Law Society of Ontario | Barreau de l'Ontario

31st Immigration Law Summit
DAY TWO

CO-CHAIRS

Joo Eun Kim, Staff Lawyer, Refugee Law Office
Legal Aid Ontario

Dupé Oluyomi-Obasi, Senior Counsel and Deputy Regional Director
National Litigation Sector, *Department of Justice Canada*

November 22, 2023

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Law Society of Ontario | Barreau de l'Ontario

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November 17, 2023

31st Immigration Law Summit
DAY TWO

CO-CHAIRS: **Joo Eun Kim**, Staff Lawyer, Refugee Law Office*, Legal Aid Ontario*

Dupé Oluyomi-Obasi, Senior Counsel and Deputy Regional Director, National Litigation Sector*, Department of Justice Canada*

November 22, 2023
9:00 a.m. to 4:30 p.m.
Total CPD Hours = 5 h Substantive + 1 h Professionalism
+ 30 m EDI Professionalism

Law Society of Ontario
Donald Lamont Learning Centre
130 Queen St. W.
Toronto, ON

SKU CLE23-01112

Agenda

9:00 a.m. – 9:05 a.m. **Welcome**

Dupé Oluyomi-Obasi, Senior Counsel and Deputy Regional Director, National Litigation Sector*, Department of Justice Canada*

Joo Eun Kim, Staff Lawyer, *Refugee Law Office, Legal Aid Ontario*

9:05 a.m. – 9:35 a.m.	**Major Case Law Update** Daniel Engel, Senior Counsel, *Department of Justice Canada* Emma White, Staff Lawyer, LAO LAW, *Legal Aid Ontario*
9:35 a.m. – 9:45 a.m.	**Question and Answer Session**
9:45 a.m. – 10:30 a.m.	**The SCC's Judgments in *Mason* and *CCR*: Implications for Future Litigation** Mahan Keramati, Senior Counsel, *Department of Justice Canada* Jamie Liew, Associate Professor, Faculty of Law, *University of Ottawa* Jared Will, *Jared Will & Associates* Marianne Zoric, General Counsel, *Department of Justice Canada*
10:30 a.m. – 10:40 a.m.	**Question and Answer Session**
10:40 a.m. – 11:00 a.m.	**Break**
11:00 a.m. – 11:50 p.m.	**Best Practices Roundup (Portals, Eligibility)** Andrea Ethier, Acting Director, Refugee Division, Intelligence and Enforcement Branch*, Canada Border Services Agency* Kia Jacobs, Acting Manager, Refugees Unit Intelligence and Enforcement Branch, *Canada Border Services Agency* Razmeen Joya, *Jackman & Associates* Adam Sadinsky, *Silcoff Schacter*

11:50 p.m.– 12:00 p.m.	**Question and Answer Session**
12:00 p.m. – 1:00 p.m.	**Lunch Break**
1:00 p.m. – 1:55 p.m.	**Stay of Removal Applications, Directives, How to Prepare a Stay Application, Challenges for the Applicants, Best Practices** The Honourable Justice Sébastien Grammond, *Federal Court of Canada* Naseem Mithoowani, *Mithoowani Waldman Immigration Law Group* Nastaran Roushan, *Seabrook Workplace Law* Nadine Silverman, Counsel, *Department of Justice Canada*
1:55 p.m. – 2:05 p.m.	**Question and Answer Session**
2:05 p.m. – 2:30 p.m.	**The Science of Unconscious Bias** (25 m EDI e) Kerry Kawakami, Department of Psychology, *York University*
2:30 p.m. – 2:35 p.m.	**Question and Answer Session** (5 m EDI e)
2:35 p.m. – 2:55 p.m.	**Break**
2:55 p.m. – 3:45 p.m.	**Drawing Boundaries, Managing Expectations** (50 m P) Hajnalka Fiszter, Mental Health Counsellor/Psychotherapist, *Therapy on Harbord* Nir Gepner, *Willowdale Community Legal Services* Fedora Mathieu, Staff Lawyer, *Legal Aid Ontario*

3:45 p.m. – 3:55 p.m.	**Question and Answer Session** (10 m P)
3:55 p.m. – 4:25 p.m.	**Federal Court Update** The Honourable Justice Mandy Aylen, *Federal Court of Canada* The Honourable Justice Patrick Gleeson, *Federal Court of Canada*
4:25 p.m. – 4:30 p.m.	**Question and Answer Session**
4:30 p.m.	**End of Day Two**

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31st Immigration Law Summit
DAY TWO

Major Case Law Update

November 22, 2023

Major Case Law Update

Emma White, Staff Lawyer, LAO LAW, *Legal Aid Ontario*

REFUGEES

Eligibility

***Canadian Council for Refugees v. Canada (MCI)*, 2023 SCC 17**

Key Finding(s): Section 159.3 of the IRPR is not ultra vires, nor does it breach s.7 of the *Charter*. "The legislation is tailored to prevent certain infringements of s. 7 interests and, importantly for present purposes, survives constitutional scrutiny here because legislative safety valves provide curative relief" (at para. 10).

Background Facts: The Safe Third Country Agreement [STCA] is given effect in Canadian law through the IRPA and the IRPR. Under s.101(1)(e) of the IRPA, refugee claims are ineligible for consideration if the claimant came from a country designated by the regulations. The United States is designated under s.159.3 of the IRPR. The appellants challenged this legislative scheme principally on the basis that it violates ss.7 and 15 of the *Charter*. The Federal Court judge was persuaded that s.7 was violated and that this breach was not justified under s.1 of the *Charter*. She declared s.101(1)(e) of the IRPA and s.159.3 of the IRPR of no force or effect under s.52 of the *Constitution Act, 1982*. By contrast, the Federal Court of Appeal held that the *Charter* challenge was not properly constituted and allowed the appeal.

Disposition: The appeal was allowed in part. The challenge based on s.15 of the *Charter* was remitted to the Federal Court.

Other Relevant Findings: Section 159.3 of the IRPR was an appropriate focus of the *Charter* challenge. The Supreme Court agreed with the Federal Court judge's findings that the liberty and security of the person interests of refugee claimants are engaged by the Canadian legislation that renders their claims ineligible, and rejected the notion that the

claimants' s.7 interests are not engaged simply because the legislation contains measures that could ultimately have offered protection.

***Garces v. Canada (MPSEP)*, 2023 FC 798**

Key Finding(s): The Minister's delegates failed to explain how an unaccompanied minor who lacks legal capacity can be considered to have made a claim within the meaning of s.101(1)(c.1) of the IRPA.

Background Facts: While the applicants were unaccompanied minors (aged 14 and 11), they signed forms to claim refugee status in the United States. There was no indication that they had a designated representative, nor did their mother participate in the process. The applicants subsequently withdrew their US application for asylum and were re-united with their mother in Canada. The Minister's delegates found the applicants ineligible to claim refugee status in Canada, pursuant to s.101(1)(c.1) of the IRPA.

Disposition: The applications for judicial review were granted, the decisions of the Minister's delegates in respect of the applicants were quashed, and the matter was remitted to a different Minister's delegate for redetermination.

Other Relevant Findings: International law was relevant to the present matter insofar as it highlighted the vulnerable position of unaccompanied minors and showed that the solution provided by Canadian law, namely, the appointment of a designated representative, has gained wide acceptance. To the extent that this is relevant to the interpretation and application of s.101(1)(c.1) of the IRPA, it forms part of the legal landscape that constrains the decision-maker.

***Frederic Hakizimana, et al. v. Canada (MPSEP), et al.*, Case Number 40159**: The applications for leave to appeal from the judgment of the Federal Court of Appeal, Number A-159-20, 2022 FCA 33, dated February 23, 2022, were dismissed without costs.

Exclusion

***Dos Santos E Silva v. Canada (MCI)*, 2023 FC 341**

Key Finding(s): The RPD should consider the penalty for a crime at the time of the assessment when determining exclusion under Article 1F(b).

Background Facts: The RAD found that the applicant was excluded pursuant to Article 1F(b), as he had committed serious non-political crimes in the United States, including a 2016 charge for driving under the influence. In December 2018, the maximum penalty under Canada's *Criminal Code* for operating a vehicle while impaired with alcohol was raised from five to ten years of imprisonment. The increase in maximum penalty led the RAD to conclude that the applicant's crime was presumed to be serious. The RAD rejected the applicant's argument (which was based on *Tran v. Canada (MPSEP)*, 2017 SCC 50) that the RPD was bound to consider his offence against the *Criminal Code* provisions in effect in 2016; instead, the RAD applied *Sanchez v Canada (MCI)*, 2014 FCA 1577, which explicitly states that the RPD should consider the penalty at the time of the assessment when determining exclusion under Article 1F(b).

Disposition: The application for judicial review was dismissed.

Other Relevant Findings: It was not for the RAD to expand the application of *Tran*, when there was no indication that the analysis in that decision was extended beyond s.36(1)(a) of the IRPA. The *Sanchez* decision, however, was precisely on point, holding that: "If a change to the penalty for the Canadian equivalent offence has occurred, the assessment should be done at the time when the Refugee Protection Division is determining the issue

of the section 1F(b) exclusion." It was reasonable for the RAD to conclude that this reasoning remained applicable to the matter at hand.

***Nader v. Canada (MCI)*, 2023 FC 265**

Key Finding(s): The RAD erred by aggregating several unrelated, non-serious crimes in finding that the applicant had committed a serious non-political crime for the purposes of Article 1F(b). Further, by aggregating the crimes, the RAD improperly considered post-offence conduct.

Background Facts: The applicant had been arrested and charged with the following criminal offences in the UK: handling stolen goods (11 motorcycles with an estimated value exceeding $80,000 CAD); possession of a controlled substance (cannabis) with intent to supply; and possession of a prohibited weapon (a Taser stun gun). The applicant pleaded guilty to the weapon charge and not guilty to the stolen goods and controlled substance charges. He left the UK for Iraq shortly prior to his trial date, then travelled to Canada from Iraq to make a refugee claim. The RPD and the RAD found that he was excluded under Article 1F(b).

Disposition: The application for judicial review was granted and the matter was returned for redetermination by a different member of the RAD.

Other Relevant Findings: In addition to its errors in aggregating the Taser and cannabis charges when finding that the handling stolen goods charge constituted a serious non-political crime, the RAD's assessment of the contextual factors and the resulting finding that the handling stolen goods crime was "serious" under Article 1F(b) were also unreasonable.

***Canada (MCI) v. Alamri*, 2023 FC 203**

Key Finding(s): Neither personal participation nor personal proximity to the relevant crimes is necessary to be found complicit in crimes against humanity. Individuals may be criminally culpable despite engaging in activities that are seemingly indirect and remote from a crime.

Background Facts: The respondent had been a member of the Green World Revolutionary Guard and a personal bodyguard to former Libyan leader Mummar Gaddafi. The RPD found the respondent complicit in crimes against humanity and therefore excluded from Convention refugee protection. The RAD found that while the respondent's contributions to crimes against humanity were voluntary and knowing, they were not significant. The RAD held that the RPD erred in excluding the respondent, and substituted its finding that the respondent was a Convention refugee.

Disposition: The application for judicial review was allowed and the matter was referred to a different panel of the RAD for reconsideration.

Other Relevant Findings: The only issue was whether the respondent's contribution was "significant." The RAD erred by finding that the respondent's indirect involvement in the regime's crimes was a mitigating factor. In addition, the RAD failed to reasonably address the Minister's argument that the respondent was criminally complicit through his role as one of Gaddafi's bodyguards.

Cessation

***Ahmad v. Canada (MCI)*, 2023 FC 1087**

Key Finding(s): The RPD failed to consider the applicant's actual knowledge of the significance of travelling on his Pakistani passport. "That significance, i.e., that such travel means relying on that country's protection, gives rise to potential immigration consequences and therefore must be considered in assessing intention to re-avail" (at para. 24).

Background Facts: Since being granted refugee protection and permanent residence, the applicant had been issued two Pakistani passports, and had travelled to Pakistan on nine occasions. At his cessation hearing, the applicant testified that he did not know that travelling on a Pakistani passport meant that he was relying on the government of Pakistan for protection; he thought that it was simply a travel document. The RPD found that the applicant's refugee protection had ceased on the basis of reavailment.

Disposition: The application for judicial review was allowed, the RPD's decision was set aside, and the matter was returned to another member of the RPD for redetermination.

Other Relevant Findings: The RPD failed to properly engage with the applicant's evidence when it found that his permanent resident status in Canada was insufficient to rebut the presumption that he intended to re-avail. The RPD did not demonstrate a consideration of the applicant's subjective intention.

***Yao v. Canada (MCI)*, 2023 FC 920**

Key Finding(s): The RPD failed to consider the applicant's testimony regarding his intention in obtaining a Chinese passport. The RPD needed to at least consider whether this evidence was capable of rebutting the presumption that the applicant intended to avail himself of China's protection.

Background Facts: Since being granted refugee protection and permanent residence, the applicant had renewed his Chinese passport, which he used to travel between Canada and the United States. The applicant also made three trips to China for family reasons. The RPD found that the applicant's refugee status had ceased on the basis of reavailment.

Disposition: The application for judicial review was allowed and the matter was remitted for redetermination by a different member of the RPD.

Other Relevant Findings: The RPD conflated the analyses required at the three stages of the reavailment test by relying on the same facts at each stage, without ever considering whether the applicant intended to avail himself of China's protection.

Abbas v. Canada (MCI), 2023 FC 871

Key Finding(s): The RPD erred in refusing to explain its decision to consider s.108(1)(a) of the IRPA in light of the accepted fact that the applicant took no action to obtain a Pakistani passport or to travel to Pakistan until the reasons for which he had received protection in Canada had ceased.

Background Facts: The applicant was a journalist and citizen of Pakistan who had authored articles critical of the Musharraf regime. He fled Pakistan in 2002 and was granted refugee status in Canada, becoming a permanent resident in 2009. The applicant obtained a Pakistani passport in December 2008 (after the Musharraf regime had ended), renewed it on several occasions, and travelled to Pakistan a number of times between 2009 and 2021. The RPD granted the Minister's cessation application on the basis of both s.108(1)(a) and s.108(1)(e) of the IRPA.

Disposition: The application for judicial review was allowed in part and the decision was set aside in part. The matter was referred back to a differently constituted panel of the RPD to reconsider, based on the Court's reasons, only that part of the Minister's application for cessation made pursuant to s.108(1)(a) of the IRPA.

Other Relevant Findings: The RPD unreasonably conflated voluntariness and intention in its analysis of the applicant's subjective intention to reavail himself of the protection of Pakistan. This error led to a flawed consideration of the applicant's intention in returning to the country using a Pakistani passport.

***Li v. Canada (MCI)*, 2023 FC 792**

Key Finding(s): The RPD's failure to meaningfully engage with the applicant's actual knowledge of the consequences of returning to China was sufficient to render the decision unreasonable.

Background Facts: Since being granted refugee protection and permanent residence, the applicant obtained a new Chinese passport, and made three trips to China. The RPD found that the applicant's refugee protection had ceased on the basis of reavailment.

Disposition: The application for judicial review was granted, the decision under review was set aside, and the matter was referred back for redetermination by a different decision-maker.

Other Relevant Findings: The RPD was not entitled to presume that the applicant was aware of the consequences of returning to China on the basis of evidence that he had initiated his own refugee claim at 45 years old and had been able to obtain a Chinese passport. The question is not whether the applicant *should have* known that he would lose his permanent resident status, but whether he *did* subjectively intend to depend on China's protection, which involves a consideration of whether he had actual knowledge of the consequences of reavailment.

***Begum v. Canada (MCI)*, 2023 FC 1317**

Key Finding(s): It was a reviewable error for the RPD to dismiss the applicant's testimony that she was unaware of the immigration consequences of travelling to Pakistan because she ought to have known the consequences of her actions. This error was compounded by the suggestion that the applicant could have consulted her former counsel or her relatives who were Convention refugees in Canada.

Background Facts: The applicant was an Ahmadi citizen of Pakistan who was granted refugee protection in 2012 based on her religion. In 2014 and in 2018, the applicant applied for and received a Pakistani passport, which she used to make six trips to Pakistan between 2014 and 2020. In 2021, the Minister made a cessation application, which the RPD granted on the basis of reavailment.

Disposition: The application for judicial review was granted and the decision was set aside to be returned to a different panel of the RPD for reconsideration.

Other Relevant Findings: Failing to identify the agents of persecution was a significant gap in the RPD's reasoning, given the applicant's evidence that she took measures to hide from local religious leaders. The RPD also failed to consider the precautionary measures the applicant took. Finally, the RPD failed to consider the applicant's personal attributes; her minimal education could very well have had a bearing on her understanding of the consequences associated with her travels.

***Linares c. Canada (MCI)*, 2023 CF 446**

Key Finding(s): The RPD's failure to consider the applicant's lack of subjective knowledge of the consequences of returning to Peru rendered the decision unreasonable. The fact that the relevant trips to Peru took place during years when loss of refugee status had no impact on permanent resident status should have been part of the analysis of subjective knowledge.

Background Facts: The applicant made a successful refugee claim in 2006 and became a permanent resident in 2007. Since that time, the applicant travelled frequently (including five trips to Peru) using her Peruvian passport, which she renewed in 2010. The RPD found that while two of the trips to Peru were justified due to exceptional circumstances, the cessation application would be granted based on the first three trips to Peru (which were

for the purpose of visiting and aiding her ailing mother) and the passport renewal. The first three trips took place between 2008 and 2010, prior to the passport renewal.

Disposition: The application for judicial review was granted, the decision of the RPD was set aside, and the matter was returned for further consideration by a differently constituted tribunal.

Other Relevant Findings: The applicant's first three trips to Peru occurred before she renewed her passport; therefore, the RPD's statement that the applicant had used her renewed passport to return to Peru five times was inaccurate, and it accentuated the unreasonableness of the RPD's conclusions on the applicant's subjective intent. The RPD also erred in confusing the purpose of the applicant's first three trips with the timing of the trips. The fact that the trips took place when applicant was on leave from her studies did not alter the reason for the trips; it was unreasonable for the RPD to deny the exceptional circumstances of these trips on the basis of their timing. Further, the RPD erred in its application of the presumption of reavailment with respect to the renewal and use of the applicant's Peruvian passport.

***Ahmad v. Canada (MCI)*, 2023 FC 8**

Key Finding(s): The RPD's analysis of the applicant's intent to reavail was deficient. By repeatedly asking the applicant to demonstrate that his presence in Pakistan was absolutely necessary, the RPD failed to consider how compelling the applicant's reasons for return were from his own perspective.

Background Facts: The applicant used his Pakistani passport to travel to Pakistan on five occasions between 2008 and 2014. He also used his Pakistani passport to travel to the United States for work. In 2021, the RPD granted the Minister's application to cease the applicant's refugee status on the basis of reavailment.

Disposition: The application for judicial review was allowed, the RPD's decision was set aside, and the matter was referred to a differently constituted panel for redetermination.

Other Relevant Findings: The RPD made unreasonable credibility findings that prevented it from properly assessing the purpose of the applicant's travels and related intent to reavail, if any.

***Ceki v. Canada (MCI)*, 2023 FC 1284**

Key Finding(s): The RPD's failure to consider all available evidence on the applicant's subjective knowledge of the consequences of obtaining Turkish documents and travelling to Turkey rendered the decision unreasonable.

Background Facts: Since being granted refugee protection and permanent residence, the applicant obtained a Turkish passport, which she used to travel to Turkey, as well as other official Turkish documents (e.g. national ID card, driver's licence). The audio files of the cessation hearing indicated that the applicant gave evidence that none of her lawyers had advised her that she could lose her permanent residence status if she obtained a Turkish passport and national ID card and returned to Turkey. Her testimony was that she only learned of this risk after the Minister brought a cessation application against her. The RPD found that her refugee protection had ceased on the ground of reavailment.

Disposition: The application for judicial review was granted, the decision was set aside, and the matter was remitted to a different RPD member for redetermination.

Other Relevant Findings: The court acknowledged that the RPD found that the applicant was not credible and that her conduct demonstrated a lack of subjective fear. However, the question of whether the applicant's evidence as to her state of knowledge with respect to the cessation provisions was credible and/or sufficient was not assessed by the RPD.

***Anvar v. Canada (MCI)*, 2023 FC 1194**

Key Finding(s): The RPD erred by failing to consider the applicant's lack of subjective knowledge of the consequences of travelling on his Afghan passport.

Background Facts: The applicant was determined to be a Convention refugee in November 2005 and he resettled in Canada in 2006. In 2022, the RPD found that the applicant had voluntarily reavailed himself of the protection of Afghanistan, as he had applied for and received three Afghan passports and travelled to Afghanistan five times between 2007 and 2015.

Disposition: The application for judicial review was granted and the matter was returned for redetermination by a differently constituted panel of the RPD.

Other Relevant Findings: The respondent argued that, given the limited evidence to rebut the presumption of reavailment, the RPD's failure to consider the applicant's subjective knowledge did not give rise to a reviewable error. However, the court found that, in view of the potential significance of the evidence concerning the applicant's awareness of the consequences of his actions, the appropriate remedy was to send the matter back for redetermination.

Vacation

***Bhuchung v. Canada (MCI)*, 2023 FC 1009**

Key Finding(s): "[W]hile new evidence is not permitted under subsection 109(2) to uphold the original determination, it is permitted under subsection 109(1) to show that there was no misrepresentation" (at para. 48).

Background Facts: The Minister filed a vacation application on the basis of misrepresentation of personal and national identity. The RPD found that the new evidence tendered by the applicant to establish his identity was inadmissible and allowed the Minister's vacation application.

Disposition: The application for judicial review was allowed, the decision of the RPD was set aside, and the matter was remitted for reconsideration by a different decision-maker.

Other Relevant Findings: The RPD's determination that the applicant's new evidence was inadmissible was based on an erroneous application of the principles governing the evidence that may be considered on an application to vacate. The applicant was entitled to adduce evidence that was responsive to the Minister's allegation under s.109(1) of the IRPA, and the RPD was required to consider it.

***Ganeswaran v. Canada (MCI)*, 2022 FC 1797**

Key Finding(s): It was an abuse of process for the RPD to proceed with hearing the Minister's vacation application given the inordinate delay (almost 10 years). The delay resulted in significant prejudice to the applicants, was manifestly unfair, and brought the administration of justice into disrepute.

Background Facts: In 2008, approximately one month after their refugee claims were accepted, immigration officials discovered that the applicants had not arrived in Canada from Sri Lanka (as they'd claimed), but had instead lived for many years in Switzerland (where all three children were born). In April 2018, the Minister filed an application to vacate the applicants' Convention refugee status. The RPD found that although there was no explanation for the almost 10-year delay (which it found to be inordinate), the vacation application could still proceed, and it granted the application.

Disposition: The application for judicial review was granted, the RPD's decision was quashed, and the matter was not remitted for redetermination.

Other Relevant Findings: The delay was inordinate and the Minister did not provide adequate reasons for why it had taken almost 10 years to bring forward the application. The stakes for the applicants had changed because of the Minister's excessive delay. The complexity here was that the benefit to the applicants and the prejudice they suffered were tied together and directly proportional. On the facts, the applicants established that the Minister's inordinate delay resulted in significant prejudice to them. The court concluded that an abuse of process was established. Allowing the vacation application to continue would result in more harm to the public interest than permanently staying the proceedings.

***Mohamed v. Canada (MIRC)*, 2023 FC 1330**

Key Finding(s): The RPD's decision was unreasonable because it failed to address whether the applicant's lack of disclosure amounted to a material misrepresentation.

Background Facts: The applicant was a citizen of Somalia who claimed that he had obtained refugee protection in the United States in 1992 based on a false identity. In 1994, he made a successful refugee claim under his true identity in Canada. Many years later, the RPD vacated the applicant's refugee status, finding that he had achieved refugee status in Canada by misrepresenting material facts, and that, if the true facts had been known, the applicant would have been excluded from refugee protection on the basis of Article 1E (due to his status in the US).

Disposition: The application for judicial review was allowed and the matter was returned to another panel of the RPD for redetermination.

Other Relevant Findings: On an application to vacate, the RPD must determine whether the original decision granting refugee protection was obtained as a result of a misrepresentation or a withholding of material facts relating to a relevant matter. This involves a three-pronged approach: i) a finding that there was a misrepresentation or a withholding of material fact(s); ii) a finding that the fact(s) relate to a relevant matter; iii) a finding that there is a causal connection between the misrepresentation or lack of disclosure and the favourable result. Here, the RPD failed to satisfy the first prong: the applicant's failure to disclose that he had obtained status in the US using a false identity was not a material representation.

Miscellaneous

***Nambazisa v. Canada (MCI)*, 2023 FC 617**

Key Finding(s): The RPD's failure to respect the applicant's language rights was an important element that contributed to the unreasonableness of the decision. The right of the public as to the language of communications and services prevails over the right of officers of federal institutions to work in their preferred official language.

Background Facts: The RPD issued a notice of decision in French, accompanied by reasons in English, and then provided the French translation of the reasons three months later. On judicial review, the applicant submitted that the RPD was not entitled to provide him with untranslated reasons in English, as the hearing had taken place in French and he had selected French as his official language of choice for the RPD proceeding. He further submitted that he had a reasonable expectation, from the RPD's own practice, that he would receive reasons in the official language he understood and which he had selected for the hearing.

Disposition: The application for judicial review was granted, the decision of the RPD was set aside, and the matter was referred back to a differently constituted panel for reconsideration based on the Court's reasons.

Other Relevant Findings: The issuance of the decision in English was contrary to the RPD's own usual practice, yet the RPD was silent on any reasons for departing from this practice. This unjustified departure from past practice raised questions of arbitrariness in the decision-making process, and undermined public confidence in administrative decision-makers and in the justice system as a whole (at para. 47). Further, it was difficult to figure out how an administrative decision can bear the hallmarks of reasonableness if the language in which it is issued makes the decision opaque, unreadable, and unintelligible to the litigant directly affected by it (at para. 52). The RPD's error had a very serious impact on the applicant, as it directly affected his participatory rights to a judicial review of the RPD decision before the Federal Court.

***Guzman De Pena v. Canada (MCI)*, 2023 FC 213**

Key Finding(s): In the context of s.97 of the IRPA, it is important not to conflate the initial reason for the threat (e.g. owning a business) with the risks a person faces once they have been targeted. The specific threats the person faces are more important than the original perceived motivation of those who threaten them.

Background Facts: The applicant faced extortion and escalating threats by the MS-13 gang in El Salvador. The RPD described the applicant's fear as follows: "The panel finds the claimant's fear is a generalized one, she will be targeted to pay a "rent" and should she fail to comply, she would be killed." The RPD found that this did not bring the applicant within s.97 of the IRPA, because "everyone in El Salvador faces a similar risk as the claimant fears experiencing, that of extortion."

Disposition: The application for judicial review was granted, the decision of the RPD was quashed and set aside, and the matter was remitted back to the RPD for reconsideration of the s.97 issue.

Other Relevant Findings: Prior to being targeted, the applicant may have faced a generalized risk simply by virtue of operating a store in El Salvador; however, the RPD failed to consider whether this turned into a personalized risk once MS-13 began targeting her. The RPD's decision was unreasonable because it did not explain how or why the applicant's narrative – which the RPD found credible – was not sufficient to establish that she faced a personalized risk in El Salvador.

***Jalloh v. Canada (MCI)*, 2023 FC 948**

Key Finding(s): Even if an applicant has never received Convention refugee status, a PRRA officer may be required to consider the "compelling reasons" exception.

Background Facts: The applicant came to Canada in 2007 as a member of the family class, but subsequently lost his permanent resident status as the result of a criminal conviction. The officer accepted the facts of the applicant's past as a child soldier in Sierra Leone, but did not consider the "compelling reasons" exception in rejecting his PRRA application. On judicial review, the Minister submitted that the officer was not obligated to consider the "compelling reasons" exception because the applicant had never received Convention refugee status.

Disposition: The application for judicial review was allowed, the decision was set aside, and the matter was remitted to a different officer for redetermination.

Other Relevant Findings: The court referred to the decision in *Yamba v. Canada (MCI)*, 2000 CanLII 15191 (F.C.A.), and cited paragraph 6: "In summary, in every case in which the Refugee Division concludes that a claimant has suffered past persecution, but this [sic] has been a change of country conditions under paragraph 2(2)(e), the Refugee Division is obligated under subsection 2(3) to consider whether the evidence presented establishes that there are "compelling reasons" as contemplated by that subsection. This obligation arises whether or not the claimant expressly invokes subsection 2(3)…"

***Fardusi v. Canada (MCI)*, 2022 FC 1568**

Key Finding(s): The RAD erred by failing to provide justification for its conclusion that a woman (whose allegations of persecution by her husband were found to be credible) was obliged to contact her persecutor to obtain information to assist her in proving her refugee claim.

Background Facts: The principal applicant [PA] and her children feared persecution from the PA's husband and from people in conflict with her husband. The RPD found the applicants to be generally credible, but concluded that they had a viable IFA. The RAD refused to admit the applicants' new evidence (the husband's Custody Application, which contained evidence about the agents of persecution and which was relevant to the question of IFA) because it contained information that existed prior to the rejection of the claim. The RAD dismissed the appeal on the basis of IFA.

Disposition: The application for judicial review was allowed, the decision of the RAD was set aside, and the matter was returned to a differently constituted panel for redetermination.

Other Relevant Findings: It was unreasonable for the RAD to conclude that the information contained in the Custody Application was reasonably available to the PA at the time of the rejection of her claim by the RPD. The RAD's reasoning ignored the fact that the husband was one of the PA's agents of persecution. The RAD's analysis surrounding the admissibility of the Custody Application, and the other proposed new evidence related to the information disclosed by the Custody Application, was logically flawed. This evidence was material to the applicants' refugee claim and the IFA analysis.

ADMISSIBILITY

***Canada (MPSEP) v. Ukhueduan*, 2023 FC 189**

Key Finding(s): Nothing in s.34(1)(f) of the IRPA requires a member to be a "true" member who contributed significantly to the wrongful actions of the group. A person's admission of membership in an organization is sufficient to meet the membership requirement.

Background Facts: The respondent admitted that she was a member of the People's Democratic Party [PDP] in Nigeria between 2006 and 2015, although she claimed that she did not become an "active" member until 2011. The IAD found that the respondent could only be considered a member of the PDP as of 2011; that there was insufficient evidence to conclude that the PDP leadership engaged in subversion after 2011; and that the terrorist activities committed by the PDP were limited to the period before the 2011 elections (when the respondent was not an active member).

Disposition: The application for judicial review was granted, the decision of the IAD was set aside, and the matter was referred back to a differently constituted panel for redetermination in accordance with the Court's reasons.

Other Relevant Findings: The IAD erred in concluding that the respondent was not a member of the PDP prior to 2011. This distinction with respect to membership and active membership bluntly ignored the state of the law and created a new threshold for membership that flew in the face of FCA precedents. The IAD also erred in applying a temporal component to the analysis of whether the PDP engaged in acts described at s.34(1)(f) of the IRPA. The exceptions to the irrelevance of a temporal connection (i.e., a person joining an organization after it has undergone a substantial transformation, or a person leaving an organization which subsequently gets involved in terrorist or subversive activities) did not apply on the facts of this case.

***Muhemba v. Canada (MCI)*, 2023 FC 1207**

Key Finding(s): Although temporality is normally not a consideration when conducting an analysis under s.34(1)(f) of the IRPA, the jurisprudence has recognized that s.34(1)(f) of the IRPA may not apply where an organization has undergone a fundamental change in circumstances (e.g. expressly given up any form of violence).

Background Facts: In her BOC form, and in an interview conducted by the CBSA, the applicant reported her membership in the Mouvement de Libération du Congo [MLC] between 2000 and 2016. At her ID hearing, the applicant reported that her membership in the MLC had, in fact, commenced in 2010. The ID found that the applicant had been a member of the MLC from 2000 to 2016, and that there were reasonable grounds to believe that the MLC had engaged in acts of subversion by force, particularly between 2000 and 2003. The ID concluded that the applicant was inadmissible pursuant to ss.34(1)(b) and (f) of the IRPA.

Disposition: The application was granted and the matter was returned for redetermination by a different decision-maker.

Other Relevant Findings: The ID's reasoning as to why it rejected the applicant's testimony that she had been an MLC member between 2010 and 2016 was not transparent, and its consideration of the corroborative evidence was similarly lacking in transparency. Additionally, the ID unreasonably failed to address evidence demonstrating that the applicant had adopted the 2010-2016 membership dates before the RPD, and had reported the same membership dates in the PR applications she had submitted on behalf of her daughters. With respect to the relevance of temporality, the ID's unreasonable determinations regarding the dates of the applicant's membership likely impacted its consideration of whether the organization had fundamentally transformed in a manner that could mean that s.34(1)(f) of the IRPA did not apply.

***Cugliari v. Canada (MCI)*, 2023 FC 263**

Key Finding(s): If there is one error in the ID's treatment of the evidence, it is not necessarily true that the decision must fall if it purports to rely on the evidence "as a whole."

Background Facts: The applicant had outstanding criminal charges in Italy related to his alleged membership in the 'Ndrangheta. The CBSA prepared an admissibility report on the applicant pursuant to s.44(1) of the IRPA, and the applicant was referred to the ID for an admissibility hearing. The ID determined that the applicant was inadmissible under s.37(1)(a) of the IRPA. The applicant challenged both the CBSA's decision and the ID's decision, disputing the finding that he was a member of the 'Ndrangheta.

Disposition: The applications for judicial review were dismissed.

Other Relevant Findings: The ID did not appear to have assessed the reliability of a 'Ndrangheta organizational chart before admitting it into evidence. To the extent that the ID relied on the chart without first assessing its reliability, the ID erred; however, this error alone did not render the decision, as a whole, unreasonable. The error was immaterial – the applicant could not expect a different outcome in the absence of this one error. Finally, the ID did not err by failing to conduct an equivalency analysis (it explicitly stated that the outstanding charges against the applicant would constitute indictable offences in Canada) and, in any event, case law confirms that an equivalency analysis for the purposes of inadmissibility on organized criminality grounds is not always required.

***Geng v. Canada (MCI)*, 2023 FC 773**

Key Finding(s): An officer is not barred from reconsidering the admissibility of a person previously found to be admissible. However, in doing so, it is incumbent on the officer to justify that decision in light of previous decisions to the contrary.

Background Facts: The controversy in this matter was whether by teaching English to Luoyang Foreign Languages Institute students in China, including some who may have been employed by the 3/PLA (a department of the People's Liberation Army responsible for China's military computer network operations and signals intelligence operations), the applicant was a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts of espionage against Canada or that is contrary to Canada's interests. The ID found that the applicant was inadmissible pursuant to s.34(1)(f) of the IRPA.

Disposition: The application for judicial review was granted and the matter was remitted for reconsideration by a different officer.

Other Relevant Findings: The National Security Screening Division [NSSD] assessment and the officer's reasons for decision demonstrated an overzealous effort to establish that the applicant was a member of the 3/PLA and, as such, inadmissible. The NSSD assessment went further and stated that there were also reasonable grounds to believe that the applicant *himself* had engaged in espionage. In the court's view, there was "no merit to the notion that the Applicant engaged in espionage merely by teaching English to members of the 3/PLA who were later assigned to monitor intercepted communications at listening posts in China or abroad. Whatever meaning facilitation may have in the context of espionage, which remains to be determined in another case, this was overreaching" (at para. 67). There were a number of serious failings in the decision and it did not meet the standard of reasonableness. Additionally, there was a breach of procedural fairness in that the applicant was not provided with sufficient information to understand the allegations against him.

H&C

***Monga v. Canada (MCI)*, 2023 FC 848**

Key Finding(s): A child's inability to speak the language of the country of return is a compelling factor in a BIOC analysis, as it impacts the child's ability to cope with learning a new language, school system, and culture.

Background Facts: On their H&C application, the applicants submitted that they would have a difficult time establishing themselves in Kolkata, India (the IFA identified by the RPD and RAD in their previous refugee proceeding). They submitted that they did not speak, read, or write the Bengali language, which was the native language in Kolkata. They submitted that their children would have difficulty in school, as the language of instruction was Bengali, and that they would suffer from significant social isolation. The officer rejected the H&C application.

Disposition: The application for judicial review was allowed, the decision was set aside, and the matter was remitted to another officer for redetermination.

Other Relevant Findings: The officer's reasoning appeared to be that the availability of language classes would sufficiently mitigate the impact of the language factor such that it required no further consideration. This reasoning was not realistic and the officer's treatment of this factor was unintelligible. Further, the officer's finding that the applicants had provided insufficient evidence that the children's language barrier would result in significant social isolation suggested that the officer had, in fact, overlooked this evidence.

***Ebanks v. Canada (MCI)*, 2023 FC 240**

Key Finding(s): The applicant had "unclean hands" and her misconduct was "serious." The fact that the applicant had submitted her H&C application after failing to report for removal established a clear connection between her misconduct and the present application for judicial review.

Background Facts: The applicant's H&C application was refused and the applicant sought judicial review of that decision. At the date of the hearing of the application for judicial review, a warrant for the applicant's arrest had been outstanding for eight years.

Disposition: The application for judicial review was dismissed.

Other Relevant Findings: The court found that the applicant had spent "a substantial amount of time flouting Canadian law." Her lack of a legitimate explanation for her failure to report for removal, and her failure to present herself to the CBSA for nearly a decade, established a clear disregard for Canadian immigration law and immigration authorities. The need to deter others from engaging in similar conduct was a key consideration.

***Liu v. Canada (MCI)*, 2022 FC 1691**

Key Finding(s): "There is no particular requirement in an H&C application that an applicant show a necessity for them to be in Canada. Nor must they show that they are qualified as a health care worker to provide personal care and support to a family member.…While issues of necessity or capacity may be relevant factors for consideration, they are not the central question and cannot alone be determinative" (at para. 14).

Background Facts: The applicants had been in Canada since December 2018 caring for the husband's elderly mother, who required constant care. Their H&C application was rejected. The officer's reasons focused on whether the applicants had demonstrated that they were "required" to remain in Canada to care for the mother and, relatedly, whether they were the "best positioned people" to provide the care she needed.

Disposition: The application for judicial review was granted and the applicants' H&C application was remitted for redetermination by a different officer.

Other Relevant Findings: The question was not whether the applicants were "required" to remain in Canada to care for the husband's mother, or whether they were the "best positioned people" to provide her care. The question the H&C officer should have answered was whether, considering all of the relevant factors, the circumstances of the applicants would excite in a reasonable person a desire to relieve them of their misfortunes through H&C relief.

***Izumi v. Canada (MCI)*, 2023 FC 1**

Key Finding(s): The officer's reasoning created the unfair expectation that the lasting impacts of abuse are limited to the physical threat of continued violence, thereby ignoring the significant psychological footprint that abuse leaves behind.

Background Facts: The applicant was a 53-year-old citizen of Japan who had been living in Canada since 2004. A clinical psychologist conducted an independent psychological assessment of the applicant, concluding that she continued to experience the "deleterious psychological after-effects" of being "trapped in a psychologically destructive, abusive family in Japan." The assessment resulted in a diagnosis of stressor-related disorder with prolonged duration, with dissociative and stress-response symptoms, requiring ongoing mental health treatment. The applicant's H&C application was rejected.

Disposition: The application for judicial review was granted, the decision under review was set aside, and the matter was remitted back for redetermination by a different officer.

Other Relevant Findings: The officer's assessment of the psychological assessment report lacked consideration of the true extent of the impact of abuse on the applicant and, therefore, contained gaps in reasoning. The court also took issue with the officer's assertion that the psychologist's opinion that the applicant would face negative effects to

her mental wellbeing if removed to Japan was speculative. This finding unfairly undermined the credibility of the report and constituted "a failure to account for the foundation of the Applicant's claim and reflects a narrow lens of the effects of domestic abuse on survivors, unfairly assuming that a risk to a survivor's wellbeing is strictly connected to the risk of further physical harm" (at para. 41).

SECURITY CERTIFICATE

***Mahjoub v. Canada (MPSEP)*, 2023 ONCA 259**

Key Finding(s): The motion judge made no error in concluding that the *Peiroo* exception applied (which was specifically developed to address the availability of *habeas corpus* in the immigration context), and that the appellant's application for *habeas corpus* should be stayed.

Background Facts: The appellant, a refugee, had been found to pose a threat to Canada's national security and was subject to a deportation order. Before the deportation order could be implemented, the Minister had to complete a Danger Opinion. In the meantime, the appellant was not in detention, but he was subject to conditions of release based on a consent order made by the Federal Court. After the consent order was made, the appellant brought an application for *habeas corpus* in the Superior Court of Justice for Ontario, seeking to be relieved from his conditions of release. The Minister brought a motion to stay the application. The motion judge found that while the Superior Court has jurisdiction to grant *habeas corpus* in connection with an order made by the Federal Court, it was appropriate to stay the application in this case because: i) the appellant had an appropriate appeal route under the IRPA to challenge the Federal Court order imposing his conditions of release; and ii) the review procedure under the IRPA constitutes a complete, comprehensive and expert statutory scheme which provides for a review at least as broad as that available by way of *habeas corpus* and no less advantageous (the "*Peiroo* exception").

Disposition: The appeal was dismissed.

Other Relevant Findings: The motion judge erred in finding that the "route of appeal" exception applied in this case. In any event, even if this exception did apply, the motion judge erred in finding that the appellant's right of appeal under the IRPA precluded him from bringing an application for *habeas corpus*.

APPENDIX

1. *Canadian Council for Refugees v. Canada (MCI)*, 2023 SCC 17
2. *Garces v. Canada (MPSEP)*, 2023 FC 798
3. *Dos Santos E Silva v. Canada (MCI)*, 2023 FC 341
4. *Nader v. Canada (MCI)*, 2023 FC 265
5. *Canada (MCI) v. Alamri*, 2023 FC 203
6. *Ahmad v. Canada (MCI)*, 2023 FC 1087
7. *Yao v. Canada (MCI)*, 2023 FC 920
8. *Abbas v. Canada (MCI)*, 2023 FC 871
9. *Li v. Canada (MCI)*, 2023 FC 792
10. *Begum v. Canada (MCI)*, 2023 FC 1317
11. *Linares c. Canada (MCI)*, 2023 CF 446
12. *Ahmad v. Canada (MCI)*, 2023 FC 8
13. *Ceki v. Canada (MCI)*, 2023 FC 1284
14. *Anvar v. Canada (MCI)*, 2023 FC 1194
15. *Bhuchung v. Canada (MCI)*, 2023 FC 1009
16. *Ganeswaran v. Canada (MCI)*, 2022 FC 1797
17. *Mohamed v. Canada (MIRC)*, 2023 FC 1330
18. *Nambazisa v. Canada (MCI)*, 2023 FC 617
19. *Guzman De Pena v. Canada (MCI)*, 2023 FC 213
20. *Jalloh v. Canada (MCI)*, 2023 FC 948
21. *Fardusi v. Canada (MCI)*, 2022 FC 1568
22. *Canada (MPSEP) v. Ukhueduan*, 2023 FC 189
23. *Muhemba v. Canada (MCI)*, 2023 FC 1207
24. *Cugliari v. Canada (MCI)*, 2023 FC 263
25. *Geng v. Canada (MCI)*, 2023 FC 773
26. *Monga v. Canada (MCI)*, 2023 FC 848
27. *Ebanks v. Canada (MCI)*, 2023 FC 240
28. *Liu v. Canada (MCI)*, 2022 FC 1691
29. *Izumi v. Canada (MCI)*, 2023 FC 1
30. *Mahjoub v. Canada (MPSEP)*, 2023 ONCA 259

31st Immigration Law Summit DAY TWO

Major Case Law Update

Daniel Engel & Mielka Visnic
Department of Justice Canada

Obazughanmwen v. Canada (MPSEP), 2023 FCA 151 – 44(2) referral, H&C, BIOC (Pelletier, de Montigny and Gleason JJ.A., June 29, 2023)

Key Finding(s):

- A referral under s. 44(2) of the *IRPA* is an administrative screening exercise, and the decision-maker has no obligation to consider H&C factors (paras 30-33)
- The legislative changes introduced in 2013 by the *Faster Removal of Foreign Criminals Act* did not alter the role of CBSA officers and MDs in the referral process (para 36)

Background Facts:

- Appellant was alleged to be inadmissible for serious criminality under s. 36(1)(a) of the *IRPA* and for organized criminality under s. 37(1)(a) of the *IRPA*
- Pursuant to s. 44(2) of the *IRPA,* an MD referred the Applicant to an admissibility hearing before the ID
- Appellant alleged that it was an error for the MD to decline to consider H&C factors, including BIOC
- Appellant argued that pre-2013 jurisprudence on this issue was no longer relevant to his case because subsequent legislative changes precluded him from filing an H&C application if he were to be found inadmissible for organized criminality
- FC dismissed the JR, but certified the following question: "May a Minister's Delegate . . . consider complex issues of fact and law including the best interests of children [BIOC] and/or humanitarian and compassionate [H&C] issues, in relation to a possible referral of a permanent resident under section 37 of *IRPA* to an admissibility hearing before the Immigration Division . . . in relation to which *IRPA* bars consideration of H&C and may bar BIOC factors?"

Disposition: Appeal dismissed

Other Relevant Findings:

- The question was improperly certified because it had already been answered in numerous prior cases – the 2013 legislative changes do not displace that jurisprudence (paras 27-36, 36)
- The Appellant had alternative recourses available, such as applying for a PRRA, seeking deferral of removal, or applying for an Exceptional Temporary Resident Permit or ministerial relief. (paras 46-47)
- The Appellant's constitutional arguments cannot be raised for the first time before the Federal Court; they must be raised before the Immigration Division (paras 48-54).

Pepa v. Canada (MCI)**,** 2023 FCA 102 – IAD jurisdiction (Laskin, Rivoalen and Monaghan JJ.A., May 12, 2023)

Key Finding(s):

- Pursuant to s. 63(2) of the *IRPA,* it was reasonable for the IAD to find it did not have jurisdiction to hear Appellant's appeal because her visa had expired when the ID issued a removal order against her (paras 10-11)

Background Facts:

- Appellant obtained a permanent resident visa as an accompanying dependent child
- Before arriving in Canada, she had gotten married so she was no longer a dependent child
- Appellant did not disclose this change of circumstance prior to her arrival in Canada
- As a result, Appellant was not landed, and her visa expired
- The ID issued an exclusion order against Appellant, finding that she was inadmissible for misrepresentation
- Since the Appellant's visa expired at the time the removal order was issued, the IAD determined that it lacked jurisdiction to consider an appeal under s. 63(2) of the *IRPA*
- Appellant sought JR of both the exclusion order and the IAD's decision that it did not have jurisdiction to hear her appeal
- FC dismissed both applications, but certified a question of general importance, which was reformulated by the FCA as follows: "Is it reasonable for the Immigration Appeal Division to find that it does not have jurisdiction to hear an appeal pursuant to subsection 63(2) of the [*IRPA*] if the permanent resident visa is expired at the time the removal order is issued?"

Disposition: Appeal dismissed

Other Relevant Findings:

- Subsection 63(2) of the *IRPA* grants a right of appeal under certain circumstances to "[a] foreign national who holds a permanent resident visa"
- If s. 63(2) did not require that the visa be valid, any foreign national physically holding a visa would be entitled to an appeal under s. 63(2), regardless of whether the Canadian government intended to give that document any legal effect (para 15)
- It was reasonable for the IAD to rely on the relevant jurisprudence as to the correct interpretation of the provision, rather than conduct its own statutory interpretation analysis (paras 12-17)
- The IAD was not faced with a question of jurisdictional boundaries between administrative tribunals, so its decision was reviewable on the reasonableness standard (para 9)

Other Notes

- Appellant has sought leave to appeal to the SCC, which is currently pending

Mvana c. Canada (MCI), 2023 CF 329 – constitutionality of s. 36(3)(a) of the *IRPA* (Roy J., March 10, 2023)

Key Finding(s):

- Paragraph 36(3)(a) of the *IRPA* does not contravene s. 15 of the *Charter*, as s. 6 of the *Charter* expressly provides for differential treatment of citizens and non-citizens with respect to the right to remain in Canada.

Background Facts:

- Paragraph 36(3)(a) of the *IRPA* provides that for the purposes of assessing inadmissibility for serious criminality or criminality, a hybrid offence is treated as an indictable offence, regardless of the method of prosecution actually chosen (summary conviction or indictment).
- The IAD granted the Applicant a three-year stay of his removal order (issued because he was inadmissible for serious criminality)
- During this period, the Applicant was convicted of a hybrid offence, though the Crown elected to proceed by way of summary conviction, not indictment.
- Since, pursuant to s. 36(3)(a), the hybrid offence was treated as an indictable offence for the purposes of assessing inadmissibility, the Applicant's stay of his removal order was cancelled by operation of law, pursuant to s. 68(4) of the *IRPA*.
- The Applicant argued that s. 36(3)(a) contravenes s. 15(1) of the *Charter* because it treats non-citizens in a discriminatory way by distorting the nature of the offence for the purposes of deportation

Disposition: Application for judicial review dismissed;

Other Relevant Findings:

- There can be no s. 15 claim with respect to differential treatment between citizens and non-citizens as it pertains to the right to remain in Canada because this difference is permitted by s. 6 of the *Charter*.
- Section 36 of the *IRPA* is part of the deportation scheme and flows from the most fundamental principle of immigration law, which is that a foreign national does not have an absolute right to remain in Canada.
- Parliament is entitled define categories of circumstances in which a non-citizen is inadmissible and therefore can be deported from the country
- The following question was certified: Does s. 36(3)(a) of the *IRPA* contravene subsection 15(1) of the *Charter*, despite ss. 6(1) of the *Charter*, and is therefore of no force or effect under section 52 of the *Charter*?

Baidu v. Canada (MCI), 2023 FC 479 – "interests of justice" under Rule 60(3) of RPD Rules (Sadrehashemi J., April 4, 2023)

Key Finding(s):

- The RPD failed to reasonably consider whether it was "in the interests of the justice" to allow the Applicant's application to reinstate his refugee claim.

Background Facts:

- The Applicant withdrew his refugee claim because he received information indicating that was no longer at risk
- He subsequently received further information indicating that he was, indeed, at risk and applied to have his refugee claim reinstated pursuant to Rule 60(3) of the *RPD Rules*, which precludes reinstatement unless it "is established that there was a failure to observe a principle of natural justice or it is otherwise in the interests of justice to allow the application".
- The RPD denied the request, finding, among other things, that it was not in the interests of justice to allow the Applicant to reinstate his claim because he "knew the consequences of his decision to withdraw his claim and made a strategic decision that he now doubts."

Disposition: Application for judicial review allowed

Other Relevant Findings:

- The RPD did not explain how the decision to withdraw was a "strategic" one (para 17)
- The RPD's approach to "the interests of justice" was unduly narrow – it suggests that it cannot be in the interests of justice to allow reinstatement unless an applicant can demonstrate that they did not understand the consequences of their decision to withdraw. (para 18)
- Though the Applicant did not make a specific submissions on the interests of justice branch, the RPD nevertheless had an obligation to consider the issue in a fulsome way
    - The Court reached this conclusion based on the distinction in wording between the two branches of Rule 60(3) - the Applicant must "establish" a breach of natural justice, but the RPD must consider whether "it is otherwise in the interests of justice to allow the application" (para 15)

Akbari v. Canada (MCI), 2023 FC 53 – "interests of justice" under Rule 60(3) of RPD Rules (Régimbald J., January 13, 2023)

Key Finding(s):

- In assessing whether reinstatement was in the interests of justice, the RPD failed to provide adequate reasons for dismissing mental health evidence.

Background Facts:

- The Applicants suffered from severe anxiety and depression, so they decided to withdraw their refugee claim and return to Iran.
- Forty-three days later, the Applicants applied to reinstate their refugee claim under Rule 60(3) of the *RPD Rules*.
- In support of their request, they provided written submissions, medical records and a psychotherapist's report, which stated that the mother was not in a proper mental state to make important decisions, such as one affecting her and her family's future (para 10).
- The RPD concluded that the Adult Applicants signed the notice of withdrawal and fully understood the consequences of withdrawing their refugee claims, finding that the psychotherapists' evidence was not compelling or persuasive

Disposition: Application for judicial review allowed

Other Relevant Findings:

- The RPD did not explain why it dismissed the medical evidence; it did not point to any contrary evidence or issues related to the quality, relevancy or reliability of the expert evidence (para 29)
- The RPD is *obligated* to consider the interests of justice, regardless of whether the applicant made submissions on the issue (para 25)
- In addition to mental health, other factors that may be relevant to the "interests of justice" branch include: the level of risk in the underlying refugee claim; the date of psychological evidence; the length of time between the withdrawal and reinstatement application; the interests of minor applicants; and the circumstances underpinning the withdrawal. (para 28)
- the RPD cannot be faulted for failing to consider BIOC when that factor was not specifically raised before it (para 54)

Hamid v. Canada (MCI), 2022 FC 1541 – Cessation, *Camayo* factors (Go J., November 10, 2022)

Key Finding(s):

- Even though no individual factor from *Camayo* is dispositive, the RPD must, at a minimum, consider all of the enumerated factors in assessing whether the presumption of reavailment has been rebutted (paras 17-18)

Background Facts:

- After obtaining refugee protection based on a well-founded fear of persecution in Afghanistan, the Applicant made six return trips using his Afghani passport, which he renewed for the purpose of those trips.
- The RPD found that the Applicant failed to rebut the presumption of reavailment and allowed the Minister's cessation application.

Disposition: Application for judicial review is allowed

Other Relevant Findings:

- When a refugee obtains or renews a passport of the country from which they fled, the refugee is presumed to have intended to reavail themselves of the protection of that country (second branch of the test) and to have actually obtained protection of that country (third branch of the test) (para 15)
- This presumption is "particularly strong" when the refugee travels to their country of nationality with the passport issued by that country (para 15)
- The effect of *Camayo* was to broaden the set of circumstances that must be examined by decision-makers when assessing whether the presumption of reavailment has been rebutted (para 17)
- No individual factor will necessarily be dispositive, but all the evidence relating to these factors must be considered and balanced to determine whether the refugee has rebutted the presumption of reavailment.
- In this case, the RPD was silent as to a number of the factors in *Camayo* (paras 39-40)

Singh v. Canada (MCI), 2023 FC 239 – Cessation, delay, abuse of process (Ahmed J., February 17, 2023)

Key Finding(s):

- The RPD reasonably found that the delay in this case did not amount to an abuse of process (paras 39-42)

Background Facts:

- In 2015, the Minister applied for a cessation of the Applicant's refugee status, but the RPD did not schedule a hearing until 2020.
- The Minister's counsel inadvertently failed to appear for the cessation hearing
- The Applicant made an application to the RPD to declare the cessation application abandoned or, in the alternative, that the delay constituted an abuse of process, and it took another 17 months for the RPD to render a decision
- The RPD found insufficient grounds to conclude that the Minister had abandoned the application for cessation and found that the delay did not constitute an abuse of process.

Disposition: Application for judicial review dismissed

Other Relevant Findings:

- A delay will rarely amount to an abuse of process absent clear evidence of direct prejudice caused by the delay (para 39)
- Since the Applicant claimed that the delay caused him hardship (such as the inability to sponsor family members or apply for Canadian citizenship), it was reasonable for the RPD to consider the factors that may undermine this claim, such as his willingness to further delay the proceedings with his abandonment application, his application for a postponement, and his apparent silence in the interim period prior to the cessation hearing being scheduled (para 41)
- The Court found the RPD's delay in these proceedings to be "troublesome" even though it did not amount to an abuse of process (para 43)

Andarawes v. Canada (MCI), 2023 FC 1086 – Cessation, intention, precautionary measures (Southcott J., August 9, 2023)

Key Finding(s):

- Precautionary measures need not amount to "being in hiding" for them to be relevant to the assessment of a refugee's intention to reavail (para 25)

Background Facts:

- The Applicant, an Egyptian citizen, obtained refugee protection in Canada in 2016
- In 2018, the Applicant was issued a new Egyptian passport, and travelled to Egypt six times.
- The RPD granted the Minister's application for cessation

Disposition: Application for judicial review allowed

Other Relevant Findings:

- Beyond stating that the Applicant was not in hiding, the RPD did not engage with his evidence or submissions on the precautionary measures he took while in Egypt (para 25)

Malik v. Canada (MCI)**,** 2023 FC 443 – Cessation, imputing parents' voluntariness and intention on children (Go J., March 29, 2023)

Key Finding(s):

- The RPD erred by automatically imputing the mother's voluntariness and intent on her children without turning its mind to the children's age and other personal attributes (para 37)

Background Facts:

- The Applicant and her three children were subject to cessation proceedings because of their reavailment to Pakistan.
- The RPD found that the mother voluntarily, intentionally and actually reavailed herself of Pakistan's protection
- There was no separate analysis of the children's voluntariness or intent.

Disposition: Application for judicial review allowed

Other Relevant Findings:

- Generally in the refugee claim context, children's claims should be considered as part of parents' claims, and that children will sometimes "suffer the consequences" of their parents' actions. (para 36)
- However, in the cessation context, where an individual's intent and the voluntariness of one's actions is part of the test for reavailment, it becomes less clear whether children must bear the 'sins' of their parents as a general rule (para 37)
- In *Camayo* the FCA enumerated the personal attributes of an individual such as age, education and level of sophistication, as factors to be considered in assessing reavailment, and these factors must also be considered with respect to children. (para 37)

Omar v. Canada (MPSEP), 2023 FC 1334 – Vacation, identity, photograph comparison (Little J., October 5, 2023)

Key Finding(s):

- This is one of a number of recent vacation cases where the Court has expressed skepticism with the RPD's assessment of an individual's identity by comparing photographs and observing facial features (paras 20-21)

Background Facts:

- In vacating the Applicant's refugee status, the RPD found that the Applicant misrepresented his identity, relying on its assessment of photographs and observing the Applicant's facial features.

Disposition: Application for judicial review allowed

Other Relevant Findings:

- The RPD does not need to rely on expert evidence when assessing identity using photographs, but should exercise caution when doing so (para 19)
- Decision-makers must be particularly alert to the risks of unconscious or implicit racial bias when relying on subjective impressions about similarities in facial features (para 19)
- Simply referring to an individual's facial features as "distinctive" without further descriptors is insufficient (para 21)
- The RPD did not recognize any inherent limitations of observing the Applicant's facial features during a virtual hearing, including the quality of the camera, the quality of the video-feed and/or wifi connection, and the lighting (para 26)
- The RPD erred in basing its decision exclusively on photograph comparisons without considering the Applicant's supporting documents (para 30)

Sariam v Canada (MCI), 2023 FC 1372 – Vacation, identity, photograph comparison (Ahmed J., October 16, 2023)

Key Finding(s):

- The RPD's has the authority to visually inspect photographs to determine identity, and its analysis in this case was reasonable (para 42)

Background Facts:

- After the Applicants were granted refugee status against Eritrea, the Minister received notice that the Applicants' photographs matched the passports of two Swedish nationals.
- The RPD granted the Minister's application to vacate the Applicants' refugee status, finding that the Applicants were indeed Swedish nationals based on its own visual inspection of photographs.

Disposition: Application for judicial review dismissed.

Other Relevant Findings:

- The RPD has the authority to make a finding that an individual is, or is not, the person appearing in the photograph of an identity document and need not rely on an expert witness to make this determination. (para 42)

Ahmed v. Canada (MCI), 2023 FC 72 – New Issues at the RAD (Pallotta J., January 17, 2023)

Key Finding(s): The Court provides a succinct discussion on the question of what constitutes a "new issue" about which the RAD must seek submissions from the parties (paras 23-30).

Background Facts:

- The RAD found there were significant inconsistencies between the Applicant's documents and the objective evidence in the National Documentation Package.
- The Applicant argued that the RAD's assessment of the evidence was unreasonable
- The Applicant also argued that the basis of the RAD's decision was substantially different than that of the RPD, and the RAD's failure to give him the opportunity to respond to the new issues constituted a breach of procedural fairness.

Disposition: Application for judicial review allowed

Other Relevant Findings:

- The decision was found to be unreasonable, but the Court rejected the Applicant's argument that there was a breach of procedural fairness
- A "new issue" is one that is legally and factually distinct from the grounds of appeal raised by the parties and cannot reasonably be said to stem from the issues as framed by the parties (para 27)
- Issues that are rooted in or are components of an existing issue are not new issues (para 27)

Nmashie v. Canada (MCI), 2023 FC 437 – procedural fairness, new issue on appeal, prospective risk (Go J., March 29, 2023)

Key Finding(s):

- The RAD breached procedural fairness by rejecting the Applicants' claim based on a new issue without first providing them an opportunity to respond.

Background Facts:

- The RPD rejected the Applicants' refugee claim, finding them not to be credible.
- On appeal, the RAD found that the RPD erred in finding the Applicants not to be credible, but dismissed the appeal because it found that the Applicants provided insufficient evidence that they had been physically harmed by their agents of persecution, or that they face a serious possibility of physical harm in the future.

Disposition: Application for judicial review allowed

Other Relevant Findings:

- The RAD made a determinative legal finding that was distinct from both the reasoning of the RPD decision and the grounds of appeal relied on by the Applicants (para 25)
- Neither the RPD nor the Applicants considered the issue of sufficiency of evidence of physical harm as the basis upon which the claim would be determined (para 35)
- The Court rejected the Respondent's argument that the issue of prospective risk was not new because it "is the essence of a refugee claim"
    - In so doing, it opined that the more central the issue is to the determination of a refugee claim, the more likely that procedural fairness requires the RAD to raise its concerns with claimants (paras 32-33)

Mohammed v. Canada (MCI), 2023 FC 1044 – H&C Relief at IAD, Pandemic Front-line Worker (O'Reilly J., July 31, 2023)

Key Finding(s):

- In its H&C analysis, the IAD failed to take give proper weight to the Applicant's service as a front-line worker during the COVID-19 pandemic (paras 17-19)

Background Facts:

- The Applicant, a permanent resident of Canada, was found to be inadmissible because she failed to comply with her residency requirement.
- The Applicant appealed the inadmissibility finding to the IAD on H&C grounds.
- The IAD initially denied the appeal, but that decision was overturned on judicial review, wherein Justice Ahmed found that the IAD failed to reasonably assess her service as a front-line worker during the COVID-19 pandemic.
- Justice Ahmed concluded that the "moral debt owed to immigrants who worked on the frontlines to help protect vulnerable people in Canada during the first waves of the COVID-19 pandemic cannot be overstated"
- On redetermination, the IAD, once again, dismissed the Applicant's appeal.

Disposition: Application for judicial review allowed

Other Relevant Findings:

- The IAD's treatment of the Applicant's work during the pandemic was unreasonable, particularly in light of Justice Ahmed's comments (paras 17-19)
- Although the IAD appeared to recognize the "moral debt" that the Applicant was due, it nevertheless concluded that her contribution to Canada was no greater than that which other Canadians provide on a routine basis (para 18)
- The IAD treated the Applicant's contribution as common and ordinary and that was not a reasonable application of Justice Ahmed's decision (para 19)

Trinidad v. Canada (MCI), 2023 FC 65 - H&C, Assessing Non-Compliance (Go J., January 16, 2023)

Key Finding(s):

- The Officer did not take a sufficiently nuanced approach in assessing the Applicant's non-compliance with Canada's immigration laws (paras 27-41)

Background Facts:

- The Applicant arrived in Canada in 2013 as a temporary foreign worker
- Due to a confluence of events, including incompetent services from an immigration consultant, the Applicant lost her status in 2016, but did not depart Canada
- She applied for permanent residence on H&C grounds, which was refused

Disposition: Application for judicial review allowed

Other Relevant Findings:

- This case offers a helpful discussion of how non-compliance with immigration laws should be assessed in an H&C application (para 33)
- Officers are entitled to consider applicant's period of unauthorized stay in Canada as a negative factor (para 35)
- However it is "often precisely because someone has not complied with Canadian immigration laws that it is necessary to submit an application for H&C relief" (para 33)
- The significance of that non-compliance must be assessed in the particular circumstances of the case at hand (para 33)
- Factors to consider include prolonged inability to leave Canada, whether the non-compliance was the result of the Applicant's own actions, whether the Applicant engaged in fraud, and the applicant's attempts to regularize their status (paras 35-37)

Aishida v Canada (MCI), 2023 FC 1213 – Stay, PRRA Underlying (Tsimberis J., September 8, 2023)

Key Finding(s):

- Irreparable harm does not necessarily flow where the applicant establishes a serious issue, even where the underlying application is a risk assessment (paras 20-21)

Background Facts:

- The Applicant's PRRA was refused, and she brought an application for leave challenging that decision
- In the interim, the Applicant was scheduled for removal, and she brought a motion to stay her removal pending determination of her PRRA litigation.

Disposition: Stay Dismissed

Other Relevant Findings:

- In finding that the Applicant failed to establish irreparable harm, the Court rejected her argument that irreparable harm would necessarily flow if she had established a serious issue in her underlying PRRA litigation (paras 20-21)
- Mootness of the underlying PRRA litigation does not, in and of itself, establish irreparable harm (para 22)

Singh v Canada (MCI), 2023 FC 12 – Misrep, Innocent misrep exception (Elliot J., January 3, 2023)

Key Finding(s):

- This case offers a useful discussion of the principles underlying the innocent misrepresentation exception to s. 40(1)(a) of the *IRPA* (paras 23, 36)

Background Facts:

- The Applicant was arrested and charged with willfully resisting or obstructing a peace officer.
- Later, the Applicant received a letter from the BC Prosecution Service advising him that it would not be proceeding with the criminal charges.
- The Applicant failed to disclose this arrest in his application for a Canadian visitor visa.
- A consultant prepared the application, and the Applicant did not review it prior to its submission.

Disposition: Application for judicial review dismissed

Other Relevant Findings:

- The innocent misrepresentation exception is a narrow one – it only applies where an applicant honestly and reasonably believes they are not misrepresenting a material fact, knowledge of the misrepresentation is beyond the applicant's control, and the applicant is unaware of the misrepresentation (para 23)
- The Applicant's failure to review the application prior to submission rendered the misrepresentation, though honest, to be unreasonable (para 36)
- The fact of the arrest was clearly knowledge within the Applicant’s control (para 36)

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TAB 2

31st Immigration Law Summit
DAY TWO

The SCC's Judgments in *Mason* and *CCR*: Implications for Future Litigation

November 22, 2023

The effects of the judgment in *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 on s. 7 litigation in the context of the IRPA

Jared Will
November 2023

Overview

I will review some of the more significant shifts in the legal landscape as a result of the Supreme Court's recent decision in *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17 [CCR SCC] with respect to litigating issues under s. 7 of the *Charter* in matters arising under the IRPA.

Most notably, the Court has rejected the approach to s. 7 engagement that has been adopted by the Federal Court of Appeal over the last decade, and has instead affirmed that the SCC's case law on s. 7 engagement more generally applies equally in the context of the IRPA. More subtly, however, the decision also contains potentially dramatic shifts in the law of arbitrariness, overbreadth, and gross disproportionality. The Court not only affirmed that legislative "safety valves" must be considered in the analysis of those principles of fundamental justice, but also appears to have modified the tests for proving that a law is overbroad or grossly disproportionate.

While the Court affirmed that arbitrariness, overbreadth, and gross disproportionality are applicable principles of fundamental justice in the context of laws that lead to deportation (rejecting the government's argument that "shocks the conscience" is the only applicable principle of fundamental justice), it also appears to have elevated the thresholds for establishing overbreadth and gross disproportionality.

Safety Valves and s. 7 Engagement:

A Fresh Start

CCR SCC: [7] Further, I agree with the Federal Court judge's findings that the liberty and security of the person interests of refugee claimants	*Kreishan v. Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 FCR 299 [118] The Supreme Court has been consistent in its determination that the substantive elements of section 7 are addressed at the removal stage.

are engaged by the Canadian legislation that renders their claims ineligible. Specifically, I reject the notion that the claimants' s. 7 interests are not engaged simply because the legislation contains measures that could ultimately have offered protection. This, I think, **rests on a misunderstanding of *Febles*** *v. Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 S.C.R. 431, and is inconsistent with this Court's approach to s. 7 set out in *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101. [72] Some have suggested that because curative mechanisms are available, refugee claimants' s. 7 interests are not engaged at the exclusion or inadmissibility determination stage. This assertion rests on a statement in *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704, that it is at the "subsequent pre-removal risk assessment stage of the *IRPA*'s refugee protection process that s. 7 is typically engaged" rather than earlier stages (para. 75). **This comment in *B010* relied on a passage from *Febles*, which spoke to the *Charter*-compliance of an exclusion provision in the *IRPA*.** Some scholars have criticized this view of curative mechanisms' role in engagement, saying that *dicta* from these cases should not deflect analysis from this Court's approach to s. 7 engagement established in other contexts (see Heckman, at p. 313; C. Grey,	[119] In *Febles*, for example, the Supreme Court held that section 98 of the IRPA—under which an individual may be excluded from even advancing a claim for protection—was consistent with section 7 of the Charter because, even if so excluded, an individual may still apply for a stay of removal under the IRPA's PRRA provisions if he or she faces a risk of death, torture or cruel and unusual treatment or punishment (at paragraph 67). [120] The weakness in the appellants' argument is apparent if their situation is contrasted to such individuals who are denied the right to advance any claim for protection. The Supreme Court considered the constitutionality of those circumstances in *B010*. Citing *Febles*, the Supreme Court stated at paragraph 75: [133] More importantly, these statistics are illustrative of the latent difficulty in the appellants' argument. At what point along the continuum of differing success rates is the risk of *refoulement* sufficiently mitigated that no section 7 interest is engaged? There is no answer to this, of course, which is why the Supreme Court has, in its reasons, focused on the bookends of the process—initial adjudication (*Singh*), and consistent with international law, removal (*Suresh*, *Febles*, *B010*). *Tapambwa v. Canada (Citizenship and Immigration),* 2019 FCA 34, [2020] 1 FCR 700 [81] The third principle arises from *B010.* Building on *Febles* the Court affirmed that "even if excluded from refugee protection, the appellant is able to apply for a stay of removal to a place if he would face death, torture or cruel and unusual treatment or punishment if removed to that place'" (i.e., a risk assessment under section 97) (*B010*, at paragraph 75, citing *Febles*, at paragraph 67; IRPA, sections 97, 112, subparagraph 113(d)(i) and paragraph 114(1)(b)). The Court held that this rationale applies equally to determinations

"Thinkable: The Charter and Refugee Law after *Appulonappa* and *B010*" (2016), 76 *S.C.L.R.* (2d) 111, at pp. 131-35 and 139; see also H. Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms* (2nd ed. 2019), at pp. 77-81 and 342). [73] *Febles* stated that an exclusion provision was "consistent" with s. 7 of the *Charter* (para. 67). In line with *Bedford* and *PHS*, ***Febles* should not be read as conflating the engagement and the principles of fundamental justice stages of the s. 7 analysis. As for *B010***, I observe that this Court ordered a new hearing in that appeal as a matter of statutory interpretation and found it unnecessary to consider the appellants' s. 7 challenge (para. 74). The **brief comment that it is only at the pre-removal stage that "s. 7 is typically engaged" was neither a formal statement of the law nor necessary to decide the case (para. 75). It should not be taken to have changed the established law on s. 7 engagement. It is helpful to recall that in other contexts, such as extradition, s. 7 "permeates" the entire process and is "engaged, although for different purposes" at each stage of the proceedings** (*United States of America v. Cobb*, 2001 SCC 19, [2001] 1 S.C.R. 587, at para. 34, per Arbour J.). In the context of ineligibility under s. 101(1)(e) of the *IRPA*, where curative measures are key to the s. 7 analysis, such measures are thus best understood as relevant to the principles of fundamental justice rather than to the	of inadmissibility (*B010*, at paragraph 75). Section 7 is therefore not engaged by a finding of inadmissibility or exclusion. [82] It follows that the appellants' argument that they must have their risks assessed against section 96 criteria runs contrary to the jurisprudence of the Supreme Court. As the determination of exclusion or inadmissibility does not engage section 7, it necessarily follows that section 7 is not engaged by the denial of a section 96 risk assessment. This is the consequence of the trilogy of S.C.C. decisions (*Suresh*, *Febles*, *B010*). Exclusion removes the appellants from the refugee determination process, and, as a direct consequence, from a section 96 risk assessment.
	Atawnah v. Canada (Public Safety and Emergency Preparedness), 2016 FCA 144, [2017] 1 FCR 153 In my view, this jurisprudence demonstrates that the supervisory role of the Federal Court, together with the ability of the Minister to exempt an applicant from the application of paragraph 112(2)(b.1) of the Act, acts as a "safety valve" such that the PRRA bar under review is not overbroad, arbitrary or grossly disproportionate."
	Revell v. Canada (Citizenship and Immigration), 2019 FCA 262 (CanLII), [2020] 2 FCR 355, at para 38 [38] The Judge was similarly right to note, at paragraphs 83 and following of her reasons, that there is extensive case law from this Court establishing that an inadmissibility finding is distinct from effecting removal and that, as other steps remain in the process, a finding of inadmissibility does not automatically or immediately result in deportation and therefore does not engage section 7 of the Charter. Despite some conflicting decisions in the early days following the decision of the Supreme Court in *Chiarelli*, this Court has consistently held since *Medovarski* and *Charkaoui v. Canada (Citizenship and*

threshold question of engagement, in keeping with this Court's methodology in *Bedford* (see, e.g., Heckman, at pp. 347-56). [77] I note that the Court of Appeal viewed the availability of judicial review in the federal courts as a relevant safety valve. It is true that within the framework established by *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, and this Court's broader administrative law jurisprudence, judicial review helps ensure that public authorities respect "legal limits, derived from the enabling statute itself, the common or civil law or the Constitution" (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 28). **However, judicial review offers different relief than a statutory mechanism that prevents or cures defects that would arise from the isolated operation of a general rule.** This is because legislatures can never entirely "shield administrative decision making from curial scrutiny" (*Vavilov*, at para. 24). The general availability of judicial review therefore cannot save otherwise unconstitutional legislation. For this reason, **I consider it unhelpful to view judicial review as a form of "safety valve" or statutory safeguard.**	*Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350 (*Charkaoui*) that section 7 is not engaged at the stage of determining inadmissibility (see *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, [2005] 3 F.C.R. 487, at paragraph 63; *J.P. v. Canada (Public Safety and Emergency Preparedness)*, 2013 FCA 262, [2014] 4 F.C.R. 371 (*J.P.*), at paragraphs 123, 125, reviewed on other grounds in *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704 (*B010*); *Torre v. Canada (Citizenship and Immigration)*, 2016 FCA 48, 263 A.C.W.S. (3d) 729, at paragraph 4, leave to appeal to S.C.C. refused, 36936 [[2016] 1 S.C.R. xviii] (21 August 2016); *Tapambwa v. Canada (Citizenship and Immigration)*, 2019 FCA 34, [2020] 1 F.C.R. 699, 304 A.C.W.S. (3d) 376, at paragraphs 81–82, leave to appeal to S.C.C. refused, 38589 (11 July 2019); *Kreishan v. Canada (Citizenship and Immigration)*, 2019 FCA 223, [2020] 2 F.C.R. 299, at paragraphs 118–127). *Moretto v. Canada (Citizenship and Immigration)*, 2019 FCA 261 [43] In my view, the Judge was right to note that there is extensive case law establishing that an inadmissibility finding is distinct from effecting removal and that, as other steps remain in the process, it does not engage section 7 of the Charter (F.C. reasons, at paragraphs 24, 43 and 47–48). (See *Tapambwa*, at paragraph 81; *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704 (*B010*), at paragraph 75; *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, [2014] 3 S.C.R. 431 at paragraph 67; *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, [2005] 3 F.C.R. 487, at paragraph 63; *J.P. v. Canada (Public Safety and Emergency Preparedness)*, 2013 FCA 262, [2014] 4 F.C.R. 371, 235 A.C.W.S. (3d) 460, at paragraphs 123 and 125, revd on other grounds in *B010*; *Torre v. Canada (Citizenship and Immigration)*, 2016 FCA 48, 263 A.C.W.S. (3d) 729, at paragraph 4, leave to appeal [to S.C.C.] refused [[2016] 1 S.C.R. xviii], 36936 (25 August 2016).)

	[44] The appellant raised essentially the same arguments as in *Revell*, and my reasoning as set out in paragraphs 35 to 57 of that case therefore applies similarly in the case at bar. The impugned provision, subsection 68(4) of the Act, mandates a finding of inadmissibility by lifting the IAD's conditional stay of the ID's inadmissibility decision. In this respect, the Judge was right to conclude that this case concerns the admissibility determination stage, not removal arrangements. In the specific circumstances of this case, the appellant may still apply for a section 24 exceptional temporary resident permit allowing him to remain in Canada for a finite period of time, or he may seek a deferral of removal at a later stage of his deportation process. This is not to mention that, unlike the appellant in the case of *Revell*, Mr. Moretto can apply for a section 25 exemption from inadmissibility on humanitarian and compassionate grounds.

TAKE AWAYS:

-The FCA's prior caselaw on 'safety valves' and judicial review as precluding s. 7 engagement has all been effectively overturned. Judicial review is not a safety valve and 'curative' safety valves do not preclude engagement.

-Once causation is established for purposes of engagement, s. 7 permeates the entire process, regardless of the existence of potentially available curative safety valves

-Many of the s. 7 cases denied by the FCA in recent years (the RAD bar for STCA-exempt claimants, PRRA-bars, the process leading to the deportation of long term permanent residence, and the provision that lead to the loss of s. 96 protection) are potentially open to re-litigation as the law re: engagement for purposes of the IRPA has changed. Similarly, it is now clear that s. 7 is engaged in admissibility and exclusion proceedings.

Safety Valves and the Principles of Fundamental Justice:

Reimagining PHS and re-writing the law of arbitrariness, overbreath, and gross disproportionality

CCR SCC:

[Preventative and Curative Safety Valves]

[9] As this Court held in *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, [2011] 3 S.C.R. 134, speaking specifically to what are usefully described as curative exemptions, legislative "safety valve[s]" can ensure that deprivations of the s. 7 interests are not arbitrary, overbroad or grossly disproportionate (para. 113).

[63] When a *Charter* challenge targets a provision in an interrelated legislative scheme, the potential impact of related provisions, including those that may serve to "prevent or cure any possible defects", must be reviewed (C.A. reasons, at para. 58(a) (emphasis added)). The success or failure of a *Charter* claim may turn on arguments or evidence related to preventative or curative provisions. But this should rarely preclude consideration of whether life, liberty or security of the person under s. 7 are "engaged".

[64] Legislation often implicates interests that s. 7 protects. At times, this will result from broad provisions that would — taken on their own — have constitutionally relevant effects on life, liberty or security of the person. However, legislatures can include related provisions within a scheme that temper those effects. When these measures are part of an integrated legislative whole, they must be accounted for when assessing the constitutionality of rules of general application.

[68] Curative measures are thus remedial: they repair a breach that would be caused by a general rule by providing a targeted exemption after the fact (see *PHS*, at para. 41). These measures often work together with preventative measures to limit the scope of a provision of general application. Preventative measures narrow a general rule by precluding its application in anticipation of a breach, often through legislative exceptions. These categories are not watertight compartments, nor are they exhaustive.

[70] In the legislative scheme at issue in this case, examples of preventative measures include the death penalty exception in s. 159.6 of the *IRPR* and the various family reunification exceptions in s. 159.5(a) to (d). Curative measures include the availability of temporary resident permits under s. 24, humanitarian and compassionate exemptions under s. 25.1(1), and public policy exceptions under s. 25.2(1).

[71] At the engagement stage, preventative provisions can tailor a provision of general application so carefully that it never threatens s. 7 interests. For instance, s. 159.6 of the *IRPR* prevents the threat to life that might emerge from returning individuals subject to the death penalty. In so doing, preventative provisions like s. 159.6rule out certain s. 7 engagements. By contrast, curative provisions will rarely, if ever, preclude the engagement of s. 7. *PHS* provides direct support for this proposition, as this Court held that the general prohibition on possession engaged s. 7 despite the availability of safety valves. Curative provisions create exceptional departures from a general rule; they are typically available only after a determination that the general rule applies. The possibility of obtaining an exemption is therefore a path through which the risks the general rule poses to life, liberty or security of the person can sometimes be avoided. In such cases, the threat to the s. 7 interests persists, but it does not always materialize.

[76] I disagree with the appellants. Curative mechanisms are properly considered when assessing whether a deprivation comports with the principles of fundamental justice.

[159] It may not always be obvious whether the source of an alleged breach is the legislation or the administrative conduct implementing it (see, e.g., A. M. Latimer and B. L. Berger, "A Plumber with Words: Seeking Constitutional Responsibility and an End to the *Little Sisters* Problem" (2022), 104 *S.C.L.R.* (2d) 143, at pp. 145-46). In applying *Morgentaler* and *Little Sisters*, it is appropriate to look to the broader jurisprudence on the assessment of causation in s. 7 challenges. As is true at every stage of proving a s. 7 violation, **challengers bear the evidentiary burden to establish that the legislation causes difficulties for individuals seeking access to curative mechanisms** (*Bedford*, at para. 78). They must therefore show that **the legislation causes the exemption to be illusory in their individual circumstances**.

[SCC's Conclusions on Overbreadth and Gross Disproportionality re: US Detention Practices]

[142] Thus, for the appellants to show that the scheme overreaches this limit — such that there is "no connection" at all between the effects of the scheme and the legislative objective, which includes the aim of only returning refugee claimants to countries that will fairly consider their claims (see *Carter*, at para. 85) — the question is whether the American system is fundamentally unfair. In my view, the record does not support the conclusion that the American detention regime is fundamentally unfair.

[147] With respect to gross disproportionality, the question is whether the impugned legislation's effects on the s. 7 interests are "so grossly disproportionate to its purposes that they cannot rationally be supported" (*Bedford*, at para. 120). This threshold is only met "in extreme cases where the seriousness of the deprivation is totally out of sync with the objective" and is "entirely outside the norms accepted in our free and democratic society" (*ibid.*). Neither a risk of detention with opportunities for

release and review nor a risk of medical isolation meets this high threshold. In Canada, as in the United States, these risks are within the mutually held norms accepted by our free and democratic societies. The appellants have not shown otherwise.

[SCC's Conclusions on Overbreadth and Gross Disproportionality re: risk of refoulement form the US]

[151] When the *IRPA*'s safety valves are activated, claimants can be exempted from return. If they are not returned to the United States, they do not face any risk of *refoulement* from the United States. The safety valves can therefore intervene to cure what might otherwise be unconstitutional effects, as was the case in *PHS*. Moreover, as in *PHS*, they are properly considered as part of the principles of fundamental justice stage of s. 7 because the mechanisms can be exercised in order to address the specific deprivation at issue, in this case the risk of *refoulement*.

[163] In sum, even assuming that claimants face real and not speculative risks of *refoulement* from the United States, the Canadian legislative scheme provides safety valves that guard against such risks. For that reason, the legislative scheme implementing the *Safe Third Country Agreement* is not overbroad or grossly disproportionate and therefore accords with the principles of fundamental justice. In light of this conclusion, as well as my conclusions on deprivations related to detention, no breach of s. 7 of the *Charter* has been established.

[164] I recall that the challenge here was advanced against legislation, not administrative conduct. It may be that administrative actors, such as CBSA officers, acted unreasonably or unconstitutionally in their treatment of some returnees or in their interpretation of the legislative scheme, including its safety valves. As noted above, when administrative action or inaction is the cause of the alleged harms, then that conduct is properly the subject of *Charter* scrutiny, not the legislation itself. But these are not issues before this Court on appeal. If administrative malfeasance results in returning individuals to circumstances that would shock the conscience of Canadians, such as returning individuals to face a real and not speculative risk of *refoulement*, constitutional and administrative remedies remain available. Without saying more, I observe that administrative decisions in this area call for "the most anxious scrutiny" (*R. (Yogathas) v. Secretary of State for the Home Department*, [2002] UKHL 36, [2003] 1 A.C. 920, at paras. 9, 58 and 74, quoting *R. v. Secretary of State for the Home Department, Ex p. Bugdaycay*, [1987] A.C. 514 (H.L.), at p. 531).

TAKE AWAYS:

- Both preventative and curative 'safety valves' must be considered when assessing whether *a law* is overbroad or grossly disproportionate. This was already clear re: preventative safety valves (PHS), but the Court has expanded that finding from PHS to apply to curative safety valves. (Notably, the Court appears to have done this by treating PHS as a case about curative safety valves, where it was an archetypal example of a preventative safety valve).

- The SCC finds that the designation of the US as a safe third country is *not* overbroad or grossly disproportionate because (a) the US detention/asylum system *as a whole* is not fundamentally unfair and (b) the *risk* of detention under poor conditions is not entirely outside of the norms accepted in our free and democratic society.

    - Despite purporting to rely on *Bedford*, this is a wholesale departure from the principles as stated in Bedford, where the relevant question was the effect on *some* individuals, or even on *one* individual. The Court has collapsed the distinction between arbitrariness and overbreadth (to prove overbreadth, you must now effectively prove what used to be required only for arbitrariness), and gave no effect to the finding in *Bedford* that a grossly disproportionate effect on *one* individual is sufficient to violate the norm. The Federal Court in this case made a finding of fact that the effect on Nedira Mustefa was grossly disproportionate. The SCC does not overturn that finding, but makes no mention of it in its gross disproportionality analysis.

    - As a result, both overbreadth and gross disproportionality have become substantially harder to prove.

- The SCC finds that the designation of the US as a safe third country is coupled with sufficient curative safety valves to protect against the grossly disproportionate and overbroad potential effect of *refoulement* such that the designation itself is *Charter* compliant.

- Going forward, unless applicants can prove that *the law* renders the safety valves illusory, then their only recourse is to seek individualized administrative or *Charter* (i.e. s. 24(1)) remedies. Relevant PJF here are arbitrariness/overbreadth, gross disproportionality and 'shocks the conscience'.

Uncertainties Arising From the Judgment:

-The SCC holds that judicial review (and thus judicial stays) are not relevant to the analysis of the constitutionality of a legislative provision. But it then finds that the fact that the Homsi family got TRPs and subsequent H&C relief is sufficient to show that these remedies are not illusory. However, those remedies were only available because the family first got a judicial stay of removal. Is this just a mistake of fact in the judgment,[1] or is the SCC actually finding that the availability of statutory remedies that required a judicial stay in order to become available are sufficient safety valves?

-What exactly is the burden of applicants to prove an arbitrary/overbroad, or grossly disproportionate effect of the law in order to receive s. 24(1) relief?

- Do they need to prove that the result occurred because they sought access to a safety valve and were denied, or is it sufficient to merely prove the unconstitutional effect?
- What will be required to prove that a safety valve failed in their case?
- If a breach in the individual case is made out, is a s. 1 justification still available to the state?

[1] Note, the SCC also found that "ABC and her daughters benefitted from an administrative deferral of removal, during which their counsel applied for a stay of removal", whereas was actually happened was that the CBSA refused to defer until the Court heard the stay, and counsel had to get the court to hear the stay on an emergency basis before removal.

CASE SUMMARY

Canadian Council for Refugees et al v MCI and MSEP, 2023 SCC 17

Prepared by Marianne Zorić[1] for the 31st Annual Immigration Law Summit
Law Society of Ontario, November 22, 2023

INTRODUCTION

On June 16, 2023, the Supreme Court of Canada issued its decision in *Canadian Council for Refugees et al. v. Canada (Minister of Citizenship and Immigration)*.[2] The following provides a summary of the key points in the Court's decision. The summary provides a particular focus on the section 7 *Charter* challenge, given the comprehensiveness of the Court's reasons on those issues.

OUTCOME

The appeal was allowed in part with Justice Kasirer writing for a unanimous Court.[3] The Court upheld the validity of s. 159.3 of the *Immigration and Refugee Protection Regulations* designating the United States as a safe third country. The Court found the designation *intra vires* and constitutional with respect to s. 7 of the *Charter*. However, in the absence of findings from the Courts below, the Court declined to decide the s. 15 *Charter* challenge and sent it back to the Federal Court for determination.

BACKGROUND

The Appellants, CCR *et al*., challenged the designation of the United States as a safe third country under s. 159.3 of the *IRPR*. The designation implements the *Safe Third Country Agreement* (STCA), a Canada-United States treaty, into Canadian law. As the Court recognized, the STCA was designed to enhance "sharing of responsibility" for refugee claims between Canada and the United States. Its animating principle is that claimants must seek protection in whichever of the two countries they enter first. Under the STCA, both Canada and the United States are to provide "access to a full and fair refugee determination procedure."[4]

Paragraph 101(1)(e) of the *Immigration and Refugee Protection Act* renders a claim for protection made by a person who came to Canada directly or indirectly from a "designated country" ineligible to have his or her claim assessed in Canada. Section 102 of the *IRPA* provides that countries may only be designated if they comply with their *non-refoulement* obligations under international law. The United States is the only country designated under s. 159.3 of the *IRPR*.

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[1] General Counsel, National Litigation Sector, Department of Justice, Ontario Regional Office, Toronto. Any opinion that may be expressed is that of the author alone and should not be interpreted as reflecting any opinions or policies of the Government of Canada. This paper does not constitute legal advice.
[2] *Canadian Council for Refugees et al v MCI and MSEP*, 2023 SCC 17
[3] Brown J. did not participate in the final judgment.
[4] Paras 1-4; 31-36.

The individual Appellants arrived from the United States to claim refugee protection in Canada. Their claims were determined ineligible for referral to the Refugee Protection Division. The individual Appellants, together with three public interest applicant Appellants, challenged the s. 159.3 designation claiming it was *ultra vires* the *IRPA* and contrary to ss. 7 and 15 of the *Charter.*

SECTION 159.3 DESIGNATION IS *INTRA VIRES*

The s. 159.3 *IRPR* designation of the United States as a safe third country is *intra vires*. Regulations benefit from a presumption of validity[5] and the relevant timeframe for determining *vires* is at the time of their promulgation. Thus, ss. 102(1)(a) and (2) of the *IRPA* establish conditions precedent to the designation of a safe third country that must be met at the time of designation and not afterwards.[6] To have succeeded on the *vires* argument, the Appellants had to have shown that the designation of the United States was not authorized on the date of promulgation. Given the arguments were directed at post-promulgation developments, the *vires* arguments could not succeed.[7]

The Court commented very briefly on the s. 102 review process, noting the Governor in Council's statutory obligation after designation to "ensure the continuing review" of the s. 102 factors. The Court accepted that they may be challenged in judicial review proceedings, but not on the question of *vires*.[8]

SECTION 7 OF THE CHARTER

A. The Section 7 Claim

(1) The Rights

Section 7 protects against infringements of the right to life, liberty, and the security of the person, where such are not in accordance with the principles of fundamental justice. The onus was on the Appellants who challenged the designation to show that the foreseeable consequences of the legislation would deprive them of life, liberty, or security of the person. The question is whether the legislation "engage[s]" those interests, in the sense that it causes a limitation or negative impact on, an infringement of, or an interference with them. A risk of such a deprivation suffices. The onus was also on the Appellants to show that this is not in accordance with the principles of fundamental justice.[9]

(2) Constituting a section 7 challenge - Required approach must have regard to wider scheme and potential preventative or curative legislative mechanisms

When assessing constitutionality under s. 7 of the *Charter*, the scheme as a whole must be considered. Provisions in a complex inter-related legislative scheme should not be viewed in

[5] Citing *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64.
[6] Para 52. All further paragraph references are to the Supreme Court's decision, unless otherwise indicated.
[7] Para 54.
[8] See: *Canada (MCI) v CCR et al*, 2021 FCA 72 at para 96.
[9] Para 56.

isolation.[10] The potential impact of related provisions, including those that may serve to "prevent or cure any possible defects" must be reviewed. Related provisions can temper effects on protected rights and they must be accounted for when assessing the constitutionality of rules of general application.[11]

Sometimes exemptions in a scheme can act "as a safety valve that prevents the [statute] from applying where such application would be arbitrary, overbroad or grossly disproportionate in its effects." These provisions can cure the constitutional defects that otherwise would arise had the general prohibition been left to apply.[12] "Preventative measures" narrow a general rule by precluding its application in anticipation of a breach, often through legislative exceptions.[13] "Curative measures" are remedial: they repair a breach that would be caused by a general rule by providing a targeted exemption after the fact.[14] Both types of measures can work together to limit the scope of a provision of general application. Courts must consider legislative provisions in their entire statutory context, irrespective of how the parties frame their challenge of the scheme.[15]

The *IRPA* scheme includes preventative measures: the various family reunification exceptions in s. 159.5(a) to (d) and the death penalty exception in s. 159.6 of the *IRPR*. The scheme's curative measures include the availability of temporary resident permits under s. 24, humanitarian and compassionate exemptions under s. 25.1(1), and public policy exceptions under s. 25.2(1), or deferral of removal under s. 48(2) as interpreted in existing Federal Court and Court of Appeal jurisprudence.[16]

These measures may be considered at the principles of fundamental justice stage, and not just at the s. 1 stage. Legislative tailoring determines how broadly the general scheme applies and thus is relevant to whether a scheme is overbroad.[17] If the legislature has crafted a scheme that cures potential breaches by providing exemptions that can target certain *Charter* rights deprivations, this can render the scheme *Charter*-compliant. To assess a s. 7 breach, the presence of such mechanisms must be considered.[18]

The s. 102(3) reviews are not safety valves. In the ss. 7 and 12 *Charter* jurisprudence, "safety valves" typically refers to discretionary exemptions or other curative mechanisms, rather than preventative provisions (like the reviews). The reviews do not play a curative role because they do not make after-the-fact relief available on an *individual* basis. Also, the general availability of judicial review cannot save unconstitutional legislation and it is not a form of "safety valve".[19]

[10] Para 63.
[11] Paras 62-64.
[12] Paras 66-67.
[13] Para 68.
[14] Para 67.
[15] Paras 68-69.
[16] Paras 44, 70-72, 80.
[17] Paras 74-76.
[18] Para 78.
[19] Para 77.

B. Engagement of Section 7

(1) Effects Implicating Section 7 Interests

The question at the engagement stage is whether the Appellants had demonstrated an effect within the scope of s. 7. The Appellants' claimed effects fell into two main categories, detention, and the risk of *refoulement* from the United States.

(a) Detention in the United States

The Court rejected the Federal Court's finding that returnees face automatic detention on return to the US but accepted that there was a risk of detention on return which varied on a case-by-case basis. The "highest possible finding on this record is that returnees to the United States are exposed to a risk of discretionary detention . . . [as] returnees who are detained in the United States can seek release and release is often granted, either on bond or without". Alternatives to detention are available. The evidence does not support the Federal Court's finding that detention is "automatic". However, the risk of detention remains an effect that engages liberty. "Liberty" encompasses freedom from detention, imprisonment and the threat thereof.[20] At the engagement stage, the question is whether the appellants have demonstrated an effect within the scope of s. 7; a risk of detention suffices.[21]

(b) Conditions While Detained in the United States

In addition to the risk of detention *per se*, the Court also considered the conditions and consequences of detention. These implicate the security of the person interest, which protects against physical punishment or suffering and the threat thereof, as well as against serious and profound state-imposed psychological stress.[22]

The conditions of detention that the Appellants complained of include medical isolation pending medical testing in detention, cold temperatures, and inadequate medical care. The Court accepted that these engage the s. 7 security of the person interests. Two other elements were considered, relating to religious dietary restrictions and detention with co-located criminal convicted persons. For these latter elements, given that the Federal Court did not rely on them, the Court "hesitate[d] to conclude absent findings below that this treatment falls within the scope of security of the person".[23] In any event, this did not breach s. 7.[24]

(c) Risks of *Refoulement:* No real, non speculative risks of *refoulement* from the United States

The Appellants also claimed that they faced a risk of *refoulement* on return to the US, on two grounds. First, they argued that detention created barriers to a detainee's ability to pursue an asylum claim, and second, that certain elements in the US asylum system (the one-year bar policy and the approach to gender-based claims) meant that Canada was a participant in indirect

[20] Para 89.
[21] Paras 80, 86-96.
[22] Para 90.
[23] Paras 91-94.
[24] Para 94.

refoulement. A risk of *refoulement*, direct or indirect, falls within the security of the person interest.[25] Returning individuals to the US does not itself constitute *refoulement*, nor does it if the United States returns individuals to their countries of origin, so long as the relevant international obligations are respected.

Therefore, the question on engagement is a factual one: "whether the Federal Court erred in concluding that a real and not speculative risk of *refoulement* from the United States exists".[26]

(i) Record does not support there is *Refoulement* Caused by Detention

Ultimately, the Court concluded that the record did not support the Federal Court's finding that barriers to advancing an asylum claim while detained gave rise to a "real and not speculative" risk of *refoulement* from the US. While the Court agreed there is a presumption that foreign states have fair and independent judicial processes,[27] courts cannot rely on the presumption that foreign states fully comply with international law. Instead, *Charter* challengers must prove the facts substantiating alleged rights violations connected to state action ascribed to Canada.[28] When those factual findings are challenged, the ordinary appellate standard of "palpable and overriding error" applies.[29]

The record showed the availability of counsel to assist asylum applicants with their claims while detained in the US. There are widespread programs designed to provide free legal representation to individuals in immigration detention.[30] Further, the record disclosed review and appeal mechanisms internal to the US asylum system. The Appellants did not show that these mechanisms are ineffective. Further, other avenues and programs for remaining in the US may be available, including temporary protected status, "withholding of removal", protection based on the Convention Against Torture and targeted visa programs for individuals in certain classes, like victims of crime or trafficking. All of these were relevant to whether individuals whose detention may create barriers to advancing their asylum claims are, in the end, *refouled*. However, the Federal Court did not assess those avenues.[31] Ultimately, the record did not support that Court's conclusion that US detention conditions pose barriers to the advancement of asylum claims that raise a real and not speculative risk of *refoulement*.[32]

(ii) *Refoulement* Due to US Asylum Policies - no breach of s. 7 shown

There were no findings by the Federal Court in respect of the US "one-year bar" rule (asylum claims must be advanced within a year of a claimant's arrival), or on the interpretation of gender-based persecution as a basis for asylum.[33] While the record is mixed, the Supreme Court noted that it shows that there are exceptions to the one-year bar. However, without findings on how

[25] Para 95.
[26] Para 96.
[27] Citing to *Ward*, SCC 1993 at p. 725, quoting *Satiacum*, (1989), 99 NR 171 (FCA), at para 19.
[28] Para 98.
[29] Paras 98-99.
[30] For example, US legislation guarantees a right to counsel in asylum proceedings and requires claimants be given a list of *pro bono* counsel. Para 100.
[31] Para 101.
[32] Para 102.
[33] Paras 103, 107.

these exceptions function, the Court could not assess whether it actually leads to *refoulement*.[34] The Court found that various alternative avenues for remaining in the US were also potentially relevant. The lack of findings below in relation to those US policies rendered it "imprudent" for the Court to determine whether there is a real and not speculative risk of *refoulement* for claimants fleeing such persecution. However, even assuming that these US policies presented a real and not speculative risk of *refoulement* for returnees, the Court noted it would not ultimately find a s. 7 breach on this basis.[35]

(d) Conclusion as to the Effects Implicating Section 7 Interests

Given the claimed consequences, detention upon return to the US, as well as three aspects of detention conditions as found by the Federal Court, the s. 7 rights to be considered were the right to liberty and to the security of the person.

With respect to the remaining claimed conditions, the Court proceeded on the assumption that they occur: non-accommodation of religious dietary needs, detention in a facility housing criminally convicted individuals and the risks of *refoulement* flowing from the one-year bar policy and the United States' approach to gender-based claims.[36]

C. Causal Link to Canadian State Action

A *Charter* claimant must show a causal link between Canadian state action and the violation of the relevant right or freedom. This "sufficient causal connection"[37] does not require that the impugned state action "be the only or the dominant cause of the prejudice suffered by the claimant."[38]

(a) "Necessary Precondition" and Foreseeability requirements both met

Canada's return of claimants to the US and knowledge about some of the consequences to them (for example detention and the one-year bar) satisfied the necessary precondition and foreseeability elements of the analysis for the Court to find that the s. 7 interests are engaged.[39]

To establish s. 7 engagement, challengers must demonstrate that the s. 7 effects are caused by Canadian state action. Here the challenge was directed to a legislative scheme, which attracts *Charter* scrutiny. However, there is no place in the analysis for assessing whether "American laws, policies or actions, themselves comply with the *Charter*. Canadian courts only consider deprivations "effected by actors other than our government, if there is a sufficient causal

[34] Paras 106-107.
[35] Para 107.
[36] Para 108.
[37] Citing *Canada (AG) v Bedford,* 2013 SCC 74 at para 76.
[38] Para 60.
[39] Paras 109-117.

connection between our government's participation and the deprivation ultimately effected." Nevertheless, the focus remains fixed on the Canadian legislative scheme and its effects.[40]

The two elements of causation are "necessary precondition" and "foreseeable consequence".[41] The causal link is not always obvious where the deprivation is effected by foreign actors since Canada has no jurisdiction to dictate the actions of foreign authorities. To draw a causal connection, Canadian authorities must have been implicated in how the harms arose. Here Canada's participation was a necessary precondition for the deprivation.[42]

On foreseeability, Canada could not foresee all the actions that foreign authorities would take, so to draw a causal connection to Canadian state action, it must be shown that Canadian authorities knew, or ought to have known, that the claimed harms could arise as a result of Canada's actions.[43] In the international context Canada does not necessarily have full knowledge of how foreign authorities will act. An effect can be shown to be foreseeable in at least two ways, by actual or by constructive knowledge of the risk that the effects would emerge. Speculation will not suffice, but it is well below the standard for judicial notice.[44] The causation element was satisfied here. Though not all of the claimed effects were foreseeable, some were.[45]

D. Principles of Fundamental Justice

(1) The Applicable Principles: Overbreadth and Gross Disproportionality

The relevant principles of fundamental justice in the s. 7 analysis were overbreadth and gross disproportionality, not the "shocks the conscience" standard. The Court concluded that that standard applies to individual decisions not to challenges to legislation.[46]

(2) Legislative Purpose

The Court provides a detailed outline on how legislative purpose may be derived. Indictors include statements of purpose, objectives of the Act, text and context of the provisions, the broader legislative scheme, extrinsic evidence, including international agreements (here the STCA), and the RIAS.[47]

Here the legislative scheme has three essential elements:

1. to share responsibility for considering refugee claims;
2. to respect the non-*refoulement* principle; and
3. to return refugee claimants only to countries that will fairly consider their claims.

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[40] Para 84 citing to *Suresh v. Canada (MCI)*, 2002 SCC 1 para 54, *Burns, op cit*. paras 59-60, and *India v. Badesha*, 2017 SCC 44 at para 38.
[41] Paras 112-113.
[42] Paras 109-112.
[43] Para 111.
[44] Para 114.
[45] Para 116-117.
[46] Paras 118, 121. Acknowledging *Kindler v Canada (Minister of Justice)*, 1991 CanLII 78 (SCC), [1991] 2 SCR 779, at pp 849-50 but reading it in light of *United States v Burns,* 2001 SCC 7.
[47] Paras 129-139.

Thus, the legislative purpose of s. 159.3 is to share responsibility for fairly considering refugee claims with the United States, in accordance with the principle of non-*refoulement*. This reflects a primary goal (sharing responsibility), subject to two limits (non-*refoulement* and the requirement for fair consideration). The claimed s. 7 deprivations, risk of discretionary detention and medical isolation, along with the presumed risks of *refoulement,* must be assessed for overbreadth and gross disproportionality against this purpose.[48]

(3) Scheme not overbroad or grossly disproportionate

For overbreadth, the question is whether the scheme is so broad in scope that it includes some conduct that bears no relation to its purpose.[49] Parliament need not have chosen the least restrictive means, the question is whether the chosen means infringe life, liberty or security of the person in a way that has no connection with the mischief contemplated by the legislature.[50] The risk of detention in the United States, with opportunities for release and review, is related to the legislative objective. Sharing responsibility for refugee claims with another state will necessarily expose returnees to the foreign legal regime that governs refugee claimants. The schemes can be different, so long as the US system is not fundamentally unfair.[51]

To ascertain what it means to treat refugee claimants fairly. the Court considered international legal instruments. International law demonstrates that detention of refugee claimants is not prohibited so long as there are safeguards which can be subject to state practice. The Court carefully examined the evidentiary record to note mechanisms for release and review of detention in the US concluding the scheme contains safeguards. Nor was there any basis to conclude that US practices on medical isolation were unfair. The legislative scheme is not overbroad.[52]

For gross disproportionality, the question is whether the legislation's effects on s. 7 interests are so grossly disproportionate to its purposes that they cannot rationally be supported. This is only met "in extreme cases where the seriousness of the deprivation is totally out of sync with the objective" and is "entirely outside the norms accepted in our free and democratic society".[53] Neither a risk of detention with opportunities for release and review nor a risk of medical isolation meets this high threshold. In Canada, as in the United States, these risks are within the mutually held norms accepted by our free and democratic societies.[54]

(4) Safety Valves within the section 7 analysis

On the question of the risk of *refoulement* because of American asylum policies, the Court found that when considering *IRPA's* legislative scheme as a whole as required, *including* the safety valves, it is not overbroad nor grossly disproportionate. The Appellants did not show that they would be returned to a real and not speculative risk of *refoulement*.

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[48] Para 139.
[49] Para 141.
[50] Paras 142-143.
[51] Para 142.
[52] Paras 143-146.
[53] Para 147.
[54] Para 147.

Safety valves help secure the constitutionality of s.159.3 by being able to exempt a claimant from return to the United States, and thereby guarding against potentially unconstitutional effects or risks. The Court recognized the existence of various safety valves in the *IRPA*: humanitarian and compassionate exemptions (s. 25.1) and public policy exemptions (s. 25.2). Also, administrative deferrals of removal (s. 48(2)) and temporary resident permits (s. 24) were mechanisms that create avenues for discretionary relief by front-line decision makers.[55] These avenues are not exhaustive.

These safety valves help ensure individuals would not be subjected to real, not speculative, risks of *refoulement*, if such risks exist.[56] The onus is on the *Charter* challenger who carries the legal and evidentiary burden to show "at every stage" that the legislation causes difficulties for those seeking to access to curative measures.[57] The Appellants failed to show that the statutory safety valves were illusory in their individual circumstances.[58] The record showed that many of the individual Appellants benefited from safety valves under the *IRPA*[59] and the Federal Court did not meaningfully engage with the relevant legislative safety valves.

The Court found the *IRPA* safety valves consistent with Article 6 of the STCA, which provides that Canada and the United States may examine "any refugee status claim" when it is in the public interest to do so. Just because Canada has only expressly relied on Article 6 to create categorical exceptions (e.g., exempting individuals subject to the death penalty from return), does not prevent the public interest authority preserved in Article 6 from being exercised on an individualized basis through the IRPA's curative mechanisms.[60]

The legislative scheme implementing the Safe Third Country Agreement is not overbroad or grossly disproportionate and it therefore accords with the principles of fundamental justice. No breach of s. 7 of the *Charter* was established.

SECTION 1 OF THE *CHARTER*

Although it was not necessary to resort to s. 1, the Court endorsed the proposition that legislative "safety valves", which are considered in the s. 7 analysis, are also relevant at the s. 1 stage of the challenge.[61] Sections 7 and 1 "ask different questions" insofar as "justification on the basis of an overarching public goal is at the heart of s. 1, but it plays no part in the s. 7 analysis, which is concerned with the narrower question of whether the impugned law infringes individual rights".[62] Given this distinction, "a different set of considerations comes into play under section 1: not just the effect of the law on (at least) one person's section 7 interests, but the effect of the section 7 violation in achieving the law's policy objectives".[63]

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[55] Paras 150, 151, 155.
[56] Para 152.
[57] Para 159.
[58] Paras 160 and 169.
[59] For example deferrals, temporary resident permits, and humanitarian and compassionate consideration at para 161.
[60] Paras 153, 156, 162.
[61] Paras 168.
[62] Para 125.
[63] Para 168.

While safety valves may not cure all breaches, it is possible that safety valves *as a whole* are sufficient to justify the breaches.[64] Thus, the Court opined that the existence of safety valves might be relevant to the argument that the legislation is "minimally impairing". Also the government, which bears the onus on s. 1, could seek to rely on safety valves in the final balancing stage of the *Oakes* test.[65] Therefore, safety valves could have potential applicability in other cases where the provision is found not to comply with the principles of fundamental justice in s. 7, but nevertheless might be saved under s. 1. Since the s. 1 analysis must be approached with sensitivity to the factual and social context of each case, at the s. 1 stage, a contextual approach would likely also consider international comity and the sovereignty of foreign states.[66]

SECTION 15 OF THE CHARTER

The Court declined to assess whether s. 159.3 *IRPR* infringes s. 15 of the *Charter* and instead returned the matter to the Federal Court for determination. A Court pointed to a number of factors for so doing.[67] The Court noted that the Appellants' s. 15 claim rests on allegations pertaining to women facing gender-based persecution and sexual violence who are denied refugee status in the US and acknowledged that the evidentiary and legal basis for the s. 15 claim remained disputed by the parties.[68] Also relevant was that the Federal Court did not engage in s. 15 fact-finding and the evidentiary record on s. 15 conflicts.[69] Thus, to decide the s. 15 claim, the Court would have had to become the trier of fact despite being an appellate court of final resort,[70] whereas that should only occur where to do so is in the interests of justice and feasible on a practical level given that lower courts have relative expertise with respect to the weighing and assessing of evidence.[71] Given the volume and complexity of the record, remitting the matter to the Federal Court was the appropriate remedy.[72]

The Court also commented on the Federal Court's decision to exercise restraint and not deal with the s. 15 arguments. The Court recognized that claims based on s. 15 are not "secondary issues" and that there is no hierarchy of rights in the *Charter*. The Federal Court did not err in exercising restraint. However, the general judicial rule concerning judicial restraint must be considered in light of the possibility of further proceedings that may require a court to consider alternative constitutional grounds.[73]

COSTS

No order as to costs.

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[64] Paras 169-170.
[65] Paras 170-171.
[66] Para 125.
[67] Paras 173-179.
[68] Para 168.
[69] Para 176.
[70] Para 176.
[71] Para 177.
[72] Paras 178-179.
[73] Paras 180-181.

APPENDIX "A" –SECTION 159.3 OF THE *IRPR*

Designation — United States

159.3 The United States is designated under paragraph 102(1)(a) of the Act as a country that complies with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture, and is a designated country for the purpose of the application of paragraph 101(1)(e) of the Act.

- SOR/2004-217, s. 2

Désignation — États-Unis

159.3 Les États-Unis sont un pays désigné au titre de l'alinéa 102(1)a) de la Loi à titre de pays qui se conforme à l'article 33 de la Convention sur les réfugiés et à l'article 3 de la Convention contre la torture et sont un pays désigné pour l'application de l'alinéa 101(1)e) de la Loi.

- DORS/2004-217, art. 2

Law Society of Ontario | Barreau de l'Ontario

TAB 3

31st Immigration Law Summit
DAY TWO

Best Practices Roundup (Portals, Eligibility)

November 22, 2023

SAMPLE ONLY

ACKNOWLEDGEMENT OF CONDITIONS - IMMIGRATION AND REFUGEE PROTECTION ACT (IRPA)
RECONNAISSANCE DE CONDITIONS RELATIVEMENT À LA LOI SUR L'IMMIGRATION ET LA PROTECTION DES RÉFUGIÉS (LIPR)

Client ID - Nº du client

In the matter of the *Immigration and Refugee Protection Act* (IRPA) and of
Relativement à la *Loi sur l'immigration et la protection des réfugiés* (LIPR) et à _____
(Name of person - Nom de la personne)

Take note, that I,
Veuillez noter que je, _____
(Name of person - Nom de la personne)

of - de _____
(Present address - Adresse actuelle)

In respect of whom conditions have been imposed pursuant to the *Immigration and Refugee Protection Act* (IRPA) under
En vertu des conditions imposées conformément à la *Lois sur l'immigration et la protection des réfugiés* selon

☐ 26(1)(d) ☑ 44(3) ☐ 56(1) ☐ 58(3) ☐ 58.1(3)

CONDITIONS - CONDITIONS

☑ Inform the:

☑ Canada Border Services Agency (CBSA) and/or ☑ Immigration Refugees and Citizenship Canada (IRCC)

in writing of my address and, in advance, of any change in that address.

Informer par écrit :

☑ l'Agence des services frontaliers du Canada (ASFC) et/ou ☑ Immigration, Réfugiés et Citoyenneté Canada (IRCC)

de mon adresse ainsi que, au préalable, de tout changement à celle-ci.

☑ Not work or study in Canada, unless authorized.
Ne pas travailler ou étudier au Canada, sauf si autorisé.

☐ Inform the: ☐ CBSA ☐ IRCC

in writing of my employer's name and the address of my place of employment and, in advance, of any change in that information.

Informer par écrit : ☐ l'ASFC ☐ IRCC

du nom de mon employeur et de l'adresse de mon lieu de travail ainsi que, au préalable, de tout changement à ces renseignements.

☐ Report to the CBSA according to the frequency noted below
Se rapporter à l'ASFC selon la fréquence indiquée ci-dessous

☑ Present myself at the time and place that an officer, the Immigration Division, the Minister or the Federal Court requires me to appear to comply with any obligation imposed on me under the IRPA.
Me présenter aux date, heure et lieu que m'ont indiqués un agent, la Section de l'immigration, le ministre ou la Cour fédérale pour me conformer à toute obligation qui m'est imposée en vertu de la Loi.

☑ Cooperate fully with the CBSA and IRCC with respect to the truthful and accurate completion of any documents, including, but not limited to, those for the purpose of establishing identity or obtaining travel documents, and submit any such documents in a timely manner.
Coopérer entièrement avec l'ASFC et IRCC en fournissant de l'information véridique et exacte afin d'obtenir tout document, incluant entre autres ceux visant à établir l'identité ou à obtenir des documents de voyage, et soumettre ces documents dans les délais appropriés.

CONDITIONS (Continued) - CONDITIONS (Suite)

☑ To produce to the CBSA without delay the original of any passport and travel and identity documents that I hold, or that I obtain, in order to permit the Agency to make copies of those documents.
Remettre sans délai, auprès de l'ASFC, l'original, de tout passeport, de tout titre de voyage et de toute pièce d'identité que je détiens ou que j'obtiens afin que l'Agence en fasse une copie.

☑ If a removal order made against me comes into force, to surrender to the CBSA without delay any passport and travel document that I hold.
Si une mesure de renvoi à mon égard prend effet, céder sans délai à l'ASFC tout passeport ou titre de voyage que je détiens.

☑ If a removal order made against me comes into force and I do not hold a document that is required to remove me from Canada, to take without delay any action that is necessary to ensure that the document is provided to the CBSA, such as by producing an application or producing evidence verifying my identity.
Si une mesure de renvoi à mon égard prend effet et qu'un document est requis afin de me renvoyer du Canada mais que je ne détiens pas ce document, prendre sans délai toute action nécessaire afin d'assurer que le document soit fourni à l'Agence, y compris la production de toute demande ou de tout élément prouvant mon identité.

☑ Not commit an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament.
Ne pas commettre d'infraction à une loi fédérale ou d'infraction qui, commise au Canada, constituerait une infraction à une loi fédérale.

☑ If I am charged with an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that charge in writing and without delay.
Informer par écrit et sans délai l'ASFC de toute accusation portée contre moi pour une infraction à une loi fédérale ou pour une infraction qui, commise au Canada, constituerait une infraction à loi fédérale.

☑ If I am convicted of an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that conviction in writing and without delay.
Informer par écrit et sans délai l'ASFC si je suis déclaré coupable d'une infraction à une loi fédérale ou d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale.

☑ If I intend to leave Canada, to inform the CBSA in writing of the date on which I intend to leave Canada.
Informer par écrit l'ASFC, le cas échéant, de mon intention de quitter le Canada et de la date à laquelle j'entends le faire.

ADDITIONAL CONDITIONS - CONDITIONS SUPPLÉMENTAIRES

☑ I shall (list other conditions)
Je dois (énumérer d'autres conditions)

Book the appointment for your medical exam;
Within the next 30 days, complete your medical exam ;
Within the next 45 days, complete your refugee claim through the IRCC Portal website:https://ircc.canada.ca/visit-visiter/en/get-account-ircc-portal
If you have any difficulties completing your application online, please email us at CBSA.Asylum-Asile.ASFC@CBSA-ASFC.gc.ca;

Within the next 45 days, submit your Basis of Claim to the Immigration and Refugee Board of Canada;
All claimants must inform us of any changes in address or contact information. All updates can be completed online at https://secure.cic.gc.ca/enquiries-renseignements/canada-case-cas-eng.aspx by selecting "Change of Contact Information".

FREQUENCY OF REQUIRED REPORTING - LA FRÉQUENCE À LAQUELLE L'INTÉRESSÉ DOIT SE PRÉSENTER

☐ Report in person until such time as this condition is either cancelled or amended in writing by a CBSA officer or the Immigration Division, as per the following:
Me présenter en personne jusqu'à ce que cette condition soit annulée ou modifiée par écrit par un agent de l'ASFC ou de la Section de l'immigration, conformément à ce qui suit :

Report to - Me présenter à: _____

Between the hours of - Entre les heures suivantes: _____

At a frequency of - à une fréquence de: _____

Start date - Date de début: _____

DURATION OF CONDITIONS / DURÉE DES CONDITIONS

The conditions imposed cease to apply only when:
– the person is detained*;
– the person is subject to new conditions imposed by the Immigration Division or the Immigration Appeal Division;
– the person is no longer subject to any IRPA proceeding; or
– a removal order is enforced against the person in accordance with the Regulations.

* Detained is understood to mean “detained” under IRPA and does not imply detention under other federal or provincial statutes. These conditions do not cease to apply if individuals are detained under another federal or provincial statute.

I understand that I should inform CBSA without delay if I am detained under another federal or provincial statute.

Les conditions imposées ne cessent de s'appliquer que lorsque survient l'un ou l'autre des événements suivants:
– la détention de l'intéressé;
– l'intéressé est assujetti aux nouvelles conditions imposées par la Section de l'immigration ou la Section des appels de l'immigration;
– l'intéressé ne fait plus l'objet d'aucune procédure en vertu de la LIPR, ou
– l'exécution de la mesure de renvoi visant l'intéressé conformément au Règlement.

* La détention doit être interprétée comme étant la «détention» visée de la LIPR et ne s'applique pas à la détention en vertu d'autres lois fédérales ou provinciales. Les conditions imposées ne cessent pas de s'appliquer si la personne est détenue au titre d'une autre loi fédérale ou provinciale. Je comprends que je dois d'informer l'ASFC de ma détention au titre d'une autre loi fédérale ou provinciale sans délai.

I, _____ , solemnly declare
(Name of interpreter)
that I have faithfully and accurately interpreted in

_____ (language) the information provided above. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

_____
(Signature of interpreter)

☐ By phone

Je, _____ , déclare
(Nom de l'interprète)
solennellement avoir interprété fidèlement et exactement en

_____ (langue) les renseignements indiqués ci-dessus. Je fais cette déclaration solennelle croyant en conscience qu'elle est vraie et sachant qu'elle a la même force et les mêmes effets que si elle était faite sous serment.

_____
(Signature de l'interprète)

☐ Par téléphone

I acknowledge being advised of the conditions.

_____
(Signature of person concerned)

Declared before me _____
(Officer name)

at _____ this _____ day of _____
(City)

of the year _____ .

_____
(Signature of the officer)

Je reconnais avoir été informé des conditions.

_____
(Signature de la personne concernée)

Déclaré devant moi _____
(Nom de l'agent)

â _____ ce _____ jour de _____
(Ville)

de l'année _____ .

_____
(Signature de l'agent)

The information provided on this document is collected under the authority of the *Immigration and Refugee Protection Act* for the purpose of informing the person concerned named in this form of the conditions imposed on that person. The information will be stored in Personal Information Bank number CBSA PPU 032, Enforcement Data System; it is protected and accessible under the provisions of the *Privacy Act*.

Les renseignements fournis dans le présent document sont receuillis en vertu de la *Loi sur l'immigration et la protection des réfugiés* pour informer la personne concernée nommée au recto du présent formulaire des conditions imposées. Ces renseignements seront versés dans le fichier de renseignements personnels ASFC PPU 032, Système de données sur l'exécution de la Loi; ils sont protégés et accessibles en verte la *Loi sur la protection des renseignements personnel*.

SAMPLE ONLY

Entry to Complete Examination

An officer has authorized you to enter Canada and has scheduled your examination for a later date, time and location.

While you are waiting, please complete your refugee claim application by using the IRCC portal.

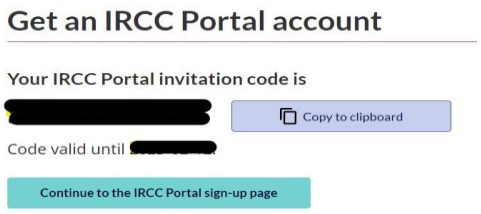
Completing your refugee claim application online as soon as possible will result in an earlier interview date.

Your refugee claim application will allow you to indicate whether you or any of your family members are requesting a work permit.

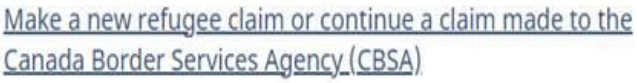
1. **Obtain** an **invitation code** by **confirming your email address** in the web link below:

   Web link: https://ircc.canada.ca/visit-visiter/en/get-account-ircc-portal or by scanning the QR Code

2. **Copy** your Invitation Code by clicking "Copy to clipboard" and click on "Continue to the IRCC Portal sign-up" page



3. From your **My IRCC portal account, click**:



4. You will need the **L# and UCI#** found on your **Acknowledgement of Claim** or **Refugee Protection Claimant Document** to continue your existing refugee claim.

For information to help you complete the forms and guide you through the application process, see:
Guide 0174 – Application Guide for Inland Refugee Claims

All claimants must inform the Government of Canada of any changes in address or contact information.
All updates can be completed online at: IRCC Webform (cic.gc.ca)

If you have any questions regarding your file or are unable to complete your refugee application using the IRCC Portal, you may send a request to : CBSA.Asylum-Asile.ASFC@CBSA-ASFC.gc.ca

Entrée autorisée pour contrôle complémentaire

Un agent vous a autorisé à entrer au Canada et a fixé votre contrôle complémentaire à un lieu, une date et une heure ultérieure.
Pendant que vous attendez, veuillez remplir votre demande d'asile en utilisant le portail de l'IRCC.

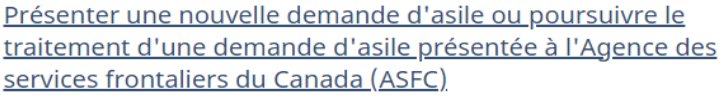
Si vous remplissez votre demande d'asile en ligne le plus tôt possible, vous aurez une date d'entrevue plus rapprochée.

Votre demande d'asile vous permettra d'indiquer si vous ou l'un des membres de votre famille demandez un permis de travail.

1. Obtenez **un code d'invitation** en **confirmant votre adresse courriel** dans le lien internet ci-dessous
   Lien internet : https://ircc.canada.ca/visit-visiter/fr/obtenir-compte-portail-ircc
   ou en **balayant** le code QR suivant

2. **Copier** votre code d'invitation en cliquant « Copier dans le presse-papier » et cliquer sur « Continuer pour s'inscrire au portail d'IRCC

3. À partir de votre compte **Mon portail d'IRCC** , **cliquez** sur:



4. Vous aurez besoin du numéro de la demande (**L#)** et de l'**IUC** figurant dans votre **Accusé de réception de la demande** ou sur votre **Document du demandeur d'asile** (DDA) pour poursuivre une demande d'asile existante.

Pour obtenir des renseignements pour vous aider à réunir les renseignements que vous devrez fournir dans le portail, consultez : Guide 0174 – Guide de demande d'asile présentée depuis le Canada

Vous devez informer le gouvernement du Canada de tout changement d'adresse ou de coordonnées. Toutes les mises à jour peuvent être effectuées en ligne à : Formulaire Web d'IRCC (cic.gc.ca)

Si vous avez des questions concernant votre dossier ou si vous ne parvenez pas à remplir votre demande d'asile en utilisant le portail de l'IRCC, vous pouvez envoyer une demande à : CBSA.Asylum-Asile.ASFC@CBSA-ASFC.gc.ca

À FAIRE!

Voici ce que vous devez compléter dès maintenant:

- ❑ Compléter votre demande d'asile dans le portail d'IRCC **d'ici 45 jours**:
  https://ircc.canada.ca/visit-visiter/fr/obtenir-compte-portail-ircc

  Veuillez rechercher le guide de demande d'aide :
  Guide 0192 – Guide de demande pour les demandes d'asile de l'ASFC présentée par l'intermédiaire du portail IRCC

  Si vous éprouvez des difficultés, veuillez nous en aviser à l'adresse suivante
  CBSA.Asylum-Asile.ASFC@CBSA-ASFC.gc.ca

Remplissant le portail d'IRCC mettra à jour votre adresse au sein du gouvernement du Canada et permettra l'envoie de votre permis de travail/d'étude.

- ❑ Soumettre votre Fondement de la demande d'asile **d'ici 45 jours:** https://irb-cisr.gc.ca/fr/formulaires/Documents/RpdSpr0201_f.pdf à la Commission de l'immigration et du statut de refugie du Canada

- ❑ **Le demandeur doit nous aviser de tout changement à son adresse ou à ses coordonnées.** Toutes les mises à jour peuvent être effectuées en ligne à : Formulaire Web d'IRCC (cic.gc.ca)

- ❑ Prendre un rendez-vous pour votre examen médical

- ❑ Aller à votre examen médical **d'ici 30 jours**

TO DO!

Here is what you need to do now:

- ❑ **Within the next 45 days**, complete your refugee claim application through the IRCC Portal website:
  https://ircc.canada.ca/visit-visiter/en/get-account-ircc-portal

  Please search the application guide for assistance:
  Guide 0192 – Application Guide for CBSA Refugee Claims Submitted through the IRCC Portal

  If you have any difficulties completing your application online, please email us at
  CBSA.Asylum-Asile.ASFC@CBSA-ASFC.gc.ca

Completing the IRCC Portal will provide the Government of Canada an updated address to send your work/study permit(s).

- ❑ **Within the next 45 days**, submit your Basis of Claim: https://irb-cisr.gc.ca/en/forms/Documents/RpdSpr0201_e.pdf to the Immigration and Refugee Board of Canada

- ❑ **All claimants must inform us of any changes in address or contact information.** All updates can be completed online at: IRCC Webform (cic.gc.ca)

- ❑ Book the appointment for your medical exam

- ❑ **Within the next 30 days**, complete your medical exam

ONE TOUCH

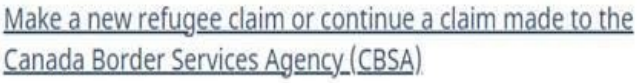
Your refugee claim application is NOT complete. You must complete your refugee claim application within the next 45 days using the IRCC portal:

1. **Obtain** an **invitation code** by **confirming your email address** in the web link below:

   Web link: https://ircc.canada.ca/visit-visiter/en/get-account-ircc-portal or by scanning the QR Code

2. **Copy** your Invitation Code by clicking "Copy to clipboard" and click on "Continue to the IRCC Portal sign-up" page

3. From your **My IRCC portal account, click**:



4. You will need the **L# and UCI#** found on your **refugee protection claimant document** to continue your existing refugee claim.

For information to help you complete the forms and guide you through the application process, see:
Guide 0174 – Application Guide for Inland Refugee Claims

IMPORTANT:

Completing the IRCC Portal will provide the Government of Canada an updated address to send your work/study permit(s).

You must also submit a completed Basis of Claim (BOC) form to the Immigration and Refugee Board (IRB) within 45-days.

Not completing your refugee claim application and BOC will result in delays and your refugee claim may be declared abandoned by the Immigration and Refugee Board (IRB). In addition, you could be subject to enforcement including arrest and removal from Canada.

If you are unable to complete your refugee application using the IRCC Portal, you may send a request for paper forms to CBSA.Asylum-Asile.ASFC@CBSA-ASFC.gc.ca *

*The paper forms requires the completion of forms using Adobe Acrobat 10 (not available on a tablet or mobile phone), and will require a manual review to ensure completion. Incomplete forms will result in delays.

IRCC PORTAL

CLIENT INFORMATION SHEET

For internal use only

Instructions:

- You must fill out a separate client information sheet for each family member who is claiming with you.
- Fill in the entire form unless you are told to skip a question
- If you do not know the answer to a question, put "unknown". Do not guess
- You may fill in this form on your computer with Microsoft Word or you may print it off and fill in by hand. If filling in by hand, please write legibly and in block letters.
- If, when filling out the form by hand, you need more space, write on the back of the page, or print off another copy of the page that requires additional information.
- Do not submit this form to any government body. We will input the information in your CRPP account for you.

CAN A CLAIM BE MADE?

1. Are you in Canada right now?	Yes ☐ No ☐
2. Have you received a removal order since you entered Canada A removal order can be a departure order, exclusion order or deportation order. If you received one of these orders, but you haven't had to leave Canada yet, the removal order hasn't been enforced.	Yes ☐ No ☐

EXISTING CLAIM

1. Have you ever made a refugee claim in Canada? If you already made a refugee claim, you would have an acknowledgement of claim letter with an application number. This incudes if you have recently made a claim at a port of entry but have not yet filed any forms.	Yes ☐ No ☐ (If your answer is No, skip the rest of this section)
If answered No, skip to Section 2	
2. If you have made a refugee claim in Canada, what is your application number? You can find this number on the Acknowledgement of Claim letter you received	

when you submitted your claim. It starts with the letters “XL” or “L.”	
3. What interview location is listed on your Entry for Further Examination or Admissibility Hearing form? You can find your interview location listed under the entry conditions on the form.	
Personal Details	
Surname / last name Write your surname exactly as it appears on your passport or identity document	
Given name / first name Write your given name exactly as it appears on your passport or identity document. If none, leave this field blank.	
Date of birth as it appears on your passport. Enter it in this format: dd/mm/yyyy.	
Gender – Female/male/ another gender	
Height – in centimeters or in feet and inches	
Eye color	
UCI (unique client identifiers), if you known	
4. Have you used another name in the past?	Yes ☐ No ☐
5. If you have used another name in the past, what was it?	
Place Of Birth	
8. City or town where you were born	
9. Country of territory where you were born	
What is your current residential address?	
Street number	
Street name	
Apartment or unit number	
City or town	
Province	

Postal code	
Date you started living at this address	
Your email address	
Your telephone number	

RESIDENTIAL ADDRESS HISTORY

List all addresses where you have lived for the past 10 years or since turning 18 years old (whichever is less time), starting with your current residence in Canada. If you do not know the exact day, put "01". This list should include everywhere you have lived, not just your "official address." It should include, for example, anywhere you lived in hiding.

From	**To**	**Street and number**	**City and Town**	**Province, state or district**	**Postal code / zip code**	**Country / Territory**	**Status in country** (e.g. citizen, worker, etc.)

What is your native language or mother tongue?	
Do you speak any other languages? If yes, list them all	

What language do you want IRCC to use in their interview with you?	
Can you communicate in English and/or French?	English ☐ French ☐ Both ☐ Neither ☐
What language would you like IRCC to use to contact you?	English ☐ French ☐

TRAVEL DOCUMENT INFORMATION

Travel Document	
Have you ever had a passport? Even if you do not have your passport with you, you should check Yes	Yes ☐ No ☐
Current Passport	
What kind of passport?	Ordinary ☐ Alien passport for non-citizens ☐ Diplomatic ☐ Official ☐ Service (official government passport, not diplomatic) ☐
What country issued your passport?	
What is the nationality on your passport?	
Passport number	
Issue date of your passport (dd/mm/yyyy)	
Expiry date of your passport (dd/mm/yyyy)	
Previous passport	
What kind of passport?	Ordinary ☐ Alien passport for non-citizens ☐ Diplomatic ☐ Official ☐ Service (official government passport, not diplomatic) ☐
What country issued your passport?	
What is the nationality on your passport?	
Passport number	

Issue date of your passport (dd/mm/yyyy)	
Expiry date of your passport (dd/mm/yyyy)	

Other Travel Documents	
Have you ever had another type of travel document?	Yes ☐ No ☐
Current Travel Document	
What kind of travel document?	Certificate of identity ☐ Refugee travel document ☐ Red Cross travel document ☐ A pass ☐ Seaman's book ☐ Organization of American States (OAS) travel document ☐ Other travel document ☐
If you clicked other, enter the details of this travel document	
What is the country code that matches the one on your travel document? e.g., CAN for Canada, AFG for Afghanistan, etc.	
Which country or organization issued your travel document?	
Travel document number	
Issue date of your travel document	
Expiry date of your travel document	

NATIONALITY

Country or territory where you were born	
City or town where you were born	
Which other countries are you a citizen of?	

If you are a citizen of another country, when did you become a citizen of that country? dd/mm/yyyy	
If you stopped being a citizen of another country, when did you stop being a citizen? dd/mm/yyyy	
National Identity Document	
Do you have a national identity document? Not all countries issue them	Yes ☐ No ☐
What country issued your national identity document?	
Document number	
Date of issue dd/mm/yyyy	
Date of expiry dd/mm/yyyy	
Country that issued your national identity document	

MARITAL STATUS

What is your current marital status?	Married ☐ Common-law ☐ Conjugal partner ☐ Divorced ☐ Single ☐ Separated ☐ Widowed ☐ Annulled marriage ☐
Date of marriage or start of common law relationship dd/mm/yyyy	
Current spouse or common-law partner's information	
Surname / last name	
Given name / first name	
Date of birth dd/mm/yyyy	
Country or territory of birth	

Current occupation	
Do you and your spouse live at the same address?	Yes ☐ No ☐
Street number	
Street name	
Apartment or unit number	
City or town	
Province	
Postal code	
Country	

CHILDREN

Do you have any biological, adopted or step-children? This includes <u>all</u> sons and <u>all</u> daughters, regardless of age or place of residence. ***If you click No, you will not be able to sponsor any children you have***					Yes ☐ No ☐
2. Enter all of your children's information (exactly as it appears on their passports)					
Surname / last name	**Given name / first name**	**Date of birth** dd/mm/yyyy	**Relationship** (e.g. son, daughter, adopted daughter, adopted son, step daughter, step son)	**Country or territory of birth**	**Does this child have the same address as you**
					Yes ☐ No ☐
					Yes ☐ No ☐
					Yes ☐ No ☐
					Yes ☐ No ☐
					Yes ☐ No ☐

					Yes ☐ No ☐

3. Children's addresses (if any of your children have a different address as you, please indicate the addresses here. If not, skip this table)

First / given name	Full address	City or town	Province, territory or state	Postal Code	Country

PARENTS

If you were adopted, provide the details of your legal parents.

Parent #1	
Surname	
Given / first name If none, leave blank	
Relationship	Mother ☐ Father ☐
4. Date of birth dd/mm/yyyy	
Is your parent deceased?	Yes ☐ No ☐
If your parent is deceased, enter the date of death dd/mm/yy	
Country of birth	
Country of citizenship	

Does your parent have the same address as you in Canada?	Yes ☐ No
Street number	
Street name	
Apartment or unit number	
City or town	
Province	
Postal code	
Country	
Parent #2	
Surname	
Given / first name If none, leave blank	
Relationship	Mother ☐ Father ☐
Date of birth dd/mm/yyyy	
Is your parent deceased?	Yes ☐ No ☐
If your parent is deceased, enter the date of death dd/mm/yy	
Country of birth	
Country of citizenship	
Does your parent have the same address as you in Canada?	Yes ☐ No ☐
Street number	
Street name	
Apartment or unit number	
City or town	
Province	
Postal code	

Country	
Guardian Information	
Does the claimant need a guardian because they are unable to understand the proceedings or is under the age of 18?	Yes ☐ No ☐
If you answered No, skip to Section D	
Identify relationship to guardian (e.g. child, grandchild, niece/nephew, etc.)	
Guardian's surname / family name	
Guardian's given name/first name	
Guardian's mailing address	
Street number	
Street name	
Apartment or unit number	
City or town	
Province	
Postal code	
Country	

TRAVEL TO CANADA	
How did you arrive in Canada?	Air ☐ Sea ☐ Land ☐
Were you a crew member?	Yes ☐ No ☐
Were you a Stowaway?	Yes ☐ No ☐
Where did you enter Canada? Enter the port of entry where you entered, including terminal number if at an airport	
When did you enter Canada? dd/mm/yyyy	
What is your current status in Canada?	

What is the number on your immigration status document? (Canadian visa)	
What was your ticket number?	

Route to Canada			
How did you travel?		Air ☐ Sea ☐ Land ☐	
Date of departure dd/mm/yyyy	**City and country**	**Date of arrival**	**City and country**

EDUCATION AND WORK

1. Education

Include your high school, post-secondary schools, and the programs you have studied or are currently studying (this includes any educational programs that you started but did not complete, and includes both full-time and part-time programs)

School/institution name	**From** dd/mm/yyyy	**To** dd/mm/yyyy	**Level of study**	**Field of study**	**Are you still studying at this school?**	**City/town**	**Province / territory / state**	**Country**

Military or police service	
2. Have you served in a military unit, militia, civil defence unit, security organization or police force?	Yes ☐ No ☐
If you clicked No, skip to the Section K, Question 15 (Government Positions)	
3. Type of service (e.g. military, police, etc.)	
4. From dd/mm/yyyy	
5. To dd/mm/yyyy	
6. Conscript (mandatory military service) or volunteer service?	
7. Your rank	
8. Your title	
9. Name and rank of your commanding officer	
10. Your duties	
11. Type of unit	
12. Name of unit	
13. Location	
14. Number of people you supervised	

GOVERNMENT POSITIONS

15. Have you ever held any government positions? Yes ☐ No ☐

If you clicked No, skip to Section K, Question 17 (Work History)

16. Government positions
A government position includes any time working as a civil servant, judge, mayor, Member of Parliament, hospital administrator, or employee at a security organization.

From	**To**	**Level of jurisdiction** e.g. municipal, regional, national, or similar	**Department / branch**	**Activity or position held**	**Country**	**Province / territory / state**	**City / town**
N/A							

PERSONAL HISTORY

17. Personal History
Include your work history and other activities you've been involved with for the past 10 years (e.g., studying, periods of unemployment, volunteering, etc.). Do not include anything from before you turned 18 years old.

From	**To**	**Activity or position**	**Job Title**	**Company/employer name**	**Country**	**Province / territory / state**	**City / town**

CRIMINALITY

Have you ever been convicted of any crime in any country or territory (including driving under the influence of alcohol or drugs)? Yes ☐ No ☐

Crime/offence	**Country/territory**	**Location**	**Date of conviction** Dd/mm/yyyy	**Length of sentence** (in months). If you only paid a fine, enter "0".

Have you ever been arrested or detained in any country or territory (this includes any arrests or detentions that led you to make a refugee claim, detentions of <u>any length</u>, even less than 24 hours, and detentions by non-state actors)? Yes ☐ No ☐

Reason for detention	**Country/territory**	**Location**	**Detained from** Dd/mm/yyyy	**Detained to** Dd/mm/yyyy

Have you ever been charged, sought, or wanted for any criminal offence in any country or territory? (Don't list any crimes already listed above) Yes ☐ No ☐

Crime/offence	**Country/territory**	**Date committed** Dd/mm/yyyy	**Date charged** Dd/mm/yyyy

Have you ever committed a crime in any country or territory? (This includes driving under the influence of alcohol or drugs. Don't include any crimes you listed above) Yes ☐ No ☐

Crime/offence	**Country/territory**	**Date committed** Dd/mm/yyyy	**Date charged** Dd/mm/yyyy

ADMISSIBILITY

Have you supported, been a member of, or been associated with any organizations? (Include any political, social, youth, student organizations, trade unions and professional associations) Yes ☐ No ☐

From dd/mm/yyyy	**To** dd/mm/yyyy	**Type of organization**	**Your activities** Include details like any positions held and what you did as a	**Country**	**City / town**

		e.g. municipal, regional, national, or similar	member or supporter of this organization		

Have you supported, been a member of, or been associated with any organizations that uses, used, advocated or advocates the use of armed struggle or violence to reach political, religious, or social objectives? Yes ☐ No ☐

From dd/mm/yyyy	**To** dd/mm/yyyy	**Type of organization** e.g. municipal, regional, national, or similar	**Your activities** Include details like any positions held and what you did as a member or supporter of this organization	**Country**	**City / town**

Have you ever witnessed or participated in the ill treatment of prisoners or civilians, looting or desecration of religious buildings? Yes ☐ No ☐

Action How were you involved?	**Country**	**City/town**	**Branch/place stationed**	**From** Date you first became a member or supporter	**To** Date you stopped being a member/supporter	**Your rank**	**Your commanding officer**
Details:							

Details:							

Have you ever used, planned, or advocated the use of armed struggle or violence to reach political, social, or religious objectives? Yes ☐ No ☐

Details:

_____

_____

_____

Have you supported, been a member of an organization that is or was engaged in an activity that is part of a pattern of criminal activity? Yes ☐ No ☐

From dd/mm/yyyy	**To** dd/mm/yyyy	**Name of organization**	**Type of organization / organization's objective / mission** e.g. municipal, regional, national, or similar	**Activities and/or positions held** Include details like any positions held and what you did as a member or supporter of this organization	**Country**	**City / town**

Have you ever had any serious disease, or physical or mental disorders? Yes ☐ No ☐

Details:

_____

_____

_____

Do you currently have any infectious diseases? Yes ☐ No ☐

Details:

_____

_____

_____

MEDICAL HISTORY

Have you ever had any serious disease, or physical or mental disorder?	Yes ☐ No ☐
Illness or disorder details – include many details as possible (such as when you were ill and why). This will help us process your application.	
Do you currently have any infectious diseases?	Yes ☐ No ☐
Infectious disease details (required) Include as many details as possible (such as when you were infected and how). This will help us process your application.	

TRAVEL HISTORY

Since the age of 18, have you travelled to a country or territory other than the one where you're a citizen or where you lived before coming to Canada? Yes ☐ No ☐

From	To	Country/territory	Location	Purpose of travel

dd/mm/yyyy	dd/mm/yyyy			

Has Canada or any other country ever refused to issue you a visa or permit, denied you entry to the country, or ordered you to leave? Yes ☐ No ☐

From dd/mm/yyyy	**To** dd/mm/yyyy	**Country/territory**	**Details**

Have you ever been refused a visa or permit, denied entry to, or ordered to leave any country or territory? Yes ☐ No ☐

Date dd/mm/yyyy	**Country/territory**	**Details**

CANADA AND US VISAS

Green card

Are you a lawful permanent resident of the United States with a valid Green Card (alien registration card)?	Yes ☐ No ☐
Enter the USCIC number exactly as it appears on the card	
Issue date of your Green card (dd/mm/yyyy)	
Expiry date of your Green card (dd/mm/yyyy)	
Visa history	
Have you held a Canadian visitor visa in the past 10 years?	Yes ☐ No ☐
Do you currently hold a valid US nonimmigrant visa?	Yes ☐ No ☐
If you answered No, skip to Section G	
Enter your nonimmigrant visa number	
Expiry date of your nonimmigrant visa (dd/mm/yyyy)	
Are you using a different passport for this application than the one you used to get your US nonimmigrant visa?	Yes ☐ No ☐
If you answered No, skip to Section G	
Passport number you used to get your nonimmigrant visa	
Issue date (dd/mm/yyyy)	
Expiry date (dd/mm/yyyy)	

REFUGEE BACKGROUND

Do you have any family members or friends in Canada (parents, children, siblings, grandparents, aunts/uncles, nephews/nieces, cousins)	Yes ☐ No ☐

Surname / last name	**Given name / first name**	**Relationship**	**Date of birth**	**Country of birth**
Address in Canada:				

Address in Canada:				
Address in Canada:				
Address in Canada:				
Address in Canada:				

Did someone help you come to Canada?		Yes ☐ No ☐		
Surname / last name	**Given name / first name**	**Relationship**	**Type of assistance**	**Amount paid (Canadian $)**

REASON FOR CLAIM

Are you afraid to return to your country or countries of citizenship?	Yes ☐ No ☐
Countries or territories you're afraid to return to (required)You can choose more than one country or territory where you're a citizen or permanent resident.	
Why are you unwilling or unable to return to your home country (or territory) or the country (or territory) where you normally live? (required)	
Why did you not move to another part of your home country (or territory) or the country (or territory) where you normally live? (required)	
Did you ask police for help in your home country (or territory) or the country (or territory) where you normally live?	Yes ☐ No ☐
Why did you not claim when you arrived in Canada (at a port of entry)? (required)	

Why did you decide to come to Canada (instead of another country or territory)? (required)	
Have you ever made a claim for refugee protection in any of the following places: • **in Canada or at a Canadian visa office abroad** • **in any other country or territory** • **with the United Nations High Commission for Refugees (UNHCR) (required)**	Yes ☐ No ☐
Countries or territories where you have made a claim for refugee protection (required)	

		Outcome of application

OTHER CLAIM DETAILS

Where would you like to be interviewed? (required)This interview will be with Immigration, Refugees and Citizenship Canada. This is not a hearing with the Immigration and Refugee Board of Canada.	
Do you need accommodation for any of the following? (optional)	
Do you need any other accommodation not listed above (please specify) (optional)	

Work Permit	
Indicate whether you are requesting a work permit	Yes ☐ No ☐

[DATE]

Canada Border Services Agency [OR Immigration, Refugees and Citizenship Canada]
[ADDRESS]

Via IRCC Portal

Dear Officer:

Re: [Client name]
UCI: [number]
Issues with IRCC Portal

Please be advised that while inputting the above-named claimant's information into the Portal, we experienced the following issue:

- The Portal would not allow us to input the correct dates of the claimant's travel to Brazil, Colombia and Panama in the "Travel to Canada" section due to an apparent glitch. The correct dates are:
    - Brazil: [date] to [date]
    - Colombia: [date] to [date]
    - Panama: [date] to [date]
- Further, please note that the dates associated with the claimant's travel to Canada may not be exact as he does not know the exact dates he entered the various countries he travelled through.

Yours truly,

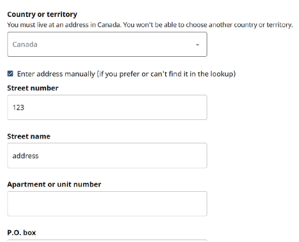
[Counsel]

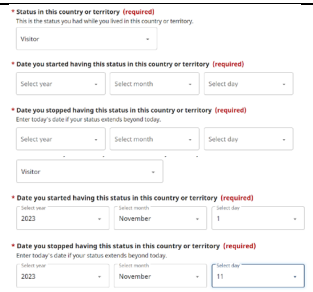
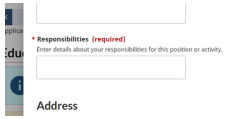
31st Immigration Law Summit DAY TWO
Best Practices Roundup (Portals, Eligibility)

IRCC Portal - Refugee Claims and Glitches

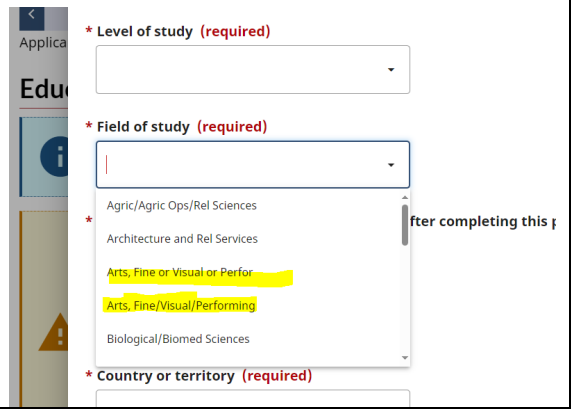
Prepared by: Razmeen Joya (Jackman & Associates) And Kia Jacobs (CBSA)

Glitches while completing the portal	Tips/suggestions to resolve the glitches	CBSA Answer
The page with the already submitted claims does not show which files need attention or have received documents – this is onerous and means we need to check the one million emails we receive day to follow up with the file number		The new rep portal has a search function for claims with pending massages. Authorized Paid Representatives portal - Canada.ca
Cannot input overlapping data, such as having a part time job while studying.	Have this section of the portal work the same as other portals where we can enter the data that overlaps.	Overlapping is allowed. Exception is for when "unemployed" is an option. 
Cannot add unit numbers to automatically inputted addresses	Allow for editing of searched addresses	Adding the Unit number for the Canadian address is possible. If the client uses Canada post to search the address , system automatically populate the selected address. In this mode, all the address fields become read only to ensure accuracy as this will recorded as "Certified address" in GCMS. If there is

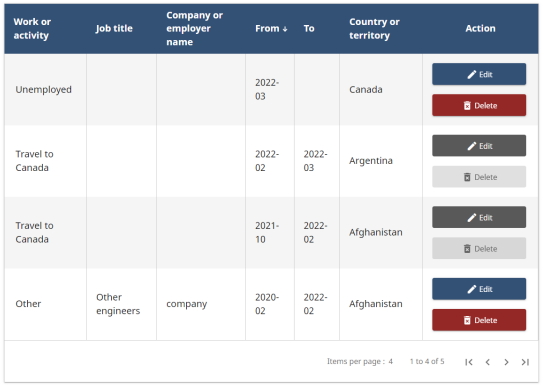
		any partial missing data in the auto-populated address, it cannot be edited.. The user is expected to select the correct address from Canada Post's suggestions. If the client cannot find the address or encounters partial data missing in the Canada post address, they have the option to enter the address manually. To do this, select the "Enter address manually" check box. 
Cannot start dependant information until documents are uploaded for PA causing blank documents to needlessly be uploaded to continue application	Remove this feature	Message relayed to IRCC development team for consideration.
When entering my client's information into the new refugee claim portal, I receive an error message after the third page indicating that "an unknown error has occurred" and the portal is no longer available. I have tried refreshing the page, logging out and logging back in, and re-opening the app in an incognito window.		For error messages such as these contact IRCC portal support. Email exclusively for lawyers IRCC.AsylumTechSupport-SupportTechAsile.IRCC@cic.gc.ca

How to answer the question in the address history section where they ask when the person stopped having that status in the country at that address… The client still has visitor's status until their ref claim is submitted and found eligible on a future date, so I don't understand how to answer the question.	The system will not permit entering a date after today's date -even if the visa remains valid. I think the only way to deal with this is to enter today's date and add a letter in the uploads explaining this	 This is a bug. Issue forwarded to IRCC development team.
Any tips on getting around this error message in the refugee claim portal? I have already tried removing all periods, colons, and slashes from the 'responsibilities' descriptions in my client's work history. Error: Responsibilities- invalid field format	-I had the same error - tried a number of things including just putting in one word. I'm not sure if that is what worked but the error disappeared. - I was also able to resolve the error by clearing all punctuation and reducing the length of my entries (after lots of trial and error). There seems to be some maximum character count that is not explicitly indicated. Very frustrating!	There is a 250 character limit. Punctuation is not an issue. 

Questions and Feedback to CBSA and IRCC about the portal

		CBSA Answer
1.	The portal was clearly designed for one person to make a handful of applications, and not the hundreds of applications a practitioner will end up making - we need to be able to sort the applications by columns, and/or applications which have received changes (e.g. interview dates) need to be flagged or it becomes impossible to keep up (especially since each family member is a separate listing).	Rep portal has increased functionality and a search function to identify client claims that require action. Authorized Paid Representatives portal - Canada.ca
2.	The travel history section requires duplicate work, as we have to list all but the first and last locations twice (Z → Y; Y → X; X → W; W → V; U → T and so on). Can the duplicate information not be pre-populated from the previous entry? In fact, that would be better as it would ensure no steps were missed.	I imagine this is for the "Travel to Canada" section and not "Travel History"? Possibility of prepopulating the country? Forwarded to IRCC development team for consideration.
3.	There's an error in the Education section that is fairly recent - there are now two categories for fine/visual arts and zero categories for arts in the sense of the humanities.	Forwarded to IRCC development team. Bug ticket opened. 

4.	The “job title” dropdown menu is completely bizarre. Some jobs are listed with incredible specificity, but others are lumped together. For example, for “tailor/seamstress” the closest options are "Creative designers and craftspersons" or "Machine operators and related workers in textile, fabric, fur and leather products processing and manufacturing". Where are these job titles coming from, and does IRCC/CBSA realize that this formatting means people will be guessing (incorrectly).	Forwarded to IRCC development team and program team. “Other” as an option perhaps?
5.	The change of address tool does ***not*** work for refugee claimants. It needs to be fixed and/or they need to stop telling people to use it.	https://secure.cic.gc.ca/enquiries-renseignements/canada-case-cas-eng.aspx Ensure to use the correct change of address webform. There are two different mechanisms depending on the type of application.
6.	No one to contact when claims have no AOC after weeks or months.	
7.	Claimants having biometrics interviews convoked *without* receiving AOCs first, and technical support claims that the AOC cannot be sent from their end (which is untrue, because a few months ago they did send it in such a case). Claimants have also been told by IRCC officers that they also don’t have access to the AOC (although in more recent cases, have been given the AOC at that first interview). This is contrary to the procedure set out (https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/canada/claims-refugee-protection-intake.html#From_inside_Canada) and unnecessarily complicated and frustrating for counsel and claimants. Why is this happening?	Reached out to IRCC for info…pending IRCC portal support. Email exclusively for lawyers IRCC.AsylumTechSupport-SupportTechAsile.IRCC@cic.gc.ca

8.	Counsel needs to receive a *complete* intake package, not just the Confirmation of Referral. This should include all Refugee Protection Claimant Documents, all CAS and amendments to any CAS, any interview notes, the notice of seizure *and* any documents seized or issued. The entire referral package gets sent to the RPD, so it should also be sent to counsel (or unrepp'd applicants) so they have a complete copy. I have also received the odd cover page to an ICAC package *without the ICAC package*. This is just downloading work to the IRB, because that's who it has to be requested from.	CBSA clients receive paper copies of all documents which should be shared with their representatives.
9.	The 'personal history' section should not be pre-populated from the answers about the route of travel to Canada. It leads to confusion and glitches as then in the personal history any entries near the time of travel say they 'overlap'.	See #10
10.	A constant annoyance on the portal for me is that if someone puts their route of travel to Canada and it's a bit of a long journey in the question about how you got to Canada, it then automatically fills in that same travel time in the "personal history" question so that it can't be altered. Then when you try to fill in the personal history it often rejects entries as overlapping with the travel to Canada in ways that are unpredictable. I don't know why IRCC insists on pre-filling the personal history based on the travel to Canada and it would be better to leave it to claimants themselves to fill in manually to avoid these glitches.	Overlap is allowed with the exception of when "unemployed" is selected. 
11.	Do we have to create a new portal account for each case?	No, the rep portal can be used. Authorized Paid Representatives portal - Canada.ca
12.	Are email addresses for each client still required or can we use our office email for all applications?	Email for client will still be requested along with other contact details.

Law Society of Ontario | Barreau de l'Ontario

TAB 4

31st Immigration Law Summit
DAY TWO

Stay of Removal Applications, Directives, How to Prepare a Stay Application, Challenges for the Applicants, Best Practices

November 22, 2023

cpd

***** FICTIONALIZED SAMPLE ONLY *****

November 10, 2023

VIA EMAIL

The Registrar
Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, ON M5G 1R7

Cc. Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Dear Sir/Madame:

RE: [Client] v Canada (MPSEP), IMM-XXXX

I enclose a motion record, seeking a stay of the Applicant's removal. **His removal is currently scheduled to [Country] for Tuesday, November 14 2023 at 11:40 am.**

I respectfully request that the motions be heard on an urgent basis, at a date and time to be set by the Court. Counsel is available in the afternoon today (Friday November 10, 2023) or anytime Monday (November 13, 2023) or the morning of Tuesday, November 14 2023.

I anticipate the motion taking no longer then 45 minutes.

The Applicant was made aware of their removal date on October 12, 2023. The Applicant suffers from psychological conditions that worsened upon learning of this date. As indicated in his affidavit, as well as in letters from his friends (including a mental health facilitator and medical expert), the Applicant became suicidal and despondent.

The shock of receiving a removal date took a great toll on the Applicant, resulting in his being paralyzed with anxiety. He cut off communication with his friends, family and even his legal representatives as a way of coping.

The Applicant acknowledges in his sworn affidavit that his own mental health prevented him from taking steps trying to stop his removal in a faster way. The Applicant finally sought legal counsel with respect to pursuing a stay of removal on the afternoon of Wednesday, November 8 2023.

Applicant's current counsel immediately informed the emergency after-hours phone number of the Registrar, and took steps to obtain the file from former counsel.

The Applicant deeply regrets that he has not acted quicker on his removal and asks that his removal be stayed until a decision is made on his pending judicial review of his refused humanitarian and compassionate application. It is respectfully submitted that compelling reasons exist to hear this motion. The Applicant fears self-harm if he is removed as scheduled.

Thank you for your attention to this matter. Please do not hesitate to contact the undersigned should you have any questions or concerns. You can contact me directly at XXXX

Yours truly,

Barrister & Solicitor

***** FICTIONALIZED SAMPLE ONLY *****

8 November 2023

The Registrar
Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, ON M5G 1R7

CC: Department of Justice
Immigration Section
120 Adelaide Street West, Suite 400
Toronto ON M5H 1T1
Via Email

Dear Sir/Madame:

RE: CLIENT v. Canada (MPSEP)
Court File IMM-

Enclosed please find enclosed a motion for a stay of removal. I would request that it be set down to be heard on an urgent basis given that the Applicant's removal is scheduled to take place on Sunday, November 12, 2023 at 6:15 PM.

The Applicant has acted as quickly as reasonably possible in bringing this matter before the Court. The Applicant was served with his Direction to Report the afternoon of November 1, 2023. This left the Applicant only 7 business days before his scheduled removal date. By November 3, 2023 the Applicant forwarded to the Greater Toronto Enforcement Centre, by same-day courier, his request for a Deferral of his Removal.

We wished to provide the Respondent with as much notice of the Applicant's stay motion as possible. On November 3, 2023 we therefore contacted the Department of Justice to notify them of our intention to file a stay motion in the event of a refusal of the Applicant's request to defer.

Unfortunately, the Applicant has yet to receive a response to his request. We have therefore submitted the stay motion on the basis of a deemed refusal, to allow for the Court and the Respondent to receive and review the Applicant's motion materials as early as possible. If, at some point prior to the hearing of this motion, we receive a response from the CBSA in relation to the Applicant's deferral request, we undertake to advise the Court and the Respondent immediately and to address the response in supplemental submissions if possible or, if time does not permit,

orally at the hearing of the stay.

If the Court does not wish to hear the Applicant's motion on an urgent basis before the Applicant's scheduled removal, we would request that the Court grant an interim interim stay. The failure of the Removals Officer to give the Applicant sufficient time to go to Court should not be held against the Applicant.

I am available to argue the stay on November 9 or November 10, 2023. I can also make myself available over the weekend, if necessary. I would anticipate that the argument on the motion will not exceed forty-five minutes.

Yours very truly,

Barrister & Solicitor

***** FICTIONALIZED SAMPLE ONLY *****

August 16, 2023

Via E-Filing System

Federal Court
Registrar
180 Queen Street West
Suite 200
Toronto, ON, M5V 3L6

cc. Department of Justice
Immigration Section
120 Adelaide Street West, Suite 400
Toronto ON M5H 1T1
Via Email

Dear Sir / Madame:

RE: Motion Record - Stay of Removal

File Number: [NAME] v MPSEP (IMM-XXX)

I represent the above-named in relation to his application for leave and judicial review against a refusal of his request to defer his removal.

Please find attached motion materials requesting that the removal of the Applicant be stayed until the resolution of this outstanding application. Removal to Sri Lanka is currently scheduled for August 31, 2023 at 4:00 pm.

The Applicant is requesting that the motion be heard at the regular sitting of the Federal Court on August 22, 2023. The expected duration of the motion is 45 minutes.

The Applicant endeavored to keep the motion record as condensed as possible, in order to keep the motion record to less then 100 pages, pursuant to the *Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings*.

However, given that the Applicant is required to show serious issue on an elevated threshold, the Applicant believes it is important to provide the Court with the entire request to defer the Applicant's removal, including the 10 page psychological report which is at the heart of the Applicant's arguments on serious issue.

Similarly, while country condition documents have been excerpted, when possible, conditions in Sri Lanka are complex. The filed country condition documents are necessary for the Applicant to establish irreparable harm.

Finally, the Applicant notes that the deferral decision itself is 13 pages long.

The Applicant submits that, given the interests at stake, the Court exercise its' discretion to accept this motion, despite the fact that it exceeds 100 pages.

Thank you for your attention to this matter.

Yours truly,

Barrister & Solicitor

FICTIONALIZED SAMPLE ONLY*

Registry No. IMM-

FEDERAL COURT

B E T W E E N:

[CLIENT NAME]

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

APPLICATION FOR LEAVE
and for JUDICIAL REVIEW

TO THE RESPONDENT:

AN APPLICATION FOR LEAVE TO COMMENCE AN APPLICATION FOR JUDICIAL REVIEW UNDER S. 72 (1) OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT* has been commenced by the Applicant.

UNLESS A JUDGE OTHERWISE DIRECTS, THIS APPLICATION FOR LEAVE will be disposed of without personal appearance by the parties, in accordance with subsection 72 (2) (d) the *Immigration and Refugee Protection Act*.

IF YOU WISH TO OPPOSE THIS APPLICATION FOR LEAVE, you or a solicitor authorized to practice in Canada and acting for you must immediately prepare a Notice of Appearance in Form IR-2 prescribed by the *Federal Court Immigration and Refugee Protection Rules*, serve it on the Tribunal and the Applicant's solicitor or, where the Applicant does not have a solicitor, serve it on the Applicant, and file it, with proof after service, at the Registry, within 10 days of service of this application for leave.

IF YOU FAIL TO DO SO, the Court may nevertheless dispose of this application for leave and, if leave is granted, the subsequent application for judicial review without further notice to you.

Note: Copies of the relevant Rules of Court, information on the local office of the Court and other necessary information may be obtained from any local office of the Federal Court or the Registry of the Trial Division in Ottawa, telephone: (613) 992-4238.

The Applicant seeks leave of the Court to commence an application for judicial review for:

> A deemed refusal with respect to the Applicant' request to defer his removal from Canada. AS THERE IS NO DECISION RENDERED THERE IS NO DATE FOR A DECISION OR A DATE THAT THE DECISION WAS COMMUNICATED TO THE APPLICANT.
>
> The Tribunal is located at 6900 Airport Road, Entrance 2B Mississauga ON L4V 1E9
>
> Tel No: 905-405-3611
>
> Fax No: (905) 405-3531
>
> The Tribunal was composed of Enforcement Officer [INSERT NAME]
>
> The file number of the Tribunal is UCI:[XXXX];
>
> The application for leave was prepared by counsel, [INSERT], located at [ADDRESS]. Tel.:XXXX; Fax: XXX
>
> The Applicant's electronic address for the service of the documents is [INSERT]

In the event that leave is granted, the Applicant seeks the following relief by way of judicial review:

(a) An order quashing the deemed refusal of the Applicant's request to defer his removal from Canada and an order remitting the matter back for a re-determination by a different officer.

In the event that leave is granted, the application for judicial review is to be based on the following grounds:

1. The decision was unlawfully made, in that the Officer denied the Applicant natural and fundamental justice as a result of the conduct.

2. The decision is so patently unreasonable having regard to the evidence properly before the Officer so as to amount to an error of law.

3. The Officer lost jurisdiction and erred in law in ignoring evidence, in taking into account irrelevant evidence, in misinterpreting evidence properly before it, in making erroneous findings of fact without regard to the evidence before it, and in failing to properly understand the evidence.

4. In the alternative, the cumulative effect of these errors concerning the evidence amounts to an error of law.

5. To deport the Applicant at this time would be in violation of section 7 of the Charter.

6. Such further and other grounds as counsel may advise and this Honourable Court permit.

The Applicant **HAS NOT** received written reasons from the Tribunal.

In the event that leave is granted, the Applicant proposes that the application for judicial review be heard at Toronto, in the English Language.

The Applicant's address for service in Canada is:

[INSERT]

DATED AT TORONTO this X day of X, 2023

_____
[INSERT]
Barrister & Solicitor

TO: Registrar, Federal Court of Canada

TO: Department of Justice,
Ontario Reginal Office
120 Adelaide Street West, Suite 400
Toronto, Ontario
M5H 1T1

Tel: (416) 973-0942
Fax: (416) 954-8982

Registry No: IMM-

FEDERAL COURT

B E T W E E N:

[CLIENT NAME]

Applicant

and

THE MINISTER OF EMERGENCY PREPAREDNESS

Respondent

APPLICATION FOR LEAVE AND FOR JUDICIAL REVIEW

[INSERT]
Barrister & Solicitor

Address
Phone Number
Fax Number

Solicitor for the Applicant

UCI: ##########

In the Matter of the Deferral Application of Arash TEHRANI

AFFIDAVIT OF ARASH TEHRANI

I, **Arash Tehrani**, of the City of Toronto, in the Province of Ontario, AFFIRM AS FOLLOWS:

1. I am the applicant in this deferral application. I have personal knowledge of the deposed facts herein. Where my knowledge is based on information or belief, I have identified the source of that information or belief and believe it to be true.

My Refugee Claim

2. I came to Canada on June 1, 2018 and claimed refugee status on or around August 7, 2018. I was thirty-one years old.

3. I came to Canada because I have experienced discrimination, harassment, and violent assaults as a result of my Kurdish ethnicity.

4. When I came to Canada and spoke with members of the Iranian-Kurdish community, they advised me that my experiences would not be enough for a positive refugee decision. They told me that I should say that I have converted to Christianity because the Canadian government is more sympathetic to Christian converts.

5. I did not seek legal advice on this issue. I believed members of my community and told my lawyer that I came to Canada because I had attended house churches in Iran, that my fellow attendees had been arrested, that the attendees had informed of my activities under torture.

6. After approximately a year of being in Canada, I did my own research and realized that I did have a valid claim based on my experiences and ethnicity. I thought about

amending my claim, but people in the Iranian-Kurdish community advised against it. This time, I sought legal advice from immigration consultants whom I contacted through people in the Iranian-Kurdish community. Unfortunately, I do not remember their names, nor do I have their contact information. The immigration consultants told me that if I amended my claim, I would be seen as dishonest and would lose my case anyway.

7. My refugee hearing was held on December 5, 2019. I was a mess during the hearing. I mixed up dates. I could not answer any questions about Christianity. I could not provide any answers as to why I had not attended a church in Canada. I was ultimately rejected in a decision issued on December 29, 2019.

8. I did not appeal the decision. I knew that it was a losing battle. I had also become depressed by this time and was receiving medication for anxiety and depression. I simply did not have the bandwidth nor desire to continue the lie.

Relationship with Bahar Barani

9. I met my wife, Bahar Barani, on March 20, 2020, at an outdoor Nowruz event held by the Toronto Kurdish Community and Information Centre. Bahar attended with her friend and roommate, Azade Ilamzadeh. I attended with my roommate, Arman Sorani. The four of us began speaking. Azade told us that she and Bahar were cooking a special Nowruz dinner that night and invited Arman and I to join them. We agreed.

10. Bahar and I became friends. Initially, we only spent time together as part of our group of four. Eventually, we began texting and going out without Azade and Arman. This was during the pandemic, so we went on long walks together and became reliant on each other for social interactions.

11. Bahar is kind, intelligent and witty. She was the first person who made me laugh since my refugee claim had been denied.

12. I began falling in love with Bahar and I could sense that she also had feelings for me. However, I did not want to begin a relationship. My immigration status was in limbo, and I was not doing well mentally.

13. On September 3, 2020, Bahar and I went out for ice-cream. Towards the end of our outing, Bahar looked at me and took a deep breath before telling me that she loved me. I responded by blurting out that I loved her.

14. By this time, Bahar knew my full story. She knew about the fraudulent refugee claim. She knew that I was taking medication for depression and anxiety.

15. I told Bahar that I was hesitant to begin a relationship because of my personal circumstances, but she brushed aside my concerns. She told me that we would face any problems together as a couple.

16. Since Bahar and I are both Kurdish, we both understood that our being a couple meant that we would be getting married very soon. Dating and "seeing how things go" are not accepted in our culture.

17. Bahar and I had a ceremony at City Hall attended by Azade and Arman on November 15, 2020. We then moved into our studio apartment near Fairview Mall on December 1, 2020.

Pre-Removal Risk Assessment

18. I attended my regular monthly meeting with the Canada Border Services Agency on August 21, 2021. This time, I was given a Pre-Removal Risk Assessment application.

19. I decided that I would no longer continue to assert that I am Christian. I was not going to lie anymore. I submitted my PRRA application on the basis of my Kurdish ethnicity. Unfortunately, it was refused on May 1, 2022. I applied for a judicial review. I was told on November 17, 2022 that my application for leave to the court had been refused.

20. Once my PRRA application had been refused, the CBSA officer made me fill out an application form for a new Iranian passport because my old passport had expired on January 6, 2022. It still had not been issued by the time that the court refused by leave application. I was terrified of going back to Iran, so I stopped showing up to meetings with the CBSA.

21. Bahar is a permanent resident. We should have applied for a spousal sponsorship right after we got married. We didn't do it because we did not have money for a lawyer and Legal Aid does not issue certificates for spousal applications. Also, we know two separate couples who had applied for a spousal sponsorship, and they had been denied by the embassy in Ankara on the basis that their relationship was not genuine. We were afraid that our application would also be denied. We thought that the best idea was for me to lay low for a while until we could save up money for a lawyer and decide what to do next.

Bahar's Pregnancy and my Detention

22. We found out that Bahar is pregnant on May 10, 2023. She is due to give birth to our daughter on December 28, 2023.

23. On September 8, 2023, Bahar was scheduled for a sonogram for 1:30 pm at Mount Sinai Hospital. I am an Uber driver and was stuck in traffic driving a client to Mississauga at 12:45 pm, so I made the unfortunate decision to speed to Bahar's appointment. A police officer stopped me while I was speeding to the hospital. She found out that immigration had issued a warrant for me. I was transferred to the custody of the CBSA and detained at the Rexdale detention centre. I am still at the detention centre.

24. While in detention, Iran issued a passport for me on November 2, 2023. As soon as the passport was issued, CBSA gave me a Direction to Report for my removal on November 30, 2023.

Request to Defer my Removal

25. Bahar and I have not yet applied for a spousal application because we do not have all the required documents to prove our relationship. For example, we do not have a marriage certificate because we never ordered a marriage certificate until my removal date was scheduled. We do not have any joint bank accounts because I was scared that immigration would somehow find my address through my bank account, so I have undertaken all financial transactions through Bahar's account. I do not have any official identification with our address. We just want enough time to be able to file our spousal sponsorship and wait until a decision is made.

26. My current situation is torture. I am constantly worried about how my detention and future deportation will impact Bahar and the baby.

27. I want to be there throughout the pregnancy and the birth of our child. Otherwise, Bahar will be alone throughout the entire process. Neither Bahar nor I have any relatives in Canada. The thought of not being there for her is frightening.

28. If I am removed from Canada, Bahar will not be able to afford rent, food, and items for the baby. I am the primary earner in our relationship. Bahar is a cashier at No Frills. She barely earns more than minimum wage. She will also need to take maternity leave because she is scheduled for a cesarian due to her high-risk pregnancy. She will also need to take care of our baby until a daycare spot is available.

29. I will not be able to financially support Bahar and the baby if I am removed from Canada. I had extreme difficulty finding employment in Iran as a Kurdish individual. I am worried that I will not be able to find employment when I return and that I will not be able to financially support Bahar and my child. Even if I do find employment, the pay in Iran is extremely low. I don't expect to make more than $300 CAD a month.

30. Finally, I do not know when I will be able to see Bahar and the baby if I am removed from Canada. Bahar obtained refugee status in Canada due to her Kurdish political activities in Iran. She cannot return to Iran. Even if we apply for a spousal sponsorship as soon as I am back in Iran, it will take at least one year for the application to be decided. After that, my current lawyer tells me that I will need an Authorization to Return to Canada and that there is no knowing how long that will take.

Affirmed before me on November 10, 2023 by virtual commissioning as per O. Reg. 431/20. The Affiant was in Toronto, Ontario. I was in Toronto, Ontario. _____ Nastaran Roushan A Commissioner, etc.	_____ **Arash Tehrani**

UCI: ##########

In the Matter of the Deferral Application of Arash TEHRANI

AFFIDAVIT OF Arash TEHRANI

Nastaran Roushan
Lawyer
LSO #58425F
130 Queens Quay East, West Tower, Suite 1208
Toronto, ON M5A 0P6

nastaran@nastaranroushan.com
Tel: 647-362-5607
Fax: 647-362-5617

Counsel for the Applicant

Registry No. IMM-####-##

FEDERAL COURT

BETWEEN:

Arash TEHRANI

Applicant

- and -

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant, Arash Tehrani, will make a motion to the Court, on **Tuesday**, **November 28, 2023**, at 9:00 a.m., or as soon thereafter as the Motion can be heard, at Toronto, under rules 35(1), 364, and 366 of the *Federal Court Rules*. The Applicant will require 90 minutes.

THE MOTION is for:

a) an order that the execution of the removal order of the Applicant, Arash Tehrani, scheduled to take place on **Friday, November 30, 2023** at 5:30 pm, to Iran, be stayed pending the Judicial Review of the underlying Application for Leave and Judicial Review of a CBSA Officer's decision to refuse his deferral request, and if leave is granted, until such time as the judicial review is finally disposed of by this Court;

b) costs of this motion; and

c) such further relief as counsel may advise and this Court deems just.

THE GROUNDS OF THE MOTION are:

a) section 18.2 of the *Federal Courts Act*;

b) rule 359 of the *Federal Courts Rules*;

c) rule 362(1) of the *Federal Court Rules*;

d) there is a serious issue to be tried;

e) the Applicant will suffer irreparable harm, not compensable in damages, if removed from Canada;

f) the balance of convenience lies in favour of staying the execution of the removal order, until the Court has determined the merits of the application for leave and, if leave is granted, the application for judicial review; and

g) such further grounds as counsel may advise and this Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE is filed in support of this motion:

a) the affidavit of Arash Tehrani, sworn November 21, 2023, and exhibits thereto; and

b) such further documentary evidence as counsel may advise and this Court permit.

DATED at Toronto on November 21, 2023.

Nastaran Roushan
LSO #58425F
1208-130 Queens Quay East, West Tower
Toronto, Ontario, M5A 0P6
Tel: (647) 362 5607
Fax: (647) 362 5617
nastaran@nastaranroushan.com

Lawyer for the Applicant

TO: Minister of Public Safety and Emergency Preparedness
c/o Department of Justice
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1
AGC_PGC_TORONTO.IMM@JUSTICE.GC.CA

Solicitors for the Respondent

AND TO: Registrar, Federal Court of Canada
180 Queen Street West, 2nd Floor
Toronto, Ontario

Registry No. IMM-####-##

FEDERAL COURT

B E T W E E N:

Arash TEHRANI
Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
Respondent

APPLICANT'S NOTICE OF MOTION TO STAY HIS REMOVAL

Nastaran Roushan
LSO #58425F
1208-130 Queens Quay East, West Tower
Toronto, Ontario, M5A 0P6

Tel: (647) 362 5607
Fax: (647) 362 5617
nastaran@nastaranroushan.com

Lawyer for the Applicant

Law Society of Ontario | Barreau de l'Ontario

TAB 5

31st Immigration Law Summit
DAY TWO

Drawing Boundaries, Managing Expectations

November 22, 2023

Dear attendants,

Please find attached the following documents that we, presenters, have prepared as part of our panel "Drawing Boundaries, Managing Expectations" presented on on November 22nd 2023" in the 31st Immigration Law Summit of the Law Society of Ontario :

- Sample Referral List
- Sample Directions
- Sample Retainer – Individual
- Sample Retainer – Joint
- Trauma informed resource

These documents are not exhaustive and are there as samples, to provide you a starting point to create your own Referral List of trusted stakeholders to refer your clients to.

They are not stand-alone documents and are supposed to be reviewed along with the explanations and guidance provided during this presentation.

Best regards,

Nir Gepner, Willowdale Community Legal Services

Victor Huynh, Therapy on Harbord

Fedora Mathieu, Staff Lawyer, Legal Aid Ontario

TIPS for creating a referral sheet

A referral sheet assists clients to find trusted help from other practitioners.

Referral sheets have a finite space and will exclude many practitioners, but they are important to provide clients with clear options. In many ways they supplement the legal assistance we provide, and provide clients with clearer options on how to proceed.

When a client receives a referral sheet from you, they rely on your recommendations. That is, the referral sheet is in some way an extension of the advice we provide clients.

1. Identify the purpose of the referral sheet (immigration services, therapy, other legal services).
2. Make sure you refer people to trusted individuals or organizations. If you are not familiar with a practitioner's credentials, a referral sheet is not a good option.
3. Provide names, addresses, and contact information for each practitioner.
4. Indicate whether the services are free of charge, private (fees included) or potentially covered by LAO through a certificate.
5. Design the sheet in a way that would not "prefer" one practitioner over another (alphabetical order, for example).
6. Clients must understand that your referral sheets are one way for them to find further assistance. Clients are not obligated to seek assistance from the people or organizations named on the sheet.

Example Referral List

These are resources and contact people we have developed positive working relationships with that may be able to support some of the most common questions and worries we have encountered as a therapist and legal representatives of refugee clients. This is not an extensive or exclusive list. These resources are a recommendation for where to start.

Organization	Services	Client Demographic	Fees	Contact Info
		SETTLEMENT SUPPORT		
The 519	Settlement Program Government Applications: Refugee application PR application Travel documents	LGBTQ+ non-LGBTQ+ Asylum seekers, protected persons, government assisted refugees, permanent residents	No	Alex Horoshuk 416-392-6878 x 4000 newtocanada@the519.org 519 Church Street, Toronto
Immigrant Women Services – IWSO	Settlement programs Crisis intervention and Counselling Interpretation and Translation	Immigrant and racialized Women and their families, GBV survivors	No	613-729-3145 infomail@iwso.ca 400-219 Argyle Avenue, Ottawa, Ontario K2P 2H4
OCISO	Settlement programs and assistance regarding education, employment, social services, financial literacy, housing, health system, legal system	LGBTQ+ , non-LGBTQ+, Youth Asylum seekers, protected persons, government assisted refugees, permanent residents	No	613-725-0202 https://ociso.org 959 Wellington Street W., Ottawa, On K1Y 2X5 Canada
		HEARING PREPARATION		
The 519	Mock Hearing Program Document review and hearing preparation by retired IRB board members, immigration lawyers, law students. Interpretation is provided	Asylum seekers with active refugee applications. Contact 12 months after receiving Refugee document or at least 4 weeks before your hearing date	No	Polina Rakina 416-392-6874 mockhearingprogram@the519.org 519 Church Street, Toronto
FCJ Refugee Centre	The Ready Tour Virtual tour and preparation for the refugee hearing process	Asylum seekers with active refugee application	No	To register: https://myrefugeeclaim.ca/en/ready-tours/ Carolina Teves cteves@fcjrefugeecentre.org
Matthew House	Mock Hearing Program Document review and hearing preparation by retired IRB board	Asylum seekers with active refugee applications. Contact at least 4 weeks before hearing	No	Elizabeth Pettigrew 647-622-6410 rhp@matthewhouse.ca

	members, immigration lawyers, law students. Interpretation is provided			981 Dundas Street West, Toronto
Matthew House	Online self-directed refugee hearing preparation	Asylum seekers, settlement workers, legal professionals. Everyone Offered in 11 different languages	No	https://meetgary.ca/
Capital Rainbow refuge	Online interactive refugee hearing preparation : Queer Refugee Hearing Program Toolkit	LGBTQI+ Asylum seekers	No	https://capitalrainbow.ca/qrhp
		MENTAL HEALTH SUPPORT		
Elise Yoon MSW, RSW	IFH registered therapist* Therapy modalities: Internal Family Systems Somatics, Inner-child Trauma-informed	Refugee youth, LGBTQ+, PTSD Languages: English, Korean (conversational)	Doctor Referral Needed	647-360-5595 eliseyoon.therapy@gmail.com 100 Harbord Street, Toronto, 2nd floor No elevator
Hajnalka Fiszter RP	IFH registered therapist* Therapy modalities: EMDR, relational Trauma-informed	Refugee adults and youth, LGBTQ+, PTSD, Gender identity Languages: English, Spanish, Hungarian	Doctor Referral Needed	647-330-9259 hfiszter@gmail.com 100 Harbord Street, Toronto, 2nd floor No elevator
Victor Huynh MSW, RSW	IFH registered therapist* Therapy modalities: Somatics, Narrative Trauma-informed	Refugee adults, LGBTQ+, PTSD, HIV+, Gender identity, race Languages: English, Cantonese Vietnamese (conversational)	Doctor Referral Needed iding scale: $0-$100 BIQPOC	647-931-6089 victor.huynh.therapy@gmail.com 100 Harbord Street, Toronto, 2nd floor No elevator
Viveka Ichikawa MSW, RSW	IFH registered therapist* Therapy modalities: Mindfulness, somatics, narrative Trauma-informed	Refugee children, youth and adults LGBTQ+, PTSD, single mothers, Intimate partner violence, racialized women, non-status women Languages: English, Japanese	Doctors Referral Needed. 8 sessions. low-income women of colour	647-250-9877 ichikawa.viveka@gmail.com 100 Harbord Street, Toronto, 2nd floor No elevator
Ibrahim Ismayilov RP	IFH registered therapist* Therapy modalities: CBT, Interpersonal Therapy Interpersonal Social Rhythm Therapy Mentalization-Based Treatment Prolonged Exposure Therapy for PTSD	Refugee adults and youth, LGBTQ+, PTSD Languages: English, French, Azeri, Turkish, Russian	Doctors Referral Needed.	613-686-5818 info@crocuscare.ca 2211 Riverside Drive, Suite B4, Ottawa, ON K1H 7X5

* IFH Registered Therapists - private therapists providing therapeutic support funded through Interim Federal Health. Wait times are substantially less than seeking support through community health organizations. Clients are typically met within the week of receiving a referral. Referral form is also attached

Immigration Law (Toronto)

Organization	Services	Fees	Contact Info
Legal Aid Ontario (LAO)	Apply for a Certificate	No fees, must qualify financially	T: 416-979-1446 Toll Free: 1-800-668-8258
Refugee Law Office	Refugee Law	No fees, must qualify financially	20 Dundas St West, Suite 201 T: 416-977-8111

As you develop your own trusted contacts in the community, please continue adding to this list

Private Lawyers - example list

You may be charged consultation or other fees by these lawyers (ask in advance)

Name of a person or organization [arranged alphabetically]	Services	Fees	Relevant contact info
redacted	Immigration Law	Fees apply	redacted
redacted	Immigration Law – temporary visa, PR, citizenship	Fees apply	redacted

Therapy on Harbord

100 Harbord Street, Toronto, ON M5S 1G6
(T): 647.931.6089 (F): 647-696-5628 (E): victor.huynh.therapy@gmail.com
www.therapyonharbord.com

How to Connect for IFH Covered Counseling/Therapy

As a person receiving Interim Federal Health Insurance Program benefits (IFHP), you have coverage to receive counseling/therapy services from an IFHP registered therapist. Be aware that not every therapist is IFHP registered.

In order to access IFHP covered therapy, you need to provide:

- medical referral for counselling/therapy from a doctor or nurse practitioner that includes a mental health diagnosis (i.e. trauma, anxiety, stress, low mood….)
- Your UCI/IFHP number
- **Or** a completed referral form (see attached)

After requesting the referral:

- request the care provider fax it directly to me or bring the referral to our first meeting
- contact me to set up a time when we can meet. Email is preferred.

Ongoing therapy:

- During the refugee process, you are able to access an unlimited number of sessions
- However, a new medical referral is needed after every 10 sessions and every calendar year
- After you complete your refugee process, you will continue to have IFHP coverage for 3 months before being switched to OHIP. At that time, you will no longer receive coverage for mental health therapy
- To continue mental health care, we can have monthly check-ins and I can place you on waitlists with my colleagues in the community for ongoing therapy if needed

Therapy on Harbord

100 Harbord Street, Toronto, ON M5S 1G6
(T): 647.931.6089 (F): 647-696-5628 (E): victor.huynh.therapy@gmail.com
www.therapyonharbord.com

Request for Therapy Service for IFHP Refugee Clients

****Please note, referrals must be completed by a medical doctor or nurse practitioner****

Referrals can be faxed, emailed or physically brought to our initial session.

To:

Victor Hing Huynh, MSW, RSW, OCSWSSW #827326
Therapy on Harbord
100 Harbord Street
Toronto, ON, M5A0B9
(P): 647-931-6089
(F): 647-696-5628
(E): victor.huynh.therapy@gmail.com
www.therapyonharbord.com

Name of Client: _____ Contact Number: _____

Email: _____ Address:_____

UCI: _____ DOB: _____

Name of Primary Care Provider (MD or NP): _____

Reason for Referral: _____

Mental Health Diagnosis:

- Depression
- Anxiety
- PTSD
- Adjustment Reaction
- Other (please specify): _____

Primary Care Provider Signature: _____ Date: _____

DIRECTIONS

FROM: [Client(s)]

TO: [You or your organization]

RE: Acknowledgment and Instructions

DATE:

I, [Client(s)' name(s)], acknowledge the following:

1. Provide background of the facts acknowledged by the client, including the advice and considerations you have discussed with them (options, risks etc.)

I understand the above and instruct [You or your organization] the following:

1. Provide clear instructions per your discussions with the client (ideally, after giving them time to reflect on what they want to do)

I will not hold [You or your organization] responsible for any adverse effects arising from these instructions.

DATED at Toronto this [date].

_____ _____

Witness / Interpreter Client(s)' name and signature

JOINT RETAINER

We, , have asked [You or your organization] to assist us and act on our behalf in the following:

[describe the precise work you agree to do]

1. Authority to represent

   a) We give [You or your organization] the right to act for us and to take any action which [You or your organization] thinks is needed in our case.
   b) We will not take any action ourselves about our case unless we talk to [You or your organization] about it first.

2. Obligation to be truthful

   a) We will tell the truth to [You or your organization], and to any Court or Tribunal.
   b) We will give complete and accurate information to [You or your organization].
   c) We will let [You or your organization] know about anything that happens that may have to do with our case.
   d) We will let [You or your organization] know if we receive or hear anything about our case.
   e) We will tell [You or your organization] about any changes to our situation (for example: changes to our income, our family situation, our address or phone number, etc.)

3. Financial eligibility for free legal services (or description of the clear and complete fees involved in this retainer for private practitioners]

   a) .
   b) .
   c) .
   d) .

Initials of Clients

4. Complaints and complaints policy

   a) We understand that [You or your organization] cannot promise that our case will be successful.

b) We understand that [You or your organization] has a *Complaints Policy* and that we can ask any [You or your organization] staff for a copy of the *Complaints Policy* at any time during our work together.

5. Confidentiality (per confidentiality policy)

a) Lawyers, paralegals, community legal workers, articling students, support staff and volunteers work at [You or your organization]. We understand that any of them may access, work on our file and represent us (where applicable).
b) We understand that everything we tell employees or volunteers of [You or your organization] is confidential due to privilege that exists between clients and representatives.
c) [You or your organization] may share information we disclose to them if we consent to the disclosure or if we are in an immediate danger to ourselves or someone else.
d) We agree to let [You or your organization] give out general information about our case to other legal clinics, Legal Aid Ontario or other organizations for statistical reasons.
e) [You or your organization] may ask us to disclose information about our case and to speak with specific people or organizations in order to represent us effectively.
f) [You or your organization] gets its money from Legal Aid Ontario. We understand that Legal Aid Ontario can require [You or your organization] to give access to our file to Legal Aid representatives (including Legal Aid Quality Service Office (QSO) representatives).
g) We agree that [You or your organization] may give access to our file to Legal Aid representatives.
h) If our case involves court proceedings or proceedings before some tribunals, it may be considered a public hearing and the general public may have access to the documents [You or your organization] sends to Court. We have discussed this with [You or your organization] and agree to the potential litigation in our case.
i) We have asked [You or your organization] to represent/assist us together. We understand that [You or your organization] cannot hold secrets from its clients. We understand [You or your organization] has an obligation to tell all of us anything about our case we disclose to [You or your organization] (even if we disclose it individually and ask [You or your organization] to keep it a secret).
j) During the operation of this retainer, we allow [You or your organization], including the clinic's case workers and students, to have ongoing independent access to all of our online portals related to the matter indicated in this retainer

(for example, immigration online portals under one of our names, or other provincial portals used to submit and/or receive documents and communication). We understand that [You or your organization] may need to access our online portals to assist us to complete, review, and/or submit information using these portals. We give [You or your organization] authorization to access portals relevant to their work with us under this retainer, and to do so independently without further requests for our consent. Our consent under this section will expire once the retainer is completed or terminated.

k) We have asked [You or your organization] to communicate with as a primary contact.

l) We delegate _____ as a person who may instruct [You or your organization] on our behalf.

Initials of clients

6. Termination of services by [You or your organization]

a) [You or your organization] must stop representing all of us if we (or even just one of us) instruct them to do so or if the clinic has a conflict of interests in our case.

_____

Initials of Clients

b) [You or your organization] may withdraw its representation if:
- We (or one of us) move or change phone numbers without telling the legal clinic, or otherwise make it impossible for the legal clinic to contact us;
- We (or one of us) fail to contact the legal clinic when requested to do so;
- We (or one of us) do not provide the information the legal clinic needs to properly represent us;
- We withhold consent or refuse [You or your organization] access to information and/or online portals needed to assist us with our case;
- We (or one of us) refuse a reasonable settlement offer;

- We (or one of us) choose not to follow the advice given by the legal clinic and this causes a breakdown in the relationship between us and the legal clinic; or,
- There is a change in our income or circumstances.
- Our case has become moot or, in the opinion of [You or your organization], continued representation would serve to undermine our legal interests.

7. Acknowledgment

a) We have read this Retainer and we understand it; or,
b) _____ read this Retainer to us and we understand it.

_____ DATE:
CLIENT

_____ DATE:
CLIENT

_____ DATE:
CLIENT

WITNESS (or interpreter, where relevant)

INDIVIDUAL RETAINER

I,_____, have asked [you or your organization] to assist me and act on my behalf in the following:

1. Authority to represent

    a) I give [YOU OR YOUR ORGANIZATION] the right to act for me and to take any action which [YOU OR YOUR ORGANIZATION] thinks is needed in my case.
    b) I will not take any action myself about my case unless I talk to [YOU OR YOUR ORGANIZATION] about it first.

2. Obligation to be truthful

    a) I will tell the truth to [YOU OR YOUR ORGANIZATION], and to any Court or Tribunal.
    b) I will give complete and accurate information to [YOU OR YOUR ORGANIZATION].
    c) I will let [YOU OR YOUR ORGANIZATION] know about anything that happens that may have to do with my case.
    d) I will let [YOU OR YOUR ORGANIZATION] know if I receive or hear anything about my case.
    e) I will tell [YOU OR YOUR ORGANIZATION] about any changes to my situation (for example: changes to my income, my family situation, my address or phone number, etc.)

1. Financial eligibility for free legal services (or description of the clear and complete fees involved in this retainer for private practitioners]

    a) .
    b) .
    c) .
    d) .

Initials

2. Complaints

a) I understand that [YOU OR YOUR ORGANIZATION] cannot promise that my case will be successful.
b) I understand that [YOU OR YOUR ORGANIZATION] has a *Complaints Policy* and that I can ask any [YOU OR YOUR ORGANIZATION] staff for a copy of the *Complaints Policy* at any time during our work together.

3. Confidentiality

a) Lawyers, paralegals, community legal workers, articling students, support staff and volunteers work at [YOU OR YOUR ORGANIZATION]. I understand that any of them may access, work on my file and represent me (where applicable).
b) I understand that everything I tell employees or volunteers of [YOU OR YOUR ORGANIZATION] is confidential due to privilege that exists between clients and representatives.
c) [YOU OR YOUR ORGANIZATION] may share information I disclose to them if I consent to the disclosure or if I am in an immediate danger to myself or someone else.
d) I agree to let [YOU OR YOUR ORGANIZATION] give out general information about my case to other legal clinics, Legal Aid Ontario or other organizations for statistical reasons.
e) [YOU OR YOUR ORGANIZATION] may ask me to disclose information about my case and to speak with specific people or organizations in order to represent me effectively.
f) [YOU OR YOUR ORGANIZATION] gets its money from Legal Aid Ontario. I understand that Legal Aid Ontario can require [YOU OR YOUR ORGANIZATION] to give access to my file to Legal Aid representatives (including Legal Aid Quality Service Office (QSO) representatives).
g) I agree that [YOU OR YOUR ORGANIZATION] may give access to my file to Legal Aid representatives.
h) If my case involves court proceedings or proceedings before some tribunals, it may be considered a public hearing and the general public may have access to the documents [YOU OR YOUR ORGANIZATION] sends to Court. I have discussed this with [YOU OR YOUR ORGANIZATION] and agree to the potential litigation in my case.

i) During the operation of this retainer, I allow [YOU OR YOUR ORGANIZATION], including the clinic's case workers and students, to have ongoing independent access to all of my online portals related to the matter indicated in this retainer (for example, immigration online portals under my name, or other provincial portals used to submit and/or receive documents and communication). I understand that [YOU OR YOUR ORGANIZATION] may need to access my online portals to assist me to complete, review, and/or submit information using these portals. I give [YOU OR YOUR ORGANIZATION] authorization to access portals relevant to their work with me under this retainer, and to do so independently without further requests for my consent. My consent under this section will expire once the retainer is completed or terminated.

Initials

4. <u>Client & Lawyer Rights & Responsibilities for Refugee Claims covered by Legal Aid Ontario (LAO) (If Applicable)</u>

a) LAO will pay [YOU OR YOUR ORGANIZATION] (7 hours) to prepare my Basis of Claim form (BOC), describing my reasons for claiming protection in Canada. [YOU OR YOUR ORGANIZATION] must submit this BOC to LAO for a merit assessment.
b) LAO will only issue a certificate for representation (9 hours for a hearing or 3 hours for an expedited interview) before the Immigration and Refugee Board (IRB) if it determines there is merit to my claim and if I continue to be financially eligible for services.
c) If I receive a certificate for preparation of my BOC or representation, LAO will pay for these legal services. I do not need to pay [YOU OR YOUR ORGANIZATION] myself for these services. The time limit for [YOU OR YOUR ORGANIZATION] 's work on my case includes any work done by a law clerk/paralegal.
d) [YOU OR YOUR ORGANIZATION] will personally interview me about the contents of my BOC before I sign it.
e) At all meetings, [YOU OR YOUR ORGANIZATION] will provide an interpreter if I need one. LAO will pay for the interpreter (up to 10 hours to

prepare my BOC and for representation before the IRB, or more, if [YOU OR YOUR ORGANIZATION] obtains approval). I will not pay the interpreter myself.

f) I will make sure my BOC is complete, correct in every detail, and I understand it perfectly before I sign it. The BOC is my declaration, so I am expected to understand it. I have the right to correct your BOC, if necessary, before I sign it.

g) [YOU OR YOUR ORGANIZATION] will give me a complete copy of my signed BOC sent to the IRB.

h) If [YOU OR YOUR ORGANIZATION] thinks a medical or psychological report is needed for my hearing, [YOU OR YOUR ORGANIZATION] will send me to a doctor or psychologist to obtain one. LAO will pay [YOU OR YOUR ORGANIZATION] for this report up to a set amount of money. I will not pay for this report myself.

i) Documents which are not in English or French must be translated before they can be sent to the IRB. If my identity or personal documents need translation, I will talk to [YOU OR YOUR ORGANIZATION] about this. LAO will pay for a limited amount of translation. If I have more documents that need translating, [YOU OR YOUR ORGANIZATION] can ask Legal Aid to pay for more translations if necessary.

j) [YOU OR YOUR ORGANIZATION] will meet with me to prepare me for my hearing and go with me to my hearing unless I agree to be represented by another lawyer, or by an articling student directly supervised by [YOU OR YOUR ORGANIZATION].

k) [YOU OR YOUR ORGANIZATION] will tell me who will be working under my legal aid certificate, preparing my BOC with me and going with me to my hearing, and whether or not that person is a lawyer.

5. <u>Termination of services by [YOU OR YOUR ORGANIZATION]</u>

a) [YOU OR YOUR ORGANIZATION] must stop representing me if I instruct them to do so or if the clinic has a conflict of interests in my case.

b) [YOU OR YOUR ORGANIZATION] may withdraw its representation if:
   - I move or change phone numbers without telling the legal clinic, or otherwise make it impossible for the legal clinic to contact me;
   - I fail to contact the legal clinic when requested to do so;

- I withhold my consent or refuse [YOU OR YOUR ORGANIZATION] access to information and/or online portals needed to assist me with my case;
- I do not provide the information the legal clinic needs to properly represent me;
- I refuse a reasonable settlement offer;
- I choose not to follow the advice given by the legal clinic and this causes a breakdown in the relationship between me and the legal clinic; or,
- There is a change in my income or circumstances
- My case has become moot or, in the opinion of [YOU OR YOUR ORGANIZATION], continued representation would serve to undermine my legal interests.

_____
Initials

6. Acknowledgment

a) I have read this Retainer and I understand it; or,
b) _____ read this Retainer to me and I understand it.

_____ DATE:
CLIENT

WITNESS (or interpreter, where relevant)

THE 5 R's OF TRAUMA INFORMED PRACTICE

REFLECTING
Understand the historical contexts of identity and social location. Know there is inherent trauma in relationships

RELATING
This is a new situation for your client - you'd likely feel afraid as well. Think about their physical and mental safety. Ensure they're comfortable

REPATTERNING
Collaborate to challenge traditional top-down approaches. Develop agreements that make sense for both of you.

RESOURCING
Build trust by meeting their needs. Set expectations. If you can't meet a need, refer trusted resources

RESILIENCE
Empower clients. Move away from perceived deficits. Get creative to understand their strengths to encourage choice

*the 5 R's are informed by the 5 principles of trauma-informed practice: safety, trust and transparency, collaboration and mutuality, empower, voice and choice, and historical, cultural and gender issues. More can be learned here: https://cewh.ca/wp-content/uploads/2012/05/2013_TIP-Guide.pdf

Law Society of Ontario | Barreau de l'Ontario

TAB 6

31st Immigration Law Summit
DAY TWO

Federal Court Update

November 22, 2023

Helpful Resources

Federal Court, Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings (amended Oct31/23)

EN : https://www.fct-cf.gc.ca/Content/assets/pdf/base/2023-10-31-Consolidated-Immigration-Practice-Guidelines.pdf

FR : https://www.fct-cf.gc.ca/Content/assets/pdf/base/2023-10-31-Lignes-directrices-consolidees-en-immigration.pdf

Law Society of Ontario | Barreau de l'Ontario

TAB 7

31st Immigration Law Summit
DAY TWO

The Science of Unconscious Bias

November 22, 2023

The Science of Implicit Biases

Kerry Kawakami

Law Society of Ontario
31st Immigration Summit
November 22, 2023
*

1

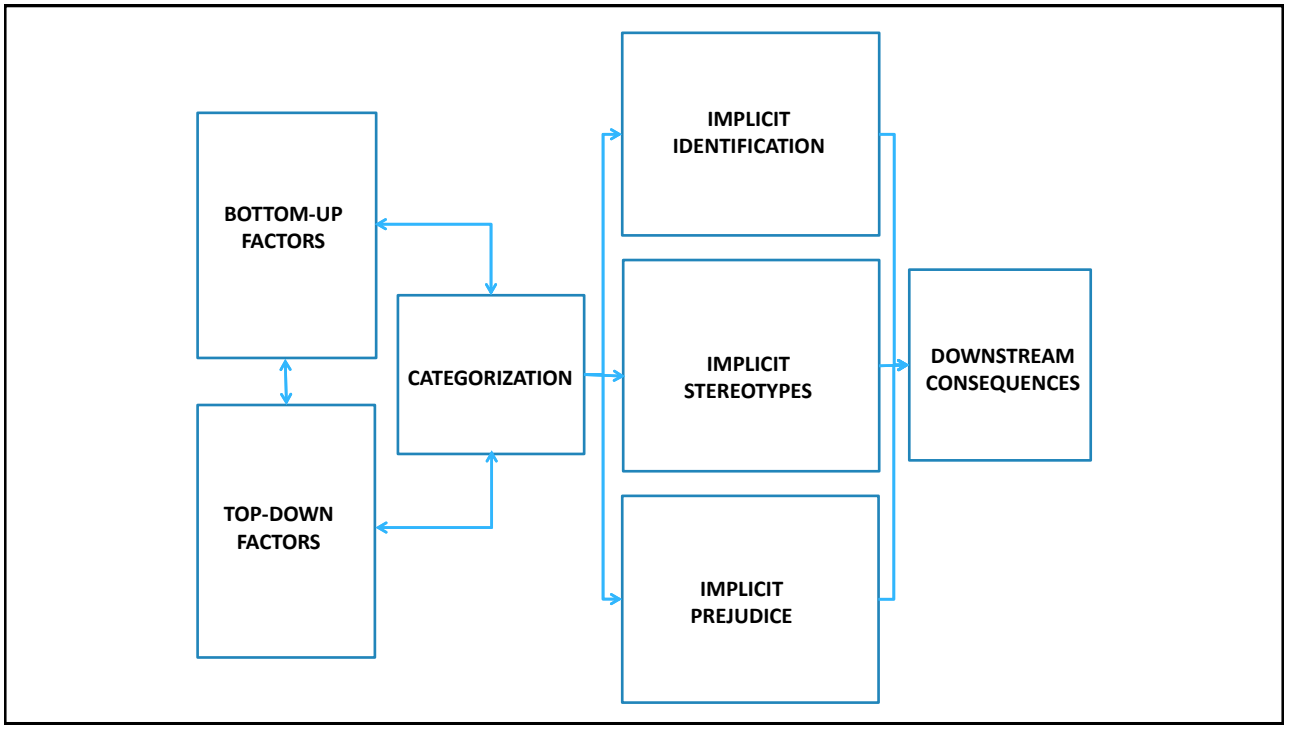
Racial Bias
Is typically defined as differential responding to members of racial/ethnic outgroups compared to one's own group.

Explicit Bias
How people evaluate and respond to members of a particular group in a conscious, deliberative way.

Implicit Bias
Can operate outside of conscious awareness and is often considered automatic.

The relationship between explicit and implicit bias

2



3

The Use of Race in Person Perception

One main assumption of this model is that we spontaneously and unintentionally categorize other people according to socially relevant categories such as race.

Is this true?

4

In one sentence describe the two people in this image.

In one sentence describe what is happening.

5

In one sentence describe the two people in this image.

In one sentence describe what is happening.

6

Strategic Color and Conflict Blindness

Responses were rated by coders

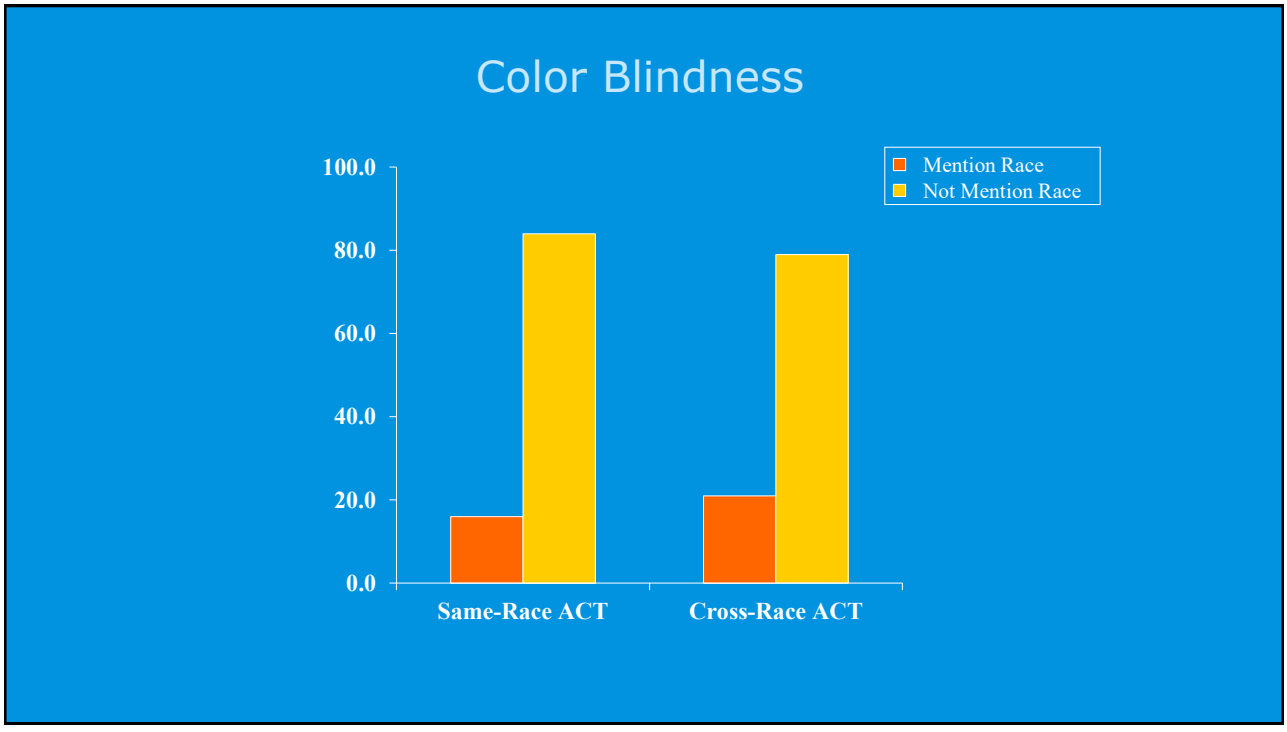
- Race mentioned yes vs. no
- Conflict mention yes vs. no

7

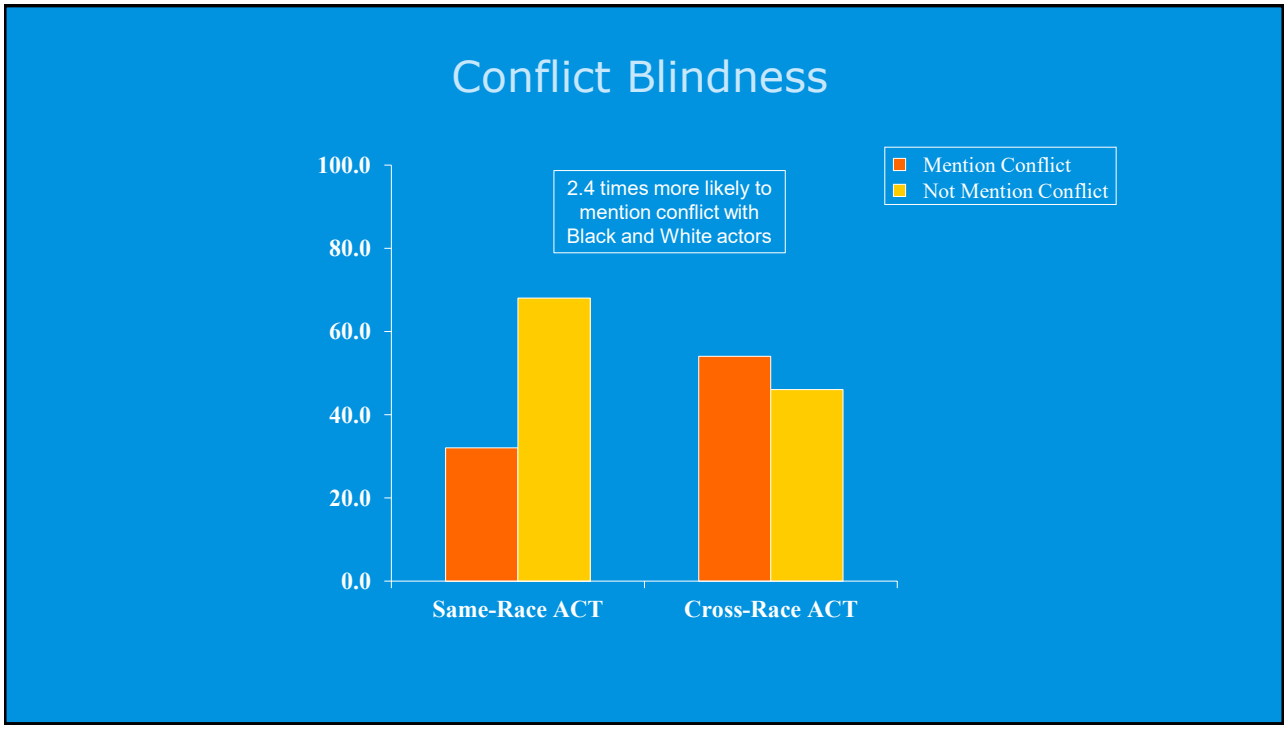
Sample Responses

- Looks like two people crossing paths on a stairwell and one is about to bump into another and they don't really seem to be doing it intentionally, but it may lead to an exchange of glances or a small confrontation.
- Two people in this picture one Black guy, one White guy and they're just going up the stairs and there's nothing else to it.
- Two school kids. They are walking up and down the stairs one going up, one coming down.

8


Color Blindness
100.0
80.0
60.0
40.0
20.0
0.0
Same-Race ACT
Cross-Race ACT
Mention Race
Not Mention Race

9


Conflict Blindness
100.0
80.0
60.0
40.0
20.0
0.0
Same-Race ACT
Cross-Race ACT
2.4 times more likely to mention conflict with Black and White actors
Mention Conflict
Not Mention Conflict

10

Strategic Color and Conflict Blindness

There are norms against expressing prejudice.

One way to not appear prejudice is to be color blind.

- by not acknowledging race
  If I don't see race, I can't be racist.

Another potential way to not appear prejudice is to be conflict blind.

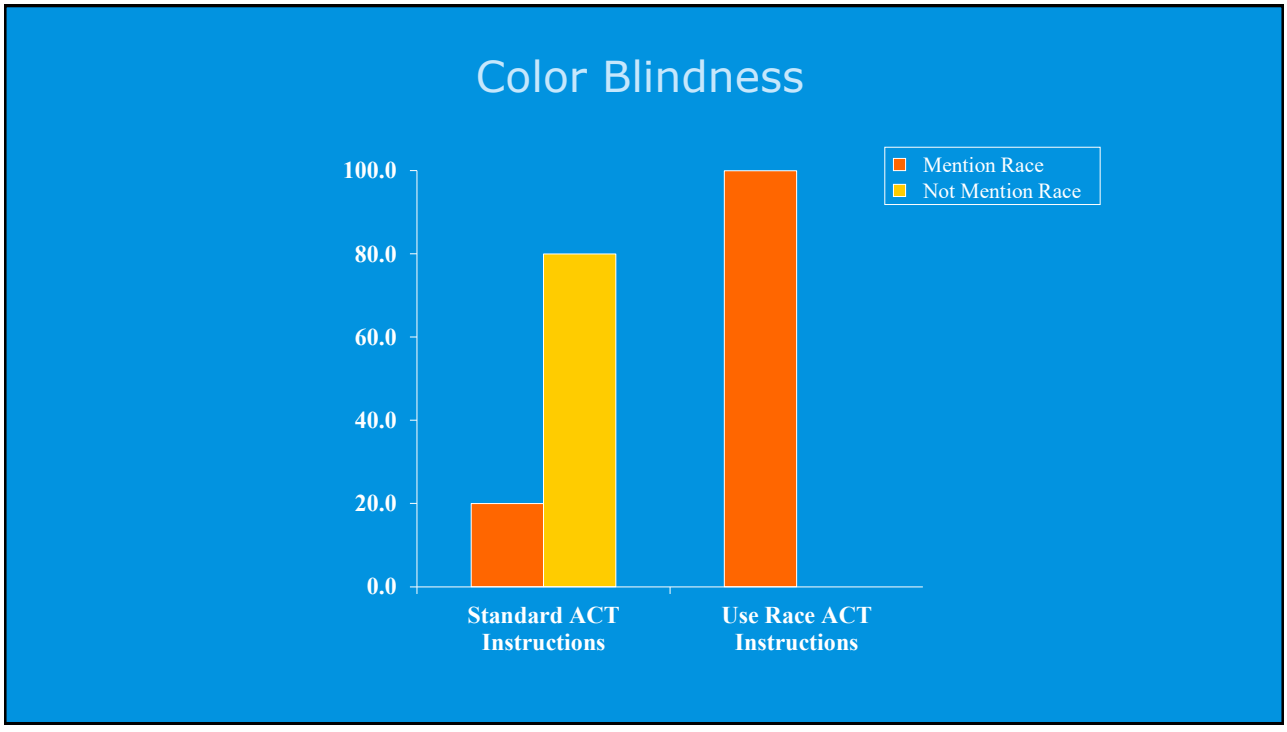
- by not acknowledging conflict between races
  If I don't see intergroup negativity, then maybe racism is not a problem.

11

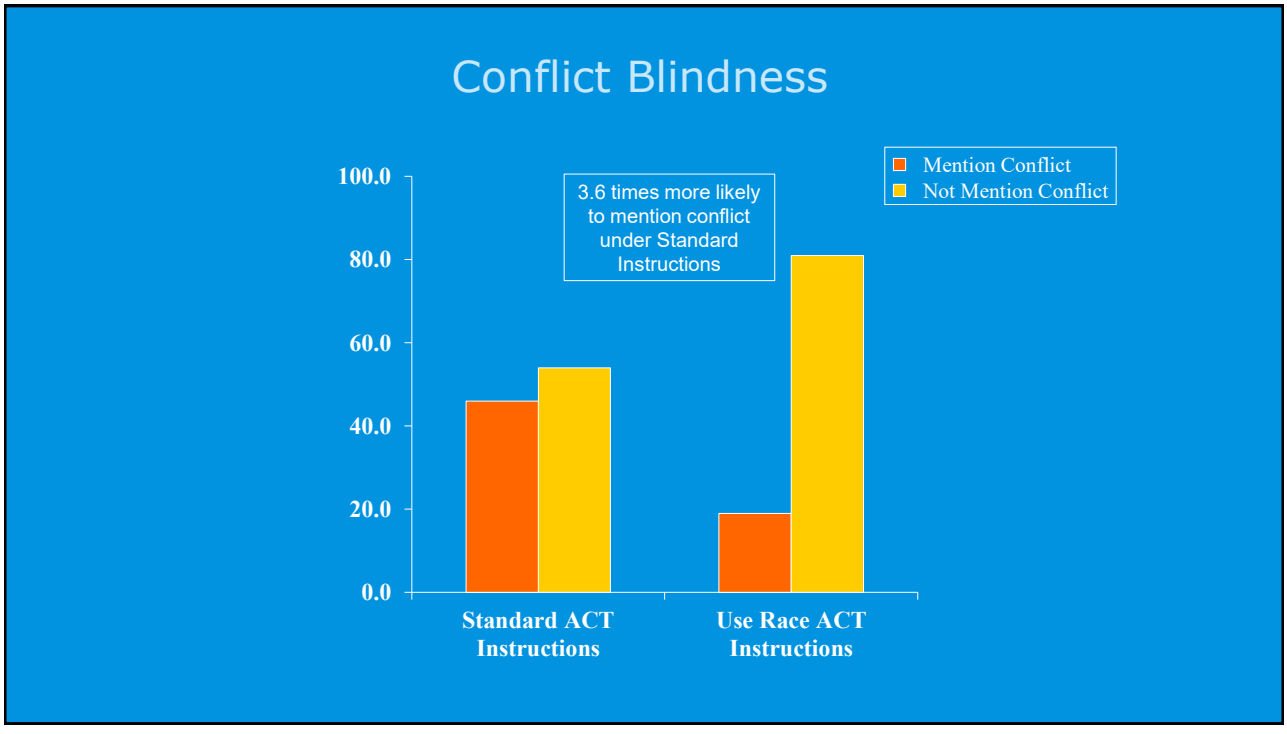
Standard Instructions:
In one sentence, please describe the two people.

Use Race Instructions:
In one sentence, please describe the people in the photograph, including the race and sex of each person.

12


Color Blindness
100.0
80.0
60.0
40.0
20.0
0.0
Mention Race
Not Mention Race
Standard ACT Instructions
Use Race ACT Instructions

13


Conflict Blindness
100.0
80.0
60.0
40.0
20.0
0.0
3.6 times more likely to mention conflict under Standard Instructions
Mention Conflict
Not Mention Conflict
Standard ACT Instructions
Use Race ACT Instructions

14

Social Categorization

So it appears as if we are NOT color blind.

Although we may not explicitly classify people according to race, we do see race and it does influence how we perceive intergroup interactions.

But are we really impacted by race spontaneously and without intent when we view others?

15

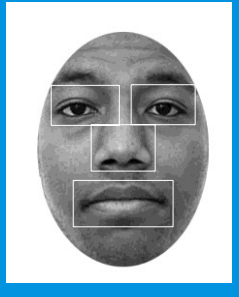
Attention to the Eyes of Black and White faces

16

Eye Tracking Task

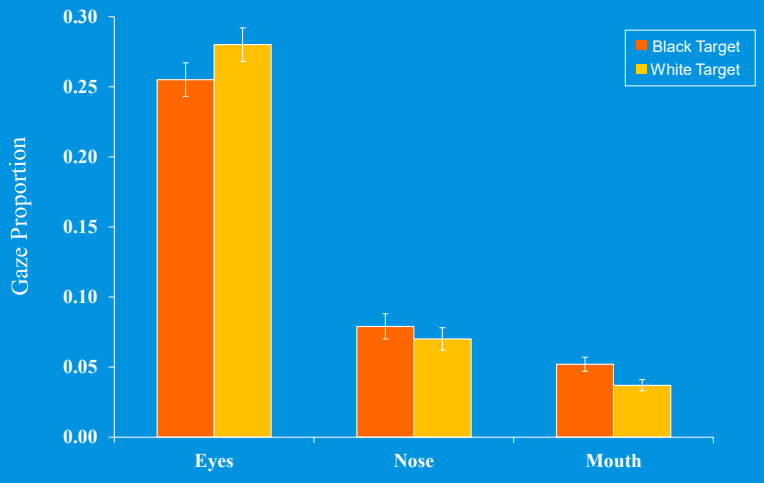
17

Areas of Interest



18

Gaze Patterns



19

Eye Gaze

The eyes provide critical information about others about their intentions, emotions, and identities.

A limited focus on the eyes may detract from a person's ability to "know" others.

20

Recognition of Own and Other Race Faces

A large literature has demonstrated that people are less accurate at recognizing members of other races compared to their own.

21

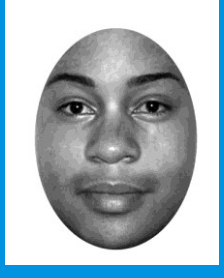
Learning Phase

22

Learning Phase

23

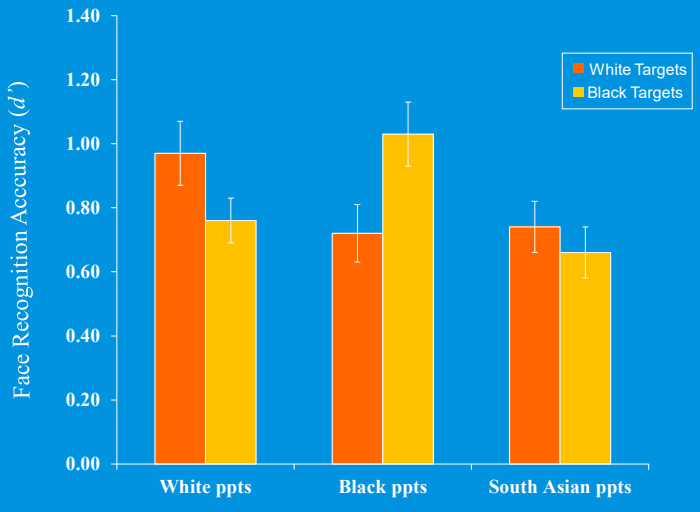
Recognition Phase



Old or New?

24

Face Recognition



25

Social Categorization

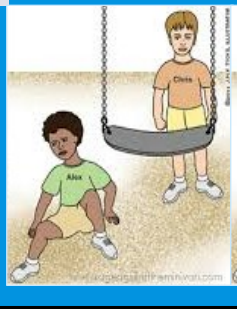
These results indicate that:

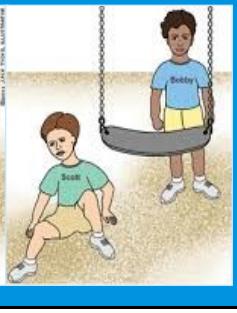
- we use race spontaneously when we view others
- we attend to their facial features differently
- we are better able to recognize faces from our own group and White faces (cf. Innocence Project)

*

26

Perceptions of Behavior





27

Exposure and Attraction to White But Not Black Targets

Contact Theory proposes that under the right circumstances, contact can decrease intergroup bias.

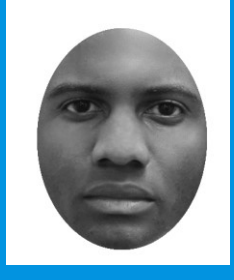
Can a single exposure to a person impact a willingness to interact with that person and is this process the same for Black and White targets?

28

Learning Phase

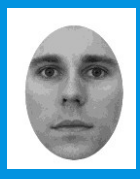
29

Learning Phase



30

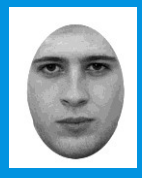
Partner Choice Task



Person 1

Person 2

Person 3

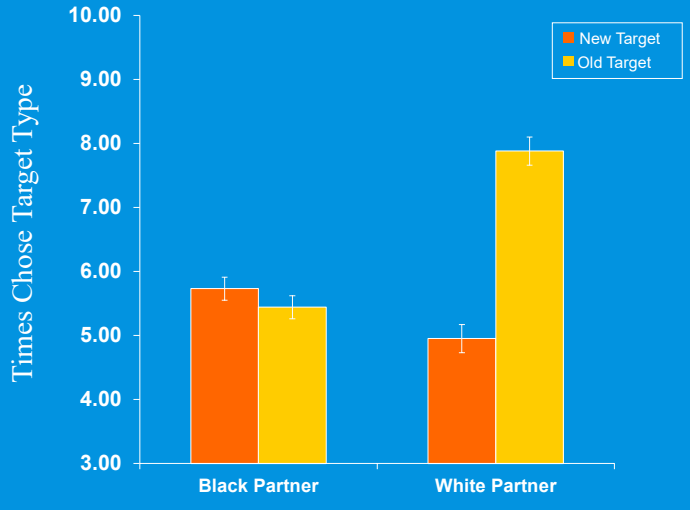


Person 4

Total number of times an old Black face, new Black face, old White face, and new White face were chosen.

31

Partner Choice



32

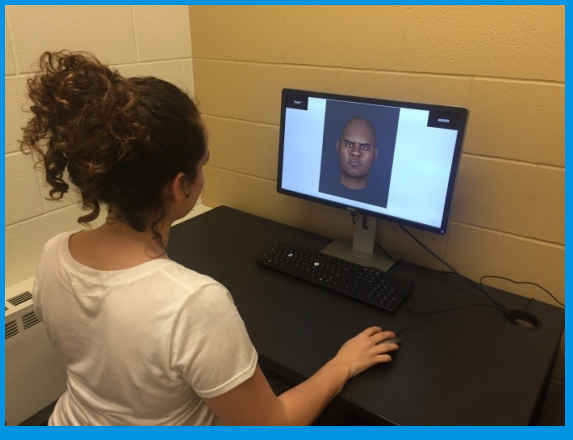
Decoding Emotions

People are worse at decoding and interpreting the emotions of outgroup relative to ingroup members.

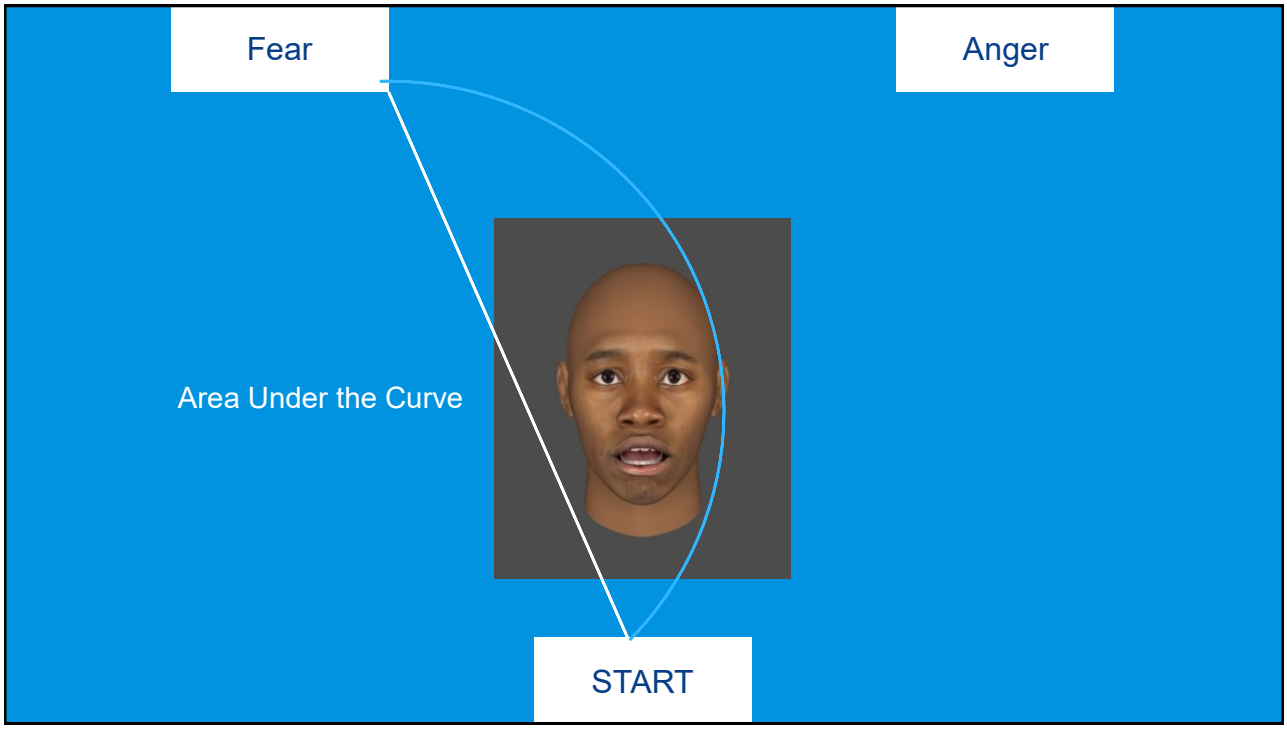
Do people process fear and anger differently on Black and White faces?

33

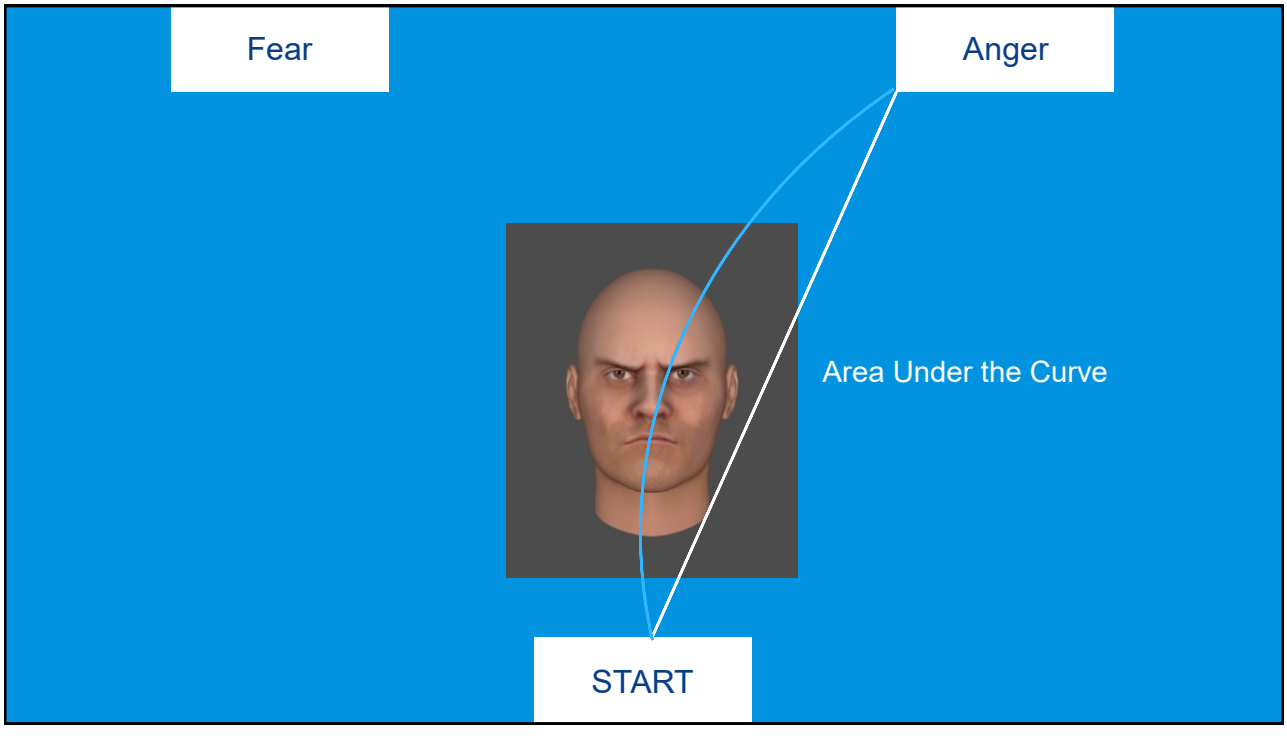
Mouse Tracking Task



34

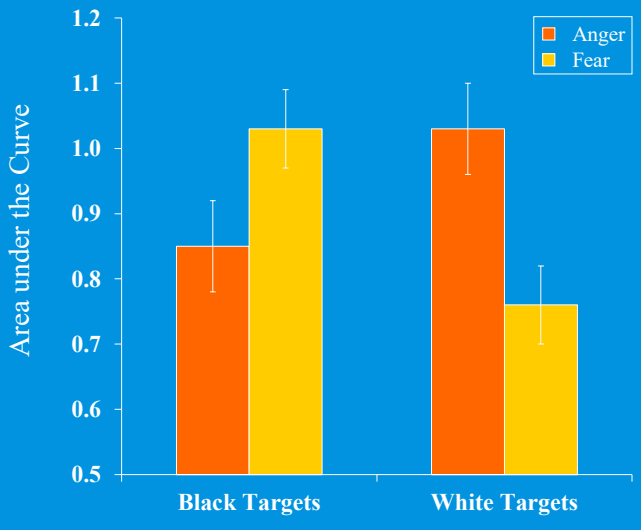

Fear
Anger
Area Under the Curve
START

35


Fear
Anger
Area Under the Curve
START

36

Emotion Identification



37

Summary

Although we may often act color blind, especially in negative intergroup contexts, we do attend to racial cues and it can influence how we process facial features and subsequently who we recognize.

Furthermore, racial cues impact our perceptions of behavior, our willingness to interact with others, and identification of emotions.

*

38

Credibility and Perceptions of Trustworthiness

Participants heard 15 statements by

- 3 native English speakers
- 3 non native speakers of English with a mild accent (Polish, Turkish, German)
- 3 non native speakers of English with a heavy accent (Korean, Turkish, Italian)

39

Credibility and Perceptions of Trustworthiness

Examples of statements:

A giraffe can go without water longer than a camel.

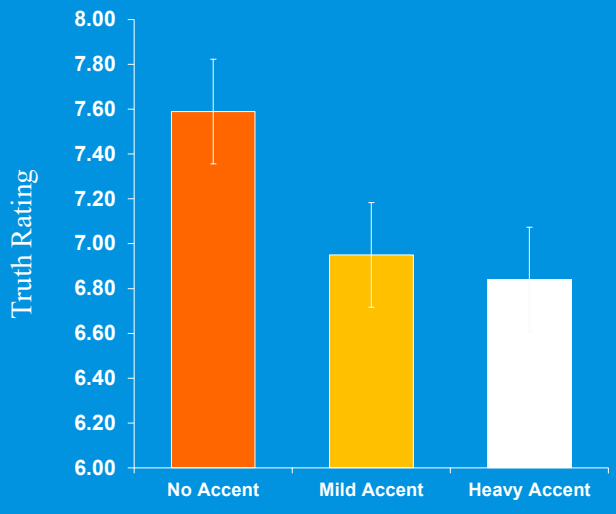
Ants don't sleep.

definitely false

definitely true

40

Credibility and Perceptions of Trustworthiness



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41

Recommendation

Because social category membership and implicit biases can impact us in a variety of ways and we might not even be aware of their impact, it is important to understand these influences.

- Training and seminars
- Reading an annual report on recent research on implicit and explicit biases

42

Recommendation

It is important to acknowledge different ethnic and racial backgrounds. Explicitly note down race, gender, and other important social categories of the person you are evaluating. Don't be color blind (or gender blind or age blind).

How might this category membership influence *your* responses?

How might it influence *their* responses?

43

Recommendation

In most experiments on race, we incorporate conditions with White targets. Try to include that condition in your decision making process. In particular, stop and ask, would I treat a White person in this same way?

If not, why not?

44

Recommendation

Ambiguity is a friend of intergroup bias.
What information or “facts” in this trial are ambiguous?

How might ambiguity of important information impact your judgements?

How can you deal with this ambiguity in a fair and systematic way?

How did you construe the situation and why?

45

Recommendation

It is also important to perceive the person as an individual rather than just another category member and to respond to them on an interpersonal level.

46

Recommendation

Factors that influence individuation:

a) Perceptions of similarity
Ask yourself, in what ways am I similar to this person?

b) Outcome dependence
In an explicit manner, try to feel obliged to provide the person with a fair trial. Imagine you have to defend the rationale for your judgement.

c) Contact and mere exposure
Understand that your experiences with others may have a different impact based on their race and your construal of their behavior.

47

Recommendation

Try to increase contact within and outside the court system both meaningful contact and mere exposure.

One powerful way to increase contact and exposure to racial/ethnic minorities is to increase and support diversity hires within the legal system.

48

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