T-\*\*\*-\*\*

**FEDERAL COURT**

BETWEEN:

**FIRST AND LAST NAME**

Applicant

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

Respondent

**MEMORANDUM OF FACT AND LAW**

**OVERVIEW**

1. This is an Application for Leave and Judicial Review of the non-decision of the Respondent, Immigration, Refugees and Citizenship Canada (“IRCC”). IRCC has failed to duly process the Applicant’s Citizenship application, which was submitted in [date] and for which the test was completed in [date].
2. The Applicant is requesting an order for a writ of *mandamus* because IRCC has not processed his citizenship application to completion, to date.
3. We submit that the Respondent has excessively delayed the processing of the Applicant’s application to a point that well exceeds the regular processing times for similar applications. The current processing time for Citizenship applications (citizenship grant) is eight [X] months.
4. The Applicant has not received any requests or correspondence from IRCC since [X]. The Applicant is requesting that an order be issued for a writ of *mandamus*, compelling the Minister to finalize the Applicant’s application or else provide a cogent justification for refusing to do so.

**PART I – STATEMENT OF FACT**

1. The Applicant submitted his application for citizenship in [date].

***Applicant’s Affidavit,* Application Record*.***

1. The Applicant completed his citizenship test on [date] and submitted fingerprints on [date].

***Applicant’s Affidavit,* Application Record*.***

**PART II – ISSUE**

1. Whether the Respondent has unreasonably delayed the processing of the Applicant’s application for the grant of Citizenship, such that an order for a writ of *mandamus* is warranted?

**PART III – LAW AND ARGUMENT**

* 1. ***The Respondent has unreasonably delayed the processing of the Applicant’s application for a grant of Citizenship such that an order for a writ of mandamus is warranted.***

1. The equitable remedy of an order for a writ of *mandamus* compels the statutory authority (in this case, IRCC) to perform a public legal duty which is owed to the Applicant.
2. The criterion for the issuance of a writ of *mandamus* is set out in the eight-step-test outlined by the Federal Court of Appeal in *Apotex Inc v. Canada (AG).* The eight preconditions that must be met for an order of *mandamus* were recently summarized by the Federal Court in *Sharafaldin v Canada (MCI)*:
   1. there must be a public legal duty to act;
   2. the duty must be owed to the applicant;
   3. there must be a clear right to performance of that duty;
   4. where the duty sought to be enforced is discretionary, certain additional principles apply;
   5. no other adequate remedy is available to the applicant;
   6. the order sought will have some practical value or effect;
   7. there is no equitable bar to the relief sought; and
   8. on a balance of convenience an order of *mandamus* should be issued.

[***Apotex Inc v. Canada (AG),* 1993 CanLII 3004 (FCA), [1994] 1 FC 742.**](https://www.canlii.org/en/ca/fca/doc/1993/1993canlii3004/1993canlii3004.html?autocompleteStr=1993%20CanLII%203004%20&autocompletePos=1)

[***Sharafaldin v. Canada (MCI),* 2022 FC 768**](https://www.canlii.org/en/ca/fct/doc/2022/2022fc768/2022fc768.html?autocompleteStr=2022%20FC%20768%20&autocompletePos=1) **at para 34. See also** [***Oladele v. Canada,* 2022 FC 1161**](https://www.canlii.org/en/ca/fct/doc/2022/2022fc1161/2022fc1161.html?autocompleteStr=2022%20FC%201161%20&autocompletePos=1) **at para 28.**

###### a) *Apotex* criteria (1) and (2): IRCC has a public legal duty to act, which is owed to the Applicant.

i. Relevant Legislation

2) The language of the *Citizenship Act (“the Act”)* is mandatory and not permissive. Section 5(1) *the Act* states:

|  |  |
| --- | --- |
| **Grant of citizenship**   * **5** **(1)** The Minister shall grant citizenship to any person who   + **(a)** makes application for citizenship;   + **(b)** [Repealed, 2017, c. 14, s. 1]   + **(c)** is a permanent resident within the meaning of subsection 2(1) of the [Immigration and Refugee Protection Act](https://laws-lois.justice.gc.ca/eng/acts/I-2.5), has, subject to the regulations, no unfulfilled conditions under that Act relating to his or her status as a permanent resident and has     - **(i)** been physically present in Canada for at least 1,095 days during the five years immediately before the date of his or her application, and     - **(ii)** [Repealed, 2017, c. 14, s. 1]     - **(iii)** met any applicable requirement under the [Income Tax Act](https://laws-lois.justice.gc.ca/eng/acts/I-3.3) to file a return of income in respect of three taxation years that are fully or partially within the five years immediately before the date of his or her application;   + **(c.1)** [Repealed, 2017, c. 14, s. 1]   + **(d)** if 18 years of age or more but less than 55 years of age at the date of his or her application, has an adequate knowledge of one of the official languages of Canada;   + **(e)** if 18 years of age or more but less than 55 years of age at the date of his or her application, demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship; and   + **(f)** is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20. | **Attribution de la citoyenneté**   * **5** **(1)** Le ministre attribue la citoyenneté à toute personne qui, à la fois :   + **a)** en fait la demande;   + **b)** [Abrogé, 2017, ch. 14, art. 1]   + **c)** est un résident permanent au sens du paragraphe 2(1) de la [Loi sur l’immigration et la protection des réfugiés](https://laws-lois.justice.gc.ca/fra/lois/I-2.5), a, sous réserve des règlements, satisfait à toute condition rattachée à son statut de résident permanent en vertu de cette loi et :     - **(i)** a été effectivement présente au Canada pendant au moins mille quatre-vingt-quinze jours au cours des cinq ans qui ont précédé la date de sa demande,     - **(ii)** [Abrogé, 2017, ch. 14, art. 1]     - **(iii)** a rempli toute exigence applicable prévue par la [Loi de l’impôt sur le revenu](https://laws-lois.justice.gc.ca/fra/lois/I-3.3) de présenter une déclaration de revenu pour trois des années d’imposition complètement ou partiellement comprises dans les cinq ans qui ont précédé la date de sa demande;   + **c.1)** [Abrogé, 2017, ch. 14, art. 1]   + **d)** si elle a 18 ans ou plus mais moins de 55 ans à la date de sa demande, a une connaissance suffisante de l’une des langues officielles du Canada;   + **e)** si elle a 18 ans ou plus mais moins de 55 ans à la date de sa demande, démontre dans l’une des langues officielles du Canada qu’elle a une connaissance suffisante du Canada et des responsabilités et avantages conférés par la citoyenneté;   + **f)** n’est pas sous le coup d’une mesure de renvoi et n’est pas visée par une déclaration du gouverneur en conseil faite en application de l’article 20. |

1. Section 11 of the *Interpretation Act* states: “The expression ‘shall’ is to be construed as imperative”. Therefore, it is respectfully submitted that there is a public duty owed by the decision maker in this case to render a decision on the Applicant’s citizenship application.

|  |  |
| --- | --- |
| The expression “shall” is to be construed as imperative and the expression “may” as permissive.  *Interpretation Act*, RSC 1985, c I-21 at s 11. | L’obligation s’exprime essentiellement par l’indicatif présent du verbe porteur de sens principal et, à l’occasion, par des verbes ou expressions comportant cette notion. L’octroi de pouvoirs, de droits, d’autorisations ou de facultés s’exprime essentiellement par le verbe « pouvoir » et, à l’occasion, par des expressions comportant ces notions.  *Loi d’interprétation (L.R.C. (1985*), ch. I-21 at s. 11) |

***i. Duty to Act and Duty Owed to the Applicant***

1. The Applicant applied for citizenship, completed his test in [date]. There have been no additional requests made by IRCC of the Applicant, since that time. The Applicant is not inadmissible to Canada.
2. Although the Respondent is prescribed by statute to have a duty to act, to date and at the time that the Application for Leave and Judicial Review was filed, the Respondent has not taken any progressive steps towards finalizing the Applicant’s application.
3. It has now been over [X] years since the application was initially submitted.
4. The Respondent has a clear legal duty owed to the Applicant and has delayed the fulfilment of this duty, in a manner which is unreasonable and unjustified.
5. The Respondent cannot use Security Screening as a blanket justification to avoid processing applications. The Applicant has met all statutory requirements, and the Minister has a duty to issue a decision without further undue delay.

[***Almuhtadi v. Canada (Citizenship and Immigration)*, 2021 FC 712 (CanLII)**](https://canlii.ca/t/jgv01) **at para** [**40**](https://canlii.ca/t/jgv01#par40)**.**

1. ***Apotex* criteria (3): The Applicants have a clear right to the performance of that duty**
2. The right to performance of a duty to make a decision is engaged only if (1) the party asking for the *mandamus* remedy satisfied all the requirements; (2) the party asking for the *mandamus* made a prior demand for performance of the duty; and (3) the tribunal has either refused to make a decision or it has taken unreasonably long to do so.

[***Sharafaldin***](https://www.canlii.org/en/ca/fct/doc/2022/2022fc768/2022fc768.html?autocompleteStr=Sharafaldin%20&autocompletePos=1) **at para 35, citing** [***Apotex***](https://www.canlii.org/en/ca/fca/doc/1993/1993canlii3004/1993canlii3004.html?autocompleteStr=1993%20CanLII%203004%20&autocompletePos=1)**.**

1. The Applicant satisfies all the requirements
2. The *Citizenship Act* sets out the conditions for the issuance of citizenship status in section 5(1).

The Applicant submits that he properly submitted his citizenship application, in accordance with the conditions precedent in section 5(1) of the *Citizenship Act.*

1. ***The Applicant has made a prior demand for performance of the duty***
2. The Applicant has requested numerous status updates and requests regarding the processing of his application, via his MP and the call center.

***Applicant’s Affidavit,* Application Record*.***

1. IRCC has taken unreasonably long to make a decision.
2. A delay may be unreasonable if (1) the delay in question is *prima facie* longer than the nature of the process required; (2) the applicant is not responsible for the delay; and (3) the authority responsible for the delay has not provided satisfactory justification.

[***Conille v. Canada (MCI),* 1998 CanLII 9097 (FC), [1999] 2 FC 33**](https://www.canlii.org/en/ca/fct/doc/1998/1998canlii9097/1998canlii9097.html?autocompleteStr=Conille%20v%20Canada%20&autocompletePos=1) **[*Conille*].**

[***Thomas v. Canada (MPSEP*), 2020 FC 164 at para 19,**](https://www.canlii.org/en/ca/fct/doc/2020/2020fc164/2020fc164.html?autocompleteStr=thomas%20v%20canada%202020&autocompletePos=1) **citing** [***Conille***](https://www.canlii.org/en/ca/fct/doc/1998/1998canlii9097/1998canlii9097.html?autocompleteStr=Conille%20v%20Canada%20&autocompletePos=1) **at para** [**23**](https://canlii.ca/t/j50lb#par23)**.**

1. As of [date] IRCC’s website states that the processing time for a Citizenship Grant application, is [X] months.

***Applicant’s Affidavit,* Application Record*.***

1. As justification for the delay, IRCC rely upon the blanket statement that security checks are pending. This Court has repeatedly held that such an explanation alone is inadequate.

[***Almuhtadi v. Canada (Citizenship and Immigration)*, 2021 FC 712**](https://canlii.ca/t/jgv01) **Para** [**40**](https://canlii.ca/t/jgv01#par40)**.**

1. There is no explanation for why the Applicant is still awaiting the finalization of his application. If there is something that IRCC needs from the Applicant, they only need to request it. To hold the application and not advise the Applicant why the application is being held, is unfair and unreasonable.
2. Moreover, in *Abdolkhaleghi v. Canada (MCI),* the Federal Court held that “if there is a long delay without adequate explanation the *mandamus* can follow.”

[***Abdolkhaleghi v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 729**](https://www.canlii.org/en/ca/fct/doc/2005/2005fc729/2005fc729.html?autocompleteStr=Abdolkhaleghi%20v%20Canada%20&autocompletePos=1) **at para 26.**

1. A final determination for the Applicant’s citizenship application has not been made despite there being nothing outstanding, as far as the Applicant is aware.

***Applicant’s Affidavit,* Application Record*.***

1. The Applicant has satisfied all the preconditions for citizenship. Moreover, the Applicant currently has no outstanding requests from IRCC. The Applicant is not responsible for the delay in any way.

***Applicant’s Affidavit,* Application Record*.***

1. No information has been provided by the Respondent that adequately justifies this unreasonably long processing delay, despite the Applicant calling the call center, and asking his MP to look into the matter.
2. This Honourable Court in *Dragan v. Canada (MCI)* held that “neglect to perform the duty or unreasonable delay in performing it may be deemed an implied refusal to perform.”

[***Dragan v. Canada (MCI),* [2003] 4 FC 189,**](https://www.canlii.org/en/ca/fct/doc/2003/2003fct211/2003fct211.html?autocompleteStr=Dragan%20v.%20Canada%20(Minister%20of%20Citizenship%20and%20Immigration&autocompletePos=1) **at para 45.**

1. Considering the above reasons, we submit that the Applicant has a clear right to performance. We further submit that the performance is impliedly refused owing to unjust and unexplained delay, in excess of the estimated timelines, where there have been no issues identified to the Applicant as a cause for delay.
2. ***Apotex* criteria (5) and (6) – *Mandamus* is the only remedy for the Applicant and the order sought will be of some practical value or effect**
3. The Respondent has refused to grant the Applicant’s citizenship, and there is no other remedy but mandamus to compel the Minister to do so. There is no alternative method to issue the oath of citizenship invitation.
4. An order allowing *mandamus* will be of practical value to the Applicant as it is the only means by which the Applicant can ensure that his application is processed and decided.
5. A refusal to grant the remedy of *mandamus* will cause the Applicant to continue to wait for the processing of her application.
6. ***Apotex* criteria (7): There is no equitable bar to relief**
7. There is no equitable bar for the Court to exercise discretion in favour of the Applicant. The Applicant has “clean hands” and is not responsible for the delay.
8. The Minister is responsible for the unreasonable delay in the processing of the Applicant’s citizenship application. The Applicant has acted in accordance with the requirements of the *Citizenship Act and the Immigration and Refugee Protection Act* and *Regulations* and has satisfied all of the statutory elements.

###### *Apotex* criteria (8): Balance of convenience lies with the Applicant

1. For the foregoing reasons, we submit that the balance of convenience lies with the Applicant.

**PART IV – THE TEST FOR LEAVE**

1. It is respectfully submitted that there is an arguable case on the merits and that the Applicant has met the test for the granting of leave.

***Bains v. Canada (Minister of Employment and Immigration)*, [1989] 3 FC 487, 38**

###### Admin LR 241.

###### PART V – ORDER SOUGHT

34. The Applicant requests that this application for leave and judicial review be allowed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED:**

DATED this [X]th day of [date].

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**First And Last Name**

*Full* Address

City, Province

Zip Code

Tel: (\*\*\*) \*\*\*-\*\*\*\*

Fax: (\*\*\*) \*\*\*-\*\*\*\*

Email: your email address

**To:** **Shalene Curtis-Micallef**

Deputy Attorney General of Canada Department of Justice

120 Adelaide Street West, Suite 400 Toronto, Ontario

M5H 1T1

Tel: (416) 973-0942

Fax: (416) 954-8982

Email: [AGC\_PGC\_TORONTO.IMM@JUSTICE.GC.CA](mailto:AGC_PGC_TORONTO.IMM@JUSTICE.GC.CA)