance that the CNR would be able to provide a supporting letter. According to the CNR Chairman, records on blood-feud cases kept by the CNR vary depending on the case.[45] Considering the blood feud took place two decades ago, it is highly unlikely the CNR would still have the Appellants' record. Therefore, due to the passage of time, the Appellants' ability to reconstruct their refugee records is significantly compromised.

39. In sum, the Minister's delay resulted in the loss of the record and essential witnesses, prejudicing the Appellants' ability to answer the vacation application against them and reconstruct their refugee record. Therefore, the 12-year delay rendered the vacation proceedings unfair, which constitutes an abuse of process under the first prong of *Blencoe*.

C. The Minister's 12-year delay caused significant prejudice to the applicants

i. The answer to the certified question should be in the affirmative

40. In addition, and in the alternative, the Appellants submit that the Minister's undue delay has been a source of significant personal prejudice, sufficient to establish an abuse of process under the second prong of *Blencoe*. Therefore, the certified question ought to be answered in the affirmative.

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[44] Vacate Member's Reasons, *supra* note 1 at para 45.

[45] Canada, Immigration and Refugee Board, *Responses to Information Requests,* ALB103570.E (Canada: IRB, 8 October 2010), online: *Immigration and Refugee Board Canada* < https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=453189>.

41. In the 2019 case of *Mella v Canada (MPSEP)*, the Federal Court remanded a vacation decision for redetermination based solely on the failure of the RPD member to give proper consideration to the abuse of process analysis, despite elsewhere stating that "the claim… depended entirely on material falsehoods."[46] The Court stated that it was unreasonable for the decision-maker to fail to properly address counsel's submissions regarding abuse of process due to an undue delay on the part of the Minister in bringing the vacation application:

> The issue of abuse of process having been squarely raised before him, it was unreasonable for the RPD member to conclude that he "need not address a declaration or grant any kind of relief." As a result, the decision must be set aside and the matter must be reconsidered.[47]

Mella supports the notion that a vacation proceeding may be halted and a stay of proceedings granted based on an abuse of process, and that all relevant forms of prejudice raised by the applicants must be considered in an abuse of process analysis in the context of vacation proceedings.

42. Vacation proceedings are no different from other administrative proceedings in that a duty of fairness is owed to the participants. This does not change when material misrepresentation has been conceded, since the actual outcome of the proceeding has not been conceded. An abuse of process may still be found when failure to abide by the rules of procedural fairness and requirements of natural justice have rendered the proceedings unfair or oppressive to the point of "actual prejudice of such magnitude that the public's sense of decency and fairness is affected."[48]

ii. Personal prejudice

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[46] *Mella v Canada (Minister of Public Safety and Emergency Preparedness)* 2019 FC 1587 at para 35 [*Mella*].
[47] *Mella*, *supra* note 46 at para 42.
[48] *Blencoe*, *supra* note 10 at para 133.

43. In the *Blencoe* analysis, "prejudice" is a wide category, defining material changes in personal circumstances which negatively affect the Appellants. The prejudice described in the second prong of the *Blencoe* analysis must be a direct result of the undue delay – that is, the prejudice would not have occurred *but for* the delay. The personal prejudice to the Appellants due to the Minister's unreasonable delay in bringing vacation proceedings is of sufficient seriousness and affront to the public's sense of decency that allowing the application to proceed against the Appellants would constitute an abuse of process.

44. This prejudice is characterized by a progressive loss of substantive legal rights during the course of the Minister's delay, in addition to the Appellants' establishment in Canada and loss of ties to Albania. Specifically, there has been prejudice to the Appellants through (1) the suspension of their citizenship applications in 2006 without notice, (2) loss of opportunity to raise humanitarian and compassionate ("H&C") factors to restore their status in Canada following a vacation of status, and (3) loss of any ties to their country of citizenship, Albania, along with the prospective loss of their significant establishment in Canada.

iii. Citizenship applications were suspended indefinitely and illegally without notice

45. The Appellants have at this point lost any opportunity to challenge the suspension of their 2006 citizenship applications, even though this suspension continued illegally for many years without statutory authorization. This loss of opportunity is a change in material circumstances which constitutes prejudice owing to the Minister's undue delay. The Federal Court in *Chabanov v Canada (MCI)* accepted that loss of procedural rights could be a form of prejudice for the purposes of the *Blencoe* analysis.[49]

[49] *Chabanov*, *supra* note 13 at para 42

46. It is clear that the Appellants have been prejudiced by legislative changes introduced during the Minister's unreasonable 12-year delay. In 2006, the suspension of their citizenship applications was authorized under s. 17 of the former *Canada Citizenship Act* ("*CCA*"). Section 17 allowed for a suspension of no longer than 6 months in order for the Minister to investigate whether the applicant meets the eligibility criteria for citizenship.[50] Despite the statutory limit of 6 months, the Kadare family's citizenship applications were suspended indefinitely from 2006 until the present day.

47. The *CCA* was amended in 2014; s. 13.1(a) of the amended *CCA* allows for suspensions of citizenship applications for "as long as is necessary" while an investigation into eligibility is in progress.[51] The Federal Court held in *Cerna v Canada (MCI)* that s. 13.1(a) applied retroactively to suspensions of citizenship applications that were started prior to 2014. Therefore, since *Cerna*, the Appellants have lost the opportunity to challenge the suspension of their citizenship applications.

48. In the analogous case of *Valverde v Canada (MCI)*, the applicant successfully challenged the suspension of her citizenship application and obtained an order of *mandamus* for the CIC to continue processing her application, because the suspension was without statutory authorization under the former s. 17 of the *CCA*.[52] Ms. Valverde was under investigation for possible cessation of refugee status and, like the Appellants, at risk of losing her refugee status and permanent residence.

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[50] *Canada Citizenship Act*, RSC, 1985, c C-29, at s. 17, as repealed by *An Act to Amend the Citizenship Act*, 2014, c 22, s 11 [*CCA*].
[51] *Canada Citizenship Act*, RSC, 1985, c C-29 at s 13.1(a); *An Act to Amend the Citizenship Act* 2014, c 22, s 11.
[52] *Valverde v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1111 at para 68.

49. The Minister's failure to give notice and its delay in pursuing the vacation application directly caused the loss of the Appellants' rights to challenge the validity of the suspension. Had the Minister properly given notice, or brought its vacation application promptly, the Appellants would have had the opportunity to legally challenge the suspension of their citizenship applications. The Minister's failure to give notice constituted a breach of procedural fairness and the unreasonable delay resulted in substantial prejudice to the Appellants by causing their loss of opportunity to both challenge the validity of the suspension and potentially be granted Canadian citizenship.

iv. The Appellants have lost all opportunities to make H&C submissions

50. Additional legislative changes between 2005 and 2017 have now placed the Appellants in a situation where they have lost any realistic opportunity to make submissions regarding humanitarian and compassionate ("H&C") factors before or after their status as refugees is vacated. In *Fabbiano*, the Federal Court held that the loss of opportunity to present H&C factors constituted significant prejudice to the Appellant.[53] The court stated:

> [H&C factors] … are more significant in cases involving persons… who are long-term permanent residents of Canada. A delegate should consider the person's age, the duration of his or her residence in Canada, family circumstances, conditions in the person's country of origin, the degree of the person's establishment in Canada, the person's criminal history, and his or her attitude…[54]

51. In the case at bar, the first relevant legislative change is the 12-month bar to eligibility for H&C applications for permanent residence and Pre-Removal-Risk Assessments ("PRRA") for failed refugee claimants. The 12-month bars were introduced in 2012 through

[53] *Fabbiano v Canada (Minister of Citizenship and Immigration)* 2014 FC 1219 at paras 26-29 [*Fabbiano*].
[54] *Fabbiano, supra* note 53 at para 15.

amendments to ss. 25(1.03)(b) and 112 (2)(b.1) of the *IRPA*.[55] H&C applications and PRRAs are the most practical mechanisms through which individuals without status may raise factors such as establishment and undue hardship in order to avoid removal from Canada.

52. Should the Minister succeed in the vacation proceedings, the Appellants would immediately be considered failed refugee claimants and subjected to referral for inadmissibility and removal proceedings. However, there exists a nearly 7-year time period between 2005, when the Minister was apprised of all the relevant information, and 2012 when the 12-month bars to PRRA and H&C eligibility were introduced. Had the Minister brought vacation proceedings at any point during this 7-year period, the Appellants would have been able to make H&C applications immediately after a vacation of status and also be eligible for PRRAs before a removal order could be executed against them. Due to the Minister's unreasonable delay of more than seven years in pursuing vacation proceedings, the Appellants are effectively precluded from seeking judicial remedies to prevent their removal from Canada for 12 months following a positive vacation decision. It is unacceptable to expect for the Appellants to "wait out" the 12-month bar to H&C and PRRA eligibility by remaining in Canada illegally without status for this period of time.

53. If the Appellants comply with Canadian immigration law and leave Canada following a vacation of status, they will also be subject to a five-year bar on making *any* applications for permanent residency. A finding of inadmissibility is a matter of mere paperwork under s. 40(1)(c) of the *IRPA,* which states that an individual will be found inadmissible following a

[55] *Protecting Canada's Immigration System Act*, SC 2012, c 17; *Balanced Refugee Reform Act*, SC 2010, c 8.

vacation of refugee status. The Appellants would also have no opportunity for a hearing prior to a removal order under s. 44.[56]

54. In 2013, Parliament amended the *IRPA* to increase the bar for misrepresentation under s. 40(2) from 2 years to 5 years.[57] Currently, if the Appellants are found inadmissible for misrepresentation following vacation of their status as refugees, they would be unable to seek legal redress from within Canada to regularize their status for 12 months following vacation due to the 12-month H&C and PRRA bars in ss. s. 25(1.03)(b) and 112 (2)(b.1) of the *IRPA*,. Furthermore, should the Appellants choose not, or be unable, to 'wait out' the 12 month period, they would be barred from any applications to regain their residency in Canada for a minimum period of 5 years. This outcome is unacceptable for the Kadare siblings, who are long-term permanent residents who have lived nearly their entire lives in Canada.

55. Since the Minister did not at any point before 2017 provide notice of its intention to bring vacation proceedings, the Appellants had no opportunity, prior to this point, to present evidence relating to H&C factors to maintain their immigration status. H&C factors are not a consideration in vacation proceedings. At this point, the Appellants have most likely lost any opportunity to raise H&C factors at any point prior to removal from Canada, due to the legislative changes which occurred 7 and 8 years into the period of the Minister's unreasonable delay. These hurdles to seeking judicial remedies following vacation of status render Justice Sivakumar's statement that "the *IRPA*… provides for a multiplicity of mechanisms through which the Respondents may be able to avoid such outcomes following the vacation of their refugee status"[58] simply untrue. Due to these changes in legislation, the

[56] *IRPA*, *supra* note 5, s. 44.
[57] *Faster Removal of Foreign Criminals Act*, SC 2013, c 16.
[58] Sivakumar J's Reasons, *supra* note 8 at para 28.

Appellants are effectively barred from pursuing any of the mechanisms in the *IRPA*, which Justice Sivakumar lists, to remain in or return to Canada following vacation of their status as refugees.

56. Finally, had the Minister pursued vacation proceedings within a reasonable timeframe, the Appellants would have additionally benefited from the H&C consideration of the best interests of the child ("BIOC"). The mandatory BIOC consideration for a child under 18 in H&C applications is imposed by statute in s. 25(1) of the *IRPA*, and was upheld by the Supreme Court of Canada in *Kanthasamy v Canada (MCI)*.[59] When the Kadare family arrived in Canada in 1999, Halit was 5 and Helena was 7. Helena did not turn 18 until 2010, five years after the Minister was made aware of Resmi Kadare's misrepresentation. Halit did not turn 18 until 2012, seven years after the Minister was made aware of Resmi Kadare's misrepresentation. Had the Minister brought its application to vacate in a timely manner, at least one of the Appellants would likely still be under the age of 18 and therefore benefit from BIOC considerations. This would have weighed heavily in the family's favour in their applications to remain in Canada.

57. In summary, had the Minister not delayed unreasonably in pursuing vacation proceedings, the Appellants would have access to significantly greater substantive rights and judicial remedies to remain in Canada following a vacation of status. It is highly prejudicial to the Appellants that the Minister delayed for such an egregious length of time that the Appellants' legal positions have changed to such a degree that they have lost any reasonable opportunity to make any applications to remain in Canada based on H&C factors.

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[59] *Kanthasamy v Canada* (*Minister of Citizenship and Immigration*), 2015 SCC 61 at paras 34-40.

v. Establishment is personal prejudice in this case

58. The Appellants have suffered significant personal prejudice due to the loss of their ties to their country of birth, Albania, during the Minister's unreasonable 12-year delay. They will also lose their establishment in Canada if their refugee status is vacated. The Appellants have now resided in and been permanent residents of Canada for over 20 years. Due to the nature of refugee protection, they have been unable to visit Albania or even apply for Albanian passports, as this would constitute re-availment and subject them to a possible cessation of proceedings under ss. 108 (1)(a) and 108(2) of the *IRPA*.

59. Due to the nature of refugee protection, the Appellants have had no choice but to remain in Canada for over 20 years. They have been denied travel documents during this time. They are not eligible for Canadian passports, and Permanent Residence Cards or Refugee Travel Documents are not effective travel documents in many circumstances. The Appellants have effectively been denied freedom of movement to leave or return to Canada, in contravention of Article 13 of the *Universal Declaration of Human Rights*.[60] Since 1999, the Kadare siblings have established themselves solely in Canada and in no other country.

60. In *Warsame v Canada*, the applicant successfully appealed a removal order to the United Nations Human Rights Committee ("UN Committee") under the *International Covenant on Civil and Political Rights* ("*ICCPR*").[61] Mr. Warsame had arrived in Canada at the age of 4 and resided in Canada for over 20 years. Based on Mr. Warsame's residency in Canada from a young age and his lack of any ties to his country of citizenship, Somalia, the UN

[60] *Universal Declaration of Human Rights*, GA Res 217A (III) UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.
[61] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].

Committee held that Canada was to be considered his "own country".[62] Warsame's removal from Canada to Somalia would therefore constitute a violation of the *ICCPR*.[63] The UN Committee states:

> A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country. In the present case, a deportation of [Warsame] to Somalia would render his return to Canada *de facto* impossible due to Canadian immigration regulations.[64]

61. Canada is a signatory to the *ICCPR* and is bound by the *ICCPR* in the implementation of its immigration statutes. As the Federal Court of Appeal states in *de Guzman v Canada (MCI)*:

> A legally binding international human rights instrument to which Canada is signatory is determinative of how IRPA must be interpreted and applied, in the absence of a contrary legislative intention.[65]

62. Allowing the Minister's vacation application against the Appellants would similarly violate the *ICCPR* and constitute an abuse of process. For the purposes of this case, establishment is prejudice. The Appellants have, during the period of the Minister's unreasonable delay, lived in a way which precludes any meaningful establishment in Albania. This is entirely due to the Minister's failure to give notice or bring vacation proceedings within a reasonable timeframe. Had the Minister done so, it is likely that the Kadare siblings would have been able to seek out and maintain ties to their country of birth, Albania. The Appellants would have been able to plan for the possibility of removal to Albania, for example by maintaining ties to their mother's relatives in Albania and maintaining connection to their language and culture.

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[62] *Jama Warsame v Canada*, CCPR/C/102/D/1959/2010, UN Human Rights Committee (HRC), 1 September 2011 at para 8.4 [*Warsame*].
[63] *Warsame, supra* note 62 at para 8.10.
[64] *Ibid* at para 8.6.
[65] *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 87.

63. Similarly, to Mr. Warsame, the Appellants arrived in Canada at the ages of 5 and 7 respectively and have lived here for over 20 years. Alba Kadare died in 2016 and the Appellants now have no family or friends in Albania. Canada is the only country in which they have any meaningful establishment; it should therefore, for all relevant purposes, be considered their own country. Vacating and deporting the Appellants at this stage would be abusive, contrary to the *ICCPR*, the principles of natural justice, and Canada's international human rights commitments.

2. The Appellants' circumstances demonstrate a clear and strong case for a stay of proceedings

64. As demonstrated above, the Appellants have suffered considerable procedural and personal prejudice owing to the Minister's unreasonable 12-year delay in bringing the vacation proceedings. A stay of proceedings is the only available remedy that will address the harm done to the Appellants. The test for whether to grant a stay of proceedings was established by the Supreme Court of Canada in *R v Babos*[66] and adapted for the immigration context in *Fabbiano*:

> 1. There must be prejudice to the person's right to a fair trial or the integrity of the justice system.
> 2. There must be no adequate alternative remedy.
> 3. If there is uncertainty after steps 1 and 2, the court must balance the interests favouring a stay (eg, denouncing misconduct or preserving the integrity of the justice system) against the public interest in having a decision on the merits.[67]

65. In the case of *Fabbiano*, the Court ruled that the Minister's delay of five years before notifying Mr. Fabbiano of the inadmissibility proceedings against him warranted a stay of

[66] *R v Babos*, 2014 SCC 16 [*Babos*].
[67] *Fabbiano*, *supra* note 53 para 10, quoting *Babos*, *supra* note 66 at para 32.

proceedings. The Court stated: "Mr Fabbiano's entitlement to a fair hearing has been infringed by delay. He has lost the opportunity to present relevant evidence."[68]

66. In *Beltran*, the Federal Court granted a stay of proceedings to the applicant, who argued it was an abuse of process for the government to be allowed to pursue inadmissibility proceedings against him 22 years after it was made aware of all the relevant facts.[73] The Court in that case stated:

> …it is completely wrong for the Government to keep information up its sleeve for 20 years… It is a fundamental principle of natural justice and the rule of law under which we live that a person be given a fair opportunity to answer the case against him. That opportunity has been lost.[69]

67. The Federal Court held that Mr. Beltran had been prejudiced in his ability to locate witnesses due to the unreasonable delay,[70] negatively impacting his ability to make full answer and defence, and that the harm to the public interest in allowing the proceedings to go ahead would exceed the harm to the public interest in halting the proceedings.[71]

68. Similarly to the case at bar, the government in *Beltran* had delayed unreasonably in bringing proceedings against the Appellant, despite having all of the relevant information at the beginning of the period of delay. The Appellants have, like Mr. Beltran, lost access to the record and any relevant witnesses. It is simply wrong in this case, as it was in *Beltran*, for the Minister to have kept information 'up its sleeve' and yet failed to bring vacation proceedings against the Appellants for 12 years.

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[68] *Fabbiano, supra* note 53 at para 31.
[69] *Beltran, supra* note 27 at paras 53-54.
[70] *Ibid* at para 43.
[71] *Beltran, supra* note 27 at para 55.

69. In *Najafi v Canada (MPSEP)*,[72] the Federal Court held that a 13-year delay in bringing inadmissibility proceedings against the applicant, after all the relevant facts were made known to the Minister, was "uniquely inordinate, egregious, and inexcusable.[73] Furthermore, the court writes that "this delay significantly impacted the fairness of the proceedings, since Mr. Najafi's memory has faded and he may not be able to call witnesses."[74] The Federal Court held that proceeding with a hearing against Mr. Najafi after he had already resided in Canada for over 20 years with no indication that his status might be in jeopardy would constitute an abuse of process, as the delay had compromised Mr. Najafi's ability to answer the case before him and "no other remedy would undo the prejudice caused to Mr. Najafi."[75] The delay in *Najafi* is only one year longer than the delay in the case at bar, and the Appellants are likewise prejudiced by the loss of witnesses and records of the relevant proceedings, especially considering that they did not participate in and have no recollection of the initial RPD hearing.

70. In *Parekh v Canada (MCI)*, the Federal Court granted a stay of proceedings to the defendants to halt the citizenship revocation proceedings against them. Although the Parekhs had admitted to materially misrepresenting their circumstances in 2002,[76] the Minister delayed until 2006 in giving notice of revocation of the Parekhs' citizenship, and the revocation had still not been carried out by 2010.[77] Allowing the application for revocation of citizenship to proceed against the Parekhs would constitute an abuse of process because they had been

[72] *Najafi, supra* note 39.
[73] *Ibid* at para 28.
[74] *Ibid* at para 29.
[75] *Najafi, supra* note 39 at paras 19-20.
[76] *Parekh, supra* note 12 at para 21.
[77] *Ibid at* paras 11, 13.

denied the benefits of citizenship throughout the delay, without even being notified of the reasons.[78]

71. Furthermore, the court wrote:

> if these proceedings are not stayed, the Defendants' inability to apply for citizenship for the next five or more year will be a prejudice directly resulting from the Minister's delay.

This prejudice resulted directly from the Minister's delay because the Parekhs would have been able to serve out the 5-year bar on reapplying for citizenship following revocation and could have even re-applied for and been granted Canadian citizenship during this period that the Minister unreasonably delayed.[79]

A. There is no available remedy other than a stay of proceedings

72. As described in section 1(B), it has been established that the above trial unfairness is sufficient to warrant a stay of proceedings. A stay of proceedings is warranted since no other remedy would sufficiently address the prejudice that the Appellants have suffered. A lesser remedy such as a temporary stay of proceedings would only serve to further prejudice the Appellants, by drawing out the case against them. As the Federal Court stated in *Fabbiano*:

> The only possible alternative remedy would be to remit the matter back to the delegate to carry out a proper analysis of the evidence. However, that recourse would only add significant further delay, psychological stress, and costs.[80]

Remitting the decision on the vacation application to another decision-maker would similarly only add to the costs and prejudice imposed upon the Appellants given the fact that the loss of record and witnesses is not reversible. An outcome such as this was found to be

[78] *Ibid* at para 21.
[79] *Ibid* at para 55.
[80] *Fabbiano, supra* note 53 at para *33.*

unacceptable in *Parekh*, given that the applicants had in no way contributed to the delay and had suffered significant prejudice.[81]

B. Interests in favour of a stay outweigh the public's interest in a decision on the merits

73. A stay of proceedings is in the interest of the Appellants and not against society's interest in maintaining the integrity of the refugee system. Although the Appellants have conceded the materiality of the misrepresentation, they are not the individuals who perpetrated this misrepresentation. These individuals, Resmi and, potentially, Alba Kadare, are not parties to the current proceedings. It should be noted that the Minister's inability to pursue vacation proceedings against Alba Kadare can only be attributed to the Ministry's bureaucratic indolence since she did not pass away until 2016, one year before vacation proceedings targeting her children were initiated. The Minister can also seek out and pursue vacation proceedings against Resmi Kadare, the individual responsible for the misrepresentation.

74. This case may be distinguished on its facts from other cases such as *Omelebele v Canada (MCI)*, in which the Minister has succeeded in vacating the status of parents who have made misrepresentations in order to gain refugee status, and also their children's status as a result.[82] In *Omelebele*, the party who made the misrepresentation was the subject of the vacation proceedings and she and her son both lost their refugee status as a result. In the case at bar, the Minister is proceeding against Halit and Helena Kadare in the absence of their parents.

75. In the case of *Mella*, the Federal Court declined to exclude Sorella and Ester Mella, who were minors at the time of their parents' refugee claim, from the consequences of the vacation application, although it acknowledged that Sorella and Ester were "wholly innocent

[81] *Parekh*, *supra* note 12 at para 65.
[82] *Omelebele v Canada (Minister of Citizenship and Immigration)*, 2015 FC 305.

with respect to the fraudulent refugee claim advanced by their parents."[83] *Mella* should be distinguished from the case at bar because Aferdita Mella, one of the principal claimants of the refugee claim, was a party to the vacation proceedings and was available to participate fully in the vacation hearing.

76. There has never been a case in which the Minister has been allowed to proceed against the children of parties who made misrepresentations in immigration proceedings, in the absence of the parties themselves. Allowing the Minister to do so now would leave a worrying precedent. Nothing prevented the Minister from proceeding against Alba and Resmi Kadare as early as 2005 when all material facts were made known, and it is solely due to the Minister's indolence that both relevant parties are now unavailable.

77. The Appellants are entirely innocent of any misrepresentation and are mere bystanders in an abusive proceeding which should have been targeted at their parents. Society has no interest in the pursuit of vacation proceedings against individuals who are morally innocent and played no part in a material misrepresentation to gain refugee status. The Federal Court, in *Canadian Doctors for Refugee Care v Canada (Attorney General)*, upheld the principle that it does not further the interest of maintaining the integrity of Canada's refugee system for innocent children to always bear the consequences of their parents' misdeeds:

> Be that as it may [that some people will abuse the refugee system], it is surely antithetical to the values of our Canadian society to visit the sins of parents on their innocent children.[84]

78. This is especially true since the Appellants have now lived in Canada for over 20 years and have, during this time, lost the opportunity to meaningfully pursue any judicial remedies to remain in Canada should their status be vacated. To allow the Minister to pursue vacation

[83] *Mella*, *supra* note 46 at para 33.
[84] *Canadian Doctors*, *supra* note 17 at para 664.

proceedings against the Appellants now, when their circumstances have materially changed in a way which renders the proceedings oppressive and highly prejudicial, would offend the public's sense of fairness and decency, and blemish the integrity of the justice system.

IV-ORDER SOUGHT

79. Given all of the above circumstances, the Appellants seek an order granting a permanent stay of proceedings against any current and future applications for vacation of their refugee status by the Minister of Public Safety and Emergency Preparedness. The Appellant requests that this Honourable Court allow the appeal and answer the certified question in the positive.

Appendix A – Legislation

Immigration and Refugee Protection Act, SC 2001, c 27 at ss 3(1)(f.1), 3(2)(e), 24(1), 25(1), 25(1.03), 40(1)(a), 40(1)(b), 40(1)(c), 112(1), 112(2)(b.1)

3 (1) The objectives of this Act with respect to immigration are [...]

(f.1) to maintain, through the establishment of fair and efficient procedures, the integrity of the Canadian immigration system;

[...]

(2) The objectives of this Act with respect to refugees are [...]

(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;

[...]

(3) This Act is to be construed and applied in a manner that [...]

(f) complies with international human rights instruments to which Canada is signatory.

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

25 (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

[...]

(1.03) The Minister may refuse to consider a request under subsection (1) if

(a) the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1 or any requirement imposed on them under section 98.1; and

(b) less than 12 months have passed since the end of the applicable period referred to in subsection (1.01) or (1.02).

40 (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act;

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation;

(c) on a final determination to vacate a decision to allow their claim for refugee protection or application for protection;

112 (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).
(2) Despite subsection (1), a person may not apply for protection if
[...]

(b.1) subject to subsection (2.1), less than 12 months, or, in the case of a person who is a national of a country that is designated under subsection 109.1(1), less than 36 months, have passed since
[...]

(i) the day on which their claim for refugee protection was rejected — unless it was deemed to be rejected under subsection 109(3) or was rejected on the basis of section E or F of Article 1 of the Refugee Convention — or determined to be withdrawn or abandoned by the Refugee Protection Division, in the case where no appeal was made and no application was made to the Federal Court for leave to commence an application for judicial review, or

Canada Citizenship Act, RSC, 1985, c C-29, at s. 13.1.

13.1 The Minister may suspend the processing of an application for as long as is necessary to receive

(a) any information or evidence or the results of any investigation or inquiry for the purpose of ascertaining whether the applicant meets the requirements under this Act relating to the application, whether the applicant should be the subject of an admissibility hearing or a removal order under the Immigration and Refugee Protection Act or whether section 20 or 22 applies with respect to the applicant; and

(b) in the case of an applicant who is a permanent resident and who is the subject of an admissibility hearing under the Immigration and Refugee Protection Act, the determination as to whether a removal order is to be made against the applicant.

2014, c 22, s 11

Canada Citizenship Act, RSC, 1985, c C-29, at s. 17, as repealed by *An Act to Amend the Citizenship Act*, 2014, c 22, s 11.

17 Where a person has made an application under this Act and the Minister is of the opinion that there is insufficient information to ascertain whether that person meets the requirements of this Act and the regulations with respect to the application, the Minister may suspend the processing of the application for the period, not to exceed six months immediately following the day on which the processing is suspended, required by the Minister to obtain the necessary information.
1974-75-76, c. 108, s. 16

Protecting Canada's Immigration System Act, SC 2012, c 17.

Balanced Refugee Reform Act, SC 2010, c 8.

Faster Removal of Foreign Criminals Act, SC 2013, c 16.

Universal Declaration of Human Rights, GA Res 217A (III) UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976).

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Appendix B - List of Authorities

Abrametz v Law Society of Saskatchewan, 2020 SKCA 81, leave to appeal to SCC granted, 39340 (25 February 2021).
Agbon v Canada (Minister of Citizenship and Immigration), 2004 FC 356.
Aleman v Canada (Minister of Citizenship & Immigration), 2002 FC 710.
Baker v Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817, 243 NR 22.
Beltran v Canada (Minister of Citizenship & Immigration), 2011 FC 516.
Blencoe v British Columbia (Human Rights Commission), 2000 SCC 44.
Canada (Minister of Public Safety and Emergency Preparedness) v Najafi, 2019 FC 594.
Canada (Citizenship and Immigration) v Parekh, 2010 FC 692.
Canada (Citizenship and Immigration) v Singh Gondara, 2011 FC 352.
Canada (Minister of Public Safety and Emergency Preparedness) and X, Re, 2018 CarswellNat 4262, 2018 CarswellNat 4263.
Canadian Doctors for Refugee Care v Canada (Attorney General), 2014 FC 651.
Chabanov v Canada (Citizenship and Immigration), 2017 FC 73.
de Guzman v Canada (Minister of Citizenship and Immigration), 2005 FCA 436.
Fabbiano v Canada (Minister of Citizenship and Immigration), 2014 FC 1219.
Hassouna v Canada (Citizenship and Immigration), 2017 FC 473.
Jama Warsame v Canada, CCPR/C/102/D/1959/2010, UN Human Rights Committee (HRC), 1 September 2011.
Kanthasamy v Canada (*Minister of Citizenship and Immigration*), 2015 SCC 61.
Mella v Canada (Minister of Public Safety and Emergency Preparedness) 2019 FC 1587.
Nweke v Canada (Minister of Citizenship and Immigration), 2017 FC 242
Omelebele v Canada (Minister of Citizenship and Immigration), 2015 FC 305.
R v Babos, 2014 SCC 16.
Thamotharem v Canada (Minister of Citizenship and Immigration), 2007 FCA 198.
Toussaint v Canada (Minister of Citizenship and Immigration), 2011 FC 216
Valverde v Canada (Minister of Citizenship and Immigration), 2015 FC 1111.
X (Re), 2012 CanLII 71598 (CA IRB).

Secondary Materials

United Kingdom Home Office, "Country Policy and Information Note: Albania, Blood Feuds" (February 2020) at 26, online (pdf): *United Kingdom* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/865400/Albania_-_Blood_feuds_-_CPIN_-_v.4__pdf.pdf>.

Canada, Immigration and Refugee Board, *Responses to Information Requests,* ALB103570.E (Canada: IRB, 8 October 2010), online: *Immigration and Refugee Board Canada* < https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=453189>.