

Court File No: T-418-12

## FEDERAL COURT

BETWEEN:

JACQUELINE SCOTT

APPLICANT

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

And

THE MINISTER OF CITIZENSHIP, IMMIGRATION and MULTICULTURALISM

RESPONDENTS

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**RESPONDENT'S MEMORANDUM OF FACT AND LAW**

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**OVERVIEW**

1. The Applicant, Jacqueline Scott ("Mrs. Scott"), is seeking judicial review of the decision of a citizenship officer (the "Officer") that she is not a Canadian citizen and requesting an order or declaration that she is a Canadian citizen.
2. Canadian citizenship is a creation of federal statute. In order to be a Canadian citizen, a person must satisfy the applicable statutory requirements. Mrs. Scott is not a citizen under the current *Citizenship Act* because she does not satisfy the requirements.
3. Mrs. Scott was not declared to be a citizen in 1947 when the first *Canadian Citizenship Act* (the "former *Canadian Citizenship Act*" or the "former Act") came into force because she was born outside of Canada and did not have a claim to citizenship through her parents. Furthermore, although Canadian officials advised them that they could, Mrs. Scott's parents decided not to pursue

citizenship for their daughter in the 1950s. Mrs. Scott subsequently left Canada, moved to the United States and eventually became an American citizen.

4. Mrs. Scott is not a citizen under recent amendments to the current *Citizenship Act*. The concept of Canadian citizenship and the status of “Canadian citizen” as they are understood today were introduced only in 1947 when the former *Canadian Citizenship Act* came into force. Accordingly, neither of Mrs. Scott’s parents was a Canadian citizen when she was born in 1945.

5. Since Mrs. Scott does not satisfy the statutory requirements to be a citizen, the Officer properly found that Mrs. Scott is not a citizen. Furthermore, the provisions of the current *Citizenship Act* do not discriminate against Mrs. Scott and violate section 15 of the *Canadian Charter of Rights and Freedoms* (the “Charter”). The former *Canadian Citizenship Act* was repealed well before the Charter came into force and applying the Charter to that Act would be an improper retroactive application of the Charter. Accordingly, the Respondent, who should be properly named as the Minister of Citizenship and Immigration (the “Minister”)<sup>1</sup>, seeks an order dismissing Mrs. Scott’s application for judicial review of the Officer’s decision.

### **PART I – FACTS**

6. Mrs. Scott was born in England in June 1945. Her mother had been born in England and was a British subject. Her father had been born in Canada and he was serving in the Canadian military during the Second World War. Mrs. Scott’s parents were not married when she was born in 1945.

Letter from Citizenship and Immigration Canada to Mrs. Scott, dated January 26, 2012 (the “Officer’s Decision Letter”) (Certified Tribunal Record (“CTR”), pp. 3 – 4) [Respondent’s Record (“RR”), Tab A, pp. 5 – 6].

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<sup>1</sup> The Minister requests that the style of cause be amended to remove “Her Majesty the Queen in right of Canada” and name only the “Minister of Citizenship and Immigration” as the Respondent [See: *Federal Courts Rules*, Rule 303 and *Department of Citizenship and Immigration Act*, section 2].

Entry of Birth for Jacqueline Sandra (CTR, pp. 34 and 37 [RR, Tab A, p. 36].

Birth Certificate of James Ellis (CTR, p. 38) [RR, Tab A, p. 40]  
(Supplementary Certified Tribunal Record ("Supp. CTR"), p. 47) [RR, Tab B, p. 124].

Affidavit of J. Scott, sworn May 24, 2012 (the "Scott Affidavit"), paras. 9 – 11 [Applicant's Record ("AR"), Tab 5, pp. 2 – 3].

7. In January 1947, Canada's first citizenship act came into force. The former *Canadian Citizenship Act* set out the requirements that a person had to satisfy to be or to become a Canadian citizen under that Act. The former Act was amended and revised several times before 1977 when it was repealed with the coming into force of the current *Citizenship Act*.

*The Canadian Citizenship Act*, S.C. 1946, c. 15.

*An Act to Amend The Canadian Citizenship Act*, S.C. 1950, c. 29.

*Canadian Citizenship Act*, R.S.C. 1952, c. 33.

*An Act to amend The Canadian Citizenship Act*, S.C. 1952-53, c. 23.

*Canadian Citizenship Act*, R.S.C. 1970, c. C-19.

8. Mrs. Scott's father had returned to Canada at the end of the war. In January 1948, Mrs. Scott and her mother entered Canada and were admitted as landed immigrants. Mrs. Scott's mother and father were married in Ontario a few months later in May 1948.

Scott Affidavit, paras. 11 and 14 – 15 [AR, Tab 5, p. 3].

Record of Permanent Resident Status (Supp. CTR, p. 17 [RR, Tab B, p. 94].

Certificate of Marriage for James Ellis and Winnifred Ellis (CTR, p. 33 and 39 [RR, Tab A, pp. 35 and 41].

9. In December 1954, Mrs. Scott's father submitted an application for a citizenship certificate for Mrs. Scott and her mother under section 10(2) of the former *Canadian Citizenship Act*. In April 1955, Mrs. Scott's mother was granted a citizenship certificate under section 10(2). However, Canadian officials advised Mrs. Scott's parents that they should apply for a certificate of citizenship on their

daughter's behalf under a different section of the former Act since her birth had been legitimized through their marriage.

Officer's Decision Letter (CTR, pp. 3 – 4) [RR, Tab A, pp. 5 – 6].

Application for Citizenship Certificate for Winnifred Edith Lucy Ellis and related documents, (Supp. CTR, pp. 20 – 21, 24 – 25, 29 – 30 and 36 – 39) [RR, Tab B, pp. 97 – 98, 101 – 102, 106 – 107 and 113 – 116].

Application for Citizenship Certificate for Jacqueline Sandra Ellis and related documents (CTR, p. 32) [RR, Tab A, p. 34] (Supp. CTR, pp. 22 – 23, 26 – 28 and 30 – 34) [RR, Tab B, pp. 99 – 100, 103 – 105 and 107 – 111].

10. Mrs. Scott's parents did not submit an application for a citizenship certificate under section 11(2)(b) of the former *Canadian Citizenship Act* and they subsequently withdrew the section 10(2) application and requested the return of the fees that had been paid in support of that application.

Application for Citizenship Certificate for Jacqueline Sandra Ellis and related documents (CTR, p. 32) [RR, Tab A, p. 34] (Supp. CTR, pp. 22 – 23, 26 – 28 and 30 – 34) [RR, Tab B, pp. 99 – 100, 103 – 105 and 107 – 111].

11. In 1972, Mrs. Scott left Canada and moved to the United States. She eventually became an American citizen in 2005.

Scott Affidavit, paras. 17 – 18 [AR, Tab 5, p. 4].

12. The current *Citizenship Act* came into force on February 15, 1977. It was revised in 1985 and it has been amended several times, most recently in April 2009.

*Citizenship Act*, S.C. 1974-75-76, c. 108.

*Citizenship Act*, R.S.C. 1985, c. C-29 as amended.

13. In 2004, Mrs. Scott submitted an application to Citizenship and Immigration Canada ("CIC") for a certificate of proof of Canadian citizenship. However, her application was not approved because she did not have a claim to citizenship.

Letter from Citizenship and Immigration Canada to Mrs. Scott, dated July 11, 2005 (CTR, p. 29) [RR, Tab A, p. 31].

Scott Affidavit, para. 4 [AR, Tab 5, p. 2].

14. Mrs. Scott subsequently asked CIC to reconsider its decision that she was not a Canadian citizen. She also applied to CIC for a discretionary grant of citizenship under section 5(4) of the current *Citizenship Act*.

15. In February 2009, CIC reviewed Mrs. Scott's proof of Canadian citizenship case and confirmed its earlier decision that she was not a Canadian citizen. CIC also determined that Mrs. Scott had not demonstrated special or unusual hardship or exceptional service to Canada and that a discretionary grant of citizenship under section 5(4) was warranted.

Letter from Citizenship and Immigration Canada to Mrs. Scott, dated February 23, 2009 (CTR, pp.26 - 28) [RR, Tab A, pp. 28 – 30].

Scott Affidavit, para. 7 [AR, Tab 5, p. 2].

16. In January 2010, Mrs. Scott submitted another application for a citizenship certificate.

Mrs. Scott's Application for a Citizenship Certificate (Proof of Citizenship), signed January 11, 2010 and related materials (CTR, pp. 7 – 72) [RR, Tab A, pp. 9 – 74] (Supp. CTR, pp. 1 – 49) [RR, Tab B, pp. 78 – 126].

Scott Affidavit, paras. 2 and 8 [AR, Tab 5, pp. 1 – 2].

17. In January 2012, the Officer refused Mrs. Scott's application for a citizenship certificate. The Officer considered all of Mrs. Scott's claims to be a Canadian citizen and found that she did not satisfy the requirements to be a citizen.

Officer's Decision Letter (CTR, pp. 3 – 4) [RR, Tab A, pp. 5 – 6].

## **PART II – ISSUES**

18. The issue before the Court on this application for judicial review is whether Mrs. Scott has established that the Officer's decision to refuse her application for a citizenship certificate was unreasonable and more particularly:

- (a) Did the Officer err when she found that Mrs. Scott is not a citizen under section 3(1)(d) of the current *Citizenship Act*?

- (b) Does section 3(1)(d) violate Mrs. Scott's rights under section 15 of the Charter, and if it does, is the violation justified under section 1 of the Charter?
- (c) Did the Officer err when she found that Mrs. Scott is not a citizen under section 3(1)(g) of the current *Citizenship Act*?
- (d) Does section 3(1)(g) violate Mrs. Scott's rights under section 15 of the Charter, and if it does, is the violation justified under section 1 of the Charter?

### **PART III – SUBMISSIONS**

#### **A. STANDARD OF REVIEW**

19. This Court has held that a citizenship officer's interpretation of citizenship legislation should be reviewed on a standard of reasonableness. Citizenship officers have expertise in dealing with citizenship legislation and whether an individual has established that he or she is a citizen based on the legislative requirements. When reviewing on a standard of reasonableness, the court is concerned with justification, transparency and intelligibility and with whether the decision under review falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law.

*Kinsel v. Canada (Citizenship and Immigration)*, 2012 FC 1515 at paras. 17 – 21.

*Jabour v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 98 at paras. 23 and 28.

*Rabin v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1094 at paras. 16 – 17, 19 and 29.

#### **B. STATUTORY SCHEME**

20. Canadian citizenship is a creation of federal statute and has no meaning apart from statute. In order to be a Canadian citizen, a person must satisfy the applicable statutory requirements.

*Solis v. Canada (Minister of Citizenship and Immigration)* (2000), 186 D.L.R. (4<sup>th</sup>) 512 (F.C.A.) at para. 4 (Leave to appeal to SCC refused [2002] S.C.C.A. No. 249 (QL)).

21. Section 3 of the current *Citizenship Act* defines who is a Canadian citizen. The relevant portion of section 3 currently provides:

3. (1) Subject to this Act, a person is a citizen if

...  
(d) the person was a citizen immediately before February 15, 1977;

...  
(g) the person was born outside Canada before February 15, 1977, to a parent who was a citizen at the time of the birth and the person did not, before the coming into force of this paragraph, become a citizen....

*Citizenship Act*, R.S.C. 1985, c. C-29, as amended, section 3.

### **C. OFFICER'S DECISION**

22. In the present case, the Officer found that Mrs. Scott did not satisfy the requirements under the current *Citizenship Act* to be a citizen.

#### **1. Mrs. Scott Is Not A Citizen Under Section 3(1)(d)**

23. The Officer considered all of Mrs. Scott's claims to be a citizen. Mrs. Scott is not a citizen under section 3(1)(d) of the current *Citizenship Act* since she had not been a citizen immediately before it came into force. Mrs. Scott had not been a citizen under section 4 of the former *Canadian Citizenship Act* because she had not derived citizenship through her father as she was born before her parents were married. She also did not derive citizenship through her mother because her mother did not become a Canadian citizen until 1955. Mrs. Scott did not become a citizen under section 9 of the former Act since she did not have Canadian domicile in January 1947. Mrs. Scott entered Canada for the first time only in 1948. Finally, Mrs. Scott was not granted citizenship under section 11 of the former Act because her parents had not pursued their application for citizenship on her behalf.

Officer's Decision Letter (CTR, pp. 3 – 4 [RR, Tab A, pp. 5 – 6].

#### **2. Mrs. Scott Is Not A Citizen Under Section 3(1)(g)**

24. Mrs. Scott is also not a citizen under section 3(1)(g) of the current *Citizenship Act* because neither of her parents were citizens at the time of her

birth. While her father was a British subject and had been born in Canada, he was not a citizen in 1945 when Mrs. Scott was born because the former *Canadian Citizenship Act* had not come into force yet. Mrs. Scott's mother did not become a citizen until 1955.

Officer's Decision Letter (CTR, pp. 3 – 4 [RR, Tab A, pp. 5 – 6].

25. Finally, the Officer noted that, although Mrs. Scott was not a citizen, she could apply to become a citizen. Mrs. Scott appeared to have permanent resident status. Accordingly, she could apply for a grant of citizenship under section 5(1) of the current Act.

Officer's Decision Letter (CTR, pp. 3 – 4) [RR, Tab A, pp. 5 – 6].

**D. THE OFFICER PROPERLY FOUND THAT MRS. SCOTT IS NOT A CITIZEN UNDER SECTION 3(1)(d) OF THE CURRENT CITIZENSHIP ACT**

26. The Officer properly found that Mrs. Scott is not a citizen under section 3(1)(d) of the current *Citizenship Act* since she had not met the requirements of the former *Canadian Citizenship Act* to be a citizen immediately before the current *Citizenship Act* came into force.

27. Mrs. Scott does not appear to be challenging the Officer's finding that she did not satisfy the requirements of the former *Canadian Citizenship Act*. In any event, the Officer's finding is well-supported by the relevant law and facts.

**1. Mrs. Scott Was Not A Citizen Under Section 4(1)(b) of the former Canadian Citizenship Act**

28. Section 4 of the former *Canadian Citizenship Act* defined when a person who had been born before January 1, 1947, was a "natural-born Canadian citizen". The relevant portion of section 4, as amended, provided that:

4. (1) A person born before the 1<sup>st</sup> day of January 1947 is a natural-born Canadian citizen, if

...

(b) he was born outside of Canada elsewhere than on a Canadian ship and was not, on the 1<sup>st</sup> day of January 1947, an alien and either was a minor on that date or had, before that date, been lawfully admitted to Canada for permanent residence and his father, or in the case of a person born out of wedlock, his mother



- (i) was born in Canada or on a Canadian ship and was not an alien at the time of that person's birth, or
- (ii) was, at the time of that person's birth, a British subject who had Canadian domicile,

*Canadian Citizenship Act*, R.S.C. 1970, c. C-19, section 4.

29. Mrs. Scott does not dispute that she was born prior to her parents' marriage. Accordingly, she could not derive citizenship through her father. Mrs. Scott also did not derive citizenship through her mother because her mother was not born in Canada and did not have Canadian domicile when Mrs. Scott was born in 1945.

**2. Mrs. Scott Was Not A Citizen Under Section 9(1)(b) of the former Canadian Citizenship Act**

30. Section 9 of the former *Canadian Citizenship Act* defined when a person was a "Canadian citizen other than a natural-born Canadian citizen". The relevant portion of section 9, as amended, provided that:

9. (1) A person, other than a natural-born Canadian citizen, is a Canadian citizen, if that person

...

(b) was, immediately before the 1<sup>st</sup> day of January 1947, a British subject who had Canadian domicile;

....

*Canadian Citizenship Act*, R.S.C. 1970, c. C-19, section 9.

31. Mrs. Scott does not argue that she had Canadian domicile immediately before January 1, 1947. She was born in England in 1945 and had not entered Canada by January 1, 1947.

**3. Mrs. Scott Was Not A Citizen Under Section 11 of the former Canadian Citizenship Act**

32. Section 11 of the former *Canadian Citizenship Act*, as amended in 1952, provided that the Minister could grant citizenship to a person whose birth had been legitimized if his or her father was a Canadian citizen:

11. (2) The Minister may, in his discretion, upon application, grant a certificate of citizenship to a person who has been lawfully admitted to

Canada for permanent residence and who, at any time in a province of Canada pursuant to the law of that province then in force,

...  
(b) has been legitimized, if the person legally recognized as the father of the legitimated person by such legitimation is a Canadian citizen.

*Canadian Citizenship Act*, R.S.C. 1970, c. C-19, section 11.

33. In 1954, Mrs. Scott's father submitted an application for a citizenship certificate for Mrs. Scott and her mother under section 10(2) of the former *Canadian Citizenship Act*. In April 1955, Mrs. Scott's mother was granted a citizenship certificate under section 10(2). However, Mrs. Scott's father was informed by Canadian officials that he would have to apply for a certificate of citizenship on Mrs. Scott's behalf under section 11(2)(b). Mrs. Scott's parents did not submit an application for a citizenship certificate under section 11(2)(b) and they subsequently withdrew the section 10(2) application, requesting the return of the fees that had been paid in support of that application. Accordingly, Mrs. Scott did not become a citizen under section 11 of the former Act.

Letter from the Registrar of Canadian Citizenship to J.E. Ellis, dated April 4, 1955 (CTR, p. 32) [RR, Tab A, p. 34] (Supp. CTR, p. 31) [RR, Tab B, p. 108].

**E. SECTION 3(1)(d) OF THE CURRENT CITIZENSHIP ACT IS CONSTITUTIONAL**

34. Instead of challenging the Officer's finding that she did not satisfy the requirements of the former *Canadian Citizenship Act* and, therefore, that she is not a citizen under section 3(1)(d) of the current *Citizenship Act*, Mrs. Scott claims that section 3(1)(d) is unconstitutional. She argues that section 3(1)(d) violates section 15 of the Charter by discriminating against her on the basis of the marital status of her parents at the time of her birth and the gender of her Canadian parent.

35. In response, Mrs. Scott is asking this Court to apply the Charter retroactively to correct past discrimination that occurred well before the Charter came into force. However, it is well-settled law that the Charter should not be applied retroactively.

36. The argument being made by Mrs. Scott has already been rejected by both the Federal Court of Appeal (the "Court of Appeal") and this Court. Both Courts have held that section 3(1)(d) of the current *Citizenship Act* does not violate section 15 of the Charter. The source of any discrimination against persons born before 1947 was the former *Canadian Citizenship Act* and occurred before section 15 of the Charter came into force in 1985. Applying the Charter to address that past discrimination would, according to the decision of the Supreme Court of Canada ("SCC") in *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 ("*Benner*"), be an improper retroactive application of the Charter.

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358.

### **1. Section 3(1)(d) Is Not Discriminatory**

37. Section 15 of the Charter provides, in part, that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

*Canadian Charter of Rights and Freedoms*, section 15.

38. Both the Court of Appeal and this Court have held that section 3(1)(d) of the current *Citizenship Act* does not discriminate against persons on the basis of any of the listed or analogous grounds under section 15 of the Charter. Section 3(1)(d) treats Mrs. Scott like every other person who was not a citizen immediately before February 15, 1977.

39. Instead, the root source of any alleged discrimination against persons born before 1947 is the differential treatment that persons received under provisions of the former *Canadian Citizenship Act*. In *Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 ("*Taylor*"), the Court of Appeal considered the same Charter argument being made by Mrs. Scott. Joseph Taylor, like Mrs. Scott, was born out of wedlock to a Canadian father and an English mother during the Second World War. Mr. Taylor's application for a citizenship certificate was refused by a citizenship officer. He sought judicial

review of the officer's decision and argued, among other things, that section 3(1)(d) violated his section 15 Charter rights. In considering Mr. Taylor's challenge to section 3(1)(d), the Court of Appeal held that the source of the alleged discrimination was the differential treatment based on the marital status of his parents in the former Act.

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at para. 101.

40. Similarly, in *Wilson v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1475 and in *Dubey v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 582, this Court found that the source of the alleged discrimination against persons born before 1947 was not section 3(1)(d) of the current *Citizenship Act*. Instead, the source of any discrimination was the former *Canadian Citizenship Act*.

*Wilson v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1475.

*Dubey v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 582.

41. Mrs. Scott's case is distinguishable from the SCC's decision in *Benner*. The appellant in *Benner* was challenging the provisions in the current *Citizenship Act* that gave him a right to citizenship as a person born outside of Canada to a Canadian mother but accompanied by different treatment from persons born outside of Canada to a Canadian father. Significantly, the SCC carefully noted that it was not reviewing the provisions of the former *Canadian Citizenship Act*. Section 3(1)(d) of the current *Citizenship Act*, unlike the provisions in question in *Benner*, does not give Mrs. Scott any right to citizenship. Similarly, in *Augier v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 613, this Court found that provisions of the current *Citizenship Act* were discriminatory but the Court again was not applying the Charter to the provisions of the former Act.

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at paras. 40 and 396 – 397.

*Augier v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 613.

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at paras. 59 – 72 and 103.

42. Since the source of any alleged discrimination against her is the former *Canadian Citizenship Act*, Mrs. Scott must necessarily, like the plaintiffs in *Dubey*, be challenging the validity of that earlier Act. A ruling that section 3(1)(d) of the current *Citizenship Act* is invalid would not suffice to support a declaration in Mrs. Scott's favour that she is a citizen.

## **2. The Charter Does Not Apply Retroactively**

43. In asking this Court to address the alleged injustice caused by the former *Canadian Citizenship Act*, Mrs. Scott is asking this Court to apply the Charter retroactively.

44. It is well-settled law that the Charter should not be applied retroactively or retrospectively. In *Benner*, the SCC stated that "the Charter does not apply retroactively and this Court has stated on numerous occasions that it cannot apply retrospectively". Similarly, in *Taylor*, the Court of Appeal held that it is an "undisputed principle that the Charter is not applied retroactively or retrospectively".

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at para. 40.

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at para. 60.

45. In *Benner*, the SCC addressed when the application of section 15 of the Charter would be an improper retroactive application. In considering whether the application of section 15 to facts that arose before the Charter came into force would be retroactive, the SCC held that it was important to look at whether the facts in question constitute a discrete event or establish an ongoing status or characteristic. "Status" generally refers to immutable characteristics that are ascribed to a person at birth such as race or the marital status of the person's parents at the time of his or her birth. The question is one of characterization: is the situation really one of going back to redress an old event which took place before the Charter created the right to be vindicated, or is it simply one of assessing the contemporary application of a law which happened to be passed before the Charter came into effect?

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at paras. 39  
– 59.

46. In applying section 15 of the Charter to questions of status, the important point in time is not the moment at which a person acquires the status in question but is instead the moment at which the status is held against the person or disentitles him or her to a benefit. If a person's status was first held against him or her or first disentitled him or her to a benefit before section 15 of the Charter came into force, then the Charter does not apply since that would require a retroactive application. Contrary to Mrs. Scott's submissions, the mere fact that the alleged discrimination may relate to a person's status rather than to a discrete event does not mean that the Charter automatically applies.

*Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at paras. 39  
– 59.

47. Since *Benner*, both this Court and Court of Appeal have considered the test set out by the SCC and have held in several cases that the application of section 15 of the Charter in similar circumstances to those of Mrs. Scott would be retroactive and improper.

48. In *Dubey v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 582 ("*Dubey*"), the two plaintiffs had been born in wedlock in the United States in 1942 and 1945 respectively. Their father had been born in the United States and their mother had been born in Canada. The plaintiffs applied for citizenship certificates in 1998 but their applications were denied under section 3(1)(d) of the current *Citizenship Act* because they had not been citizens in 1977. The former *Canadian Citizenship Act* provided that a child born outside of Canada in wedlock was granted citizenship if the child's father was born in Canada. However, a child born outside of Canada in wedlock to a Canadian born mother was not a citizen, unless of course, the child's father was also Canadian born. The plaintiffs challenged the decision to deny their applications for citizenship certificates, arguing that their section 15 Charter rights had been violated.

*Dubey v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT  
582.

49. The Honourable Mr. Justice Nadon held that the real source of the discrimination being alleged by the plaintiffs was the former *Canadian Citizenship Act*. The plaintiffs necessarily had to challenge the former *Canadian Citizenship Act* since a declaration that section 3(1)(d) of the current *Citizenship Act* was invalid would not suffice to make them citizens. However, applying the Charter to the former Act would be a retroactive application since their rights to citizenship had crystallized in 1977 when the current *Citizenship Act* came into force, before section 15 of the Charter came into effect. The plaintiffs were asking the Court to go back into the past and correct an event that they considered "unjust". Accordingly, Mr. Justice Nadon dismissed the plaintiffs' application.

*Dubey v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 582.

50. In *Wilson v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1475, the Honourable Mr. Justice Harrington agreed with Mr. Justice Nadon's reasoning in *Dubey*. Since the current *Citizenship Act* does not deal with persons born prior to 1947, it does not carry forward any legislative discrimination that has to be assessed against the Charter. Whether the trigger point was the date when the current *Citizenship Act* came into force or earlier dates when the applicant could or should have done something, the result is the same. The Acts that did not give the applicant the status he asserted had no current application and thus were not subject to the Charter. The current *Citizenship Act* snapped the chain of causality.

*Wilson v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1475.

51. In *McLean v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 10, the appellant was born in wedlock in the United States in 1943 to an American father and a Canadian mother. He moved to Canada and was granted permanent resident status. However, he was ordered deported because of criminal convictions. The appellant resisted deportation on the basis of a claim that he was a Canadian citizen. He subsequently applied for a citizenship certificate. However, his application was denied and he sought judicial review, which was also denied. On appeal, the Court of Appeal held that the Charter did

not apply because, applying the test in *Benner*, the appellant had been confronted with his lack of citizenship before the Charter came into force when he had resisted being deported on the basis that he was a Canadian citizen.

*McLean v. Canada (Minister of Citizenship and Immigration)*, 2001 FCA 10.

52. Finally, in *Taylor*, the Court of Appeal again held that it would be an improper retroactive application of the Charter to apply it to the provisions of the former *Canadian Citizenship Act*. Mr. Taylor, like Mrs. Scott, was born out of wedlock in England during the Second World War. His father, who had been born in Canada, was a Canadian Armed Forces soldier and his mother was born in England. Mr. Taylor's parents married in 1945 and in 1946, after the war, Mr. Taylor and his mother came to Canada to live with his parents. However, the marriage fell apart a few months later and Mr. Taylor and his mother returned to England to live in the fall of 1946. In 2003, Mr. Taylor applied for a citizenship certificate. A citizenship officer refused his application and Mr. Taylor sought judicial review of the officer's decision. This Court concluded that Mr. Taylor was a Canadian citizen and directed the Minister to issue a certificate of citizenship to Mr. Taylor but the Minister appealed this Court's decision.

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349.

53. Mr. Taylor challenged section 3(1)(d), arguing that it discriminated against him because he had been born out of wedlock, and thereby violated section 15 of the Charter. The Court of Appeal found that the root source of the discrimination being alleged by Mr. Taylor was the differential treatment based on the marital status of his parents in section 4(1)(b) of the former *Canadian Citizenship Act* and held that the application of section 15 of the Charter would be an improper retroactive application.

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349.

54. In the present case, this Court is again being asked to apply the Charter retroactively to correct discrimination that occurred before the Charter came into force. Mrs. Scott was not entitled to citizenship on the basis of her birth, out of



wedlock, to a Canadian born father when the former *Canadian Citizenship Act* came into force and her disenfranchisement continued up until the coming into force of the current *Citizenship Act* in 1977. Accordingly, Mrs. Scott's status as the child born out of wedlock to a Canadian father disenfranchised her to Canadian citizenship years before the Charter came into force.

55. Furthermore, Mrs. Scott, like the appellant in *McLean*, was confronted with her lack of citizenship before the Charter came into force. In the 1950s, Mrs. Scott's parents applied for citizenship for her under the former *Canadian Citizenship Act* and they were advised that they would have to apply under a different provision of that Act because they had married and Mrs. Scott's birth had been legitimized. At that time, Mrs. Scott was directly confronted with the fact that she had not obtained citizenship by reason of her birth because her parents had not been married when she was born.

56. Accordingly, any application of the Charter in Mrs. Scott's circumstances would, based on the test established by the SCC in *Benner*, be an improper retroactive application. Whether the trigger point was the date when the current *Citizenship Act* came into force or earlier dates when Mrs. Scott or her parents could or should have done something, the result is the same. The Act that did not give the applicant the status she asserts has no current application and thus is not subject to the Charter. The current *Citizenship Act* snapped the chain of causality and Mrs. Scott is asking this Court to redress past discrimination.

**F. THE OFFICER PROPERLY FOUND THAT MRS. SCOTT IS NOT A CITIZEN UNDER SECTION 3(1)(g)**

57. In addition to considering whether Mrs. Scott is a citizen under section 3(1)(d) of the current *Citizenship Act*, the Officer examined whether Mrs. Scott is a citizen under section 3(1)(g) of the current *Act*. Section 3(1)(g) was recently amended in April 2009 when Bill C-37 or an *Act to Amend the Citizenship Act*, S.C. 2008, c. 14, came into force.

58. Section 3(1)(g) currently provides that a person is a citizen if the person was born outside of Canada before February 15, 1977, to a parent who was a citizen at the time of the person's birth and the person did not become a citizen before 2009. The Officer found that Mrs. Scott is not a citizen under section 3(1)(g) because neither one of her parents was a Canadian citizen when Mrs. Scott was born in 1945. Instead, both of her parents were British subjects when she was born.

Officer's Decision Letter (CTR, pp. 3 – 4) [RR, Tab A, pp. 5 – 6].

59. Mrs. Scott argues that the Officer erred when she found that Mrs. Scott is not a citizen under section 3(1)(g) of the current *Citizenship Act*. More particularly, she argues that the former *Canadian Citizenship Act* operated retroactively to make her father a citizen under that *Act* back to the date of his birth in 1911 and that, therefore, he should be considered to have been a citizen for the purposes of section 3(1)(g) in 1945 when she was born or, in the alternative, that the word "citizen" in section 3(1)(g) should be interpreted to include persons who were "citizens" before 1947 and who became citizens under the former Act in 1947.

**1. The former *Canadian Citizenship Act* Did Not Operate To Make Mrs. Scott's Father A Citizen Under That Act Before 1947**

60. Mrs. Scott's argument that her father had the status of "Canadian citizen", as it is currently understood, in 1911 or in 1945 is contrary to the relevant law and facts.

61. It is well-settled law that the words of an Act are to be read in their entire context and in the grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

*Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1 at para. 21.

62. The concept of Canadian citizenship and the status of "Canadian citizen" are creatures of statute and they have no meaning apart from statute. The word "citizen" in citizenship legislation means a person who is a citizen under that

legislation. In order to be a citizen, a person must satisfy the applicable statutory requirements.

*Solis v. Canada (Minister of Citizenship and Immigration)*, (2000) 186 DLR (4<sup>th</sup>) 512 (F.C.A.) at para. 4 (Leave to appeal to the SCC refused [2002] SCCA No. 249 (QL)).

63. The Courts have consistently held that the modern concept of Canadian citizenship was introduced on January 1, 1947, with the coming into force of the former *Canadian Citizenship Act*. Prior to January 1, 1947, a person in Canada might have qualified for various statuses including "Canadian national", "British subject" and "naturalized British subject". A person could also have been a "Canadian citizen" under the *Immigration Act, 1910*, for the limited purpose of entering and remaining in Canada. However, Canadian citizenship did not exist as a single legal concept prior to 1947.

*Immigration Act, 1910*, R.S.C. 1927, c. 93.

*Naturalization Act, 1914* R.S.C. 1927 c. 138.

*Canadian Nationals Act*, R.S.C. 1927, c. 2.

See also: *House of Commons Debates* – Transcript of Comments by the Honourable Paul Martin (Sr.), Secretary of State, in the House of Commons on October 22, 1945, and April 2, 1946, on the introduction and second reading of the Bill that became the first *Canadian Citizenship Act*.

64. The SCC has recognized that there was no concept of Canadian citizenship before 1947. In *Benner*, the SCC began its analysis by discussing the legislative and historical context of the current *Citizenship Act* and it stated that "[before] 1947, there was no concept of Canadian citizenship....[in] 1946, Parliament passed the first Canadian Citizenship Act."

*Benner v Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at para. 30.

65. The Court of Appeal has also found that the concept of Canadian citizenship was introduced in 1947. In *McLean v. Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 127, the Court of Appeal upheld this Court's decision and reaffirmed that the concept of Canadian citizenship was introduced in 1947 with the enactment of the former *Canadian Citizenship Act*.

*McLean v. Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 127 (C.A.) at para. 5.

*McLean v. Canada (Minister of Citizenship and Immigration)* (1999), 177 F.T.R. 219 at paras. 12 and 13.

66. More recently, the Court of Appeal confirmed again in *Veleta v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 138 that Canadian citizenship was created with the coming into force of the former *Canadian Citizenship Act* in 1947.

*Veleta v. Canada (Minister of Citizenship and Immigration)* 2005 FC 572 at paras. 27 – 32.

*Veleta v. Canada (Minister of Citizenship and Immigration)* 2006 FCA 138 at para. 9.

67. Even more recently in *Taylor*, the Court of Appeal reviewed in detail the relevant legislation that governed the status of Canadians both before and after 1947. The Court of Appeal held, among other things, that the former *Canadian Citizenship Act* had a dramatic effect in Canadian law and “introduced Canadian citizenship instead of British subject status or Canadian nationality....Whatever status existed under whatever prior statute or Order in Council, including P.C. 858, was, as of January 1, 1947, replaced by a new status, that of Canadian citizen as defined in the new Act.”

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349 at paras. 15 – 57.

68. Mrs. Scott’s argument that her father should be considered a citizen for the purposes of citizenship legislation all the way back to his birth in 1911 is contrary to all of this caselaw. As the Courts have recognized, the former *Canadian Citizenship Act* was not intended to operate retroactively to deem a person born before 1947 to be a citizen under the former Act back to the date of his or her birth. To the contrary, as the Court of Appeal stated in *Taylor*, the former Act gave people a new status of “Canadian citizen” under that Act as of January 1, 1947. Parliament’s intention that the former Act would give people the status of “Canadian citizen” only as of January 1, 1947, is clearly reflected in the comments of the Honourable Paul Martin (Sr.) to the House of Commons on second reading of the Bill that became the first *Canadian Citizenship Act*. He told

the House that the former Act set forth those persons that “are to be Canadian citizens immediately upon the coming into force of the act.”

*House of Commons Debates* – Transcript of Comments by the Honourable Paul Martin (Sr.), Secretary of State, in the House of Commons on April 2, 1946, on second reading of the Bill that became the first *Canadian Citizenship Act* at p. 506.

69. The language and scheme of the former *Canadian Citizenship Act* also do not support an argument that it was intended to operate retroactively to deem a person born before 1947 to be a citizen under that Act back to the date of his or her birth. The fact that the former Act repealed the *Naturalization Act* and the *Canadian Nationals Act* but did not deprive a Canadian national or a British subject of the national status that he or she possessed in January 1947 does not mean that the former Act retroactively deemed all Canadian nationals or British subjects to be Canadian citizens under that Act back to their date of birth. Similarly, the amendments to the former Act when Newfoundland joined Confederation must be read in the context of the entire Act and do not show that it was intended to operate retroactively.

**2. Parliament Did Not Intend Section 3(1)(g) To Apply To Persons Born Before 1947**

70. The evidence also does not support Mrs. Scott's argument that Parliament intended the word “citizen” in section 3(1)(g) to include persons who were “citizens” under immigration legislation before 1947 and who became citizens in 1947 or that section 3(1)(g) should apply to persons born before 1947.

71. The recent amendments made to the current *Citizenship Act* by Bill C-37 (2009) were intended to resolve various issues that had arisen under the citizenship legislation since 1947. However, the amendments continued to respect the significance of January 1, 1947, and Parliament did not intend for the amendments, including section 3(1)(g), to retroactively grant citizenship to persons, like Mrs. Scott, who were born before 1947 and did not become citizens when the former *Canadian Citizenship Act* came into force. The materials presented to the Parliamentary committee studying Bill C-37 by CIC officials

clearly explained that the Bill would not have any effect on a person born outside of Canada before 1947 who did not meet the statutory requirements under the former *Canadian Citizenship Act* at the time. The Minister of Citizenship and Immigration, the Honourable Diane Finley, also told the Senate Committee considering Bill C-37 that the Bill's application to persons born outside of Canada was limited to "those born abroad to a Canadian citizen on or after January 1, 1947."

Parliamentary Debates on Bill C-37 [Joint Legislative Brief, Vol. 2, Tabs 25 – 35].

Documents Provided to Standing House Committee by CIC Officials [Joint Legislative Brief, Vol. 2, Tabs 36 – 51].

See also: *Kinsel v. Canada (Citizenship and Immigration)*, 2012 FC 1515

#### **G. SECTION 3(1)(g) OF THE CURRENT ACT IS CONSTITUTIONAL**

72. If her father is not deemed to be a citizen for the purpose of section 3(1)(g) and she is, therefore, not a citizen under that section, Mrs. Scott argues that section 3(1)(g) violates section 15 of the Charter. More particularly, she argues that section 3(1)(g) discriminates against her on the basis of age.

73. In response, Mrs. Scott's argument is not supported by the relevant law and facts. Section 3(1)(g) does not violate the Charter. Instead, Mrs. Scott is again asking this Court to apply the Charter retroactively to correct past discrimination that occurred before the Charter came into force.

74. As set out earlier, section 15(1) of the Charter provides that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

*Canadian Charter of Rights and Freedoms*, section 15.

75. Not all distinctions are, in and of themselves, contrary to section 15(1). As the SCC has recognized, it is obvious that legislatures may – and to govern effectively – must treat individuals and groups in different ways. Indeed, such

distinctions are one of the main preoccupations of legislatures. The classifying of individuals and groups, the making of different provisions respecting such groups, the application of different rules, regulations, requirements and qualifications to different persons is necessary for the governance of modern society.

*Withler v. Canada (Attorney General)*, 2011 SCC 12 at paras. 29 – 40.

*Law Society of British Columbia v. Andrews*, [1989] 1 S.C.R. 143 at pp. 168 – 169.

76. Equality is not about sameness and section 15(1) does not protect a right to identical treatment. Rather, it protects an individual's right to be free from discrimination. Accordingly, in order to establish a violation of section 15(1), an individual must show not only that the impugned law has a differential impact and that he or she is not receiving the equal benefit of the law based on a prohibited ground but also that the impact of the law is discriminatory.

*Quebec (Attorney General) v. A.*, 2013 SCC 5.

*Withler v. Canada (Attorney General)*, 2011 SCC 12 at paras. 29 – 40.

#### **1. Mrs. Scott Is Not Being Denied The Benefit Of The Law**

77. Mrs. Scott is not being denied the "equal benefit of the law" simply because section 3(1)(g) does not provide that she is a citizen. It is self-evident that not every section in the current Act applies to or confers a benefit on every person, regardless of their circumstances.

78. Mrs. Scott has been entitled to the benefit of applying for Canadian citizenship for years. Canadian citizenship legislation provided a process or mechanism for Mrs. Scott to become a citizen in the 1950s. At that time, Canadian officials advised Mrs. Scott's parents that they could apply for citizenship for Mrs. Scott under section 11 of the former *Canadian Citizenship Act*. Section 11 provided that the Minister could grant citizenship to a person whose birth had been legitimized if his or her father was a Canadian citizen. However, Mrs. Scott's parents decided not to pursue citizenship for Mrs. Scott.

79. The current *Citizenship Act* continues to provide mechanisms for Mrs. Scott to become a citizen. For example, as the Officer noted in her decision letter, Mrs. Scott appeared to continue to have permanent resident status and she could consider applying for a grant of citizenship under section 5(1) of the current Act. Section 5(1) provides that the Minister shall grant citizenship to a permanent resident who satisfies the criteria outlined in that section.

**2. Section 3(1)(g) Does Not Create A Distinction On A Prohibited Ground**

80. Section 3(1)(g) does not create a distinction on any of the grounds listed in section 15 of the Charter or any analogous grounds. Instead, it draws a distinction based on other considerations, including the citizenship status of the person's parents at the time of the person's birth and when the former *Canadian Citizenship Act* came into force.

81. Section 3(1)(g) distinguishes between two broad groups of people – those born to a parent who was a citizen at the person's birth and those born to parents who were both not citizens at the time of the person's birth. The section does not draw a distinction on the basis of age and it does not even make a distinction based solely on a person's date of birth. A person is not a citizen under section 3(1)(g) regardless of whether he or she was born after January 1, 1947, if one of the person's parents was not a citizen at the time of the person's birth.

82. Furthermore, even accepting for the sake of argument that section 3(1)(g) creates a distinction based on whether a person was born before January 1, 1947, that is not a distinction based on age. A distinction drawn on the basis of whether a person was born before a particular date is not the same as a distinction based on age. Neither the group of people born before January 1, 1947, nor the group of people born after that date is defined by a particular age. The group of people born before January 1, 1947, will include persons of various ages. The most that can be said about these groups is that one group will be older than the other.



83. Finally, contrary to Mrs. Scott's submissions, section 3(1)(g) does not create a distinction based on the marital status of an individual's parents at the time of his or her birth or the gender of the individual's Canadian parent. As long as at least one of an individual's parents was a citizen at the time of his or her birth, an individual may be a citizen under section 3(1)(g) regardless of whether he or she was born out of wedlock and regardless of which of his or her parents was a citizen.

**3. Any Distinction Created By Section 3(1)(g) Is Not Discriminatory**

84. Furthermore, even assuming for the sake of argument that section 3(1)(g) creates a distinction on the basis of a prohibited ground, that is not sufficient, by itself, to found a violation of section 15(1). The individual alleging the Charter violation must show that the impugned law is discriminatory in light of contextual factors such as whether the law treats a historically disadvantaged group in way that exacerbates the situation of the group or whether the law imposes a disadvantage based on a stereotype that does not correspond to the actual circumstances and characteristics of the affected individual or group.

*Quebec (Attorney General) v. A.* 2013 SCC 5.

*Withler v. Canada (Attorney General)*, 2011 SCC 12 at paras. 29 – 40.

85. Mrs. Scott has not shown that she belongs to a historically disadvantaged group or discrete minority whose situation is exacerbated by the current *Citizenship Act* and section 3(1)(g). The group of persons born before January 1, 1947, is a diverse and varied group of individuals whose only common feature is that they were born before a particular date.

86. Any distinction created by section 3(1)(g) is not based on stereotypes. As submitted earlier, section 3(1)(g) does not create a distinction on the basis of age. Furthermore, age-based distinctions are a common and necessary way of ordering our society and do not automatically evoke disadvantage. Section 3(1)(g) does not provide that a person is not a citizen based on an assumption that persons of a particular age are not entitled to be citizens or a stereotype about persons of a particular age.

87. Rather than being based on stereotypes or any personal characteristics, the distinction being alleged by Mrs. Scott is created by the simple fact that Parliament had to fix a specific date for the coming into force of the former *Canadian Citizenship Act*, and the resulting creation of the new status of "Canadian citizen", and Parliament chose January 1, 1947.

**4. This Court Has Already Rejected A Similar "Age Discrimination" Argument**

88. This Court has already rejected essentially the same "age discrimination" argument being made by Mrs. Scott. The plaintiff, Mr. Crease, in *Crease v. Canada*, [1994] 3 FC 480, had been born in Venezuela in 1943. His mother had been born in Canada in 1904 but had left Canada in 1932. Mr. Crease had attended high school and university in Canada and returned repeatedly throughout his life.

*Crease v. Canada*, [1994] 3 FC 480.

89. Mr. Crease applied for a grant of Canadian citizenship under section 5(2)(b) of the current Act. At the relevant time, section 5(2)(b) referred to a person who was born to a mother who was a citizen at the time of his birth. Mr. Crease's application was rejected because his mother was not a Canadian citizen in 1943, when Mr. Crease was born, since the first Act did not come into force until 1947. Mr. Crease commenced an action, alleging that his section 15 Charter rights had been violated and seeking a declaration that a grant of citizenship was available under section 5(2)(b) to a person born outside of Canada before January 1, 1947, to a mother who would have been a citizen if the Citizenship Act had been in force at that time.

*Crease v. Canada*, [1994] 3 FC 480.

90. This Court found that Mr. Crease's Charter rights had not been infringed or denied. Among other things, this Court held that distinction drawn by section 5(2)(b) between persons born before January 1, 1947, and persons born after that date was not based upon age or any other listed or analogous ground.

Instead, the distinction was based on his mother's status, namely that she was not a citizen, at the time that he was born.

*Crease v. Canada*, [1994] 3 FC 480.

91. In summary, section 3(1)(g) does not violate the Charter. Instead, Mrs. Scott is again asking this Court to apply the Charter retroactively to correct past discrimination that occurred before the Charter came into force. As submitted earlier, it is well-settled law that the Charter should not be applied retroactively to correct any discrimination under former citizenship legislation against persons born before 1947.

##### **5. Any Discrimination Under Section 3(1)(g) Is Justified**

92. If section 3(1)(g) does discriminate against Mrs. Scott on a prohibited ground, any discrimination is demonstrably justified in a free and democratic society under section 1 of the Charter.

93. It is well-settled law that in order to show that any violation of the Charter is justified, the state has the onus of proving, on a balance of probabilities, that the objective of the law is pressing and substantial and that there is proportionality between the objective and the means used to achieve it.

94. As submitted earlier, the recent amendments made to the current *Citizenship Act* by Bill C-37 were intended to address various specific issues or problems, including loss of citizenship by individuals, that had arisen under citizenship legislation since 1947 while protecting the value of Canadian citizenship by creating reasonable limits. However, Parliament was not seeking to deal generally with persons, like Mrs. Scott, who were born before 1947 and did not become citizens when the former *Canadian Citizenship Act* came into force. The amendments made by Bill C-37 continued to respect the significance of January 1, 1947, and the introduction on that date of the concept of Canadian citizenship.

Parliamentary Debates on Bill C-37 [Joint Legislative Brief, Vol. 2, Tabs 25 – 35].

Documents Provided to Standing House Committee by CIC Officials  
[Joint Legislative Brief, Vol. 2, Tabs 36 – 51].

See also: *Kinsel v. Canada (Citizenship and Immigration)*, 2012 FC 1515.

95. As already discussed, the Courts have repeatedly recognized the significance of the former *Canadian Citizenship Act* and of January 1, 1947. On that date, the concept of Canadian citizenship was introduced and a new status, that of a Canadian citizen, replaced statuses that had existed under previous legislation. Parliament was entitled to respect the significance of that date and was not required to retroactively grant citizenship to persons back before that date. Respecting the date on which Canadian citizenship was created helps to protect the value of Canadian citizenship by setting clear and reasonable limits on who is a citizen. There is a rational connection between Parliament's decision not to retroactively recognize persons as citizens before 1947 and its desire to respect January 1, 1947, as the date on which the modern concept of citizenship was created.

96. As evidenced by the debates and discussions in both the House of Commons and the Senate, Parliament was balancing a large number of interlocking and interacting interests and considerations when it was crafting the recent amendments to the current *Citizenship Act*. One of those considerations was respecting January 1, 1947, as the date on which the modern concept of citizenship was created and avoiding the anomalies and unintended consequences inevitably associated with reaching back in history and changing a person's national status. Retroactively conferring citizenship on persons before 1947 could have national and international as well as individual implications. Imposing on a person a new citizenship or nationality that he or she does not necessarily want could impose all kinds of obligations on the person or, similarly, deprive the person of various benefits. Attempting to grant citizenship to persons before 1947 would be further complicated by the existence before that date of British subject status.

Parliamentary Debates on Bill C-37 [Joint Legislative Brief, Vol. 2, Tabs 25 – 35].

Documents Provided to Standing House Committee by CIC Officials  
[Joint Legislative Brief, Vol. 2, Tabs 36 – 51].

*Kinsel v. Canada (Citizenship and Immigration)*, 2012 FC 1515.

*McIvor v. Canada (Registrar of Indian and Northern Affairs)*, 2009 BCCA  
153 (leave to appeal to the SCC dismissed) at para. 132.

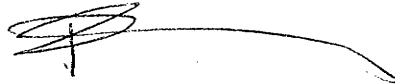
97. Parliament also recognized that there were other mechanisms for dealing with individual cases. As Mrs. Scott's case illustrates, both the former *Canadian Citizenship Act* and the current *Citizenship Act* have provided mechanisms for persons in her situation to obtain citizenship.

98. In short, the recent amendments to the current *Citizenship Act*, including section 3(1)(g), addressed various issues or problems that had arisen under citizenship legislation since 1947 in a fair and proportional manner. Accordingly, any discrimination under section 3(1) is demonstrably justified.

**PART IV – CONCLUSION**

99. In conclusion, the Officer properly found that Mrs. Scott had not satisfied the statutory requirement to be a citizen. Furthermore, the provisions of the current *Citizenship Act* do not discriminate against Mrs. Scott and violate section 15 of the Charter. Accordingly, the Respondent seeks an order dismissing Mrs. Scott's application for judicial review of the Officer's decision.

**DATED April 19, 2013**, at the City of Vancouver, in the Province of British Columbia.



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**PART V – LIST OF AUTHORITIES**

**Appendix A - Statutes and Regulations**

*Immigration Act, 1910, R.S.C. 1927, c. 93.*

*Naturalization Act, 1914 R.S.C. 1927 c. 138.*

*Canadian Nationals Act, R.S.C. 1927, c. 21.*

*The Canadian Citizenship Act, S.C. 1946, c. 15.*

*An Act to Amend The Canadian Citizenship Act, S.C. 1950, c. 29.*

*Canadian Citizenship Act, R.S.C. 1952, c. 33.*

*An Act to amend The Canadian Citizenship Act, S.C. 1952-53, c. 23.*

*Canadian Citizenship Act, R.S.C. 1970, c. C-19.*

*Citizenship Act, S.C. 1974 - 75 - 76, c. 108 (the "1977 Citizenship Act").*

*Citizenship Act, R.S.C. 1985, c. C-29.*

*Canadian Charter of Rights and Freedoms, section 15.*

**Appendix B – Authorities**

*Augier v. Canada (Minister of Citizenship and Immigration), 2004 FC 613.*

*Benner v. Canada (Secretary of State), [1994] 1 FC 250 (FCA).*

*Benner v. Canada (Secretary of State), [1997] 1 S.C.R. 358.*

*Dubey v. Canada (Minister of Citizenship and Immigration), 2002 FCT 582.*

*Crease v. Canada, [1994] 3 FC 480 (TD).*

*Jabour v. Canada (Minister of Citizenship and Immigration), 2012 FC 98.*

*Kinsel v. Canada (Citizenship and Immigration), 2012 FC 1515.*

*Law Society of British Columbia v. Andrews, [1989] 1 S.C.R. 143.*

*Mclvor v. Canada (Registrar of Indian and Northern Affairs), 2009 BCCA 153.*

*McLean v. Canada (Minister of Citizenship and Immigration)* (1999), 177 F.T.R. 219.

*McLean v. Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 127 (C.A.)

*Quebec (Attorney General) v. A.*, 2013 SCC 5

*Rabin v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 1094.

*Solis v. Canada (Minister of Citizenship and Immigration)* (2000), 186 D.L.R. (4<sup>th</sup>) 512 (F.C.A.) at para. 4 (Leave to appeal to SCC refused [2002] S.C.C.A. No. 249 (QL)).

*Taylor v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 349.

*Veleta v. Canada (Minister of Citizenship and Immigration)* (2005), 273 F.T.R. 108.

*Veleta v. Canada (Minister of Citizenship and Immigration)* (2006), 268 D.L.R. (4<sup>th</sup>) 513 (F.C.A.)

*Wilson v. Canada (Minister of Citizenship)*, 2003 FC 1475.

*Withler v. Canada (Attorney General)*, 2011 SCC 12.

**Appendix C – Authorities**

House of Commons Debates October 22, 1945 and April 2, 1946