

## CITIZENSHIP AND IMMIGRATION

### STATUS IN CANADA

#### *Citizens*

Motion by respondent pursuant to *Federal Courts Rules*, SOR/98-106 (Rules), r. 74 seeking to remove notice of appeal from court file, for court file to be closed because Court lacking jurisdiction — Appellant appealing from Federal Court (F.C.) decision (2018 FC 151) declaring respondent citizen of Canada in underlying action — F.C. not certifying question under *Citizenship Act*, R.S.C., 1985, c. C-29 (Act), s. 22.2(d) — Court allowing appellant's notice of appeal to be filed — In making this decision, whether Court already deciding issue under r. 74 — Transmittal sheet from Registry prompting Court's direction suggesting that Rules, r. 72 was the concern at that time — R. 72 concerning formal defects in document presented for filing or failure to satisfy conditions precedent for filing — R. 74 dealing with whether document should be removed because of fatal substantive defect — Whether Court having jurisdiction to consider appeal despite absence of certified question — Act, s. 22.2(d), *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 74(d) imposing statutory bar against appeals unless F.C. certifying question — Court nevertheless recognizing certain "well-defined", "narrow" categories of exception, allowing appeals falling within categories to be brought — Only plausible basis for judge-made exceptions to statutory bars is constitutional principle, i.e. rule of law, recognized in preamble to *Constitution Act, 1982*, unwritten principles of Constitution — Case law has not defined particularly well exception for loss of jurisdiction for fundamental flaw in proceeding going to root of F.C.'s ability to decide case — Threshold for exception remaining exceedingly difficult to meet — High threshold allowing Parliament's preference for absolute bar to prevail in all cases except for those rare cases where concerns based on constitutional principle of rule of law most pronounced — "Rule of law" limited concept illustrated by rare cases successfully applying it in this context — Here, F.C. granting citizenship to respondent, but clear language of Act giving this power only to appellant Minister — Apparent exceedance of authority implicating rule of law in serious way — Follows that Court having jurisdiction over notice of appeal; should not remove notice of appeal, close court file — Motion dismissed

CANADA (CITIZENSHIP AND IMMIGRATION) V. TENNANT (A-104-18, 2018 FCA 132, Stratas J.A., judgment dated July 4, 2018, 11 pp.)