Certified Questions – Immigration and Refugee Protection Act / Citizenship Act

Updated January 4, 2024

NOTE: This list is not necessarily exhaustive. Questions that were certified in Orders and that do not appear in Reasons for Order may not appear on this list. If you are aware of any other certified question not appearing on this list, please contact us at media-fct@fct-cf.gc.ca .

For ease of reference, decisions rendered before the coming into force of the *Immigration and Refugee Protection Act,* S.C. 2001, c.27 are no longer listed in this report. The decisions below were either raised under the *Immigration and Refugee Protection Act* or the *Citizenship Act* or refer to them.

Back to the main page

TABLE OF CONTENTS

IMMIGRATION AND REFUGEE PROTECTION ACT, S.C. 2001, c. 27

INTERPRETATION

Section 2

“foreign national”

IMM-1552-06

“permanent resident”

IMM-1552-06

OBJECTIVES AND APPLICATION

Section 3

IMM-4055-06 IMM-4022-06 IMM-5204-13

ENABLING AUTHORITY

Section 4

IMM-7109-05

AGREEMENTS

PART 1 : IMMIGRATION TO CANADA

DIVISION 1 : REQUIREMENTS BEFORE ENTERING CANADA AND SELECTION

Section 11

IMM-98-01 IMM-318-05 IMM-7202-05 IMM-6-09

Section 12

IMM-5186-05

Section 14

IMM-7109-05

DIVISION 2 : EXAMINATION

Section 15

IMM-1094-07 IMM-8881-11 IMM-1937-15

Section 16

IMM-88-05

DIVISION 3 : ENTERING AND REMAINING IN CANADA

Section 20

IMM-7202-05

Section 21

IMM-3758-04

Section 24

IMM-5340-00 IMM-4821-14

Section 25

IMM-9174-04 IMM-7202-05 IMM-4022-06 IMM-940-07 IMM-3813-08 IMM-309-08 IMM-9573-11 IMM-1515-12 IMM-2593-12 IMM-7326-12 IMM-4406-13 IMM-1106-14 IMM-3821-14 IMM-4542-14 IMM-1273-17 IMM-3242-18 IMM-1508-18 IMM-6772-19 IMM-5594-20

Section 25.2

IMM-1516-16

Section 28

IMM-121-05 IMM-325-06

Section 29
IMM-7625-05 IMM-1201-06
DIVISION 4 : INADMISSIBILITY
IMM-3411-16 IMM-3347-18
Section 33
IMM-88-05
Section 34
IMM-1357-03 IMM-5086-03 IMM-8656-04 IMM-88-05 IMM-5395-05 IMM-2579-09
IMM-1728-09 IMM-3310-09 IMM-5147-09 IMM-1474-09 IMM-3767-10 / IMM-3769-10 IMM-3103-12
IMM-10493-12 IMM-7522-12 IMM-371-14 IMM-1645-19 IMM-4199-19 IMM-3566-19 IMM-3490-19
Section 35
IMM-377-02 (May 21st, 2003) IMM-377-02 (October 1st, 2004)
IMM-5236-02 IMM-1145-03 IMM-88-05 IMM-506-07 IMM-3367-09 IMM-1975-18
Section 36
IMM-88-05 IMM-1930-09 IMM-7208-13 IMM-5522-21
Section 37
IMM-4621-02 IMM-8912-04 IMM-88-05 IMM-4896-07 IMM-4760-11 IMM-6888-11 IMM-8666-11 IMM-2041-12
IMM-2409-12 IMM-2309-12 IMM-5626-13 IMM-1144-14 IMM-2995-15 IMM-1431-16 IMM-729-19 IMM-6785-19
Section 38
IMM-88-05 IMM-5186-05 IMM-2616-09 IMM-4112-09 IMM-4737-08 IMM-8494-11
Section 39
IMM-88-05
Section 40
IMM-10475-04 IMM-5815-04 IMM-88-05 IMM-1522-11 IMM-6485-13 IMM-4872-16 IMM-3817-17 IMM-5594-20
Section 41
IMM-88-05 IMM-1201-06
Section 42
IMM-88-05
Section 43
IMM-88-05
DIVISION 5 : LOSS OF STATUS AND REMOVAL
Section 44
IMM-5125-02 IMM-2347-03 IMM-6352-04 IMM-6353-04 IMM-7038-04 IMM-7625-05
IMM-6266-06 / IMM-6267-06 IMM-3154-07 IMM-3156-07 IMM-3333-09 IMM-8486-12
IMM-5314-14 IMM-7152-14/IMM-7153-14 IMM-3411-18 IMM-1061-18 IMM-4426-18 IMM-4427-18 IMM-1915-19 IMM-6268-19 IMM-6270-19
IMM-5379-20 and IMM-5380-20

Section 45
IMM-4964-03 IMM-1318-04 IMM-2200-08
Section 46
IMM-1552-06 IMM-6485-13
Section 48
IMM-7941-03 IMM-4236-05 IMM-885-06 IMM-3375-06 IMM-2353-06 IMM-5938-06
IMM-150-07 IMM-5636-06 IMM-1396-10
Section 49
IMM-1552-06
Section 50
IMM-9107-04 IMM-3836-05 IMM-1472-06 IMM-4533-05
Section 52
IMM-9934-03
DIVISION 6 : DETENTION AND RELEASE
Section 55
IMM-1934-14
Section 57
IMM-1845-03 IMM-364-15
Section 58
IMM-1845-03 IMM-2757-05 IMM-3538-09 IMM-6267-09 IMM-1934-14 IMM-364-15
DIVISION 7 : RIGHT OF APPEAL
Section 63
IMM-1552-06 IMM-5468-11 IMM-4225-12 IMM-3803-12 IMM-4406-13 IMM-41-14 IMM-3648-17 IMM-6268-19 IMM-6270-19
Section 64
IMM-3260-03 IMM-2139-03 IMM-655-03 IMM-472-04 IMM-3111-04 IMM-5154-04
IMM-8360-04 IMM-2453-05 IMM-3220-07
Section 65
IMM-4225-12 IMM-3803-12 IMM-4406-13
Section 67
IMM-3634-04 IMM-8906-04 IMM-4406-13 IMM-879-15 IMM-4245-18 IMM-6722-19
IMM-3834-20
Section 68
IMM-9738-04 IMM-8360-04 IMM-7131-05 IMM-8565-12 IMM-4245-18 IMM-6722-19
IMM-3834-20
Section 71
IMM-7369-03 IMM-7688-04 / IMM-10094-04 IMM-8987-04
DIVISION 8 : JUDICIAL REVIEW

Section 72
IMM-1963-04 IMM-8863-04 IMM-9071-04 IMM-2353-06 IMM-3375-06 IMM-5938-06
IMM-150-07 IMM-5015-06 IMM-3145-07 IMM-1086-09 IMM-3079-09 IMM-1474-09 IMM-4225-12 IMM-3803-12
IMM-7880-19
Section 74
IMM-6636-12
DIVISION 9 : CERTIFICATES AND PROTECTION OF INFORMATION
Section 77
DES-5-08
Section 78
DES-5-08
Section 82
DES-6-08
Section 83
DES-5-08
Section 85
DES-5-08
Section 86
IMM-5125-02
Section 87, 87.3, 87.4
IMM-5125-02 IMM-5635-12 IMM-10968-12, IMM-10972-12, IMM-10978-12, IMM-12609-12, IMM-11890-12, IMM-12541-12
IMM-3431-13 IMM-2621-13
DIVISION 10 : GENERAL PROVISIONS
Section 91
IMM-63-05 IMM-5039-11

PART 2 : REFUGEE PROTECTION

DIVISION 1 : REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION
Section 95
IMM-1868-04 IMM-5107-05 IMM-1133-15 IMM-2155-19
Section 96
IMM-3069-03 IMM-4181-03 IMM-150-04 IMM-2168-05 IMM-5571-05 IMM-3818-05
IMM-822-06 IMM-2208-06 IMM-4723-06 IMM-7117-05 IMM-7816-12 IMM-11315-12
IMM-3220-14 IMM-3582-13 IMM-67-14
Section 97
IMM-923-03 IMM-5838-02 IMM-656-03 / IMM-661-03 IMM-9332-03 IMM-6045-04
IMM-3818-05 IMM-2669-06 IMM-6516-06 IMM-3077-07 IMM-4396-09 IMM-2597-11

IMM-3383-11 IMM-8048-13

Section 98

IMM-923-03 IMM-3194-02 IMM-2814-06 IMM-4071-06 IMM-192-07 IMM-1603-07
IMM-2147-08 IMM-4183-08 IMM-3786-08 IMM-3921-10 IMM-5890-11 IMM-7327-10
IMM-2880-11 IMM-4410-12 IMM-11894-12 IMM-878-15 IMM-2919-15 IMM-977-19 IMM-2379-19 IMM-2973-19

DIVISION 2 : CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

Section 101

IMM-7818-05 IMM-1570-08 IMM-5890-11 IMM-6395-11 IMM-5590-15 IMM-6388-18 IMM-2977-17

Section 102

IMM-7818-05

Section 103

IMM-1851-09 IMM-371-14

Section 104

IMM-371-14

Section 107

IMM-968-15

Section 107.1

IMM-968-15

Section 108

IMM-2010-11 IMM-6485-13 IMM-1407-14 IMM-4732-14 IMM-5302-14 IMM-5825-14 IMM-4174-14 IMM-1133-15
T-232-16 IMM-2155-19

Section 109

IMM-2283-07 IMM-4154-19

Section 110

IMM-6362-13 IMM-5981-13 IMM-7630-13 IMM-7567-13 IMM-6711-13 IMM-6640-13 IMM-6639-13
IMM-8015-13 IMM-3700-13 / IMM-5940-14 IMM-7050-14 IMM-4974-15 IMM-3193-15, IMM-248-16, IMM-932-16, IMM-1354-16 and IMM-1604-16

Section 111

IMM-6362-13 IMM-5981-13 IMM-7630-13 IMM-7567-13 IMM-6640-13 IMM-6639-13 IMM-8015-13

DIVISION 3 : PRE-REMOVAL RISK ASSESSMENT

Section 112

IMM-9593-03 IMM-1868-04 IMM-9071-04 IMM-1963-04 IMM-2228-04 IMM-8736-04
IMM-9174-04 IMM-2669-06 IMM-12508-12 IMM-12545-12 IMM-343-14 IMM-1516-16
IMM-3855-15, IMM-3838-15, IMM-591-16, IMM-3515-16 and IMM 1552-17

Section 113

IMM-9593-03 IMM-9571-03 IMM-8736-04 IMM-7269-05 IMM-4055-06 IMM-192-07 IMM-6711-13 IMM-1516-16

Section 114
IMM-1516-16
Section 115
IMM-1868-04 IMM-3377-04 IMM-3634-04 IMM-6447-05 IMM-4510-11

PART 3 : ENFORCEMENT

Human Smuggling and Trafficking
Offences Related to Documents
General Offences
Proceeds of Crime
Prosecution of Offences
Forfeiture
Officers Authorized to Enforce Act
Peace Officers
Ticketable Offences
Debt Due to Her Majesty
Collection of Debts Due to Her Majesty
Transportation Companies
Sharing of Information

PART 4 : IMMIGRATION AND REFUGEE BOARD

Composition of Board
Head Office and Staff
Duties of Chairperson
Section 159
IMM-7836-04
IMM-9766-04 / IMM-9220-04 / IMM-9452-04 / IMM-9797-04 / IMM-353-05 / IMM-407-05 / IMM-934-05 / IMM-1144-05 / IMM-1419-05 / IMM-1877-05 / IMM-2034-05 / IMM-2150-05 / IMM-2709-05 / IMM-3313-05 / IMM-3994-05 / IMM-4044-05 / IMM-712-05 / IMM-470-05 / IMM-4064-05
IMM-3370-05 IMM-4127-05 IMM-3310-05 IMM-4637-05 IMM-5637-05 IMM-6316-05 IMM-7697-05 IMM-7261-05
IMM-396-06 IMM-7766-05 IMM-7770-05 IMM-6547-05 IMM-4817-05 IMM-1177-06 IMM-4534-06 IMM-3433-17 IMM-3373-18
Functioning of Board
Provisions that Apply to All Divisions
Section 162
IMM-6362-13 IMM-5981-13 IMM-7630-13 IMM-7567-13 IMM-6640-13 IMM-6639-13 IMM-8015-13
Section 163
IMM-2645-17
Section 167
IMM-4357-09

Refugee Protection Division
Section 170(g)
IMM-3194-02
Section 170(h)
IMM-3194-02 IMM-5130-17
Section 170.2
IMM-1376-14
Refugee Appeal Division
Section 171
IMM-6362-13 IMM-5981-13 IMM-7630-13 IMM-7567-13 IMM-6640-13 IMM-6639-13 IMM-8015-13
Immigration Division
Immigration Appeal Division
Remedial and Disciplinary Measures

PART 5 : TRANSITIONAL PROVISIONS, CONSEQUENTIAL AND RELATED AMENDMENTS, COORDINATING AMENDMENTS, REPEALS AND COMING INTO FORCE

Transitional Provisions
Section 190
IMM-1989-01 IMM-78-05
Section 196
IMM-4060-02 IMM-4088-02 IMM-4491-02 IMM-3873-02 IMM-4502-02 IMM-4500-02
Section 197
IMM-735-04 IMM-6961-03 IMM-2866-05 IMM-8360-04 IMM-3517-07

Repeals
Coming Into Force

Return to Top

IMMIGRATION AND REFUGEE PROTECTION REGULATIONS, SOR/2002-227

PART 1 : INTERPRETATION AND APPLICATION

Division 1 : Interpretation
Section 1
“excessive demand”
IMM-5340-00 IMM-2616-09 IMM-4737-08
“family member”
IMM-9245-04

Section 2
“dependent child”
IMM-9214-04 IMM-9245-04 IMM-2281-06 IMM-6139-06 IMM-5468-11
“marriage”
IMM-3162-08
Division 2 : Family Relationships
Section 4. Bad faith
IMM-6-09 IMM-5204-13

PART 2 : GENERAL REQUIREMENTS

Division 1 : Documents Required Before Entry
Section 9
IMM-10482-03
Division 2 : Applications
Section 10
IMM-3758-04 IMM-1544-15 IMM-1104-15
Division 3 : Documents and Certified Copies
Division 4 : Representation for a Fee

PART 3 : INADMISSIBILITY

Division 1: Determinaton of Inadmissibility
Section 16
IMM-1975-18

PART 4 : PROCEDURES

Division 1 : Visa Issuance
Section 25.1
IMM-5366-16
Division 2 : Authorization to Enter Canada
Division 3 : Conduct of Examination
Section 34
IMM-5340-00
Section 49
IMM-2757-05

PART 5 : PERMANENT RESIDENTS

Division 1 : Permanent Resident Cards
Section 54, Section 59
IMM-8486-12
Division 2 : Residency Obligation

Division 3 : Permit Holders
Division 4 : Permit Holders Class
Section 65
IMM-5340-00
Division 5 : Humanitarian and Compassionate Considerations
Division 6 : Permanent Resident Visa

PART 6 : ECONOMIC CLASSES

Division 1 : Skilled Workers
Section 78
“Education”
IMM-552-09 IMM-1196-10 IMM-5481-09 IMM-2954-10 IMM-6455-09 IMM-5486-10 IMM-4516-13
Section 83
IMM-6394-09
Section 84
IMM-9245-04
Section 85
IMM-9245-04 IMM-5186-05
Section 87
“Canadian Experience Class”
IMM-1543-12
Division 2 : Business Immigrants
Section 88
“business experience”
IMM-1835-06
Division 3 : Live-in Caregivers
Section 114
IMM-6-09

PART 7 : FAMILY CLASSES

Division 1 : Family Class
Section 117
IMM-8447-03 IMM-2124-04 IMM-1737-04 IMM-318-05 IMM-1760-04 IMM-78-05 IMM-3635-04 IMM-9744-04
IMM-4375-05 IMM-3084-06 IMM-3162-08 IMM-3676-09 IMM-2622-09 IMM-5468-11 IMM-4760-11 IMM-8666-11
IMM-475-17
Division 2 : Spouse or Common-Law Partner in Canada Class
IMM-3486-08
Division 3 : Sponsors

Section 133
IMM-184-06 IMM-3178-16
Section 134
IMM-3732-11 IMM-3178-16

PART 8 : REFUGEE CLASSES

Division 1 : Convention Refugees Abroad and Humanitarian-Protected Persons Abroad
Section 139
IMM-2355-01 IMM-3566-11
Division 2 : Sponsorship
Division 3 : Determination of Eligibility of Claim
Section 159.3
IMM-7818-05
IMM-2977-17
Section 159.5
IMM-4534-06
Division 4 : Pre-Removal Risk Assessment
Section 160
IMM-9283-04
Section 167
IMM-9593-03
Division 5 : Protected Persons — Permanent Residence
Section 175
IMM-3758-04
Section 176
IMM-3758-04

PART 9 : TEMPORARY RESIDENTS

Division 1 : TEMPORARY RESIDENT VISA
Section 182
IMM-7625-05 IMM-8426-13
Division 2 : CONDITIONS ON TEMPORARY RESIDENTS
Section 183
IMM-2838-15 / IMM-2840-15
Division 3 : Work Without a Permit
Division 4 : Study Without a Permit
Division 5 : TEMPORARY RESIDENT VISA EXEMPTIONS

PART 10 : VISITORS
PART 11 : WORKERS
Division 1 : GENERAL RULES
Division 2 : APPLICATION FOR WORK PERMIT
Division 3 : Issuance of Work Permits
PART 12 : STUDENTS
Division 1 : General Rules
Division 2 : Application for Study Permit
Division 3 : Issuance of Study Permits
Division 4 : Restrictions on Studying in Canada
Division 5 : Validity and Expiry of Study Permits
PART 13 : REMOVAL
Division 1 : Removal Orders
Section 226
IMM-9934-03
Division 2 : Specified Removal Order
IMM-2779-12
Division 3 : Stay of Removal Orders
IMM-5636-06 IMM-3486-08
Division 4 : Enforcement of Removal Orders
Section 238
IMM-4079-17
PART 14 : DETENTION AND RELEASE
IMM-364-15
PART 15 : THE IMMIGRATION APPEAL DIVISION
PART 16 : SEIZURE
PART 17 : TRANSPORTATION
PART 18 : LOANS
PART 19 : FEES
Division 1 : General
Division 2 : Fees for Applications for Visas and Permits
Section 295
IMM-804-09
Division 3 : Fees for Applications to Remain in Canada as a Permanent Resident
Division 4 : Right of Permanent Residence

Return to Top

REFUGEE PROTECTION DIVISION RULES, SOR/2002-228

Return to Top

IMMIGRATION DIVISION RULES, SOR/2002-229

Return to Top

IMMIGRATION APPEAL DIVISION RULES, SOR/2002-230

23 - PART VI - Administration
29 - PART VII - Offences
32 - PART VIII - Status of Persons in Canada
SCHEDULE - Oath or Affirmation of Citizenship

STRENGTHENING CANADIAN CITIZENSHIP ACT, S.C. 2014, c. 22

SHORT TITLE
CITIZENSHIP ACT
TRANSITIONAL PROVISIONS
Section 31
T-1981-18
CONSEQUENTIAL AMENDMENTS
COORDINATING AMENDMENTS
COMING INTO FORCE

Return to Top

OTHER

Class actions
IMM-8863-04 IMM-5015-06
Clean hands
IMM-3402-03
Detention
IMM-3387-05 IMM-4038-08 IMM-4039-08 IMM-63-16 / IMM-502-16
Estoppel
IMM-356-04
Federal Court
IMM-1086-09
Functus Officio
IMM-1546-13
Implausiblity Findings
IMM-5130-17
Jurisprudence
IMM-377-02 (May 21st, 2003) IMM-2106-20
Mandamus
IMM-7109-05 IMM-10968-12, IMM-10972-12, IMM-10978-12, IMM-12609-12, IMM-11890-12, IMM-12541-12

IMM-2621-13 IMM-7972-13

Mootness

IMM-9071-04 IMM-1963-04 IMM-3375-06 IMM-2353-06 IMM-150-07 IMM-5938-06 IMM-6175-06
IMM-432-07 IMM-2139-07 IMM-2455-07 IMM-4294-07 IMM-4023-07 IMM-475-07 IMM-1396-10
IMM-7227-13 IMM-547-15

Other principles of law

IMM-7131-05

Privilege

DES-5-08

Procedural fairness and natural justice

IMM-9593-05 IMM-7836-04
IMM-9766-04 / IMM-9220-04 / IMM-9452-04 / IMM-9797-04 / IMM-353-05 / IMM-407-05 / IMM-934-05 / IMM-1144-05 / IMM-1419-05 / IMM-1877-05 / IMM-2034-05 / IMM-2150-05 / IMM-2709-05 / IMM-3313-05 / IMM-3994-05 / IMM-4044-05 / IMM-712-05 / IMM-470-05 / IMM-4064-05
IMM-3370-05 IMM-4127-05 IMM-3310-05 IMM-4637-05 IMM-5637-05 IMM-6316-05 IMM-7697-05 IMM-7261-05
IMM-396-06 IMM-7766-05 IMM-7770-05 IMM-6547-05 IMM-4817-05 IMM-1177-06 IMM-964-07
IMM-1937-15 IMM-4585-16 / IMM-1531-17

Redetermination

IMM-98-01

Right to counsel

IMM-3387-05

Standard of Review

IMM-2645-17 IMM-5130-17

Stay of proceedings

IMM-4184-06

Stare decisis

IMM-7935-14 IMM-3347-18
IMM-3411-16

Return to Top

LIST OF CERTIFIED QUESTIONS

Trial	*Appeal*	*Question*	*Answer*
IMM-5340-00 Gibson J. August 8, 2002 2002 FCT 844 Back to IRPA s. 24 Back to IRPR s. 1 Back to IRPR s. 34 Back to IRPR s. 65	A-560-02 Linden J.A. Evans J.A. (Reasons) Malone J.A. November 12, 2003 2003 FCA 420 2005 SCC 57	Is an applicant's wealth a relevant consideration in determining whether his or her admission to Canada would cause excessive demands on social services in Canada and is a determination by medical officers in this regard determinative or is the decision-maker in respect of the applicant's application for permanent residence in Canada required to consider the reasonableness of the medical officers' determination regarding "excessive demands" in the light of all the relevant material provided to the respondent by the applicant? **Answer (per FCA):** An applicant's wealth is not a consideration that a medical officer is legally required to consider when determining whether a person's admission to Canada would cause or might reasonably be expected to cause excessive demands on social services in Canada.	Appeal allowed. See answer below question (per FCA). Further appeal to the Supreme Court of Canada allowed. **See SCC judgement.**
IMM-2355-01 Dawson J. December 17, 2002 2002 FCT 1303 Back to IRPR s. 139	A-38-03 Linden J.A. Sexton J.A. (Reasons) Malone J.A. January 30, 2004 2004 FCA 49	1. Is the duty of fairness breached when a visa officer refuses to allow counsel to attend at the interview of an applicant seeking admission to Canada as a Convention refugee seeking resettlement? 2. What legal rights or obligations must a Convention refugee possess outside of Canada in order to be considered re-settled so as to have a "durable solution"?	Appeal allowed. **Answers:** 1. Not answered, see reasons. 2. Not answered.
IMM-3020-02 Kelen J. March 7, 2003 2003 FCT 281 Back to IRPR s. 361	A-133-03 Rothstein J.A. (Reasons) Sexton J.A. Sharlow J.A. May 22, 2003 2003 FCA 233	In view of the Court's findings of fact with respect to the legislative history and intent of subsection 361(3) of the *Immigration and Refugee Protection Regulations* regarding immigrant visa applications filed before January 1, 2002, does the respondent have an implied duty to use his reasonable best efforts to assess such applications before March 31, 2003?	Appeal dismissed for mootness.
IMM-1989-01 O'Keefe J. March 27, 2003 2003 FCT 363	A-176-03 Décary J.A. Létourneau J.A. Noël J.A. December 11, 2003	Is s. 350 of the *Immigration Regulations, 2002*, *ultra vires* the *Immigration and Refugee Protection Act* in that the statutory provision the respondent asserts provides its *raison d'être, i.e.,* s. 190; is not *àpropos* because (a) s. 190 applies only to (i) matters "under the former [Immigration] Act", not the *Federal Court Act*, which were (ii) pending before Immigration, not the Federal Court, on 28 June 2002 and, in any event, (b) the matter giving rise to this application before the Federal Court was not "pending" on that date because the visa-officer had finalized the matter when she issued	Appeal dismissed for delay.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 190 Back to IRPR s. 350		her refusal letter on 9 April 2001?	
IMM-1603-01 O'Keefe J. March 28, 2003 2003 FCT 368 Back to IRPR s. 350	A-177-03 Décary J.A. Létourneau J.A. Noël J.A. December 11, 2003	Is subsection 350(3) of the Regulations, *supra*, *ultra vires* of IRPA?	Appeal dismissed for delay.
IMM-4060-02 Snider J. May 20, 2003 2003 FCT 634 Back to IRPA s. 196	A-249-03 Rothstein J.A. (Concurred) Evans J.A. (Reasons) Pelletier J.A. (Dissenting Reasons) March 3, 2004 2004 FCA 85 2005 SCC 51	Does the word "stay" in section 196 of the IRPA contemplate a stay that came into effect under the *Immigration Act*, R.S.C. 1985, c. I-2 as a result of the operation of paragraph 49(1)(b)? *Note: Appeal heard together with: A-267-03 and A-374-03.*	Appeal dismissed. See Reasons for answer. Further appeal to Supreme Court of Canada dismissed.
IMM-377-02 Campbell J. May 21, 2003 2003 FCT 639 Back to IRPA s. 35 Back to Other	A-283-03 Rothstein J.A. Pelletier J.A. (Reasons) Malone J.A. March 4, 2004 2004 FCA 89 A-539-04 Létourneau J.A. (Reasons) Rothstein J.A. Malone J.A . September 20, 2005 2005 FCA 303	1. Does the exclusion of a Convention refugee under Article 1F(a) of the Refugee Convention mean it has been established that there are reasonable grounds to believe that the refugee status claimant has committed offences at international law under section 18(1)(j) of the *Immigration Act* so that an Adjudicator conducting an inquiry into allegations made under section 19(1)(j) of the Act would be bound by the Convention Refugee Determination Division's exclusion under Article 1F(a) of the Convention? 2. Does the definition of "crime against humanity", found at section 4(3) of the Crimes Against Humanity and War Crimes Act, include complicity therein? 3. Can a reviewing Judge apply a Federal Court Trial Division case retroactively to a decision of an Adjudicator which pre-dated the case?	Appeal allowed. Questions not answered. Question 2 recertified by Layden-Stevenson J. October 1, 2004 (see below) Appeal dismissed. **Answer to question 2:** Yes September 20, 2005

Trial	*Appeal*	*Question*	*Answer*
IMM-4088-02 Campbell J. May 27, 2003 2003 FCT 661 Back to IRPA s. 196	A-267-03 (A-249-03) Rothstein J.A. (Concurred) Evans J.A. (Reasons) Pelletier J.A. (Dissenting Reasons) March 3, 2004 2004 FCA 85 2005 SCC 51	Does the word "stay" in s.196 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 contemplate a stay that came into effect under the *Immigration Act*, R.S.C. 1985, c. I-2 as a result of the operation of s.49(1)(b)? *Note: Appeal heard together with:A-249-03 and A-374-03 (full minutes on **A-249-03**)*	Appeal allowed. See Reasons for answer. Further appeal to Supreme Court of Canada dismissed.
IMM-98-01 Layden-Stevenson J. June 13, 2003 2003 FCT 743 Back to IRPA s. 11 Back to Other	A-308-03 Décary J.A. (Reasons) Evans J.A. Pelletier J.A March 31, 2004 2004 FCA 143	Where a visa officer refuses an application for permanent residence on redetermination, after a previous decision was set aside by the court, is the visa officer obliged to specifically state or set out the differences between the two decisions?	Appeal dismissed. **Answer**: No.
IMM-4491-02 Dawson J. July 29, 2003 2003 FC 930 Back to IRPA s. 196	A-374-03 (A-249-03) Rothstein J.A. (Concurred) Evans J.A. (Reasons) Pelletier J.A. (Dissenting Reasons) March 3, 2004 2004 FCA 85 2005 SCC 51	Does the word "stay" in section 196 of the IRPA contemplate a stay that came into effect under the *Immigration Act*, R.S.C. 1985, c. I-2 as a result of the operation of paragraph 49(1)(b)? *Note: Appeal heard together with:A-249-03 and A-267-03 (full minutes on A-249-03)*	Appeal allowed. See Reasons for answer. Further appeal to Supreme Court of Canada dismissed.
IMM-3873-02 Campbell J. July 8, 2003	A-359-03 Rothstein J.A. Malone J.A.	Does the word "stay" in s.196 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 contemplate a stay that came into effect under the *Immigration Act*, R.S.C. 1985, c. I-2 as a result of the operation of s.49(1)(b)?	Appeal allowed. **Answer**: No.

Trial	*Appeal*	*Question*	*Answer*
2003 FC 847 Back to IRPA s. 196	Sharlow J.A. (Reasons) March 22, 2004 2004 FCA 120		
IMM-923-03 Kelen J. September 4, 2003 2003 FC 1023 Back to IRPA s. 97 Back to IRPA s. 98	A-422-03 Décary J.A. Létourneau J.A. Pelletier J.A. (Reasons) June 30, 2004 2004 FCA 250	1. Can a refugee claimant be excluded from protection under Article 1F(b) of the *Refugee Convention* for committing a purely economic offence? 2. In light of *Suresh*, is the Refugee Division required to conduct a balancing of the nature and severity of the claimant's offence against the possibility that he or she might face torture if returned to his or her country of origin?	Appeal dismissed. See Reasons for answers. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-5236-02 Noël J. September 24, 2003 2003 FC 1085 Back to IRPA s. 35		In cases where a Visa Officer believes an applicant may have committed an offense referred to in section 4 to 7 of the *Crimes against Humanity Act* and that therefore the applicant may be inadmissible to Canada pursuant to section 35(1)(a) of the *Immigration and Refugee Protection Act* or section 19(1)(j) of the former *Immigration Act* must the visa officer specify the offense that she has reasonable grounds to believe the applicant has committed? (as submitted)	No appeal filed.
IMM-1845-03 Gauthier J. October 21, 2003 2003 FC 1225 Back to IRPA s. 57 Back to IRPA s. 58	A-479-03 Stone J.A. Rothstein J.A. (Reasons) Sharlow J.A. January 9, 2004 2004 FCA 4	Are the detention reviews made pursuant to s. 57(2) and 58 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27, hearings *de novo* and does the detained person bear the burden of establishing that he/she is not a danger to the Canadian public or not a flight risk at such reviews? **Answer:** At each detention review made pursuant to sections 57 and 58 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, the Immigration Division must come to a fresh conclusion whether the detained person should continue to be detained. Although an evidentiary burden might shift to the detainee once the Minister has established a *prima facie* case, the Minister always bears the ultimate burden of establishing that the detained person is a danger to the Canadian public or is a flight risk at such reviews. However, previous decisions to detain the individual must be considered at subsequent reviews and the Immigration Division must give clear and compelling reasons for departing from previous decisions.	Appeal dismissed. See answer below question.
IMM-5125-02 Mackay J. December 8, 2003	A-597-03 Strayer J.A. Rothstein J.A. (Reasons)	Does the procedure pursuant to ss. 44(2), 86 and 87 of the *Immigration and Refugee Protection Act* engage section 7 of the *Charter of Rights and Freedoms* and if so, is any deprivation of liberty and security of person contrary to the principles of fundamental justice?	Appeal dismissed. **Answer**: No.

Trial	*Appeal*	*Question*	*Answer*
2003 FC 1429 Back to IRPA s. 44 Back to IRPA s. 86 Back to IRPA s. 87	Malone J.A. May 28, 2003 2004 FCA 212		Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-4502-02 O'Reilly J. December 16, 2003 2003 FC 1466 Back to IRPA s. 196	A-12-04 Létourneau J.A. Nadon J.A. Pelletier J.A. April 11, 2006	Does the word "stay" in section 196 of the IRPA contemplate a stay that came into effect under the *Immigration Act*, R.S.C. 1985, c. I-2 as a result of the operation of paragraph 49(1)(b)?	Appeal allowed on consent.
IMM-5838-02 Gauthier J. December 22, 2003 2003 FC 1514 Back to IRPA s. 97	A-31-04 Rothstein J.A. (Reasons) Noël J.A. (Concurred) Malone J.A. (Concurred) January 5, 2005 2005 FCA 1	1. Does section 97 of the *Act* require that a person establish, on a balance of probabilities, that he or she will face the danger or risks described in paragraphs 97(1)(*a*) and *b*)? 2. What is the requisite degree of risk of torture envisaged by the expression "substantial grounds for believing that"? 3. Is the same degree of risk required under paragraph 97(1)*(b)*? **Answers**: 1. The standard of proof for purposes of section 97 is proof on a balance of probabilities. 2. The requisite degree of danger of torture envisaged by the expression "believed on substantial grounds to exist" is that the danger of torture is more likely than not. 3. The degree of risk under paragraph 97(1)*(b)* is that the risk is more likely than not.	Appeal dismissed. See answers below questions. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-3260-03 Pinard J. January 8, 2004 2004 FC 7 Back to IRPA s. 64	A-298-04	Does pre-sentence custody, which is expressly credited towards a person's criminal sentence, form part of the "term of imprisonment" under section 64(2) of *Immigration and Refugee Protection Act*?	Discontinued.
IMM-2139-03 Campbell J. January 16, 2004 2004 FC 63	A-79-04 Evans J.A. (Judgment) Sharlow J.A. Pelletier J.A.	Does pre-sentence custody, which is expressly credited towards a person's criminal sentence, form part of the "term of imprisonment" under section 64(2) of the *Immigration and Refugee Protection Act*?	Appeal dismissed for delay.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 64	September 29, 2004		
IMM-4500-02 Gauthier J. January 26, 2004 2004 FC 121 Back to IRPA s. 196	A-93-04 Desjardins J.A. Linden J.A. Pelletier J.A. November 9, 2005	Does the word "stay" in section 196 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, contemplate a stay that came into effect under the *Immigration Act*, R.C.S. (1985) C I-2, as a result of the operation of paragraph 49(1)(*d*)?	Appeal allowed on consent.
IMM-655-03 Kelen J. February 27, 2004 2004 FC 293 Back to IRPA s. 64 Back to IRPR s. 326	A-167-04 Létourneau J.A. (Reasons) Sexton J.A. Sharlow J.A. December 15, 2004 2004 FCA 436	If a person has been convicted of a crime that was punished in Canada by a term of imprisonment of less than two years, and found to be a "danger to the public" under subsection 70(5) of the former *Immigration Act* so that person had no right of an appeal to the IAD under the former *Immigration Act*, does subsection 326(2) of the *Immigration and Refugee Protection Regulations*, which refers to subsection 64(1) of IRPA but not subsection 64(2) of IRPA, bar an appeal to the IAD?	Appeal dismissed. **Answer**: Yes.
IMM-1357-03 Gibson J. March 4, 2004 2004 FC 310 Back to IRPA s. 34	A-207-04 Rothstein J.A. (Reasons) Noël J.A. Malone J.A. March 4, 2005 2005 FCA 85	Having regard to section 7 of the *Canadian Charter of Rights and Freedoms* and international human rights instruments to which Canada is a signatory, including the *Convention on the Rights of the Child*, is there, on the particular facts underlying this application for judicial review, any distinction in liability between the Applicant who was a minor at all times relevant to his activities on behalf of the Mujahedin-e-Khalq and an adult undertaking equivalent activities on behalf of such an organization without being a formal member of that organization, for inadmissibility under subsection 34(1) of the *Immigration and Refugee Protection Act*? **Answer:** (a) section 7 of the Charter is not engaged in the determination to be made by the Immigration Division under paragraph 34(1)(*f*) of the Act; (b) the *Convention on the Rights of the Child* does not apply when the proceedings and decision involving an individual take place when the individual is no longer a minor; (c) an individual's status as a minor is relevant and there may be a distinction between a minor and an adult in the determination of whether the individual is a member of a terrorist organization under paragraph 34(1)(*f*) of the Act if the minor provides evidence to support such a distinction; and (d) in the present case, Mr. Poshteh's age was properly considered by the Immigration Division and it was open to the	Appeal dismissed. See answer below question.

Trial	*Appeal*	*Question*	*Answer*
		Immigration Division to determine that he was a member of a terrorist organization for purposes of paragraph 34(1)(*f*) of the Act.	
IMM-3069-03 Campbell J. March 18, 2004 2004 FC 415 Back to IRPA s. 96	A-217-04 Nadon J.A. Sharlow J.A. (Reasons) Malone J.A. March 8, 2005 2005 FCA 91	In a case where a claimant has suffered persecution, is the Refugee Protection Division of the Immigration and Refugee Board required to apply the rebuttable presumption found in paragraph 45 of the Office of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status: "that a person has well-founded fear of being persecuted if he has already been the victim of persecution for one of the reasons enumerated in the 1951 Convention" or is this presumption not part of Canadian law? **Answer**: The second sentence of paragraph 45 of the Office of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status does not establish a presumption of law or a rebuttable presumption of law that must be applied in determining refugee claims under the *Immigration and Refugee Protection Act*. A person establishes a refugee claim by proving the existence of a well-founded fear of persecution for one of the reasons listed in section 96 of the *Immigration and Refugee Protection Act*. Proof of past persecution for one of the listed reasons may support a finding of fact that the claimant has a well-founded fear of persecution in the future, but it will not necessarily do so. If, for example, there is evidence that country conditions have changed since the persecution occurred, that evidence must be evaluated to determine whether the fear remains well founded.	Appeal dismissed. See answer below question. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-3194-02 Mackay J. March 19, 2004 2004 FC 179 Back to IRPA s. 98 Back to IRPA s. 170(g) Back to IRPA s. 170(h) Back to RPDR s. 25	A-191-04 Richard C.J. Sharlow J.A. Malone J.A. (Reasons) April 11, 2005 2005 FCA 125	1. (a) In a refugee exclusion case based on Article 1F(b) of international Convention on the Status of Refugees where the Minister relies upon interrogation statements produced abroad by foreign government agencies, must the Minister establish those statements were voluntary when made, particularly where there is some evidence of lack of voluntariness of one or more of the statements and evidence of torture sometimes used in obtaining statements from persons detained is included in information on general country conditions? (b) Is the Minister required to give notice in advance of a hearing, of specific criminal acts alleged against the claimant, or is it sufficient if evidence at the subsequent hearing reveals specifics of criminal acts allegedly committed by the claimant? (c) Is the Refugee Division required to state in its decision the specifics of criminal acts committed by the claimant? 2. Does the decision of the Supreme Court in *Suresh v. M.C.I.*, [2002] 1 S.C.R. 3, providing for separate assessment of a foreign state's assurance to avoid torture of returned nationals, apply where there is some evidence of generalized resort to torture in the foreign state, or only where there is evidence reasonably indicating resort to torture in similar cases.	Appeal dismissed. **Answers**: 1. (a) No. (b) No. (c) No. 2. Not answered.

Trial	*Appeal*	*Question*	*Answer*
IMM-1145-03 Russell J. March 25, 2004 2004 FC 446 Back to IRPA s. 35		Does a ministerial designation made under sub-section 19(1)*(l)* of the former *Immigration Act* continue to be valid and applicable for the purposes of subsection 35(1)*(b)* of *IRPA* or is the Minister required to re-designate under *IRPA*?	No appeal filed.
IMM-4181-03 Pinard J. April 6, 2004 2004 FC 511 Back to IRPA s. 96	A-241-04 Décary J.A. (Reasons) Létourneau J.A. Nadon J.A. April 12, 2005 2005 FCA 126	Does the expression "countries of nationality" of section 96 of the *Immigration and Refugee Protection Act* include a country where the claimant can obtain citizenship if, in order to obtain it, he must first renounce the citizenship of another country and he is not prepared to do so?	Appeal allowed. **Answer**: Yes.
IMM-4621-02 O'Reilly J. April 13, 2004 2004 FC 349 Back to IRPA s. 37	A-229-04 Noël J.A. Sexton J.A. Evans J.A. (Reasons) April 8, 2005 2005 FCA 122	In order to prove membership in a criminal organization under s. 37(l)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, is evidence of involvement in the organization's activities sufficient or must there be indicia of actual membership?	Appeal Allowed. Question not answered.
IMM-1076-03 Harrington J. April 14, 2004 2004 FC 569 Back to IDR s. 5	A-287-04 Linden J.A. Rothstein J.A. (Reasons) Noël J.A. November 4, 2004 2004 FCA 373	Does the Immigration Division have to consider the merits of the Minister's case when considering whether to accept a withdrawal of a request for an admissibility hearing where no substantive evidence has been accepted in the proceeding? **Answer:** The Immigration Division should not consider the merits of the Minister's case when considering whether to accept a withdrawal of a request for an admissibility hearing where no substantive evidence has been accepted in the proceeding.	Appeal allowed. See answer below question.
IMM-656-03 IMM-661-03 Blanchard J. June 17, 2004	A-363-04 Linden J.A. (Reasons) Sexton J.A. Evans J.A.	Does section 97 of the IRPA require that a person establish, on a balance of probabilities, that he or she will face the danger or risks described in paragraphs 97(1)*(a)* or *(b)*?	Appeal dismissed. Question not answered (but see 2005 FCA 1)

Trial	*Appeal*	*Question*	*Answer*
2004 FC 872 Back to IRPA s. 97	May 4, 2005 2005 FCA 160		
IMM-7369-03 Kelen J. July 7, 2004 2004 FC 964 Back to IRPA s. 71	A-406-04 Noël J.A. Sexton J.A. Sharlow J.A. June 15, 2005	Does section 71 of IRPA extinguish the common law continuing "equitable jurisdiction" of the IAD to reopen an appeal except where the IAD has failed to observe a principle of natural justice?	Appeal dismissed for mootness.
IMM-4964-03 Gibson J. August 13, 2004 2004 FC 1120 Back to IRPA s. 45	A-549-04 Linden J.A. Rothstein J.A. (Reasons) Noël J.A. May 27, 2005 2005 FCA 202	(a) Does the issuance of a deportation order pursuant to paragraph 45*(d)* of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, against a permanent resident of Canada convicted of criminal offences and punished by a term of imprisonment of two years or more, and the removal scheme enacted under the *Immigration and Refugee Protection Act ("IRPA")* for such a person as a whole, engage liberty interest and section 7 of the Canadian *Charter of Rights and Freedoms* (the "Charter")? (b) If the answer to the first question is yes, does the statutory scheme enacted under the *IRPA*, including the removal provisions of paragraph 45*(d)*, for the deportation of a permanent resident from Canada convicted of a criminal offence and punished by a sentence of two years or more, on the particular facts with this matter, comply with the requirements of section 7 of the Charter? **Answers:** (a) for purposes of this appeal, it is not necessary to decide whether removal from Canada engages the appellant's liberty interest under section 7 of the Charter; and (b) for purposes of this appeal and assuming without deciding that the appellant's liberty interest is engaged, the scheme of the *IRPA* which may result in the removal of the appellant does not violate principles of fundamental justice.	Appeal dismissed. See answers below questions.
IMM-5086-03 Mactavish J. August 26, 2004 2004 FC 1174		Is a determination under sub-section 34(1) of the *Immigration and Refugee Protection Act* a judicially reviewable decision if an application for Ministerial relief under sub-section 34(2) is outstanding and no decision has been made on the application for landing?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 34			
IMM-8447-03 Kelen J. September 20, 2004 2004 FC 1276 Back to IRPR s. 117	A-558-04 Evans J.A. (Reasons) Desjardins J.A., Malone J.A. December 20, 2005 2005 FCA 436	Is subsection 117(9)(d) of the *Immigration and Refugee Protection Regulations* invalid or inoperative because it is unconstitutional as it deprives the applicant of her right to liberty and/or her right to security of person, in a manner not in accordance with the principles of fundamental justice, contrary to section 7 of the Charter?	Appeal dismissed. **Answer**: No. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-377-02 Layden-Stevenson J. October 1, 2004 2004 FC 1356 Back to IRPA s. 35	A-539-04 Létourneau J.A. (Reasons) Rothstein J.A. Malone J.A. September 20, 2005 2005 FCA 303	Does the definition of "crime against humanity" found at subsection 6(3) of the *Crimes Against Humanity and War Crimes Act* include complicity therein?	Appeal dismissed. **Answer**: Yes.
IMM-150-04 Harrington J. October 12, 2004 Back to IRPA s. 96	A-592-04 Linden J.A. Nadon J.A. Sharlow J.A. (Reasons) October 5, 2005 2005 FCA 322	In a country where military service is compulsory, and there is no alternative thereto, do repeated prosecutions and incarcerations of a conscientious objector for the offence of refusing to do his military service, constitute persecution based on a Convention refugee ground?	Appeal dismissed. **Answer**: No Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-7941-03 Gibson J. October 27, 2004 2004 FC 1511 Back to IRPA s. 48	A-627-04 Létourneau J.A. Nadon J.A. Pelletier J.A. November 14, 2006	In the absence of evidence that the country of destination of an applicant will not be able to satisfactorily respond to the compelling individual circumstances of an applicant for deferral of removal, is the scope of obligation of the officer to whom an application for deferral of removal has been made, as adopted in the reasons for decision herein, appropriate in law?	Appeal dismissed following notice of status review.

Trial	*Appeal*	*Question*	*Answer*
IMM-9593-03 Harrington J. October 27, 2004 Back to IRPA s. 112 Back to IRPA s. 113 Back to IRPR s. 167 Back to Other	A-626-04	Must an immigration officer, who is conducting a pre-removal risk assessment, disclose documents which he or she has considered in relation to general country conditions which are not available at the Immigration Review Board Documentation Centre, but are publicly accessible in that they are available on the internet and give the applicant an opportunity to respond thereto, before reaching a decision?	Discontinued.
IMM-9934-03 Harrington J. November 25, 2004 Back to IRPA s. 52 Back to IRPR s. 226		In the case where a claim for refugee status was rejected, but the claimant did not leave the country in the prescribed time, and the departure order became a deportation order, a) What criteria must an officer consider when determining whether a claimant should be authorized to return to Canada under section 52 of the *Immigration and Refugee Protection Act*? b) Must the officer consider the reasons for the late departure? c) Must the officer ask the claimant to specifically explain the reason for the delayed departure? d) To what extent is the claimant's history in Canada relevant?	No appeal filed.
IMM-2347-03 Lemieux J. December 3, 2004 Back to IRPA s. 44	A-688-04 Décary J.A. (Reasons) Noël J.A. Pelletier J.A. March 29, 2006 2006 FCA 126	1. What is the scope of the Minister's Delegate's discretion under subsection 44(2) of the *Immigration and Refugee Protection Act* when making a removal order? 2. What is the extent of participatory rights required when a Minister's Delegate is making a decision pursuant to section 44(2) of the *Immigration and Refugee Protection Act* when making a removal order?	Appeal allowed. See Reasons for answer.
IMM-356-04 Gibson J. December 17, 2004 Back to Other	A-16-05 Linden J.A. Rothstein J.A. Pelletier J.A. (Reasons) December 9, 2005 2005 FCA 419	On the facts of this matter, did the Refugee Protection Division, when exercising its discretion to apply or not to apply issue estoppel, err in a reviewable manner by failing to expressly address in its reasons for decision the factors submitted by the parties before it as being relevant to the exercise of that discretion?	Appeal dismissed. Certified question does not arise on the facts of this case.
IMM-472-04 Martineau J.	05-A-9 A-126-05	a) Does the word "punished" used in ss. 64(2) of the IRPA with respect to a term of imprisonment refer to the sentence of imprisonment imposed or the actual time served in prison?	Appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
January 17, 2005 2005 FC 60 Back to IRPA s. 64	Nadon J.A. Sexton J.A. Sharlow J.A.(Reasons) October 25, 2005 2005 FCA 347	b) Does ss. 64(2) of the IRPA violate s. 7 of the Charter in a manner which cannot be justified under s. 1 of the Charter? **Answer:** a) With respect to the first certified question, we are all of the view that the word "punished" in subsection 64(2) of the *Immigration and Refugee Protection Act* refers to the sentence imposed, not the actual duration of incarceration. b) We will not deal with the second certified question. (Question abandoned by appellant)	See answers below questions.
IMM-10482-03 Teitelbaum J. February 9, 2005 Back to IRPR s. 9	A-64-05 Richard C.J. Noël J.A. (Reasons) Nadon J.A. February 15, 2006 2006 FCA 68	What is the appropriate standard to apply for the judicial review of a decision of a visa officer in the matter of a study permit application: patent unreasonableness or reasonableness *simpliciter*?	Appeal dismissed. Certified question not answered.
IMM-9571-03 Simpson J. February 18, 2005 2005 FC 262 Back to IRPA s. 113	A-51-05 Décary J.A. Létourneau J.A. Noël J.A. July 6, 2005	Does this case involve exceptional circumstances in which the balancing required by section 113 of the IRPA could justify deportation to torture?	Appeal allowed on motion by the Respondent.
IMM-9332-03 O'Reilly J. March 7, 2005 2005 FC 326 Back to IRPA s. 97		Does Section 97 of IRPA require that a person establish, on a balance of probabilities, that he or she will face the danger or risks described in paragraphs 97(1)(*a*) and (*b*)?	No appeal filed.
IMM-2124-04 Mosley J. March 10, 2005 2005 FC 354 Back to IRPR s. 117	A-151-05 Rothstein J.A. (Reasons) Linden J.A. Pelletier J.A. December 5, 2005 2005 FCA 406	Does paragraph 117(9)(d) of the *IRP Regulations* apply to exclude Convention refugees abroad, or Convention refugees seeking resettlement, as members of the family class by virtue of their relationship to a sponsor who previously became a permanent resident and at that time failed to declare them as non-accompanying family members?	Appeal dismissed. **Answer:** Yes.

Trial	*Appeal*	*Question*	*Answer*
IMM-3402-03 Lemieux J. March 25, 2005 Back to Other	A-170-05 Décary J.A. Sextom J.A. Evans J.A. (Reasons) January 12, 2006 2006 FCA 14	When an applicant comes to the Court without clean hands on an application for judicial review, should the Court in determining whether to consider the merits of the application, consider the consequences that might befall the applicant if the application is not considered on its merits? **Answer:** A consideration of the consequences of not determining the merits of an application for judicial review is within the Judge's overall discretion with respect to the hearing of the application and the grant of relief.	Appeal allowed. See answer below question.
IMM-6352-04 IMM-6353-04 IMM-7038-04 Snider J. March 31, 2005 2005 FC 429 Back to IRPA s. 44	A-197-05 A-198-05	1. What is the scope of: (a) the immigration officer's discretion under s. 44(1) of the IRPA in making a decision as to whether to prepare a report to the Minister (or, as in this case, the Minister's delegate); and (b) of the discretion of the Minister's delegate, under s. 44(2) of the Act, in making a decision as to whether to make a referral to the Immigration Division for an inquiry? 2. What is the duty of fairness owed in respect of: (a) the immigration officer's decision on whether to prepare a report under s. 44(1) of the Act; and (b) the decision of the Minister's delegate as to whether to refer such report to the Immigration Division under s. 44(2) of the Act?	Discontinued.
IMM-1868-04 Mosley J. April 1st, 2005 2005 FC 437 Back to IRPA s. 95 Back to IRPA s. 112 Back to IRPA s. 115	A-203-05	1. What legal effect, if any, has a designation by the UNHCR as a "mandate refugee" on the determination of whether an individual is a protected person under sections 95, 112, and 115? 2. What legal effect, if any, does a successful application for permanent residence under the former *Indochinese Designated Class Regulations* have upon a determination of whether an individual is a protected person under sections 95, 112, and 115?	Discontinued.
IMM-1318-04 O'Reilly J. April 5, 2005 2005 FC 445 Back to IRPA s. 45	A-208-05	1. Does the issuance of a deportation order pursuant to paragraph 45(*d*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 against a permanent resident of Canada convicted of criminal offences and punished by a term of imprisonment of 2 years or more, and the removal scheme enacted under the *Immigration and Refugee Protection Act* for such a person as a whole, engage liberty interests in section 7 of the *Canadian Charter of Rights and Freedoms*? 2. If the answer to the first question is yes, does the statutory scheme enacted under the *Immigration and Refugee*	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
		Protection Act, including the removal provision of paragraph 45(*d*), for the deportation of a permanent resident from Canada convicted of a criminal offence and punished by a sentence of two years or more, on the particular facts of this matter, comply with the requirements of section 7 of the *Canadian Charter of Rights and Freedoms*, fundamental justice?	
IMM-735-04 Rouleau J. April 7, 2005 Back to IRPA s. 197	A-210-05 Sexton J.A. (Reasons) Linden J.A. Noël J.A. December 9, 2005 2005 FCA 417	What is the appropriate interpretation of the time of breach, as regards s. 197 of the IRPA: - the time of conviction, or the time of commission of the offence and how can s. 197 be applied retroactively / retrospectively for a situation where an offence occurred prior to June 28th, 2002, but the conviction occurred after the coming into force of the IRPA, and be reconciled with the whole of the Act? **Answer:** The appropriate interpretation of the time of breach, as regards section 197 of the *IRPA*, is the time of the offence. Section 197 is retrospectively applicable to a case in which an offence occurred prior to June 28, 2002, but the conviction occurred after the coming into force of the *IRPA*. The wording of the section, particularly when it is read in the context of its companion transitional provisions in the *IRPA*, reveals that Parliament intended section 197 to have retrospective effects. Even if the legislature's intention on this point were not clear, the presumption against retrospectivity does not apply to section 197 because that provision is designed to protect the public.	Appeal dismissed. See answer below question.
IMM-8863-04 Mactavish J. April 12, 2005 2005 FC 479 Back to IRPA s. 72 Back to Other	A-169-05 Létourneau J.A. Rothstein J.A. (Reasons) Malone J.A. September 28, 2005 2005 FCA 308	1. Is a desire to seek certification of a class action a relevant consideration on a motion, pursuant to section 18.4(2) of the Federal Courts Act, to convert an application for judicial review into an action? and 2. If so, what is the test for conversion in the circumstances? Does it include consideration of the factors listed in Rule 299.18, which sets out the test for certification of a class action? **Answers:** 1. A desire to seek certification of a class action is a relevant consideration on a motion to convert a judicial review into an action under subsection 18.4(2). However, such desire is not sufficient to justify conversion. 2. The matters relevant for consideration on an application for conversion for the purpose of certifying a class action include those in rule 299.18. As a practical matter, the applications for conversion and certification should be heard and considered together unless a party can demonstrate prejudice in doing so. Then, where the applications for conversion and certification are considered together, if the test for certification is satisfied, a conversion order should be made and it should immediately be followed by an order certifying the class action.	Appeal allowed. See answers below question.
IMM-3111-04 Pinard J.	A-254-05 Décary J.A. (Reasons) Sexton J.A.	Did the Immigration Appeal Division err in law in determining that it did not have jurisdiction to hear the applicant's appeal of the deportation order?	Appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
May 6, 2005 2005 FC 615 Back to IRPA s. 64	Evans J.A. December 13, 2005 2005 FCA 426		**Answer:** No
IMM-3758-04 Snider J. May 12, 2005 2005 FC 663 Back to IRPA s. 21 Back to IRPR s. 10 Back to IRPR s. 175 Back to IRPR s. 176	A-280-05	Can a protected person's application for permanent residence in Canada be amended to include family members more than 180 days after being determined to be a protected person under the *Immigration and Refugee Protection Act?*	Appeal dismissed for delay.
IMM-9071-04 Gibson J. May 27, 2005 2005 FC 759 Back to IRPA s. 72 Back to IRPA s. 112 Back to Other		Is an application for judicial review of a Pre-Removal Risk Assessment moot where the individual who is subject of the decision has been removed from or has left Canada after an application for stay of removal has been rejected on the grounds that the Applicant has failed to establish that such removal would subject him to irreparable harm and, further, if it is moot, is it open to the Trial Court to decline to exercise its discretion to hear the application for judicial review, notwithstanding its mootness?	No appeal filed.
IMM-1963-04 Gibson J. May 27, 2005 2005 FC 756 Back to IRPA s. 72 Back to IRPA s. 112 Back to Other		Is an application for judicial review of a Pre-Removal Risk Assessment moot where the individual who is subject of the decision has been removed from or has left Canada after an application for stay of removal has been rejected on the grounds that the Applicant has failed to establish that such removal would subject him to irreparable harm and, further, if it is moot, is it open to the Trial Court to decline to exercise its discretion to hear the application for judicial review, notwithstanding its mootness?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
IMM-5154-04 Mactavish J. May 27, 2005 2005 FC 757 Back to IRPA s. 64		1. Does pre-sentence custody, which is expressly credited towards a person's criminal sentence, form part of the "term of imprisonment" under section 64(2) of the *Immigration and Refugee Protection Act*? and 2. Does the word "punished" used in subsection 64(2) of *IRPA* with respect to a term of imprisonment refer to the actual time served in prison after sentencing?	No appeal filed.
IMM-2228-04 Gibson J. May 30, 2005 2005 FC 739 Back to IRPA s. 112	A-296-05 Décary J.A. Sextom J.A. Evans J.A. (Reasons) December 12, 2005 2005 FCA 422	Did the Pre-Removal Risk Assessment Unit, under the Canada Border Services Agency, possess the requisite degree of institutional independence such that natural justice and fundamental justice were respected?	Appeal dismissed. **Answer:** Yes. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-3377-04 Lutfy C.J. June 13, 2005 2005 FC 834 Back to IRPA s. 115	A-390-05 Evans J.A (Reasons) Nadon J.A. Sexton J.A. April 26, 2006 2006 FCA 151	Does the opinion that a "protected person" ("the person") constitutes a danger to the public in Canada, as contemplated by paragraph 115(2)(*a*) of the *Immigration and Refugee Protection Act*, require a preliminary determination by the Minister's delegate concerning the person's criminality, supported by a clear, distinct and separate rationale: (a) without regard to any of the risk factors which the person may face if returned to the country from which refuge was sought; and (b) independently from any consideration and balancing of the competing interests, as may be required by section 7 of the *Canadian Charter of Rights and Freedoms* and *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, concerning the person's presence in Canada and the injustice that could be caused to the individual upon deportation? **Answer:** Paragraph 115(2)(*a*) of the *IRPA* requires the Minister's delegate to form an opinion on whether a protected person is "a danger to the public" without having regard to the risk of persecution, or other humanitarian or compassionate circumstances, and to provide an adequate explanation of the bases for that opinion.	Appeal allowed. See answer below question.
IMM-1737-04 Heneghan J. June 15, 2005 2005 FC 855		1. Are stepparents included in the family class and, in particular, does the word "mother" in paragraph 117(1)(c) of the *Immigration and Refugee Protection Regulations* include a stepmother? 2. Does the word "parent" in French include "stepparent"?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPR s. 117			
IMM-9283-04 Tremblay-Lamer J. June 16, 2005 2005 FC 852 Back to IRPR s. 160		Is the PRRA officer required to send the notice under section 160 of the *Immigration and Refugee Protection Regulations* before the departure order becomes a deportation order, thereby putting the foreign national in an irregular situation? Should the answer to the preceding question be positive, should the deportation order be set aside?	No appeal filed.
IMM-6961-03 Lemieux J. July 7, 2005 2005 FC 950 Back to IRPA s. 197	A-570-05 Linden J.A. Noël J.A. Evans J.A. (Reasons) November 20, 2006 2006 FCA 379	Is the interpretation of section 197 of the *IRPA* contained in these reasons on the facts of this case correct?	Appeal allowed. **Answer:** No
IMM-10475-04 Campbell J. July 27, 2005 2005 FC 1037 Back to IRPA s. 40		Does s. 40(1)(c) of the *IRPA* require the person concerned to make a misrepresentation in the course of the vacation hearing before the Refugee Protection Division?	No appeal filed.
IMM-318-05 Gibson J. July 28, 2005 2005 FC 1039 Back to IRPA s. 11 Back to IRPR s. 117	A-481-05	Should *IRP Regulation 117(9)(d)* and, in particular, the phrase “at the time of that application” be interpreted to refer to an application for a permanent resident visa pursuant to section 11 of the *Immigration and Refugee Protection Act* or does it extend to the granting of permanent resident status?	Discontinued.
IMM-5815-04	A-420-05	Under s. 40(1)(a) of the *Immigration and Refugee Protection Act*, which reads:	Appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
O'Keefe J. August 3, 2005 2005 FC 1059 Back to IRPA s. 40	Noël J.A. Evans J.A. (Reasons) Malone J.A. October 24, 2006 2006 FCA 345	A permanent resident or a foreign national is inadmissible for misrepresentation (a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act… is a permanent resident inadmissible for indirectly misrepresenting a material fact if they are landed as the dependent of a principal applicant who misrepresented material facts on his application for landing?	Question not answered.
IMM-1760-04 O'Keefe J. August 3, 2005 2005 FC 1063 Back to IRPR s. 117		Is subsection 117(9)(d) of the *Immigration and Refugee Protection Regulations* invalid or inoperative because it is unconstitutional as it deprives the applicant of her right to liberty and/or her right to security of person, in a manner not in accordance with the principles of fundamental justice, contrary to section 7 of the Charter?	No appeal filed.
IMM-8656-04 Phelan J. August 9, 2005 2005 FC 1077 Back to IRPA s. 34		1. For purposes of paragraph 34(1)(b) of IRPA, does the phrase "subversion by force" mean actual use of physical compulsion or does it also include the threat or reasonable possibility of physical compulsion? 2. Does paragraph 34(1)(b) of IRPA require the permanent resident or foreign national to have an actual intention to use force in the subversion of any government?	No appeal filed.
IMM-9107-04 Dawson J. August 23, 2005 2005 FC 1147 Back to IRPA s. 50	A-416-05 Linden J.A. (Reasons) Evans J.A. Malone J.A. November 28, 2006 2006 FCA 386	In the circumstances of this case, where: 1. A parent is a foreign national who is subject to a valid removal order; 2. A family court issues an order, granting custody to the parent of his or her Canadian born child and prohibiting the removal of the child from the province; and 3. The Minister is given the opportunity to make submissions before the family court before the order is pronounced; Would the family court order be directly contravened, within the contemplation of subsection 50(a) of the Act, if the parent, but not the child, is removed from Canada?	Appeal dismissed. Question not answered.
IMM-78-05 Harrington J. August 31, 2005	A-446-05 Noël J.A. (Reasons) Sharlow J.A. Malone J.A.	1. Can the doctrine of legitimate expectations be relied on to avoid the application of section 190 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27? 2. Does the phrase "at the time of that application" in paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, contemplate the time at which the application for permanent residence was made?	Appeal allowed. See answers below questions.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 190 Back to IRPR s. 117	May 18, 2006 2006 FCA 186	**Answers:** 1. No. 2. The phrase "at the time of that application" in paragraph 117(9)(d) of the Regulations contemplates the life of the application from the time when it is initiated by the filing of the authorized form to the time when permanent resident status is granted at a port of entry.	Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-6045-04 Mosley J. September 1, 2005 2005 FC 1193 Back to IRPA s. 97	A-418-05 Linden J.A. (Reasons) Nadon J.A. Malone J.A. November 10, 2006 2006 FCA 365	Does the exclusion of a risk to life caused by the inability of a country to provide adequate medical care to a person suffering life-threatening illness under section 97 of the *Immigration and Refugee Protection Act* infringe the *Canadian Charter of Rights and Freedoms* in a manner that does not accord with the principles of fundamental justice, and which cannot be justified under section 1 of the *Charter*?	Appeal dismissed. Question not answered.
IMM-8912-04 Hughes J. September 6, 2005 2005 FC 1211 Back to IRPA s. 37	A-473-05 Linden J.A. (Reasons) Nadon J.A. Sexton J.A. October 12, 2006 2006 FCA 326	a) Do the words "being a member of an organization" in paragraph 37(1)(a) of the IRPA include a person who was not a member at the time of reporting but was a member before that time? b) What constitutes an "organization" within the meaning of paragraph 37(1)(a) of the IRPA, and does the A.K. Kannan gang fit within that meaning? **Answers:** a) The phrase "being a member of an organization" in paragraph 37(1)(a) of the IRPA includes a person who was not a member at the time of the reporting, but was a member before that time. b) The word "organization", as it is used in paragraph 37(1)(a) of the IRPA, is to be given a broad and unrestricted interpretation. While no precise definition can be established here, the factors listed by O'Reilly J. in *Thanaratnam*, *supra*, by the Board member, and possibly others, are helpful when making a determination, but no one of them is an essential element. The structure of criminal organizations is varied, and the Board must be given flexibility to evaluate all of the evidence in the light of the legislative purpose of IRPA to prioritize security in deciding whether a group is an organization for the purpose of paragraph 37(1)(a). The A.K. Kannan gang, as found by the Board and the Judge, fits within this meaning.	Appeal dismissed. See answers below questions.
IMM-3634-04 Simpson J. September 7, 2005 2005 FC 1212	A-464-05 Linden J.A. (Reasons) Nadon J.A. Malone J.A.	Is a Deportation Order, with respect to a permanent resident who has been declared to be a convention refugee, which specifies as sole country of citizenship the country which he fled as a refugee, sufficient without more to establish that country as the likely country of removal so that *Chieu* applies and the IAD is required to consider hardship to the Applicant in that country on an appeal from a Deportation Order?	Appeal dismissed. **Answer:** No.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 67 Back to IRPA s. 115	October 19, 2006 2006 FCA 340		
IMM-88-05 Snider J. September 8, 2005 2005 FC 1224 Back to IRPA s. 16 Back to IRPA s. 33 Back to IRPA s. 34 Back to IRPA s. 35 Back to IRPA s. 36 Back to IRPA s. 37 Back to IRPA s. 38 Back to IRPA s. 39 Back to IRPA s. 40 Back to IRPA s. 41 Back to IRPA s. 42 Back to IRPA s. 43		a) Is s. 16(1) of *IRPA* applicable to an applicant applying for a visa to come to Canada? b) Does a visa officer have jurisdiction to refuse an investor applicant on grounds that he has failed to meet the requirements of *IRPA* and not on grounds that he found to be inadmissible as per the classes of inadmissible persons under section 32 to 43 of *IRPA*?	No appeal filed.
IMM-3635-04 Phelan J. September 14, 2005 2005 FC 1209 Back to IRPR s. 117	A-550-05 Richard C.J. Sharlow J.A. (Reasons) Pelletier J.A. September 14, 2006 2006 FCA 303	Does the phrase “at the time of that application” in paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 mean at the time at which the sponsor’s application for a permanent resident visa was submitted? **Answer:** The phrase “at the time of that application” in paragraph 117(9)(d) of the Regulations contemplates the life of the application from the time when it is initiated by filing the authorized form to the time when permanent resident status is granted at a port of entry.	Appeal allowed. See answer below question.
IMM-9744-04 Pinard J. September 16, 2005	A-495-05	In interpreting paragraph 117(9)(*d*) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, should the Appeal Division of the Immigration and Refugee Board have considered that the respondent, when she sought to enter Canada, had the obligation to declare the birth of her daughter to the immigration authorities, even if her daughter's birth	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
2005 FC 1255 Back to IRPR s. 117		took place after the respondent had filled out her original forms with the visa office at the Canadian Embassy in Haiti?	
IMM-8736-04 Hughes J. September 19, 2005 2005 FC 1280 Back to IRPA s. 112 Back to IRPA s. 113	A-486-05 Linden J.A. Evans J.A. (Reasons) Malone J.A. December 1, 2006 2006 FCA 394	What obligation, if any, does a PRRA Officer have to consider the interests of a Canadian-born child when assessing the risks involved in removing at least one of the parents of that child? **Answer:** A PRRA officer has no obligation to consider, in the context of the PRRA, the interests of a Canadian-born child when assessing the risks involved in removing at least one of the parents of that child.	Appeal allowed. See answer below question.
IMM-9174-04 Pinard J. September 30, 2005 2005 FC 1321 Back to IRPA s. 25 Back to IRPA s. 112	A-477-05 Décary J.A. Létourneau J.A (Reasons) Nadon J.A. September 13, 2006 2006 FCA 301	Is there an appearance of bias in this case because the same officer decided the application for visa exemption on humanitarian and compassionate grounds as well as the PRRA application?	Appeal dismissed. **Answer:** No.
IMM-8906-04 Lutfy C.J. October 5, 2005 Back to IRPA s. 67	A-500-05 Desjardins J.A. (Dissenting Reasons) Décary J.A. (Reasons) Malone J.A. (Concurred) 2007 FCA 24 2009 SCC 12	1. Is the appropriate standard of review for a decision of the Immigration Appeal Division, denying special relief on humanitarian and compassionate considerations pursuant to paragraph 67(1)(c) of the IRPA, one of patent unreasonableness? 2. In the event that the answer to question number (i) is in the affirmative, was it patently unreasonable for the Immigration Appeal Division to have denied special relief, where the person to be removed for serious criminality had not been incarcerated for the crimes in issue?	Appeal allowed **Answers (per FCA):** 1. No. 2. Not answered. Further appeal to SCC allowed. See SCC judgement.
IMM-9214-04 Gibson J. November 9, 2005	A-560-05	For the purposes of determining whether an individual is a “dependent child” in respect of a parent, within a situation of dependency described in subparagraph (b) (iii) of the definition “dependent child” in section 2 of the *Immigration and Refugee Protection Regulations*, must the conditions of the inability of the child to be financially self-supporting due to a	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
2005 FC 1522 Back to IRPR s. 2		physical or mental condition be established only at the time the claim to dependency is being asserted or must it be established that such condition existed and was diagnosed prior to the child attaining the age of 22 years?	
IMM-9738-04 Mactavish J. November 22, 2005 2005 FC 1580 Back to IRPA s. 68		Does the Immigration Appeal Division have the jurisdiction to determine a constitutional challenge to section 68(4) of the *Immigration and Refugee Protection Act*?	No appeal filed.
IMM-9245-04 Snider J. December 1, 2005 2005 FC 1632 Back to IRPR s. 1 Back to IRPR s. 2 Back to IRPR s. 84 Back to IRPR s. 85	A-632-05 Evans J.A. (Reasons) Sexton J.A. Nadon J.A. June 12, 2006 2006 FCA 217	(a) Does the principle of lock-in established in the jurisprudence apply to the definition of family member in applications made under the skilled worker category? (b) If a child who was over the age of 22 years and who was considered dependent on the date of application by virtue of his or her financial dependence by reason of full-time study or physical or mental condition no longer meets the requirements of dependent child within the meaning of s. 2 of the *Immigration and Refugee Protection Regulations*, SOR/2002-22, at the time of the visa issuance, must the child be included as part of his or her parent's application for permanent residence in Canada? **Answers:** (a) Not answered. (b) A child of a federal skilled worker who has applied for a visa, who was 22 years of age or over, and who was considered dependent on the skilled worker at the date of application by virtue of his or her financial dependence and full-time study, but who does not meet the requirements of a "dependent child" within the meaning of paragraph 2(*b*)(ii) of the *Immigration and Refugee Protection Regulations*, SOR/2002-22, when the visa application is determined, cannot be included as part of his or her parent's application for permanent residence in Canada.	Appeal allowed. See answers below questions.
IMM-7688-04 IMM-10094-04 Heneghan J. December 14, 2005 2005 FC 1694	A-20-06 Evans J.A. (Reasons) Linden J.A. Nadon J.A. February 8, 2007	1. Does section 71 of IRPA extinguish the common law continuing "equitable jurisdiction" of the IAD to reopen an appeal except where IAD has failed to observe a principle of natural justice? 2. Is a continuing "danger opinion" a "disqualification" flowing from convictions that have been pardoned and therefore contrary to section 5 of the *Criminal Records Act?*	Appeal dismissed **Answers:** 1. Yes. 2. Not answered.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 71	2007 FCA 35	The Federal Court of Appeal restated question 1 as follows: 1. Does section 71 of IRPA extinguish the continuing "equitable jurisdiction" of the IAD to reopen an appeal against a deportation order, except where the IAD has failed to observe a principle of natural justice? *Note: Appeal heard together with A-79-06.*	
IMM-2866-05 Snider J. January 16, 2006 2006 FC 30 Back to IRPA s. 197	A-63-06	If a permanent resident: (a) has committed an offence with a maximum sentence of at least 10 years for which a sentence of at least two years was imposed; (b) has been found inadmissible and made the subject of a removal order under the former Act; (c) was granted a stay by the IAD under the former Act; and (d) has breached the conditions of his stay but has not been convicted of any offence that would meet the threshold of s. 68(4) of the *IRPA;* does s. 197 operate to discontinue his appeal to the IAD?	Discontinued.
IMM-7836-04 Blanchard J. January 19, 2006 Back to IRPA s. 159 Back to Other	A-38-06 Evans J.A. (Reasons) Décary J.A. Sharlow J.A. (Concurring Reasons) May 25, 2007 2007 FCA 198	1. Does the implementation of paragraph 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice by unduly interfering with claimants' right to be heard? 2. Has the implementation of Guideline 7 led to fettering of Board Members' discretion? 3. Does the finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim?	Appeal allowed. **Answers:** 1. No. 2. No. 3. Question not answered. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-8987-04 Campbell J. January 26, 2006 2006 FC 79 Back to IRPA s. 71	A-79-06 (A-20-06) Linden J.A. Nadon J.A. Evans J.A. (Reasons) February 8, 2007 2007 FCA 35	Does s.71 of the *IRPA* extinguish the common law continuing "equitable jurisdiction" of the IAD to reopen an appeal except where the IAD has failed to observe a principle of natural justice? The Federal Court of Appeal restated the question as follows: Does section 71 of IRPA extinguish the continuing "equitable jurisdiction" of the IAD to reopen an appeal against a deportation order, except where the IAD has failed to observe a principle of natural justice? *Note: Appeal heard together with A-20-06 (full minutes on A-20-06).*	Appeal dismissed **Answer:** Yes.

Trial	*Appeal*	*Question*	*Answer*
IMM-8360-04 Layden-Stevenson J. January 31, 2006 2006 FC 102 Back to IRPA s. 64 Back to IRPA s. 68 Back to IRPA s. 197	A-88-06	Where the section 197 thresholds of the IRPA has been met, must the provisions of both section 64 and subsection 68(4) be satisfied to cancel the stay and terminate the appeal to the IAD?	Discontinued.
IMM-2453-05 Beaudry J. February 3, 2006 2006 FC 124 Back to IRPA s. 64	A-92-06	1. Does pre-sentence custody, which is expressly credited towards a person's criminal sentence, form part of the "term of imprisonment" under section 64(2) of the *Immigration and Refugee Protection Act*?	Discontinued.
IMM-2757-05 Mosley J. February 17, 2006 2006 FC 221 Back to IRPA s. 58 Back to IRPR s. 49	A-114-06	Is an officer forfeiting a security deposit or guarantee in response to a breach of release conditions required to consider limiting the forfeiture to an amount proportionate to the nature and extent of the breach?	Discontinued.
IMM-3836-05 Tremblay-Lamer J. March 9, 2006 2006 FC 311 Back to IRPA s. 50	A-142-06 Desjardins J.A. (Reasons) Noël J.A. Pelletier J.A. March 16, 2007 2007 FCA 75	Can the judgment of a provincial court refusing to order the return of a child pursuant to the *Convention on the Civil Aspects of International Child Abduction*, [1989] Can. T.S. No. 35, and s. 20 of the *Act respecting the Civil Aspects of International and Interprovincial Child Abduction*, R.S.Q., c. A-23.01, "the ACAIICA", have the effect of directly and indefinitely preventing the enforcement of a removal order which has taken effect pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("the IRPA")?	Appeal allowed. **Answer:** No.

Trial	*Appeal*	*Question*	*Answer*
IMM-4236-05 Snider J. March 23, 2006 2006 FC 372 Back to IRPA s. 48	A-176-06 Richard C.J. Sharlow J.A. Pelletier J.A. April 11, 2007	(a) When a person scheduled for removal asks an enforcement officer to defer removal until the processing of an H&C application is completed, but does not provide any evidence to support the request, does the officer err by failing to consider the copy of the H&C application that is contained in the person's file with Citizenship and Immigration Canada? (b) If the answer is yes and the H&C application contains newly-raised allegations of risk, is the enforcement officer under a duty to defer the removal until the completion of the H&C application?	Dismissed following notice of status review.
IMM-2168-05 Mactavish J. March 31, 2006 2006 FC 420 Back to IRPA s. 96	A-182-06 Décary J.A. Sexton J.A. Evans J.A. April 30, 2017 2007 FCA 171	When dealing with a refugee claim advanced by a mere foot soldier, is the question whether a given conflict may be unlawful in international law relevant to the determination which must be made by the Refugee Division under paragraph 171 of the UNHCR *Handbook*?	Appeal dismissed. Question not answered. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-5571-05 Mactavish J. March 31, 2006 2006 FC 421 Back to IRPA s. 96	A-185-06 Décary J.A. Sexton J.A. Evans J.A. April 30, 2017 2007 FCA 171	When dealing with a refugee claim advanced by a mere foot soldier, is the question whether a given conflict may be unlawful in international law relevant to the determination which must be made by the Refugee Division under paragraph 171 of the UNHCR *Handbook*?	Appeal dismissed. Question not answered. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-9766-04, IMM-9220-04, IMM-9452-04, IMM-9797-04, IMM-353-05, IMM-407-05, IMM-934-05, IMM-1144-05, IMM-1419-05, IMM-1877-05, IMM-2034-05, IMM-2150-05, IMM-2709-05, IMM-3313-	A-164-06 A-187-06 A-188-06 A-196-06 A-197-06 A-198-06 A-199-06 A-200-06 Evans J.A (Reasons) Décary J.A. Sharlow J.A.	1. Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel? 2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice? 3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion? 4. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim?	Appeals dismissed. **Answers:** 1. No. 2. No. 3. No. 4. Question not answered. 5. No. 6. No. 7. Question not answered.

Trial	*Appeal*	*Question*	*Answer*
05, IMM-3994-05, IMM-4044-05, IMM-712-05, IMM-470-05, IMM-4064-05 Mosley J. April 10, 2006 2006 FC 461 Back to IRPA s. 159 Back to Other	May 25, 2007 2007 FCA 199	5. Does the role of Refugee Protection Division Members in questioning refugee claimants, as contemplated by Guideline 7, give rise to a reasonable apprehension of bias? 6. Is Guideline 7 unlawful because it is *ultra vires* the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the *Immigration and Refugee Protection Act*? 7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-3370-05 Snider J. April 21, 2006 2006 FC 506 Back to IRPA s. 159 Back to Other	A-238-06	1. Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel? 2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice? 3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion? 4. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim? 5. Does the role of Refugee Protection Division Members in questioning refugee claimants, as contemplated by Guideline 7, give rise to a reasonable apprehension of bias? 6. Is Guideline 7 unlawful because it is *ultra vires* the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the *Immigration and Refugee Protection Act*? 7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	Discontinued.
IMM-4127-05 Gibson J.	A-241-06	When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
April 26, 2006 2006 FC 513 Back to IRPA s. 159 Back to Other			
IMM-3310-05 Gibson J. April 26, 2006 2006 FC 512 Back to IRPA s. 159 Back to Other	A-240-06	When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	Discontinued.
IMM-4375-05 Phelan J. April 28, 2006 2006 FC 533 Back to IRPR s. 117	A-216-06 Létourneau J.A. Sexton J.A. Evans J.A. February 13, 2007 2007 FCA 64	Does the phrase "at the time of that application" in paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 mean the time at which the sponsor's application for a permanent resident visa was submitted?	Appeal allowed. Question not answered.
IMM-4637-05 Snider J. May 4, 2006 2006 FC 563 Back to IRPA s. 159 Back to Other	A-259-06 Sharlow J.A. Pelletier J.A. Ryer J.A. August 30, 2007	1. Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel? 2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice? 3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion? 4. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim?	Appeal dismissed for delay.

Trial	*Appeal*	*Question*	*Answer*
		5. Does the role of Refugee Protection Division Members in questioning refugee claimants, as contemplated by Guideline 7, give rise to a reasonable apprehension of bias? 6. Is Guideline 7 unlawful because it is *ultra vires* the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the *Immigration and Refugee Protection Act*? 7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	
IMM-5107-05 Martineau J. June 8, 2006 2006 FC 726 Back to IRPA s. 95 Back to IRPR s. 338	A-293-06	Under the *Immigration and Refugee Protection Act* and *Regulations*, is "refugee protection" conferred on a person who was landed in Canada as a member of the Political Prisoners and Oppressed Persons Designated Class but who has never been determined to be a Convention refugee or a person in need of protection?	Discontinued.
IMM-3818-05 Barnes J. June 12, 2006 2006 FC 732 Back to IRPA s. 96 Back to IRPA s. 97	A-310-06 Richard C.J. (Reasons) Sharlow J.A. Malone J.A. March 8, 2007 2007 FCA 99	Before seeking protection from another state, is a person obliged to make lifestyle or employment changes which would offer protection from a persecution or which could protect the life and safety of a claimant and, if so, what is the test for making such a determination? **Answer:** It is not possible in the context of this case to attempt to develop an exhaustive list of the factors that should be taken into account in assessing whether a person is in need of protection. However, persons claiming to be in need of protection solely because of the nature of the occupation or business in which they are engaged in their own country generally will not be found to be in need of protection unless they can establish that there is no alternative occupation or business reasonably open to them in their own country that would eliminate the risk of harm.	Appeal dismissed. See answer below question.
IMM-5637-05 Barnes J. June 12, 2006 2006 FC 734 Back to IRPA s. 159 Back to Other	A-300-06 Noël J.A. Sharlow J.A. Malone J.A. May 9, 2007	1. Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel? 2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice?	Dismissed following notice of status review.

Trial	*Appeal*	*Question*	*Answer*
		3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion? 4. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim? 5. Does the role of Refugee Protection Division Members in questioning refugee claimants, as contemplated by Guideline 7, give rise to a reasonable apprehension of bias? 6. Is Guideline 7 unlawful because it is *ultra vires* the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the *Immigration and Refugee Protection Act*? 7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	
IMM-121-05 Heneghan J. July 18, 2006 2006 FC 893 Back to IRPA s. 28	A-363-06 Décary J.A. (Reasons) Linden J.A. Sexton J.A. May 29, 2007 2007 FCA 205	1. Does the five-year period in s. 28 of *IRPA* apply to periods prior to June 28, 2002? 2. If so, does applying s. 28 retroactively breach s. 7 of the *Canadian Charter of Rights and Freedoms*?	Appeal dismissed. **Answers:** 1. Yes. 2. No.
IMM-3387-05 O'Reilly J. July 25, 2006 2006 FC 910 Back to Other	A-383-06	1. In light of *Dehghani* v. *Canada (Minister of Employment and Immigration)*, [1993] 1 S.C.R. 1053 in which the Court held that routine secondary examinations of persons entering Canada did not amount to detentions for purposes of s. 10(b) of the Charter, are there, nevertheless, circumstances in which such persons could be considered to be detained and entitled to retain and instruct counsel? 2. Depending on the answer to question 1, in what circumstances should a tribunal exclude, pursuant to s. 24(2) of the Charter, statements made by a person who has been detained and whose right to counsel has been denied (noting that persons seeking entry to Canada do not have a right to silence and are obliged to answer truthfully all questions put to them while under examination)?	Discontinued.
IMM-6316-05 Phelan J. July 26, 2006		1. Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
2006 FC 921 Back to IRPA s. 159 Back to Other		2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice? 3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion? 4. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim? 5. Does the role of Refugee Protection Division Members in questioning refugee claimants, as contemplated by Guideline 7, give rise to a reasonable apprehension of bias? 6. Is Guideline 7 unlawful because it is *ultra vires* the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the *Immigration and Refugee Protection Act*? 7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review? 8. If Guideline 7 is unlawful, either in its creation or application, is a proceeding conducted under Guideline 7 and its decision lawful where the matter is determined on an issue unrelated to Guideline 7 or its application in that proceeding?	
IMM-7697-05 Harrington J. July 27, 2006 2006 FC 892 Back to IRPA s. 159 Back to Other	A-374-06 Létourneau J.A. Pelletier J.A. Trudel J.A. July 6, 2007	1. Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel? 2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice? 3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion? 4. Does a finding that Guideline 7 fetters a Refugee Protection Division Member's discretion necessarily mean that the application for judicial review must be granted, without regard to whether or not the applicant was otherwise afforded procedural fairness in the particular case or whether there was an alternate basis for rejecting the claim? 5. Does the role of Refugee Protection Division Members in questioning refugee claimants, as contemplated by Guideline 7, give rise to a reasonable apprehension of bias? 6. Is Guideline 7 unlawful because it is *ultra vires* the guideline-making authority of the Chairperson under paragraph	Dismissed following notice of status review.

Trial	*Appeal*	*Question*	*Answer*
		159 (1) (h) of the *Immigration and Refugee Protection Act*?	
IMM-7261-05 Blais J. August 9, 2006 2006 FC 959 Back to IRPA s. 159 Back to Other		When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	No appeal filed.
IMM-5186-05 Barnes J. August 15, 2006 2006 FC 978 Back to IRPA s. 38 Back to IRPA s. 12 Back to IRPR s. 85	A-366-06 Linden J.A. Létourneau J.A. (Reasons) Sexton J.A. September 12, 2007 2007 FCA 282	Does the reasoning of the Supreme Court of Canada in *Hilewitz* v. *Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 706 apply to individuals applying to immigrate to Canada as skilled workers?	Appeal dismissed. **Answer:** Yes.
IMM-7131-05 Kelen J. September 1, 2006 2006 FC 1055 Back to IRPA s. 68 Back to Other	A-409-06 Nadon J.A. Sexton J.A. (Reasons) Sharlow J.A. October 3, 2007 2007 FCA 315	Is the Immigration Appeal Division of the Immigration and Refugee Board obliged to consider all of the relevant factors raised by the applicant's evidence when the applicant has not presented these factors in his submissions as a basis for staying the deportation order?	Appeal dismissed. **Answer:** Yes.
IMM-396-06 Mactavish J. September 13, 2006 2006 FC 1087 Back to IRPA s. 159		1. Has the implementation of Guideline Seven led to the fettering of Board members' discretion? 2. Does Guideline Seven violate natural justice by distorting the independent role of Board members? and 3. If Guideline Seven and the procedure mandated by it breaches natural or fundamental justice, can a refugee claimant in any way implicitly waive the breach, for example by failing to object to the procedure?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to Other			
IMM-184-06 Noël J. September 28, 2006 2006 FC 1134 Back to IRPR s. 133	A-467-06 Linden J.A. Evans J.A. Sharlow J.A. (Reasons) November 11, 2007 2007 FCA 358	Whether paragraph 133(1)(k) of the IRPR violates subsection 15(1) of the Charter in that it discriminates on the basis of the analogous ground of receipt of social assistance?	Appeal dismissed for mootness.
IMM-7109-05 Snider J. September 29, 2006 2006 FC 1159 Back to IRPA s. 4 Back to IRPA s. 14 Back to Other	A-451-06 Létourneau J.A. Evans J.A. Sharlow J.A. (Reasons) April 12, 2007 2007 FCA 150	1. In the absence of the Governor in Council having enacted relevant Regulations and given the Minister of Citizenship and Immigration's responsibility for the administration of *IRPA*, does the Minister of Citizenship and Immigration have authority to: (a) Set annual target ranges for the total number of immigrants to Canada? (b) Determine how the annual target range will be distributed among the three immigrant classes (economic, refugee and family class)? (c) Distinguish between members of the same class, by processing spouses, partners and children, in priority to parents and grandparents? 2. Given the answers to Question #1, have the Applicants established an entitlement to the discretionary and equitable remedy of *mandamus*, given all the circumstances of this case?	Appeal dismissed for mootness.
IMM-7766-05 Blais J. October 26, 2006 2006 FC 1287 Back to IRPA s. 159 Back to Other		Has the implementation of Guideline 7 led to fettering of Refugee Protection Division member's discretion?	No appeal filed.
IMM-7625-05 Gauthier J. October 30, 2006 2006 FC 1314		1. Is an application for restoration pursuant to section 182 of the *Regulations* a relevant consideration when the Minister's delegate considers whether or not to make an exclusion order based on a failure to comply with section 29(2) of IRPA? 2. Does a foreign national who has applied for restoration within the delay set out in section 182 of the *Regulations*, automatically lose the benefit of his or her application when an enforcement officer considers issuing a report under	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 29 Back to IRPA s. 44 Back to IRPR s. 182		section 44(1) on the basis of a failure to comply with section 29(2) of IRPA?	
IMM-7770-05 Blais J. November 8, 2006 2006 FC 1349 Back to IRPA s. 159 Back to Other		Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion?	No appeal filed.
IMM-325-06 Barnes J. November 9, 2006 2006 FC 1359 Back to IRPA s. 28		Does the five-year period in s. 28 of IRPA apply to periods prior to June 28, 2002?	No appeal filed.
IMM-6547-05 Gauthier J. November 9, 2006 2006 FC 1360 Back to IRPA s. 159 Back to Other	A-570-06 Nadon J.A. Sexton J.A. Sharlow J.A. (Reasons) October 1, 2007 2007 FCA 309	When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	Appeal dismissed for mootness.
IMM-4817-05 Russell J. November 16, 2006 Back to IRPA s. 159	A-534-06 Sexton J.A. Sharlow J.A. Ryer J.A. October 17, 2007	1. Does the nature or reverse questioning of refugee claimants contravene the principles of fundamental justice pursuant to the Charter Right of freedom and/or the common law right of natural justice or procedural fairness, in particular by mandating the implementation of an inquisitorial style hearing in a refugee claim? 2. Does the implementation of Guidelines 7 inherently result in the fettering of Board Members' discretion?	Appeal dismissed for the reasons set out in *Thamotharem* (2007 FCA 198) and *Benitez* (2007 FCA 199).

Trial	*Appeal*	*Question*	*Answer*
Back to Other			
IMM-2814-06 Phelan J. November 30, 2006 2006 FC 1451 Back to IRPA s. 98		1. Does serving a sentence for a serious crime prior to coming to Canada allow one to avoid the application of Article 1F of the Convention? 2. If the answer to question 1 is affirmative, when and in what circumstances is a sentence deemed served, specifically does a deportation have the effect of deeming a sentence served?	No appeal filed.
IMM-7269-05 Mosley J. December 7, 2006 Back to IRPA s. 113	A-11-07 Linden J.A. Sharlow J.A. (Reasons) Ryer J.A. December 6, 2007 2007 FCA 385	1. Is "new evidence" for the purposes of s. 113(a) of the IRPA limited to evidence that post-dates and is "substantially different" from the evidence that was before the RPD? 2. Does the standard for the reception of "new evidence" under s. 113(a) of the IRPA require the PRRA Officer to accept any evidence created after the RPD determination, even where that evidence was reasonably available to the applicant or he/she could reasonably have been expected to present it at the refugee hearing?	Appeal dismissed. See Reasons at paragraph 13 for answers.
IMM-1552-06 Blanchard J. December 13, 2006 2006 FC 1485 Back to IRPA s. 2 Back to IRPA s. 46 Back to IRPA s. 49 Back to IRPA s. 63 Back to IADR s. 58		Would it be lawful for the Immigration Appeal Division to entertain an application for an extension of time pursuant to subsection 58(*d*) of the Immigration Appeal Division Rules made by an individual who has no right of appeal through the combined effect of paragraphs 49(1)(*b*) and 46(1)(*c*), sections 2 and 63 of the *Immigration and Refugee Protection Act*?	No appeal filed.
IMM-1201-06 Hughes J. December 14, 2006 2006 FC 1502		To what extent may those charged with determining whether the conditions of a work permit have been breached look beyond the wording of the permit itself in order resolve any apparent ambiguity?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 29 Back to IRPA s. 41			
IMM-3084-06 Beaudry J. December 21, 2006 2006 FC 1540 Back to IRPR s. 117	A-52-07	Does subsection 117(9)(d) of the *Immigration and Refugee Protection Regulations* (IRPR) apply to exclude non-accompanying family members from membership from the family class in circumstances where the sponsor was unaware of their existence at the time of his/her application for Permanent Residence and Landing in Canada?	Discontinued.
IMM-63-05 Hughes J. January 15, 2007 2006 FC 1489 Back to IRPA s. 91	A-57-07 Sexton J.A. Blais J.A. Evans J.A. July 18, 2008 2008 FCA 243	Are the *Regulations Amending the Immigration and Refugee Protection Regulations* (SOR/2004-59), which were enacted pursuant to section 91 of the *Immigration and Refugee Protection Act*, *ultra vires*? **Answer** [T]he Regulations neither violate the constitution, jeopardise lawyer-client privilege, nor otherwise exceed the broad legislative power delegated to the Governor-in-Council by the *Immigration and Refugee Protection Act*, S.C. 2002, c. 27, section 91 (IRPA).	Appeal dismissed. See answer below question. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-885-06 Campbell J. January 24, 2007 2007 FC 78 Back to IRPA s. 48	A-101-07 Desjardins J.A. (Reasons) Sexton J.A. Pelletier J.A. January 9, 2008 2008 FCA 8	What is the correct standard of review of an officer's decision, made pursuant to the discretion set out in section 48 of the *Immigration and Refugee Protection Act* to defer removal of persons from Canada?	Appeal dismissed for mootness.
IMM-7202-05 Dawson J. January 25, 2007 2007 FC 74 Back to IRPA s. 11 Back to IRPA s. 20 Back to IRPA s. 25	A-102-07 Décary J.A. Létourneau J.A. Sharlow J.A. February 27, 2008 2008 FCA 77	1. Is the Minister legally entitled to fragment an application under section 25 of the *Immigration and Refugee Protection Act* into a two-step assessment, the first step being an assessment whether individual humanitarian and compassionate circumstances are sufficient to warrant an exemption from subsections 11(1) and 20(1) of the Act and the second step being a determination whether the person is inadmissible? 2. Is the Minister obliged, when considering an application under section 25 of the Act, to weigh or balance the degree of compelling humanitarian and compassionate circumstances on which the individual relies against the nature and extent of the legal obstacle to admissibility?	Appeal dismissed. Questions not answered.

Trial	*Appeal*	*Question*	*Answer*
IMM-1177-06 Gauthier J. February 2, 2007 2007 FC 118 Back to IRPA s. 159 Back to Other	A-93-07	a) Does Guideline 7, issued under the authority of the Chairperson of the Immigration and Refugee Board, violate the principles of fundamental justice under s. 7 of the *Charter of Rights and Freedoms* by unduly interfering with claimants' right to be heard and right to counsel? b) Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice?	Discontinued.
IMM-1472-06 Hughes J. February 26, 2007 Back to IRPA s. 50	A-120-07	Does a Refugee Protection Division's letter indicating that it is suspending consideration of an Applicant's motion to re-open a claim based on the use of the Chairperson's Guideline 7 and the Federal Court's decision in *Thamotharem* until the Federal Court of Appeal rules on *Thamotharem* (A-38-06) bar the Minister for Public Safety and Emergency Preparedness from executing a valid removal order of the persons seeking a deferral of removal on the basis of such a letter?	Discontinued.
IMM-6447-05 Kelen J. February 28, 2007 2007 FC 229 Back to IRPA s. 115	A-170-07 Décary, J.A. Nadon, J.A. Trudel, J.A. (Reasons) April 24, 2008 2008 FCA 153	1. If, in the preparation of an opinion under paragraph 115(2) of the *Immigration and Refugee Protection Act*, the Minister finds that a refugee who is inadmissible on grounds of organized criminality does not face a risk of persecution, torture, cruel and unusual punishment or treatment upon return to his country of origin, does such a finding render unnecessary the Minister's consideration of the "nature and severity of acts committed" under paragraph 115(2)(b)? 2. If the lack of risk identified in question #1 is not determinative, is paragraph 115(2)(b) of the *Immigration and Refugee Protection Act* to be applied "on the basis of the nature and severity of acts committed" by the criminal organization of which the person is a member, or of acts committed by the person being considered for removal (including acts of the criminal organization in which the person was complicit)? **Answers:** 1. No. 2. The exception of paragraph 115(2)(*b*) regarding organized criminality will apply to a Convention refugee or a protected person if, in the opinion of the Minister, that person should not be allowed to remain in Canada on the basis of the nature and substantial gravity of acts committed (in the context of organized criminality) personally or through complicity, as defined by our domestic laws, but established on a standard of reasonable grounds.	Appeal allowed. See answers below questions.
IMM-4055-06 de Montigny J. March 1, 2007 2007 FC 240	A-174-07	1. Is " new evidence" for the purposes of s. 113(*a*) of the IRPA limited to evidence that post-dates and is "substantially different" from the evidence that was before the RPD? 2. Does the standard for the reception of "new evidence" under s. 113(*a*) of the IRPA require the PRRA Officer to accept any evidence created after the RPD determination, even where that evidence was reasonably available to the applicant or	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 3 Back to IRPA s. 113		he/she could reasonably have been expected to present it at the refugee hearing? 3. In determining whether evidence has arisen after the Board rejects a refugee claim and is therefore "new", must the PRRA officer look only for new facts or new risks, or can he or she also take into consideration other factors like the nature of the information, its significance for the case, and the credibility of its source? 4. In light of paragraphs 3(3)(*d*) and (*f*) of the IRPA, is the PRRA officer precluded from considering personalized evidence that goes to the heart of an applicant's claim and establishes that he would be at risk if returned, when that evidence could conceivably have been presented to the Board?	
IMM-5395-05 Dawson J. March 9, 2007 Back to IRPA s. 34		Is a determination of inadmissibility under 34(1) of the *Immigration and Refugee Protection Act* made pursuant to a Ministerial relief report a reviewable decision where there has been a request for Ministerial relief which has been denied and the application for permanent residence has been refused?	No appeal filed.
IMM-1835-06 Mactavish J. March 22, 2007 2007 FC 310 Back to IRPR s. 88	A-186-07 Nadon J.A. Sexton J.A. Ryer J.A. (Reasons) March 6, 2008 2008 FCA 87	Does the phrase "the control of a percentage of equity of the qualifying business", as it appears in subsection 88(1) of the *Immigration and Refugee Protection Regulations*, refer only to the legal or *de jure* control of the shares in issue, or does it include cases where an applicant may have *de facto* control over the shares in question, notwithstanding the fact that legal control over the shares may temporarily rest in another person?	Appeal allowed. See Reasons at paragraphs 25, 19 and 20.
IMM-2669-06 de Montigny J. April 5, 2007 2007 FC 361 Back to IRPA s. 97 Back to IRPA s. 112	A-228-07	1. Where the Minister takes a public position on pre-removal risk to an applicant before a pre-removal risk assessment application is decided, is there a reasonable apprehension that the Minister's decision on pre-removal risk assessment application will be biased? 2. What is the appropriate standard of review for the interpretation of a diplomatic note providing assurances against the death penalty or the infliction of torture or other cruel or unusual treatment? 3. Is it appropriate to rely on assurances against torture in assessing an applicant's risk under section 97 of the *IRPA*, when there are credible reports that torture prevails in the country where the applicant is to be removed? If so, under what circumstances? 4. If there is a risk of torture in an individual case, what are the requirements that an assurance against torture should fulfill to make that risk less likely than not? Should the assurance provide for monitoring to allow for verification of compliance for that assurance to be found reliable? In the absence of a monitoring mechanism, is the notoriety of the person to be removed a relevant, and a sufficient, consideration for the PRRA officer in determining whether it is more likely than not that the assuring state will adhere to the diplomatic assurance?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
IMM-4022-06 Layden-Stevenson J. April 13, 2007 2007 FC 387 Back to IRPA s. 3 Back to IRPA s. 25	A-239-07 Noël J.A. (Reasons) Nadon J.A. Ryer J.A. April 22, 2008 2008 FCA 151	Does paragraph 3(3)(f) of the IRPA require that an immigration officer, exercising discretion under section 25 of the IRPA, specifically refer to and analyse the international human rights instruments to which Canada is signatory, or is it sufficient if the officer addresses their substance? **Answer:** Paragraph 3(3)f of the IRPA does not require that an officer exercising discretion under s.25 of the IRPA specifically refer to and analyse the international human rights instruments to which Canada is a signatory. It is sufficient if the Officer addresses the substance of the issues raised.	Appeal dismissed. See answer below question.
IMM-3375-06 Gibson J. April 17, 2007 Back to IRPA s. 48 Back to IRPA s. 72 Back to Other		Where an applicant has filed an application for leave and for judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that, on the particular facts of this matter or analogous facts, the applicant's removal is subsequently halted by operation of a stay Order issued by this Court, render the underlying judicial review application moot?	No appeal filed.
IMM-822-06 O'Reilly J. April 25, 2007 2007 FC 320 Back to IRPA s. 96	A-225-07 Létourneau J.A. Nadon J.A. Sharlow J.A. March 12, 2008 2008 FCA 94	What is meant by the presumption of state protection (as mentioned in *Canada (Attorney General)* v. *Ward*, [1993] 2 S.C.R. 689)? Does it impose a particular standard of proof on refugee claimants to rebut it, or does it merely impose an obligation to present reliable evidence of a lack of state protection? If it imposes a particular standard of proof, what is it? **Answer**: A refugee who claims that the state protection is inadequate or non-existent bears the evidentiary burden of adducing evidence to that effect and the legal burden of persuading the trier of fact that his or her claim in this respect is founded. The standard of proof applicable is the balance of probabilities and there is no requirement of a higher degree of probability than what that standard usually requires. As for the quality of the evidence required to rebut the presumption of state protection, the presumption is rebutted by clear and convincing evidence that the state protection is inadequate or non-existent.	Appeal allowed. See answer below question.
IMM-2281-06 de Montigny J. May 28, 2007 2007 FC 558	A-295-07	Does marriage affect the dependency of a student who was over the age of 22 when the application was filed over the age of 22 when the marriage took place?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPR s. 2			
IMM-6266-06 IMM-6267-06 Hughes J. July 6, 2007 2007 FC 725 Back to IRPA s. 44		What constitutes the report under section 44(1) of IRPA and when, if at all should that material be given to an applicant?	No appeal filed.
IMM-2208-06 de Montigny J. July 9, 2007 2007 FC 728 Back to IRPA s. 96	A-358-07	1. What is the difference between claiming Convention refugee status as a conscientious objector, and claiming Convention refugee status on the basis that one does not want to participate in an internationally condemned conflict? What are the different requirements to prove each? 2. Is there such a thing as "partial" conscientious objection, or does that phrase merely indicate that an applicant's claim really relates to the "international condemnation" exception at paragraph 171 of the UNHCR Handbook? 3. How should decision-makers define "international condemnation"? Does it refer to breaches of international law only? Must it come from an official body that claims to speak with an international voice, like the United Nations? Or would a consensus of reputable international sources, like non-government organizations, be sufficient?	Discontinued.
IMM-6139-06 Harrington J. July 24, 2007 Back to IRPR s. 2	A-359-07 Desjardins J.A. Noël J.A. Trudel J.A. (Reasons) March 13, 2008 2008 FCA 102	For the purpose of interpreting the conditions set out in the definition of "dependent child" established under clause 2(*b*)(ii)(A) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, as amended, with regard to the phrase "continuously enrolled in and attending", can the Immigration Appeal Division take into consideration a break in studies and, if so, can it take into consideration the reasons for this break?	Appeal allowed. Question not answered.
IMM-2353-06 Snider J. August 7, 2007 2007 FC 823 Back to IRPA s. 48	A-379-07	Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 72 Back to Other			
IMM-4184-06 Lemieux J. August 13, 2007 Back to Other	A-376-07	(a) Did the Federal Court judge err in his interpretation of the Supreme Court of Canada's decisions in *Charkaoui* and *Suresh* in that they do not require a stay of the judicial review proceedings in this case? (b) Did the Federal Court judge err in law in that he ordered the stay based on speculation that a future evidentiary record in this case would be materially different from the present record? (c) Is the Supreme Court's determination in *Charkaoui* that detention reviews and reasonableness hearings can proceed under the existing IRPA scheme during the one-year period of suspension inconsistent with the Federal Court judge's decision in this case that the judicial review cannot proceed during the one-year period of suspension?	Discontinued.
IMM-4071-06 Hughes J. September 20, 2007 2007 FC 943 Back to IRPA s. 98		Do the provisions of section 98 of the *Immigration and Refugee Protection Act* to the extent that they incorporate the provisions of Article 1F (b) of the Refugee Convention violate the provisions of section 7 of the Charter of Rights and Freedoms in failing to provide fundamental justice by reason of vagueness?	No appeal filed.
IMM-150-07 Gibson J. October 26, 2007 2007 FC 1109 Back to IRPA s. 48 Back to IRPA s. 72 Back to Other	A-533-07	Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a Removal Order outstanding against him or her does the fact that the applicants' removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?	Discontinued.
IMM-940-07 Harrington J. November 9, 2007 2007 FC 1069 Back to IRPA s. 25	A-560-07 Noël J.A. Nadon J.A. Trudel J.A. October 27, 2008 2008 FCA 326	Does an immigration officer in charge of assessing an application under section 25 of the *Immigration and Refugee Protection Act* (for an exemption from the obligation to present an application for an immigrant visa from outside Canada) have jurisdiction to consider whether an applicant's removal would breach the International Covenant on Civil and Political Rights, more specifically Articles 17, 23 and 24?	Appeal allowed. Question not answered.

Trial	*Appeal*	*Question*	*Answer*
IMM-5938-06 Snider J. November 9, 2007 2007 FC 1168 Back to IRPA s. 48 Back to IRPA s. 72 Back to Other	A-562-07	Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?	Dismissed following notice of status review.
IMM-6175-06 Snider J. November 30, 2007 2007-FC 1247 Back to Other		Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a removal order outstanding against him or her, does the fact that the applicants' removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?	No appeal filed.
IMM-5015-06 Harrington J. January 4, 2008 2008 FC 7 Back to Other Back to IRPA s. 72	A-11-08 Linden J.A. Nadon J.A. Sexton J.A.(Reasons) June 13, 2008 2008 FCA 215	(a) Is leave required to commence an action for judicial review, the purpose of which is to put in issue the *vires* of a regulation issued pursuant to the *Immigration and Refugee Protection Act?* (b) Must claimants who seek recovery of money paid under a regulation alleged to be *ultra vires* commence proceedings by way of judicial review? (c) May a judicial review, which is treated and proceeded with as an action, call into question the *vires* of fee categories not paid by the representative plaintiffs? (d) Since recovery of money is beyond the scope of judicial review, must the claimants await the outcome of judicial review before commencing an action? (e) When the legality of a federal Regulation is properly challenged in a judicial review application in Federal Court, is it premature to "convert" that judicial review into an action (pursuant to s.18.4 (2) of *Federal Court Act*) before the Federal Court has heard and rendered its decision disposing of judicial review? (f) When the central legal issue in a proposed class action (launched pursuant to rule 299 of the *Federal Courts Rules*) is the legality of a federal Regulation, does *Grenier* (2005 FCA 348) require that the legality of the federal Regulation first be determined by the Federal Court, through the process of judicial review pursuant to s.18 (1) of the *Federal Courts Act?* (g) Where the central issue in an application for judicial review which is subject of an application for conversion and certification as a class action involves a mixed question of fact and law in which resolution of disputed facts is critical to the determination of these common questions of fact and law, and where in the exercise of its discretion the Court	Appeal allowed in part. See Reasons for answers.

Trial	*Appeal*	*Question*	*Answer*
		concludes that it is appropriate to direct that the application for judicial review be treated and proceeded with as an action pursuant to section 18.2 and 18.4(2) of the *Federal Courts Act* and that the proceeding be converted as a class action pursuant to rule 299, does *Grenier* preclude the Court from making such order and instead require that the validity of the regulation in issue in the judicial review first be determined without conversion or certification pursuant to section 18(1)?	
IMM-7818-05 Phelan J. January 17, 2008 Back to IRPR s. 159.3 Back to IRPA s. 101 Back to IRPA s. 102	A-37-08 Richard C.J. Noël J.A. (Reasons) Evans J.A. (Concurring Reasons) June 27, 2008 2008 FCA 229	1. What is the appropriate standard of review in respect of the Governor-in-Council's decision to designate the United States as a "safe third country" pursuant to s.102 of the *Immigration and Refugee Protection Act*? 2. Are the paragraphs 159.1 to 159.7 (inclusive) of the *Immigration and Refugee Protection Regulations* and Safe Third Country Agreement between Canada and the United States of America *ultra vires* and of no legal force and effect? 3. Does the designation of the United States of America as a "safe third country" alone or in combination with the ineligibility provision of clause 101(1) (*e*) of the *Immigration and Refugee Protection Act* violate sections 7 and 15 of the *Canadian Charter of Rights and Freedom* and is such violation justified under section1?	Appeal allowed. **Answers**: 1. Correctness 2. No 3. No answer can be given at this stage.
IMM-3220-07 Snider, J. February 1, 2008 2008 FC 125 Back to IRPA s. 64	A-96-08	Does the phrase "a crime that was punished in Canada by a term of imprisonment of at least two years" used in subsection 64 (2) of IRPA apply where the underlying conviction(s) and/or sentence is/are the subject of an outstanding criminal appeal(s)?	Discontinued.
IMM-6516-06 Phelan J. February 12, 2008 Back to IRPA s. 97		Where there is relevant objective evidence that may support a claim for protection, but where the Refugee Protection Division does not find the claimant's subjective evidence credible except as to identity, is the Refugee Protection Division required to assess that objective evidence under s.97 of the *Immigration and Refugee Protection Act?*	No appeal filed.
IMM-192-07 Mosley J. February 12, 2008 2008 FC 51 Back to IRPA s. 98	A-73-08 Evans J.A. (Reasons) Ryer J.A. Sharlow J.A. (Concurring Reasons) November 14, 2008	Once the Refugee Protection Division excludes an individual from protection under Article 1E of the Refugee Convention and IRPA s.98 due to having nationality of a third country, what is the relevant date for a PRRA officer's determination whether the individual should also be excluded under Article 1E and section 98 from PRRA protection – the time of admission to Canada or the time of PRRA application? **Answer** (per Sharlow J.A., concurring reasons): If the claimant presents new evidence (as contemplated by paragraph	Appeal dismissed. Evans J.A. did not answer the certified question as it was "not dispositive of the appeal" (paragraph 10).

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 113	2008 FCA 355	113(a) of IRPA) that Article 1E does not apply as of the date of the pre-removal risk assessment, the PRRA officer may determine on the basis of the new evidence that Article 1E currently applies, in which case the claim for protection is barred. Alternatively, the PRRA officer may determine on the basis of the new evidence that Article 1E does not currently apply although it did apply at the time of the claimant's admission to Canada (or at the date of the RPD decision). If such a change of status has occurred, the PRRA officer should consider why the change of status occurred and what steps, if any, the claimant took or might have taken to cause or fail to prevent the change of status. If the acts or omissions of the claimant indicate asylum shopping, Article 1E may be held to apply despite the change in status.	Sharlow J.A. gave an answer to the question in concurring reasons. See answer below question.
IMM-2283-07 Harrington J. February 13, 2008 2008 FC 181 Back to IRPA s. 109		If, during the course of a vacation hearing under section 109 of the *Immigration and Refugee Protection Act*, the respondent is asked by Panel or the Minister's Counsel why facts were misrepresented or withheld, is the answer relevant to the outcome of the application?	No appeal filed.
IMM-1603-07 Strayer J. February 21, 2008 2008 FC 238 Back to IRPA s. 98	A-140-08 Létourneau J.A. (Reasons) Sharlow J.A. Pelletier J.A. December 17, 2008 2008 FCA 404	1. Does serving a sentence for a serious crime prior to coming to Canada allow one to avoid the application of Article 1F (b) of convention? 2. If the answer to question one is affirmative, if a person is forced to leave country where the crime was committed prior to the completion of this sentence does this have the effect of deeming the sentence to have been served?	Appeal dismissed. **Answers:** 1. No. 2. Not necessary to answer.
IMM-4534-06 Phelan J. February 25, 2008 2008 FC 245 Back to IRPR s. 159.5		1. Does the term "rejected" in the phrase "unless the claim has been rejected" in s.159.5(*c*) (iii) of the *Immigration and Refugee Protection Regulations* include the final determination of all reviews and appeals which may flow from the initial rejection decision? 2. That are the consequences to those persons whose claim was denied under s. 159.5(*c*) (iii) if the decision in *Canadian Council for Refugees v. Canada*, 2007 FC 1262, is upheld in respect of *ultra vires* of s. 159 of the Regulations?	No appeal filed.
IMM-3077-07 Tremblay-Lamer J. March 12, 2008	A-168-08 Létourneau J.A. Blais J.A.	Where the population of a country faces a generalized risk of crime, does the limitation of section 97 (1) (b) (ii) of IRPA apply to a subgroup of individuals who face a significantly heightened risk of such crime?	Appeal dismissed. Question not answered.

Trial	*Appeal*	*Question*	*Answer*
2007 FC 331 Back to IRPA s. 97	Trudel J.A. 2009 FCA 31		
IMM-432-07 R. Dawson J. March 13, 2008 2008 FC 341 Back to Other	A-165-08 Desjardins J.A. Nadon J.A. (Reasons) Blais J.A. (Reasons concurring in the result) 2009 FCA 81	Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing, and a stay of removal is granted so that the person is not removed from Canada, does the fact that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a "live controversy" between the parties, or is the matter rendered moot by the passing of scheduled removal date? **Answer**: Because the underlying application for landing remains outstanding at the date the Court considers the application for judicial review, there remains a "live controversy" between the parties and, as a result, the matter is not rendered moot by the passing of the scheduled removal date.	Appeal dismissed. See answer below question.
IMM-2455-07 L. Mactavish J. March 13, 2008 2008 FC 342 Back to Other		Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing on humanitarian and compassionate grounds, and a stay of removal is granted so that the person is not removed from Canada, does the fact that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a "live controversy" between the parties, or is the matter rendered moot merely by the passing of the scheduled removal date?	No appeal filed.
IMM-2139-07 R. Dawson J. March 18, 2008 2008 FC 364 Back to Other		Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing, and a stay of removal is granted so that the person is not removed from Canada, does the fact that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a "live controversy" between the parties, or is the matter rendered moot by the passing of scheduled removal date?	No appeal filed.
IMM-4723-06 Beaudry J. March 28, 2008 2007 FC 332	A-211-07 Décary J.A. Letourneau J.A. Nadon J.A. (Reasons)	Considering section 53 of the *United Nations Handbook on Procedures and Criteria for Determining Refugee Status*, and in particular the last sentence of that paragraph "This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context ", is it an error in law to limit the analysis of the cumulative grounds to the events that occurred within one country of nationality or habitual residence, when the claimant alleges	Appeal allowed. See answer below question.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 96	March 5, 2008 2008 FCA 84	persecution on the basis of the same Convention ground in the two (or more) countries, and where the claimant's subject fear is related to events that occurred in more than one country? **Answer:** NO, except where the events which occur in a country other than that in respect of which a claimant seeks refugee status are relevant to the determination of whether the country where a claimant seeks refugee status can protect him or her from persecution.	
IMM-1092-07 / IMM-1094-07 Mosley J. April 2, 2008 Back to IRPA s. 15	A-199-08 / A-200-08 Létourneau J.A. Nadon J.A. (Reasons) Trudel J.A. (Concurring Reasons) 2009 FCA 189	Does fairness require that an officer conducting an interview and assessment of an application by a child for landing in Canada to join her parents be under a duty to obtain further information concerning the best interests of child if the officer believes that the evidence presented is insufficient? **Note**: *[62] Because of the highly factual and variable circumstances of each H&C application, I cannot see how the certified question can be answered in the affirmative. However, I do not rule out the possibility that there may be occasions where fairness may or will require an officer to obtain further and better information. Whether fairness so requires will therefore depend on the facts of each case.*	Appeal dismissed. Question not answered. See note below question.
IMM-3517-07 Campbell J. April 3, 2008 2008 FC 431 Back to IRPA s. 197	A-207-08	Is the condition "keep the peace and be of good behaviour" as imposed in stay of deportation orders by the Immigration Appeal Division of the I.R.B. breached each and every time the person concerned is convicted of an offence under and/or found to have violated any federal, provincial and/or municipal statute and regulation throughout Canada?	Discontinued.
IMM-7117-05 Russell J. April 4, 2008 2008 FC 446 Back to IRPA s. 96		Is the presumption of adequate state protection rebutted if an applicant can show that women are generally at risk from domestic violence and abuse in their home state and that, although some measures have been taken by the authorities to protect an applicant, the evidence accepted by the Board is that those measures have not deterred the agent of persecution and the Board accepts the applicant's evidence that, if returned, she will face the same risks (including possible death) that she faced in the past?	No appeal filed.
IMM-506-07 Harrington J.		(a) Are all prisoners necessarily "civilians" for the purpose of defining a crime against humanity as per *Canada (Minister of Citizenship and Immigration)* v. Mugesera, 2005 SCC 40, [2005] 2 S.C.R.100?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
April 11, 2008 2008 FC 436 Back to IRPA s. 35		(b) May the execution of criminals constitute a crime against humanity as being part of a widespread and systemic attack on civilians? (c) Were the acts committed by the Sandinistas against the Contras in military or civil war activities part of a "widespread and systemic attack on civilians"? (d) Is it an error in law to rely on the Rome Statute in consideration of whether the mistreatment of prisoners constitutes a crime against humanity (in relation to the applicant's service as a prison guard at El Chipote Prison)? (e) Should a pardon or general amnesty be taken into account in considering whether a person is inadmissible on grounds of violating human or international rights within the meaning of section 35 of *the Immigration and Refugee Protection Act*?	
IMM-4533-05 Heneghan J. May 2, 2008 2008 FC 572 Back to IRPA s. 50		1) In the circumstances of this case where: 1. A parent is a foreign national who is subject to a valid removal order; 2. A family court issues an order, granting custody to the parent of his or her Canadian born child and prohibiting the removal of the child from the province; and 3. The Minister is given the opportunity to make submissions before the family court before the order is pronounced; Would the family court order be directly contravened, within the contemplation of subsection 50(a) of the Act, if the parent, but not the child, is removed from Canada? 2) If it does not create a statutory stay pursuant to s. 50(a) of IRPA, then does removal of the mother/parent constitute a violation of section 7 of the Charter?	No appeal filed.
IMM-4294-07 Mosley J. June 9, 2008 2008 FC719 Back to Other	A-369-08	Where an applicant has filed an application for leave and judicial review challenging a refusal to defer removal pending a decision on an outstanding application for landing, and a stay of removal is granted so that the person is not removed from Canada, does the fact that a decision on the underlying application for landing remains outstanding at the date the Court considers the application for judicial review maintain a "live controversy" between the parties, or is the matter rendered moot by the passing of the scheduled removal date?	Appeal withdrawn.
IMM-4896-07 Martineau J. 23 juin 2008 2008 CF 788		For the purposes of paragraph 37(1)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, what is the general definition of "member" and what test must one apply to determine whether a person is or was a "member" of an "organization" described in that paragraph?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 37			
IMM-4023-07 Martineau J. June 26, 2008 2008 FC 663 Back to Other	A-386-08 Décary J.A. Noël J.A. (Reasons) Blais J.A. May 26, 2009 2009 FCA 171	a) Is an application for judicial review of a Pre-Removal Risk Assessment moot where the individual who is the subject of the decision has been removed from or has left Canada after an application for a stay of removal has been rejected? b) What factors or criteria, if different or additional to those elucidated in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at p.358-363, should the Court consider in the exercise of its discretion to hear an application for judicial review that is moot? c) If a judicial review of a Pre-Removal Risk Assessment is successful after the applicant has been removed from or has left Canada, does the Court have the authority to order the Minister to return the applicant to Canada pending re-determination and, as the case may be, at the cost of the government?	Appeal dismissed. **Answers**: 1. Yes. 2. There is no need in this case to consider factors beyond those considered in *Borowski.* 3. No answer given (hypothetical).
IMM-3154-07 IMM-3156-07 Mosley J. June 26, 2008 2008 FC 806 Back to IRPA s. 44	A-387-08 Létourneau J.A. Nadon J.A. Trudel J.A. (Reasons) March 10, 2009 2009 FCA 73	1. Is there a greater duty of fairness required of immigration officers preparing a section 44(1) report and the Minister in referring the report when dealing with persons in custody?	Appeal dismissed. Question not answered.
IMM-5636-06 Heneghan J. June 30, 2008 2008 FC 820 Back to IRPA s.48 Back to IRPR, part 13, div. 3		Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a Removal Order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a stay Order issued by this Court render the underlying judicial review application moot?	No appeal filed.
IMM-475-07 Heneghan J. September 17, 2008 2008 FC 1045	A-531-08	Where an applicant has filed an application for leave and judicial review of a decision not to defer the implementation of a Removal Order outstanding against him or her, does the fact that the applicant's removal is subsequently halted by operation of a Stay Order issued by this Court render the underlying judicial review application moot?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
Back to Other			
IMM-964-07 Simpson J. October 31, 2008 Back to Other		Does an applicant have the right to notice before an interview of any extrinsic evidence to be considered by a visa officer in connection with an application for a visa?	No appeal filed.
IMM-1570-08 Mosley J. November 5, 2008 2008 FC 1230 Back to IRPA s. 101	A-607-08 Evans J. A. Sharlow J. A. Ryer J. A. November 11, 2009 2009 FCA 344	Is the legal remedy or status of "withholding of removal" in the United States of America equivalent to being "recognized as a Convention refugee", pursuant to 101(1)(*d*) of the *Immigration and Refugee Protection Act*?	Appeal dismissed. **Answer**: Yes.
IMM-3145-07 Mandamin J. December 5, 2008 2008 FC 1356 Back to IRPA s. 72	A-616-08 Létourneau J.A. Sexton J.A. Layden-Stevenson J.A. October 7, 2009 2009 FCA 288	Does section 72 of the IRPA bar an application for judicial review by the Applicant of a spousal application, while the sponsor exercises a right of appeal pursuant to section 63 of IRPA?	Appeal dismissed for mootness. **Answer:** Yes.
IMM-4038-08 IMM-4039-08 Heneghan J. December 29, 2008 Back to Other	A-642-08 Desjardins J.A. Létourneau J.A. Trudel J.A. March 17, 2009 2009 FCA 85	Does lengthy detention become "indefinite" detention, and consequently a breach of section 7 of the Charter, where the tribunal estimates future length of detention based on a detainee's anticipated pursuit of all available processes under IRPA and the Regulations including Federal Court proceedings?	Appeal allowed. See Reasons at paragraph 81 for answer.
IMM-2147-08 de Montigny J. January 30, 2009	A-68-09	1. Within the context of the judicial review hearing where the Minister intervenes to seek the exclusion of the claimant, is the Minister under a duty to disclose all relevant evidence in his possession, including exculpatory evidence, subject only to any claims to privilege which would be assessed by the tribunal?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
2009 FC 104 Back to IRPA s. 98		2. Is that duty contingent on any request from the claimant or does the duty exist independently of any request from the claimant? 3. Can the right to disclosure be waived? If so, must the waiver be explicit, or can it be inferred from the conduct of the claimant? 4. If there is a duty to disclose, does that duty include a duty to disclose evidence in the possession of other Government agencies when Minister's counsel is aware that that government agency has a file on the person which might contain relevant evidence?	
IMM-2200-08 Barnes J. Feb. 25, 2009 2009 FC 252 Back to IRPA s.45	A-164-09 Noël J.A. Pelletier J.A. Layden-Stevenson J.A. March 10, 2010 2010 FCA 41	Does the Minister of Citizenship and Immigration engage in an abuse of process in continuing to seek a removal order where the affected individual has been determined not to be a danger to the public and, if so, can the Immigration Division decline to make an inadmissibility determination under section 45 of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 on that basis?	Appeal dismissed. **Answers:** First part: no. Second part: no need to answer.
IMM-3162-08 Russell, J. June 2, 2009 2009 FC 380 Back to IRPR s. 2 Back to IRPR s. 117		Is a talaq divorce that took place in Canada, but which has been recognized and registered in Lebanon, a legal or foreign divorce that Canada should recognize under the *Divorce Act*?	No appeal filed.
IMM-3813-08 Russell, J. June 2, 2009 2009 FC 415 Back to IRPA s. 25	A-276-09 Noël J.A Dawson J.A. Trudel J.A. July 6, 2010 2010 FCA 177	Can punishment under a law of general application for desertion, when the desertion was motivated by a sincere and deeply held moral, political and/or religious objection to a particular war, amount to unusual, undeserved or disproportionate hardship in the context of an application for permanent residence on humanitarian and compassionate grounds?	Appeal allowed. Question not answered.
IMM-4183-08 Gibson, J. June 3, 2009	A-275-09 Noël J.A. Layden-Stevenson J.A.	1. Is it permissible for the Refugee Division to consider an individual's status in a third country upon arrival in Canada and thereafter, up until and including the date of the hearing before the Refugee Division in order to determine whether an individual should be excluded under Article 1E of the Refugee Convention?	Appeal allowed. **Answers:**

Trial	*Appeal*	*Question*	*Answer*
2009 FC 466 Back to IRPA s. 98	Stratas J.A. May 10, 2010 2010 FCA 118	2. Is it also permissible for the Refugee Division to consider what steps the individual took or did not take to cause or fail to prevent the loss of status in a third country in assessing whether Article 1E should apply?	1. Yes 2. Yes, subject to qualifications (see paragraph 28 of Reasons)
IMM-3786-08 Heneghan J. June 18, 2009 2009 FC 623 Back to IRPA s. 98	A-251-09 Noël J.A. Pelletier J.A. Layden-Stevenson J.A. March 17, 2010 2010 FCA 75	1. Do pre-removal risk assessment officers have the jurisdiction to exclude persons from refugee protection under section 98 of the *IRPA* and find them described in section 112(3)(c) of the *IRPA*? **Answer:** Yes 2. Does paragraph 112(3)(*c*) of the *IRPA* only apply to rejections by the Refugee Protection Division on the basis of Section F of Article 1 of the *Refugee Convention* or does it also apply to rejections by pre-removal risk assessment officers on the basis of Section F of Article 1 of the *Refugee Convention*. **Answer**: Paragraph 112(3)(c) applies to findings of exclusion on the basis of section F of Article 1 of the Convention by pre-removal risk assessment officers, as well as to findings of exclusion by the Refugee Protection Division.	Appeal allowed. See answers below questions. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-3486-08 Blanchard J. June 17, 2009 2009 FC 641 Back to IRPR Part 7 Div. 2 Back to IRPR Part 13 Div. 3	A-288-09	Does the Minister's policy on administrative deferral of removal found under IP8 offend the Applicant's sections 7 and 11(*d*) rights of the *Canadian Charter of Rights and Freedoms*?	Discontinued.
IMM-309-08 Mactavish J. July 3, 2009 2009 FC 695 Back to IRPA s. 25	A-308-09 Blais C.J. Nadon J.A. Layden-Stevenson J.A. September 15, 2010 2010 FCA 230	Once a decision has been rendered in relation to an application for a humanitarian and compassionate exemption, is the ability of the decision-maker to reopen or reconsider the application on the basis of further evidence provided by an applicant limited by the doctrine of *functus officio*?	Appeal allowed in part. **Answer:** No.

Trial	*Appeal*	*Question*	*Answer*
IMM-326-09 Snider J. September 4, 2009 2009 FC 873 Back to IRPR Part 19, Div. 5	A-408-09 Sharlow J.A. Dawson J.A. Layden-Stevenson J.A. April 29, 2011 2011 FCA 146	*The certified questions were reformulated by the FCA:* 1. On a proper interpretation of subsection 25(1) of the *IRPA*, is the Minister obliged to consider a request for an exemption from the requirement in paragraph 10(1)(*d*) of the *Regulations* to pay a fee for processing an application under subsection 25(1)? 2. Has the failure of the Governor in Council to enact regulations permitting the waiver of fees for foreign nationals living in poverty who wish to make an in-Canada application for permanent resident status pursuant to subsection 25(1) of the *IRPA* infringed: i. the rights of the appellants under section 7 or 15 of the *Charter*, or ii. the rule of law or the common law constitutional right of access to the courts?	Appeal allowed. **Answers:** 1.Yes 2.No
IMM-1930-09 de Montigny J. October 22, 2009 2009 FC 1075 Back to IRPA s. 36	A-393-09	Does a member of the Immigration Division ("ID") presiding over an admissibility hearing concerning an allegation of serious criminality for an offence committed in Canada have the jurisdiction to adjourn the hearing for the purpose of providing the person concerned humanitarian and compassionate relief from the effects of re-incarceration that would ensue pursuant to subsection 128(5) of the *Corrections and Conditional Release Act* ("*CCRA*")?	Discontinued.
IMM-3538-09 Tremblay-Lamer J. November 12, 2009 2009 FC 1152 Back to IRPA s. 58		Does the Immigration Division retain jurisdiction to detain a foreign national once the foreign national has been found to be a refugee or a protected person?	No appeal filed.
IMM-2579-09 Snider J. November 26, 2009 2009 FC 1213	A-481-09 Noël J.A. Sharlow J.A. Layden-Stevenson J.A. October 19, 2010	Is a foreign national inadmissible to Canada, pursuant to paragraph 34(1)(*f*) of *IRPA*, where there is clear and convincing evidence that the organization disavowed and ceased its engagement in acts of subversion or terrorism as contemplated by paragraph 34(1)(*b*) and (*c*) prior to the foreign national's membership in the organization? **Answer**: It is not a requirement for inadmissibility under s. 34(1)(f) of the IRPA that the dates of an individual's	Appeal dismissed. See answer below question.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 34	2010 FCA 274	membership in the organization correspond with the dates on which that organization committed acts of terrorism or subversion by force.	
IMM-1851-09 de Montigny J. December 4, 2009 2009 FC 1247 Back to IRPA s. 103		After an RPD hearing has been suspended under section 103 of the *Immigration and Refugee Protection Act* pending the outcome of an ID hearing and re-determination of a claim's eligibility, if the ID determines that the claimant is inadmissible for security reasons, does the officer have discretion under the *Immigration and Refugee Protection Act* to not re-determine the claim's eligibility and to not notify the RPD of the officer's decision on eligibility, and thereby suspend the RPD hearing indefinitely?	No appeal filed.
IMM-1088-09 Snider J. December 11, 2009 2009 FC 1269 Back to IRPR Part 19, Div. 5	A-501-09 Sharlow J.A. Dawson J.A. Layden-Stevenson J.A. April 29, 2011 2011 FCA 146	*The certified questions were reformulated by the FCA:* 1. On a proper interpretation of subsection 25(1) of the *IRPA*, is the Minister obliged to consider a request for an exemption from the requirement in paragraph 10(1)(*d*) of the *Regulations* to pay a fee for processing an application under subsection 25(1)? 2. Has the failure of the Governor in Council to enact regulations permitting the waiver of fees for foreign nationals living in poverty who wish to make an in-Canada application for permanent resident status pursuant to subsection 25(1) of the *IRPA* infringed: i. the rights of the appellants under section 7 or 15 of the *Charter*, or ii. the rule of law or the common law constitutional right of access to the courts?	Appeal allowed. **Answers:** 1.Yes 2.No
IMM-1728-09 Mosley J December 23, 2009 2009 FC 1302 Back IRPA s. 34	A-31-10 Blais C.J. Noël J.A. Pelletier J.A. March 17, 2011 2011 FCA 103 2013 SCC 36	1. When determining a subsection 34(2) application, must the Minister of Public Safety consider any specific factors in assessing whether a foreign national's presence in Canada would be contrary to the national interest? 2. Specifically, must the Minister consider the five factors listed in the Appendix D of IP10? **Answers (per FCA)**: 1. National security and public safety, as set out in para. 50 of the reasons. 2. No.	Appeal allowed. See answer below question. Further appeal to Supreme Court of Canada dismissed. See Reasons.
IMM-2616-09	A-41-10	Is the ability and willingness of applicants to defray the cost of their out-patient prescription drug medication (in keeping	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
Harrington J. December 31, 2009 2009 FC 1315 Back to IRPR s. 1 Back to IRPA s. 38		with the provincial/territorial regulations regulating the government payment of prescription drugs) a relevant consideration in assessing whether the demands presented by an applicant's health condition constitute an excessive demand?	
IMM-3333-09 Campbell J. January 21, 2010 2010 FC 64 Back to IRPA s. 44	A-48-10 Evans J.A. Dawson J.A. Stratas J.A. October 14, 2010 2010 FCA 267	Does the IAD have an obligation in law to determine the genuineness of a marriage on a *de novo* appeal brought with respect to an issue of misrepresentation when the issue of the genuineness of the marriage concerned was not specifically raised for determination in the appeal? **Answer**: Yes, provided that the person concerned had a fair opportunity before the IAD to address the genuineness of the marriage.	Appeal allowed. See answer below question.
IMM-2622-09 Campbell J. January 21, 2010 2010 FC 70 Back to IRPR s. 117		In the case of a spousal sponsorship of a spouse with two dependant children, does the IAD have jurisdiction to grant relief with respect to the dependant children when the appeal before the IAD with respect to the spouse is withdrawn?	No appeal filed.
IMM-1086-09 Lutfy C.J. January 26 2010 2010 FC 89 Back to IRPA s. 72 Back to Other	A-37-10 Sharlow J.A. Dawson J.A. Stratas J.A. October 3, 2011 2011 FCA 272	a) Does s. 99(2) of the *Constitution Act, 1867* apply to deputy judges of the Federal Court? b) Are deputy judges, acting pursuant to subsection 10(1.1) of the *Federal Courts Act*, subject to the cessation of office provision in subsection 8(2)?	Appeal allowed. See Reasons for answers to the questions.
IMM-4737-08	A-100-10	When a medical officer has determined that an applicant will be in need of prescription drugs, the cost of which would	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
Mosley, J. February 16, 2010 2010 FC 157 Back to IRPR s. 1 Back to IRPA s. 38		place the applicant over the threshold of "excessive demand" as set out in the *Immigration and Refugee Protection Regulations*, must a visa officer assess the applicant's ability to pay for the prescription drugs privately when those same drugs are covered by a government program for which the applicant would be eligible in the province/territory of intended residence?	
IMM-3367-09 Harrington J. Feb. 18, 2010 2010 FC 173 Back to IRPA s. 35	A-102-10 Noël J.A. Pelletier J.A. Mainville J.A. 2010 FCA 296 November 4, 2010	Are subsection 35(1) of the *Immigration and Refugee Protection Act* and section 16 of the *Immigration and Refugee Protection Regulations* in accordance with the principles stated by the Supreme Court in the *Singh v. Canada (Minister of Citizenship and Immigration)*, [1985] 1 S.C.R. 177 and *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 S.C.R. 350, decisions and with section 7 of the *Canadian Charter of Rights and Freedoms* when a person targeted by those provisions had already obtained the refugee or protected person status and does not have the right to defend him/herself against the allegations made against him/her under those provisions?	Appeal dismissed. Question not answered.
IMM-4112-09 Mosley J. March 2, 2010 2010 FC 240 Back to IRPA s. 38	A-115-10 Dawson J.A. Layden-Stevenson J.A. Stratas J.A. February 1, 2011 2011 FCA 35	a) When considering whether a person is inadmissible on health grounds pursuant to paragraph 38(1)(c) of the Act, is a Medical Officer obligated to actively seek information about the applicants' ability and intent to mitigate excessive demand on social services from the outset of the inquiry, or is it sufficient for the Medical Officer to provide a Fairness Letter and rely on the applicants' response to that letter? **Answer:** A medical officer is not obligated to seek out information about the applicants' ability and intent to mitigate excessive demands on social services from the outset of the inquiry. It is sufficient for the medical officer to provide a Fairness Letter that clearly sets out all of the relevant concerns and provides a true opportunity to meaningfully respond to all of the concerns of the medical officer. b) Is a Medical Officer under a duty to provide adequate reasons for finding that a person is inadmissible on health grounds pursuant to paragraph 38(1)(c) of the Act, which is independent from the Visa Officer's duty to provide reasons and which is therefore not satisfied by the Visa Officer providing reasons that are clearly adequate? **Answer:** When assessing whether a foreign national's health condition might reasonably be expected to cause excessive demand, a medical officer is under a duty to provide sufficient information to an immigration officer to allow the immigration officer to be satisfied that the medical officer's opinion is reasonable.	Appeal allowed. See answers below questions.
IMM-6267-09 Barnes J.	A-114-10	a) In an application pursuant to ss. 58(l)(c) of the *Immigration and Refugee Protection Act*, what degree of	Appeal dismissed for mootness.

Trial	*Appeal*	*Question*	*Answer*
March 2, 2010 2010 FC 243 Back to IRPA s. 58	Nadon J.A Pelletier J.A Mainville J.A January 25, 2011 2011 FCA 27	deference, if any, is the presiding Member of the Immigration Division required to give to the Minister's suspicion that the person concerned is inadmissible on grounds of security or for violating human or international rights? b) In an application pursuant to ss. 58(1)(c) of the *Immigration and Refugee Protection Act*, what degree of deference, if any, is the presiding Member of the Immigration Division required to give to the Minister's decision on what further investigative steps are needed (or necessary) in their inquiry into a suspicion that the person concerned is inadmissible on grounds of security or for violating human or international rights?	
IMM-552-09 O'Reilly J. March 4, 2010 2010 FC 130 Back to IRPR s. 78	A-149-10 Noël J.A. Pelletier J.A. Trudel J.A. February 3, 2011 2011 FCA 40	Does the definition of "full-time equivalent" in s. 78(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 merely require an assessment of the period of time that would have been needed to achieve a particular educational credential on a full-time basis, or does it also require a consideration of the nature and quantity of instruction the individual receives? **Answer**: The definition of "full-time equivalent" applies when there is a discrepancy between the time in which a particular "educational credential" (as defined) is obtained by an individual and the time required to obtain the same credential on a full-time basis by reason of having followed part-time or accelerated studies at an educational or training institution recognized by the authorities. It follows that the definition requires a consideration of both the nature and quantity of instruction received by the individual.	Appeal allowed. See answer below question.
IMM-3079-09 Russell J. March 4, 2010 2010 FC 251 Back to IRPA s. 72		Can the judge deciding an application for leave limit the issues to be considered on the judicial review?	No appeal filed.
IMM-3676-09 Hughes J. March 11, 2010 2010 FC 286 Back to IRPR s. 117		Whether a person legally married outside Canada who has come to Canada and subsequently receives a divorce from an appropriate court of the Canadian province in which they reside, must also secure a divorce from the country in which they were married before they can sponsor the new spouse who is resident outside Canada to enter Canada as an applicant for permanent residence in Canada?	No appeal filed.
IMM-3310-09 Gibson J.		Is formal membership in an organization that has engaged in acts of terrorism determinative of whether a person is to be considered inadmissible to Canada pursuant to paragraph 34(1)(f) of the Immigration and Refugee Protection Act?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
March 17, 2010 2010 FC 303 Back to IRPA s. 34			
IMM-6-09 Campbell J. May 5, 2010 2010 FC 288 Back to IRPR s. 4 Back to IRPR s. 114 Back to IRPA s. 11	A-180-10 A-153-10 2010 FCA 164 (Decision not published on FCA website)	1. When assessing the bona fides of a marriage where the circumstances of the marriage are unusual, is there a duty on the officer deciding the application to have both spouses interviewed in order to ensure that the evidence of both parties to the marriage is properly considered? 2. Whether the expressed terms of: a. the *Canada Act, 1982*, c. 11 (U.K.); b. Ss. 14, 16, 19 and 20 of the *Constitution Act, 1982*; c. The terms of ss. 16 and 19 of the *Constitution Act, 1982*, and ss. 18-18.1 of the *Federal Courts Act*; prohibit and deprive jurisdiction of: a. any Federal Board or Tribunal; and in turn b. this Honourable Court; to conduct any of its business or "proceeding(s)" in any other language except English or French? 3. Whether the written underlying Constitutional principles and rights enunciated as: a. Constitutionalism and the Rule of Law; and b. Independence of the Judiciary and Constitutional right to judicial review; c. As enunciated in, inter alia, the *Quebec Secession Reference* and *Dunsmuir*; dictate the same Constitutional requirement?	Minister's Appeal (A-153-10) discontinued. Applicant's Appeal (A-180-10) dismissed. Questions not answered.
IMM-4396-09 Pinard J. May 27, 2010 2010 FC 559 Back to IRPA s. 97		Can an assumption that rape is not a crime predicated on gender and reflecting gender imbalances be applied in an evidentiary vacuum, without regard to evidence demonstrating the contrary with respect to conditions in a refugee claimant's country of nationality?	No appeal filed.
IMM-4357-09 Russell J. June 11, 2010	A-247-10 Noël J.A. Evans J.A.	When evidence is presented that an appellant is suffering from a mental illness, does a duty arise in the IAD to determine in accordance with s. 167(2), whether or not the appellant is capable of understanding the nature of the appeal proceedings? If so, what formal procedural steps must be taken by the Board to meet this duty?	Appeal dismissed. See answer below question.

Trial	*Appeal*	*Question*	*Answer*
2010 FC 638 Back to IRPA s. 167	Sharlow J.A. February 9, 2011 2011 FCA 51	**Answer:** Whether the principles of natural justice require the IAD to initiate inquiries to enable it to form an opinion on whether an appellant who is suffering from a mental illness appreciates the nature of the proceedings depends on an examination of all the circumstances of the case. Since no such duty arose in the present case, it is not necessary to address the hypothetical question of the procedural steps that would have been necessary to discharge the duty.	
IMM-5174-09 Mainville J. July 2, 2010 2010 FC 725 Back to IRPA s. 98	A-281-10 Noël J.A. Nadon J.A. Pelletier J.A. July 15, 2011 2011 FCA 224	*The certified question was reformulated by the FCA:* For the purposes of exclusion pursuant to paragraph 1Fa) of the United Nations Refugee Convention, can complicity by association in crimes against humanity be established by the fact that the refugee claimant was a senior public servant in a government that committed such crimes, along with the fact that the refugee claimant was aware of these crimes and remained in his position without denouncing them?	Appeal allowed. **Answer**: Yes.
IMM-5147-09 Zinn J. July 19, 2010 2010 FC 752 Back to IRPA s. 34	A-267-10 Blais CJ Sharlow J.A. Stratus J.A. March 9, 2011 2011 FCA 91	Is a person inadmissible to Canada for "engaging in an act of espionage … against a democratic government, institution or process" within the meaning of subsection section 34(1)(a) of the *Immigration and Refugee Protection Act*, if the person's activities consist of intelligence gathering activities that are legal in the country where they take place, do not violate international law and where there is no evidence of hostile intent against the persons who are being observed?	Appeal dismissed. **Answer**: Yes.
IMM-804-09 Mosley J. August 5, 2010 2010 FC 803 Back to IRPR s. 295	A-295-10 Dawson J.A. Layden-Stevenson J.A. Mainville J.A. March 28, 2011 2011 FCA 110	Is *Immigration and Refugee Protection Regulation* 295 (3) (a), as applied to sponsored immigrant visa applications made by parents and grandparents, *ultra vires* on the ground it is inconsistent with s.19 of the *Financial Administration Act*?	Appeal dismissed. **Answer**: No.
IMM-1474-09 Mosley J. September 27, 2010 2010 FC 957 Back to IRPA s. 72 Back to IRPA s. 34		1. With respect to a visa-exempt, foreign national who indicates a future intention to visit Canada, is a "preliminary assessment" of inadmissibility a decision, order, act or proceeding properly subject to judicial review in the Federal Court pursuant to section 18.1 of the *Federal Courts Act*? 2. Does a voluntary contribution of cash and goods to an organization listed as a "terrorist entity" pursuant to the Criminal Code, without other acts or indicia of membership, constitute reasonable grounds to believe that the donor has engaged in terrorist acts or is a member of a terrorist organization so as to make the donor	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
		inadmissable on security grounds under s. 34(1)(c) or (f) or *IRPA*?	
IMM-1196-10 Heneghan J. October 1, 2010 2010 FC 983 Back to IRPR s. 78	A-416-10 Sharlow J.A. Pelletier J.A. Stratas J.A. December 6, 2011 2011 FCA 339	In assessing points for education under section 78 of the *Immigration and Refugee Protection Regulations*, does the visa officer award points for years of full-time or full-time equivalent studies that did not contribute to obtaining the educational credential being assessed? **Answer**: In assessing points for education under section 78 of the *Immigration and Refugee Protection Regulations*, the visa officer does not award points for years of full-time or full-time equivalent studies that did not contribute to the educational credential being assessed. That is, visa officers must give credit only for those years of study which the national authorities identify as the norm for the achievement of the educational credential in issue.	Appeal dismissed. See answer below question.
DES-6-08 Hansen J. October 5, 2010 2010 FC 870 Back to IRPA s. 82	A-392-10 Noël J.A. Nadon J.A. Evans J.A. May 24, 2011 2011 FCA 175	1. Did the learned Federal Court Judge err in her interpretation of subsection 82.1(2) of the IRPA? 2. Did the learned Federal Court Judge err in her interpretation of subsection 82.1(1) of the IRPA?	Appeal dismissed. **Answers:** 1. No 2. No
IMM-1291-10 Heneghan J. October 6, 2010 2010 FC 995 Back to IRPR s. 78	A-419-10 Sharlow J.A. Pelletier J.A. Stratas J.A. December 5, 2011 2011 FCA 339	In assessing points for education under section 78 of the *Immigration and Refugee Protection Regulations*, does the visa officer award points for years of full-time or full-time equivalent studies that did not contribute to obtaining the educational credential being assessed? **Answer**: In assessing points for education under section 78 of the *Immigration and Refugee Protection Regulations*, the visa officer does not award points for years of full-time or full-time equivalent studies that did not contribute to the educational credential being assessed. That is, visa officers must give credit only for those years of study which the national authorities identify as the norm for the achievement of the educational credential in issue.	Appeal dismissed. See answer below question.
IMM-1396-10 Harrington J. October 25, 2010 2010 FC 1046 Back to IRPA s. 48		1. When a foreign national has a negatively determined PRRA, has filed an application for leave and judicial review of that PRRA decision, but continues to maintain the same allegation of risk in a request to defer removal, does an enforcement officer have the discretion to defer removal on that basis alone or must a judicial stay based on the PRRA application for leave and for judicial review be sought in Federal Court? 2. Does the potential mootness of an applicant's PRRA litigation upon removal warrant a deferral of removal pending	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to Other		resolution of this same litigation?	
IMM-6394-09 Barnes J. November 8, 2010 2010 FC 1104 Back to IRPR s. 83	A-449-10 Sexton J.A. Dawson J.A. Stratas J.A. June 2, 2011 2011 FCA 187	In assessing adaptability under s. 83 of the Immigration and Refugee Protection Regulations, should a visa officer aggregate programs of study that do not each constitute two years of full-time study of at least two years' duration at a post-secondary institution in Canada and award points if the total period of study amounts to or exceeds two years of full-time study at one or more post-secondary institutions? **Answer**: In assessing adaptability under section 83 of the *Immigration and Refugee Protection Regulations*, a visa officer should not aggregate disparate programs of study and award points if the total period of study amounts to or exceeds two years of full-time study at one or more post-secondary institutions.	Appeal allowed. See answer below question.
IMM-5481-09 Heneghan J. November 19, 2010 2010 FC 1159 Back to IRPR s. 78		When a skilled worker visa applicant has achieved an educational credential referred to in a particular subparagraph in Regulation 78(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 but not the total number of years of study required by that subparagraph, does section 78(4) require the visa officers to award the number of points based on the applicant's highest educational credential or based on the applicant's years of study?	No appeal filed.
IMM-6455-09 Campbell J. November 30, 2010 2010 FC 1206 Back to IRPR s. 78	A-484-10 Sharlow J.A. Pelletier J.A. Stratas J.A. December 5, 2011 2011 FCA 339	In assessing points for education under s. 78 of the Immigration and Refugee Protection Regulations, does the visa officer award points for years of full-time equivalent studies that did not contribute to obtaining the educational credential being assessed? **Answer:** In assessing points for education under section 78 of the Immigration and Refugee Protection Regulations, the visa officer does not award points for years of full-time or full-time equivalent studies that did not contribute to the educational credential being assessed. That is, visa officers must give credit only for those years of study which the national authorities identify as the norm for the achievement of the educational credential in issue.	Appeal allowed. See answer below question.
DES-5-08 Noël J. January 21, 2011 2011 FC 75 Back to IRPA s. 77 Back to Other	A-76-11 Blais C.J. Létourneau J.A Layden-Stevenson J.A April 25, 2012 2012 FCA 122	1. Do sections 77(2), 78, 83(1)(c)-(e), 83(1)(h), 83(1)(i), 85.4(2) and 85.5(b) of the IRPA breach section 7 of the Charter of Rights and Freedoms by denying the person concerned the right to a fair hearing? If so, are the provisions justified under section 1? 2. Do human sources benefit from a class-based privilege? If so, what is the scope of this privilege and was the formulation of a "need to know" exception for the Special Advocates in *Harkat (Re)*, 2009 FC 204, a correct exception to this privilege?	Appeal allowed in part. **Answers (per FCA)**: 1. No. 2. No. Further appeal to Supreme Court

Trial	*Appeal*	*Question*	*Answer*
	2014 SCC 37		of Canada allowed. See Reasons.
IMM-2954-10 Noël J. March 25, 2011 2011 FC 370 Back to IRPR s. 78	A-170-11	For the purposes of section 78(3)(b)(i) of the *Immigration and Refugee Protection Regulations*, is a visa officer to consider a second Masters' degree under section 78(2)(f) as the "single educational credential that results in the highest number of points"?	Discontinued.
IMM-5486-10 O'Reilly J. June 6, 2011 2011 FC 645 Back to IRPR s. 78		In assessing points for education under s 78 of the Immigration and Refugee Protection Regulations, does the visa officer award points for years of full-time equivalent studies that did not contribute to obtaining the educational credential being assessed?	No appeal filed.
IMM-3921-10 O'Reilly J. June 9, 2011 2011 FC 666 Back to IRPA s. 98		In light of the decision of *JS (Sri Lanka) v Secretary of State for the Home Department*, is it an error to presume a person complicit in crimes against humanity based on membership in an organization with a limited and brutal purpose?	No appeal filed.
IMM-7327-10 Scott J. September 27, 2011 2011 FC 1103 Back to IRPA s. 98	A-379-11 Evans J.A. Sharlow J.A. Stratas J.A. December 7, 2012 2012 FCA 324 2014 SCC 68	When applying article 1F (b) of the United Nations *Convention relating to the Status of Refugees*, is it relevant for the Refugee Protection Division of the Immigration and Refugee Board to consider the fact that the refugee claimant has been rehabilitated since the commission of the crime at issue?	Appeal dismissed. **Answer (per FCA):** No. Further appeal to SCC dismissed.

Trial	*Appeal*	*Question*	*Answer*
IMM-1522-11 Hughes, J. October 3, 2011 2011 FC 1126 Back to IRPA s. 40		Is a foreign national inadmissible for misrepresenting a material fact if at the time of filing his/her application for permanent residence or at the time of granting permanent residence he/she had no knowledge of the material fact that constituted such misrepresentation?	No appeal filed.
IMM-2597-11 Beaudry J. December 6, 2011 Back to IRPA s. 97		Can a risk to life resulting from socio-economic conditions amount to a personalized risk pursuant to section 97(1)b) of IRPA?	No appeal filed.
IMM-3767-10 / IMM-3769-10 O'Reilly J. December 28, 2011 2011 FC 1332 Back to IRPA s. 34	A-36-12 Stratas J.A. Webb J.A. Near J.A. September 30, 2014 2014 FCA 213	When determining a s 34(2) application, must the Minister of Public Safety consider any specific factors in assessing whether a foreign national's presence in Canada would be contrary to the national interest? Specifically, must the Minister consider the five factors listed in the Appendix D of IP10?	Appeal allowed. See Reasons at paragraphs 22 and 23 for answer.
IMM-5039-11 Martineau J. January 9, 2012 2011 FC 1435 Back to IRPA s. 91	A-22-12 Noël J.A. Evans J.A. Sharlow J.A. June 25, 2012 2012 FCA 194	Are the *Regulations Amending the Immigration and Refugee Protection Regulations* (SOR/2011-129), the *Order Fixing June 30, 2011 as the Day on which Chapter 8 of the Statutes of Canada, 2011, Comes into Force* (SI/2011-57) and/or the *Regulations Designating a Body for the Purposes of Paragraph 91(2)(c) of the Immigration and Refugee Protection Act* (SOR/2011-142) *ultra vires*, illegal and/or invalid in law?	Appeal dismissed. **Answer**: No.
IMM-4510-11 Harrington J. January 20, 2012 2011 FC 1473	A-64-12 Blais C.J. April 13, 2012 2012 FCA 112 2012 FCA 303	In the context of a danger opinion analysis, if the Minister determines that there would be no personalized risk faced by the person concerned and therefore avoids balancing the risk posed by the person with the risk faced, is the Minister then required by section 7 of the *Charter* to balance the generalized risk that would be faced at the humanitarian and compassionate stage of the analysis?	Appeal dismissed. No answer to question.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 115			
IMM-3732-11 Rennie J. February 1, 2012 2012 FC 123 Back to IRPR s. 134	A-57-12	Is the Appeal Division of the Immigration and Refugee Board of Canada, in hearing an appeal from a decision of a Visa Officer dismissing an application to sponsor family members, bound to accept as conclusive the income as reported in the applicant's Notice of Assessment, by Regulation 134 of the *Immigration and Refugee Protection Regulations* (SOR/2002-227)?	Discontinued.
IMM-3383-11 Hughes J. February 3, 2012 2012 FC 144 Back to IRPA s. 97	A-77-12 Noël J.A. Dawson J.A. Stratas J.A. October 10, 2012 2012 FCA 256	Does the Immigration and Refugee Protection Board violate the provisions of section 7 of the Charter if it declines to postpone its hearing based on risk to life where there is a pending humanitarian and compassionate application also based on risk to life?	Appeal dismissed. **Answer**: No.
IMM-3566-11 Beaudry J. February 7, 2012 Back to IRPR s. 139		In an application for judicial review of a decision refusing an application under the Country of Asylum class or under the Convention refugee abroad class, can the applicant submit documentary evidence to the Court that was accessible, pertinent and reliable pertaining to a country's general conditions to demonstrate the unreasonableness of the officer's decision, even if this evidence was not submitted to the officer but existed before the decision was made?	No appeal filed.
IMM-2880-11 O'Reilly J. February 9, 2012 2012 FC 191 Back to IRPA s. 98	A-79-12	When applying article 1F (b) of the United Nations *Convention relating to the Status of Refugees*, is it relevant for the Refugee Protection Division of the Immigration and Refugee Board to consider the fact that the refugee claimant has been rehabilitated since the commission of the crime at issue?	Appeal dismissed as 2012 FCA 324 is a complete answer to this appeal. See same question answered in the negative in 2012 FCA 324. See also: further appeal to SCC dismissed (2014 SCC 68).
IMM-5890-11 Martineau J.	A-90-12 Evans J.A.	1. Once the Minister of Citizenship and Immigration denies the request of the Canada Border Service Agency in the Minister of Public Safety and Emergency Preparedness for a danger opinion for the purpose of paragraph 101(2)(*b*)	Appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
February 27, 2012 2012 FC 262 Back to IRPA s. 98 Back to IRPA s. 101	Sharlow J.A. Stratas J.A. December 7, 2012 2012 FCA 325	of the Immigration and Refugee Protection Act, SC 2001 c 27, can the Minister of Public Safety and Emergency Preparedness seek exclusion at a refugee protection hearing of the Refugee Protection Division, Immigration and Refugee Board based on the same underlying criminal conduct on which the Canada Border Service Agency sought a danger opinion? 2. When applying article 1F(*b*) of the United Nations Convention Relating to the Status of Refugees, July 28, 1951, [1969] Can TS No 6, is it relevant for the Refugee Protection Division, Immigration and Refugee Board to consider: (a) whether the refugee claimant has been rehabilitated since the commission of the crime at issue? (b) The fact that the Minister of Citizenship and Immigration has determined the refugee claimant not to be a danger to the public in Canada?	**Answers**: 1. Yes. 2. a. No b. No
IMM-2010-11 Hughes J. March 5, 2012 2012 FC 290 Back to IRPA s. 108	A-87-12	Is an Officer obliged to consider section 108(4) of IRPA only in truly exceptional cases rising to the level of appalling or atrocious?	Discontinued
IMM-5468-11 Noël J. April 16, 2012 2012 FC 438 Back to IRPA s. 63 Back to IRPR s. 2 Back to IRPR s. 117		Under section 63(1) of the *Immigration and Refugee Protection Act*, does the Immigration Appeal Division have jurisdiction to hear an appeal when the foreign national who filed an application for permanent residence is not, in relation to his sponsor, his biological or adopted child pursuant to the definitions of "dependent child" and "member of the family class" at sections 2(1) and 117(1)*b*) of the *Immigration and Refugee Protection Regulations*, as deemed by the minister acting through its local representative in a Canadian visa office?	No appeal filed.
IMM-4760-11 Noël J. May 15, 2012 2012 FC 569 Back to IRPA s. 37 Back to IRPR s. 117	A-195-12 Evans J.A. Dawson J.A. Stratas J.A. March 22, 2013 2013 FCA 87	For the purposes of para 37(1)(b) of the IRPA, is it appropriate to define the term 'people smuggling' by relying on section 117 of the same statute rather than a definition contained in an international instrument to which Canada is a signatory?	Appeal dismissed (Federal Court of Appeal). Further appeal to the Supreme Court of Canada allowed. **See SCC Judgement.**

Trial	*Appeal*	*Question*	*Answer*
	2015 SCC 58		
IMM-8666-11 Hughes J. June 7, 2012 2012 FC 899 Back to IRPA s. 37 Back to IRPR s. 117	A-194-12 Evans J.A. Dawson J.A. Stratas J.A. March 22, 2013 2013 FCA 87 2015 SCC 58	For the purposes of para 37 (1)(b) of the IRPA is it appropriate to define the term "people smuggling" by relying on section 117 of the same statute rather than a definition contained in an international instrument to which Canada is signatory?"	Appeal dismissed (Federal Court of Appeal). Further appeal to the Supreme Court of Canada allowed. **See SCC Judgement.**
IMM-6888-11 Snider J. June 11, 2012 2012 FC 726 Back to IRPA s. 37		Is the importation of narcotics into another state an activity 'such as people smuggling, trafficking in persons or money laundering' within the meaning of s. 37(1)(b) of *IRPA*?	No appeal filed.
IMM-6395-11 de Montigny J. June 15, 2012 2012 FC 764 Back to IRPA s. 101	A-372-12 Pelletier J.A. Gauthier J.A. Trudel J.A. September 25, 2013 2013 FCA 226	Does the rejection of a refugee claim submitted by parents accompanied by minor children necessarily render ineligible a later claim submitted by one of those children, having now reached the age of majority, on their own behalf, pursuant to paragraph 101(1)(*b*) of the IRPA, regardless of whether the facts on which the second claim is based are different from those on which the original claim submitted by the parents was based? **Answer:** The rejection of a refugee claim submitted by a minor child, whether or not that claim has been filed in conjunction with claims by other family members, necessarily renders ineligible a later claim submitted by that child, having now reached the age of majority, pursuant to paragraph 101(1)(*b*) of the Act, regardless of whether the facts on which the second claim is based are different from those on which the original claim submitted by the child was based.	Appeal allowed. See answer below question.
IMM-9573-11 Hughes, J. August 7, 2012 2012 FC 971 Back to IRPA		Is the 'child' spoken of in section 25 of IRPA restricted to a person under the age of 18 years?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
s. 25			
IMM-1515-12 Hughes, J.October 12, 2012 2012 FC 1190 Back to IRPA s. 25		What is the nature of risk, if any, to be assessed with respect to humanitarian and compassionate considerations under section 25 of IRPA, as amended by the Balanced Refugee Reform Act?	No appeal filed. See same question in 2014 FCA 114 and 2014 FCA 113. But see further appeal in 2015 SCC 61.
IMM-2593-12 Near, J. October 31, 2012 2012 FC 1274 Back to IRPA s. 25	A-510-12 Blais C.J. Sharlow J.A. Stratas J.A. May 2, 2014 2014 FCA 114	1. What is the nature of the risk, if any, to be assessed with respect to the humanitarian and compassionate considerations under section 25 of *IRPA*, as amended by the *Balanced Refugee Reform Act*? **Answer:** Matters such as well-founded fear of persecution, risk to life, and risk of cruel and unusual treatment or punishment – factors under sections 96 and 97 – may not be considered under subsection 25(1) by virtue of subsection 25(1.3). However, the facts underlying those factors may nevertheless be relevant insofar as they related to whether the applicant is directly and personally experiencing unusual and undeserved, or disproportionate hardship. 2. Does the exclusion from consideration on humanitarian and compassionate grounds of the "factors" taken into account in the determination of whether a person needs protection under section 96 or 97 of *IRPA* mean that the facts presented to the decision-maker in the application for protection may not be used in a determination of the "elements related to the hardships" faced by a foreign national under subsection 25(1.3) of *IRPA*? **Answer:** No. All facts related to the hardships may be provided and considered.	Appeal allowed. See answers below questions. Same question in 2014 FCA 113. But see further appeal in 2015 SCC 61.
IMM-2309-12 Gagné J. November 9, 2012 2012 FC 1282 Back to IRPA s. 37	A-498-12 Sharlow J.A. Mainville J.A. Near J.A. November 12, 2013 2013 FCA 262 2015 SCC 58	a) For the purposes of paragraph 37(1)(*b*) of the IRPA, is it appropriate to define the term “people smuggling” by relying on section 117 of the same statute rather than on a definition contained in an international instrument to which Canada is a signatory? b) For the application of paragraph 37(1)(*b*) and section 117 of the IRPA, is there a distinction to be made between aiding and abetting the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by the IRPA, as opposed to aiding and abetting the smugglers while within a vessel and in the course of being smuggled? In other words, in what circumstances would the definition of people smuggling in section 37(1)(*b*) of the IRPA extend to the offences referred to in section 131 of the IRPA?	Appeal allowed (Federal Court of Appeal). Further appeal to Supreme Court of Canada allowed. **See SCC Judgement.**

Trial	*Appeal*	*Question*	*Answer*
IMM-2409-12 Zinn, J. December 4, 2012 2012 FC 1417 Back to IRPA s. 37	A-563-12 Sharlow J.A. Mainville J.A. Near J.A. November 12, 2013 2013 FCA 262 2015 SCC 58	1. Is the interpretation of paragraph 37(1)(b) of the Immigration and Refugee Protection Act, SC 2001, c 27, and in particular of the phrase “people smuggling” therein, by the Immigration and Refugee Board, Immigration Division, reviewable on the standard of correctness or reasonableness? 2. Does the phrase “people smuggling” in paragraph 37(1)(b) of the Immigration and Refugee Protection Act, SC 2001, c 27, require that it be done by the smuggler in order to obtain, “directly or indirectly, a financial or other material benefit” as is required in the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime?	Appeal allowed (Federal Court of Appeal). Further appeal to Supreme Court of Canada allowed. **See SCC Judgement.**
IMM-2041-12 Mosley, J. December 12, 2012 2012 FC 1466 Back to IRPA s. 37	A-29-13 Sharlow J.A. Mainville J.A. Near J.A. November 12, 2013 2013 FCA 262 2015 SCC 58	a) For the purposes of para 37 (1)(b) of the IRPA is it appropriate to define the term "people smuggling" by relying on section 117 of the same statute rather than a definition contained in an international instrument to which Canada is signatory? b) Is the interpretation of paragraph 37(1)(b) of the Immigration and Refugee Protection Act, SC 2001, c 27, and in particular of the phrase “people smuggling” therein, reviewable on the standard of correctness or reasonableness?	Appeal allowed (Federal Court of Appeal). Further appeal to Supreme Court of Canada allowed. **See SCC Judgement.**
IMM-8881-11 Mosley, J. December 18, 2012 2012 FC 1489 Back to IRPA s. 15	A-32-13	Is it an abuse of power for a CBSA officer to compel a person to attend an interview with CSIS where CBSA has no authority to compel the person to participate in that interview?	Discontinued.
IMM-2779-12 Tremblay-Lamer, J. January 3, 2013 2013 FC 1 Back to IRPR s. 228	A-45-13 Noël J.A. Gauthier J.A. Mainville J.A. January 10, 2014 2014 FCA 4	Does the Minister’s issuance of an exclusion order pursuant to subparagraph 228(1)(c)(v) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 before the member of a crew subject to the exclusion order has any contact with the immigration authorities constitute a breach of procedural fairness because it deprives the foreign national of the opportunity to make a refugee claim?	Appeal allowed. **Answer:** No.

Trial	*Appeal*	*Question*	*Answer*
IMM-8494-11 Mosley J. January 8, 2013 2012 FC 1523 Back to IRPA s. 38	A-1-13 Blais C.J. Sharlow J.A. Stratas J.A. November 4, 2013 2013 FCA 257	When a principal applicant in a response to a fairness letter does not dispute the medical diagnosis or medical prognosis or the cost estimates to provide social services is there an obligation on the immigration officer to refer the response to the medical officer for consideration and decision? **Answer:** When a principal applicant in response to a fairness letter submits a proposal to mitigate the costs of publicly funded social services, and the proposal raises matters that may fall within the mandate of the medical officer (as explained in *Hilewitz v. Canada (Minister of Citizenship and Immigration)*;*De Jong v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57, [2005] 2 SCR 706), that proposal must be submitted to the medical officer for consideration even if the applicant does not dispute any of the medical officer's initial conclusions.	Appeal dismissed. See answer below question.
IMM-1543-12 Gleason J. February 8, 2013 2013 FC 147 Back to IRPR s.87	A-97-13 Evans J.A. Gauthier J,A. Near J.A. November 19, 2013 2013 FCA 263	1. Is it permissible for a visa officer to consider comparator salary data when assessing the nature of the work experience of an applicant who wishes to qualify as a member of the Canadian Experience Class, as described in section 87.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227? **Answer**: Yes. 2. What standard of review is applicable to a visa officer's interpretation of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 and to the officer's assessment of an application under the *Immigration and Refugee Protection Regulations*, SOR/2002-227? **Answer**: Correctness is the applicable standard in this case for reviewing the visa officer's interpretation of section 87.1 of the Regulations, and reasonableness is the standard of review of a visa officer's findings of fact and application of section 87.1 to the facts of a CEC application.	Appeal dismissed. See answers below questions.
IMM-7816-12 Harrington J. February 12, 2013 2013 FC 151 Back to IRPA s. 96		Is review by this Court of the meaning of "membership in a particular social group" in section 96 of the *Immigration and Refugee Protection Act* as determined by a member of the Refugee Protection Division of the Immigration and Refugee Board on the correctness or reasonableness standard?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
IMM-4410-12 Gleason J. March 15, 2013 2013 FC 273 Back to IRPA s.98	A-134-13	When applying Article 1F (b) of the United Nations Convention relating to the Status of Refugees is it relevant for the Refugee Protection Division, Immigration and Refugee Board to consider whether the refugee claimant has been rehabilitated since the commission of the crime at issue?	Discontinued. See same question in 2012 FCA 324. Further appeal in 2014 SCC 68.
IMM-8565-12 Scott J. April 10, 2013 2013 FC 360 Back to IRPA s.68	A-161-13	During a stay of removal order, does subsection 68(4) of the IRPA only apply to convictions for subsection 36(1) offences committed after the beginning of the stay?	Discontinued
IMM-4225-12 Heneghan J. April 18, 2013 2013 FC 397 Back to IRPA s. 72 Back to IRPA s. 63 Back to IRPA s. 65	A-176-13 Pelletier J.A. Dawson J.A. Stratas J.A. July 25, 2014 2014 FCA 180	In light of sections 72(2)(a), 63(1) and 65 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and the case of *Somodi v. Canada (Minister of Citizenship and Immigration)*, [2010] 4 F.C.R. 26 (F.C.A.), where the applicant has made a family class sponsorship application and requested humanitarian and compassionate considerations within the application, is the applicant precluded from seeking judicial review by the Federal Court before exhausting their right of appeal to the Immigration Appeal Division where the right of appeal is limited pursuant to paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227?	Appeal dismissed. **Answer**: No.
IMM-10307-12, IMM-3725-12, IMM-5635-12, IMM-6165-12, IMM-8747-12 Rennie J. April 18, 2013 2013 FC 377 Back to IRPA s.87	A-180-13 A-181-13 A-183-13 A-185-13 A-186-13 2014 FCA 191	1. Does subsection 87.4(1) of the *IRPA* terminate by operation of law the applications described in that subsection upon its coming into force, and if not, are the applicants entitled to *mandamus*? **Answer**: Subsection 87.4(1) terminated the applications automatically on June 29, 2012. After that date, the Minister had no legal obligation to continue to process the applications. The appellants are not entitled to mandamus. 2. Does the *Canadian Bill of Rights* mandate notice and an opportunity to make submissions prior to termination of an application under subsection 87.4(1) of the *IRPA*? **Answer**: No.	Appeals dismissed. See answers below questions.

Trial	*Appeal*	*Question*	*Answer*
		3. Is section 87.4 of the *IRPA* unconstitutional, being contrary to the rule of law or sections 7 and 15 the *Canadian Charter of Rights and Freedoms*? **Answer**: No.	
IMM-3803-12 Heneghan J. April 24, 2013 2013 FC 396 Back to IRPA s. 72 Back to IRPA s. 63 Back to IRPA s. 65	A-177-13 Pelletier J.A. Dawson J.A. Stratas J.A. July 25, 2014 2014 FCA 181	In light of sections 72(2)(a), 63(1) and 65 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, and the case of *Somodi v. Canada (Minister of Citizenship and Immigration)*, [2010] 4 F.C.R. 26 (F.C.A.), where the applicant has made a family class sponsorship application and requested humanitarian and compassionate considerations within the application, is the applicant precluded from seeking judicial review by the Federal Court before exhausting their right of appeal to the Immigration Appeal Division where the right of appeal is limited pursuant to paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227?	Appeal dismissed. **Answer:** No.
IMM-8486-12 Pinard J. June 20, 2013 2013 FC 663 Back to IRPR s. 54 Back to IRPR s. 59 Back to IRPA s. 44	A-259-13/	In light of subsections 54(2) and 59(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, where an applicant is not the subject of a report prepared under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 at the time he or she is sent a letter to pick up his or her permanent resident ("PR") card at a scheduled time ("the pick up date"), but before the pick up date new concerns arise leading to an investigation under subsection 44(1), is there a legal duty to issue a five-year PR card to the applicant on the pick up date even if the investigation under subsection 44(1) is incomplete?	Discontinued.
IMM-11315-12 Mosley J. July 3, 2013 2013 FC 740 Back to IRPA s. 96		Is review by this Court of the meaning of "membership in a particular social group" in the United Nations Convention relating to the status of refugees, and reflected in s. 96 of the *Immigration and Refugee Protection Act*, as determined by a Member of the Refugee Protection Division, of the Immigration and Refugee Board, on the correctness or reasonableness standard?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
IMM-7326-12 Kane J. July 19, 2013 2013 FC 802 Back to IRPA s. 25	A-272-13 Blais C.J. Sharlow J.A. Stratas J.A. May 2, 2014 2014 FCA 113 2015 SCC 61	What is the nature of risk, if any, to be assessed with respect to humanitarian and compassionate considerations under section 25 of *IRPA*, as amended by the *Balanced Refugee Reform Act*?	Appeal dismissed. Further appeal to Supreme Court of Canada allowed. **See SCC Judgement.**
IMM-3103-12 Gleason J. August 16, 2013 2013 FC 876 Back to IRPA s. 34	A-281-13 Pelletier J.A. Gauthier J.A. Near J.A. November 7, 2014 2014 FCA 262	*The certified question was reformulated by the FCA*: Can paragraph 34(1)(b) of the IRPA be interpreted to exclude from its ambit the alleged right to use force in an attempt to subvert a certain type of government in furtherance of an oppressed people's claimed right to self-determination assuming that such right is recognized under Protocol I of the Geneva Conventions of 1949?	Appeal dismissed. **Answer:** No.
IMM-11894-12 Russell, J. August 29, 2013 2013 FC 913 Back to IRPA s. 98	A-315-13 Nadon J.A. Stratas J.A. Scitt J.A. June 10, 2014 2014 FCA 157	When assessing the Canadian equivalent of a foreign offence in the context of exclusion under Article 1F(b) of the *Convention relating to the Status of Refugees* and the *Jayasekara* factors, should the Refugee Protection Division Member assess the seriousness of the crime at issue at the time of commission of the crime or, if a change to the Canadian equivalent has occurred in the interim, at the time when the exclusion is being determined by the Refugee Protection Division? **Answer**: 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.	Appeal dismissed. See answer below question.
IMM-6636-12 Gleason J. September 23, 2013 2013 FC 973 Back to IRPA s. 74	A-359-13	What is the applicable standard of review for an alleged error in failing to disjoin claims before the IRB?	Discontinued.
IMM-10493-12 Strickland J.		Does *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40 change the existing legal test for assessing membership in terrorist organizations, for the purposes of assessing admissibility under subsection 34(1)(f) of	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
January 24, 2014 2014 FC 85 Back to IRPA s. 34		the *IRPA*, whether such membership is admitted or not?	
IMM-10968-12 (2014 FC 92), IMM-10972-12 (2014 FC 93), IMM-10978-12 (2014 FC 94), IMM-12609-12 (2014 FC 95), IMM-11890-12 (2014 FC 96), IMM-12541-12 (2014 FC 97) Boivin J. January 28, 2014 Back to Other Back to IRPA s.87	A-117-14 Ryer J.A. Webb J.A. Rennie J.A June 15, 2015 2015 FCA 144	Are individuals who will be subject to a lengthy waiting period, prior to the assessment of their immigration applications under the Investor class, due to the effect of annual targets and Ministerial Instructions made under s. 87.3 of the IRPA, entitled to an order of *mandamus* to compel immediate processing?	Appeals dismissed for mootness.
IMM-5626-13 Hughes J. March 17, 2014 2014 FC 258 Back to IRPA s. 37	A-208-14 Noël C.J. Dawson J.A. Trudel J.A. January 27, 2015 2015 FCA 21	In section 37(1)(a) of the Immigration and Refugee Protection Act, does the phrase "in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence" require evidence of the elements of a specific foreign offence and an equivalency analysis and finding of dual criminality between the foreign offence and an offence punishable under an Act of Parliament by way of indictment?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified).
IMM-3431-13 Phelan J. March 24, 2014 2014 FC 42 Back to IRPA s.87	A-220-14	Is obtaining a selection decision made after March 29, 2012 but before June 29, 2012 sufficient to prevent termination of the Applicant's federal skilled worker application under s 87.4 of the *Immigration and Refugee Protection Act*?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
IMM-1546-13 Barnes J. April 17, 2014 2014 FC 370 Back to Other	A-256-14 Dawson, J.A. Stratas J.A. Boivin J.A. January 15, 2015 2015 FCA 10	Once a PRRA officer has reached a final decision, and that decision has been communicated to the applicant, can the officer revisit that decision or does the doctrine of *functus officio* apply? **Answer:** A PRRA officer may revisit or reconsider a final decision in appropriate circumstances because the doctrine of *functus officio* does not strictly apply in non-adjudicative administrative proceedings.	Appeal dismissed. See answer below question.
IMM-1934-14 Mactavish J. April 25, 2014 2014 FC 390 Back to IRPA s. 55 Back to IRPA s. 58	A-261-14	Is paragraph 58(1)(c) of the *Immigration and Refugee Protection Act* only available as a ground for continued detention where it follows a detention under subsection 55(3) of the *IRPA*?	Discontinued.
IMM-7522-12 Zinn J. April 28, 2014 2014 FC 384 Back to IRPA s. 34	A-265-14 Dawson J.A. Stratas J.A. Boivin J.A. April 7, 2015 2015 FCA 86	Does *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678, change the existing legal test for assessing membership in terrorist organizations, for the purposes of assessing inadmissibility under paragraph 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27? **Answer:** *Ezokola v. Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 S.C.R. 678 does not change the existing legal test for assessing membership in terrorist organizations under paragraph 34(1)(*f*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.	Appeal dismissed. See answer below question. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-2621-13 Gleason J. June 23, 2014 2014 FC 596 Back to IRPA s.87 Back to Other	A-320-14 Ryer J.A. Webb J.A. Rennie J.A. June 15, 2015 2015 FCA 146	Are individuals who have been subject to a lengthy waiting period prior to the assessment of their immigration applications under the investor class, due to the annual targets and Ministerial Instructions made under s. 87.3 of the IRPA, entitled to an order in the nature of *mandamus* to compel their processing? Does such a delay violate the applicants' rights under either sections 7 or 15 of the *Charter* or the rule of law?	Appeal dismissed for mootness.
IMM-6485-13 Strickland J.	A-350-14	In connection with s. 108(2) of the IRPA and in light of the amendments to s. 46(1) and 40.1(1)(c.1): (a) is a CBSA officer who intends to interview a permanent resident and protected person obliged to inform that person	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
July 9, 2014 2014 FC 671 Back to IRPA s. 40 Back to IRPA s. 46 Back to IRPA s. 108		of the purpose of the interview, being a potential cessation application; (b) is the CBSA officer or a hearings officer, the CIC Minister's delegate, obliged to provide that person with an opportunity to make submissions prior to the making of a cessation application; (c) does the CBSA hearings officer, or the hearings officer as the Minister's delegate, have the discretion to consider factors other than those set out in s. 108(1), including H&C considerations and the best interests of a child, when deciding whether to make a cessation application pursuant to s. 108(2)?	
IMM-4406-13 Heneghan J. July 22, 2014 2014 FC 733 Back to IRPA s. 25 Back to IRPA s. 63 Back to IRPA s. 65 Back to IRPA s. 67		In an appeal under subsection 63(1) of the Immigration and Refugee Protection Act, S.C. 2001, s. 27 ("IRPA"), and considering the statutory bar under section 65 of IRPA, does the Immigration Appeal Division have jurisdiction to determine whether a visa officer made an error pursuant to paragraph 67(1)(a) of IRPA when assessing a family class permanent resident visa application, as regards the visa officer's determination of the foreign national's request under section 25(1) of the IRPA for an exemption based on Humanitarian and Compassionate considerations from a given requirement of the IRPA and associated Regulations?	No appeal filed.
IMM-8048-13 Harrington J. September 18, 2014 2014 FC 895 Back to IRPA s. 97	A-461-14 Nadon J.A. Pelletier J.A. Gauthier J.A. September 17, 2015 2015 FCA 202	In order for a claim under section 97 of the *Immigration and Refugee Protection Act* to be allowed, must a claimant first give up a private right to avoid the risk of torture or death?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified).
IMM-6362-13 Phelan J. October 3, 2014 2014 FC 799 Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162	A-470-14 Gauthier J.A. Webb J.A. Near J.A. March 29, 2016 2016 FCA 93	*The certified question was reformulated by the FCA:* Was it reasonable for the RAD to limit its role to a review of the reasonableness of the RPD's findings of fact (or mixed fact and law), which involved no issue of credibility? **Answer:** No. The RAD ought to have applied the correctness standard of review to determine whether the RPD erred.	Appeal dismissed. See answer below question.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 171			
IMM-5981-13 Shore J. October 15, 2014 2014 FC 975 Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162 Back to IRPA s. 171		How is the Refugee Appeal Division (RAD), under its mandate, to undertake an appeal from the Refugee Protection Division (RPD)?	No appeal filed. See similar question in 2016 FCA 93.
IMM-7630-13 Roy J. October 20, 2014 2014 FC 913 Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162 Back to IRPA s. 171		What is the scope of the Refugee Appeal Division's review when considering an appeal of a decision of the Refugee Protection Division?	No appeal filed. See similar question in 2016 FCA 93.
IMM-1407-14 Tremblay-Lamer J. October 20, 2014 Back to IRPA s. 108	A-509-14	Does the CBSA hearings officer, or the hearings officer as the Minister's delegate, have the discretion to consider factors other than those set out in s. 108(1), including H&C considerations and the best interests of a child, when deciding whether to make a cessation application pursuant to s. 108(2)?	Discontinued.
IMM-7567-13 Locke J. October 24, 2014 2014 FC 858		What is the scope of the Refugee Appeal Division's (RAD) review when considering an appeal of a decision of the Refugee Protection Division (RPD)?	No appeal filed. See similar question in 2016 FCA 93.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162 Back to IRPA s. 171			
IMM-6711-13 Gagné J. October 28, 2014 2014 FC 1022 Back to IRPA s. 110 Back to IRPA s. 113	A-512-14 Nadon J.A. Gauthier J.A. de Montigny J.A. March 29, 2016 2016 FCA 96	1. What standard of review should be applied by this Court when reviewing the Refugee Appeal Division's interpretation of subsection 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27? **Answer:** The RAD's interpretation of subsection 110(4) of the IRPA must be reviewed in light of the reasonableness standard, in accordance with the presumption that an administrative agency's interpretation of its home statute should be shown deference by the reviewing court. 2. In considering the role of a Pre-Removal Risk Assessment officer and that of the Refugee Appeal Division of the Immigration and Refugee Board, sitting in appeal of a decision of the Refugee Protection Division, does the test set out in *Raza v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 385 for the interpretation of paragraph 113(*a*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 apply to its subsection 110(4)? **Answer**: To determine the admissibility of evidence under subsection 110(4) of the IRPA, the RAD must always ensure compliance with the explicit requirements set out in this provision. It was also reasonable for the RAD to be guided, subject to the necessary adaptations, by the considerations made by this Court in *Raza*. However, the requirement concerning the materiality of the new evidence must be assessed in the context of subsection 110(6), for the sole purpose of determining whether the RAD may hold a hearing.	Appeal allowed. See answers below questions.
IMM-6640-13 Gagné J. November 12, 2014 2014 FC 1063 Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162 Back to IRPA s. 171		1. What standard of review should be applied by this Court when reviewing the Refugee Appeal Division's interpretation of sections 110, 111, 162 and 171 of the Immigration and Refugee Protection Act, SC 2001, c 27, and more specifically when reviewing its determination of the level of deference owed to the Refugee Protection Division's credibility findings? 2. Within the Refugee Appeal Division's statutory framework where the appeal proceeds on the basis of the Refugee Protection Division record of the proceedings, what is the level of deference owed by the Refugee Appeal Division to the Refugee Protection Division findings of fact and of mixed fact and law, more specifically to its credibility findings?	No appeal filed.
IMM-12508-12 / IMM-	A-545-14 / A-546-14	1. Does the prohibition contained in section 112(2)(b.1) of the *Immigration and Refugee Protection Act* against	Appeals dismissed.

Trial	*Appeal*	*Question*	*Answer*
12545-12 Annis J. November 13, 2014 2014 FC 1073 2014 FC 1074 Back to IRPA s. 112	Dawson J.A. Webb J.A. Rennie J.A February 12, 2016 2016 FCA 51	bringing a Pre-Removal Risk Assessment application until 12 months have passed since the claim for refugee protection was last rejected infringe section 7 of the *Charter*? 2. If not, does the present removals process, employed within 12 months of a refugee claim being last rejected, when determining whether to defer removal at the request of an unsuccessful refugee claimant for the purpose of permitting a Pre-Removal Risk Assessment application to be advanced, infringe section 7 of the *Charter*?	Questions not answered.
IMM-5204-13 Brown J. November 13, 2014 2014 FC 1077 Back to IRPR s. 4 Back to IRPA s. 3		Is the disjunctive element of subsection 4(1) of *the Immigration and Refugee Protection Regulations*, SOR/2002-227 (as amended SOR/2010-208) *ultra vires* the enabling statute (the *Immigration and Refugee Protection Act*, SC 2001, c 27) because subsection 4(1) would prohibit the sponsorship of a spouse when the marriage was found to be *entered into* primarily for the purpose of gaining status, notwithstanding a finding that the marriage always was or subsequently became genuine, and would therefore frustrate the aims and objectives of the Act, in particular section 3(1)(d), "to see that families are reunited in Canada"?	No appeal filed.
IMM-6639-13 Gagné J. November 14, 2014 2014 FC 1072 Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162 Back to IRPA s. 171		Within the Refugee Appeal Division [RAD]'s statutory framework where the appeal proceeds on the basis of the Refugee Protection Division [RPD] record of the proceedings, what is the level of deference, if any, owed by the RAD to the RPD's findings of fact or mixed fact and law?	No appeal filed.
IMM-7208-13 O'Reilly J. November 27, 2014 2014 FC 1040 Back to IRPA s. 36	A-531-14 Gauthier J.A. Nyer J.A. Near J.A. October 30, 2015 2015 FCA 237	1. Is a conditional sentence of imprisonment imposed pursuant to the regime set out in ss 742 to 742.7 of the *Criminal Code* a "term of imprisonment" under s 36(1)(*a*) of the IRPA? **Answer:** No. 2. Does the phrase "punishable by a maximum term of imprisonment of at least ten years" in s 36(1)(*a*) of the IRPA refer to the maximum term of imprisonment available at the time the person was sentenced or to the maximum term of imprisonment under the law in force at the time admissibility is determined? **Answer:** It refers to the maximum term of imprisonment available at the time of the commission of the offence.	Appeal allowed. Further appeal to Supreme Court of Canada allowed. See SCC answers below questions.

Trial	*Appeal*	*Question*	*Answer*
	2017 SCC 50		
IMM-371-14 Mactavish J. December 19, 2014 2014 FC 1246 Back to IRPA s. 34 Back to IRPA s. 103 Back to IRPA s. 104	A-30-15 Nadon J.A. Scott J.A. Rennie J.A. November 17, 2015 2015 FCA 256	After a Refugee Protection Division proceeding has been suspended under paragraph 103(1)(a) of the *Immigration and Refugee Protection Act* pending the outcome of an Immigration Division hearing into a refugee claimant's admissibility, if the Immigration Division determines that the claimant is inadmissible for security reasons under section 34(1)(f) of *IRPA*, does a CBSA officer have any discretion under subsection 104(1)(b) of *IRPA* to not determine the claim's eligibility and to not notify the Refugee Protection Division of the officer's decision on eligibility?	Appeal dismissed. **Answer**: No.
IMM-4732-14 Bédard J. January 15, 2015 2015 FC 51 Back to IRPA s. 108		1. Does applying for and obtaining a passport from one's country of nationality with the intention to use it to travel outside Canada, but not in one's country of nationality, constitute, in all circumstances, irrefutable proof that the refugee had the intention of reavailing himself of the protection of his country of nationality? 2. Does applying for and obtaining a passport from one's country of nationality with the intention to use it to travel outside Canada, but not in one's country of nationality constitute, in all circumstances, a circumstance that can never serve to rebut the presumption created at paragraph 121 of the UNHCR Handbook?	No appeal filed.
IMM-3220-14 Shore J. January 15, 2015 2015 FC 61 Back to IRPA s. 96	A-55-15	Does the one-child policy, when, in fact, executed by a State qualify as one of "persecution" as interpreted by the Refugee Convention, if, and when, a couple would want to have, have conceived, or have more than one child?	Discontinued.
IMM-7972-13 Manson J. January 16, 2015 2015 FC 97 Back to Other	A-54-15 Pelletier J.A. Near J.A. Boivin J.A. June 15, 2016 2016 FCA 182	Can a writ of mandamus be issued to compel the Minister of Public Safety and Emergency Preparedness or the Canada Border Services Agency to investigate a complaint of marriage fraud made by a private citizen?	Appeal dismissed. See Reasons.

Trial	*Appeal*	*Question*	*Answer*
IMM-4516-13 Strickland J. January 16, 2015 2015 FC 67 Back to IRPR s. 78		When assessing a federal skilled worker class application for permanent residency and the points to be awarded for education under s. 78 of the *Immigration and Refugee Protection Regulations* (IRP Regulations), do the IRP Regulations require an equivalency assessment, as required by s. 75(2) and defined by s. 73(1), of a foreign diploma, certificate or credential to be evaluated and explicitly stated as being equivalent to a diploma, certificate or credential issued on the completion of a Canadian program of study or training, as defined in s. 73(1) as a "Canadian educational credential"? Or, is a determination and statement of the equivalent value of the foreign diploma, certificate or credential, expressed as a number of years of study in Canada, sufficient to award points pursuant to s. 78(1)?	No appeal filed.
IMM-8015-13 Zinn J. January 20, 2015 2015 FC 77 Back to IRPA s. 110 Back to IRPA s. 111 Back to IRPA s. 162 Back to IRPA s. 171		What is the scope of the Refugee Appeal Division's review when considering an appeal of a decision of the Refugee Protection Division?	No appeal filed.
IMM-3582-13 Annis J. February 16, 2015 2015 FC 188 Back to IRPA s. 96	A-147-15 Stratas J.A. Webb J.A. Scott J.A. June 14, 2016 2016 FCA 178	1. Whether the Refugee Protection Board commits a reviewable error if it fails to determine whether protection measures introduced in a democratic state to protect minorities have been demonstrated to provide operational adequacy of state protection in order to conclude that adequate state protection exists? 2. Whether refugee protection claimants are required to complain to policing oversight agencies in a democratic state as a requirement of accessing state protection, when no risk of harm arises from doing so?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified).
IMM-8426-13 Shore J. February 23, 2015 2015 FC 237 Back to IRPR s. 182	A-167-15	(1) Is the fact that there is a pending application for restoration under section 182 of the Immigration and *Refugee Protection* Regulations a relevant factor that must be taken into account by the Minister in considering whether an exclusion order should be made against a foreign national seeking to enter Canada? (2) Before making an exclusion order against a foreign national seeking to enter Canada, is the Minister responsible for verifying whether the foreign national's pending application for restoration duly complies with the requirements of section 182 of the *Immigration and Refugee Protection Regulations*?	Appeal dismissed following notice of status review.

Trial	*Appeal*	*Question*	*Answer*
IMM-41-14 de Montigny J. March 17, 2015 2015 FC 338 Back to IRPA s. 63	A-203-15	For the purposes of determining its jurisdiction to hear an appeal pursuant to subsection 63(2) of the *IRPA*, shall the validity of the permanent resident visa be assessed by the IAD at the time of arrival in Canada or at the time the exclusion order is made?	Discontinued.
IMM-5302-14 Noël J. March 17, 2015 2015 FC 329 Back to IRPA s. 108	A-205-15 Nadon J.A. Rennie J.A. Gleason J.A. April 29, 2016 2016 FCA 134 2016 FCA 237	In a cessation application pursuant to paragraph 108(1)(*a*) of IRPA, do the same or substantially the same legal considerations, precedents, and analysis apply to persons found to be Convention refugees as to persons found to be in need of protection as members of the Country of asylum class?	Appeal dismissed. **Answer**: Yes.
IMM-7227-13 Forthergill J. March 23, 2015 2015 FC 345 Back to Other	A-181-15	Is an application for judicial review of a decision of the Refugee Protection Division moot where the individual who is the subject of the decision has involuntarily returned to his or her country of nationality, and, if yes, should the Court normally refuse to exercise its discretion to hear it?	Discontinued.
IMM-5314-14 Tremblay-Lamer J. May 6, 2015 2015 FC 591 Back to IRPA s. 44	A-242-15 Noël C.J. Scott J.A. de Montigny J.A. February 2, 2016 2016 FCA 48	Does the Immigration Division of the Immigration and Refugee Board have the jurisdiction to grant a stay of proceedings under subsection 24(1) of the *Canadian Charter of Rights and Freedoms* in the course of an admissibility hearing following the referral of a report prepared pursuant to subsection 44(1) of the IRPA?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified). Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-67-14 Mosley J. May 11, 2015	A-260-15 Ryer J.A. Webb J.A.	*The certified question was reformulated by the FCA:* Is any impediment that a refugee claimant may face in accessing state protection in a country in which that claimant is a	Appeal dismissed. **Answer**: No.

Trial	*Appeal*	*Question*	*Answer*
2015 FC 455 Back to IRPA s. 96	Rennie J.A. June 9, 2016 2016 FCA 175	citizen sufficient to exclude that country from the scope of the expressions "countries of nationality" and "country of nationality" in section 96 of the *Immigration and Refugee Protection Act*?	Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-5825-14 Mosley J. May 15, 2015 2015 FC 639 Back to IRPA s. 108	A-280-15 Ryer J.A. Near J.A. Boivin J.A. April 27, 2016 2016 FCA 131	Does the CBSA hearings officer, or the hearings officer as the Minister's delegate, have the discretion to consider factors other than those set out in s. 108(1), including H&C considerations and the best interests of a child, when deciding whether to make a cessation application pursuant to s. 108(2) in respect of a permanent resident?	Appeal allowed. **Answer**: No.
IMM-3821-14 Mosley J. May 19, 2015 2015 FC 642 Back to IRPA s. 25		In a best interests of the child analysis, is an Officer required first to explicitly establish what the child's best interests are, and then to establish the degree to which the child's interests are compromised by one potential decision over another, in order to show that the Officer has been alert, alive and sensitive to the best interest of the child?	No appeal filed.
IMM-1106-14 Annis J. May 22, 2015 2015 FC 661 Back to IRPA s. 25	A-295-15	1. Is evidence of kidnapping and similar violent criminal conduct relevant to a hardship analysis under section 25 of the IRPA? 2. Is it incorrect or unreasonable to require, as part of an H&C, analysis that an applicant establish that the circumstances of hardship that he or she will face on removal are not those generally faced by others in their country of origin? 3. If the answer to question 2) is no, can the conditions in the country of origin support a reasoned inference as to the challenges any applicant would face on return to his or her country of origin, and thereby provide an evidentiary foundation for a meaningful, individualized analysis of hardships that will affect the applicant personally and directly as required by *Kanthasamy v Canada (Citizenship and Immigration*), 2014 FCA 113, 459 NR 367, leave to appeal to the SCC granted, [2014] SCCA No 309?	Appeal dismissed for delay.

Trial	*Appeal*	*Question*	*Answer*
IMM-4174-14 Heneghan J. June 17, 2015 2015 FC 765 Back to IRPA s. 108	A-320-15	When deciding whether to allow an application by the Minister for cessation of refugee status pursuant to s. 108(1)(a) of the *Immigration and Refugee Protection Act* based on past actions, can the Board allow the Minister's application without addressing whether the person is at risk of persecution upon return to their country of nationality at the time of the cessation hearing?	Discontinued.
IMM-343-14 Mactavish J. June 22, 2015 2015 FC 774 Back to IRPA s. 112	A-322-15 Dawson J.A. Near J.A. Boivin J.A. May 9, 2016 2016 FCA 144	Does the prohibition contained in section 112(2)(b.1) of the *Immigration and Refugee Protection Act* against bringing a Pre-Removal Risk Assessment application until 36 months have passed since the claim for refugee protection was abandoned, violate section 7 of the Charter?	Appeal dismissed. **Answer**: No. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-1144-14 Bédard J. July 17 2015 2015 FC 879 Back to IRPA s. 37		1. In the context of a declaration of inadmissibility under paragraph 37(1)(a) of the IRPA, is it necessary to identify the applicable criminal organization? 2. At paragraph 37(1)(a) of the IRPA, does the expression "or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence" require the identification of the provisions of a federal law punishable by indictment that are related to an offence, the identification of the constituent elements of the offence under Canadian law and the proof of the constituent elements of the offence?	No appeal filed.
IMM-4821-14 Bédard J. July 17 2015 2015 FC 880 Back to IRPA s. 24		When considering an application for a temporary resident permit under section 24(1) of the IRPA, does the decision-maker's obligation to proceed fairly include an obligation to advise the applicant of an internal recommendation so that he can provide observations before the decision is rendered, when the recommendation contains an analysis that is founded on proof that had been considered in the context of the decision declaring the applicant inadmissible and on proof filed by the applicant in support of the application for a TRP?	No appeal filed.
IMM-3700-13 / IMM-5940-14 Boswell J.	A-338-15	1. Does paragraph 110(2)(d.1) of the *IRPA* comply with subsection 15(1) of the *Charter*? 2. If not, is paragraph 110(2)(d.1) of the *IRPA* a reasonable limit on *Charter* rights that is prescribed by law and can	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
July 23, 2015 2015 FC 892 Back to IRPA s. 110		be demonstrably justified under section 1 of the *Charter*?	
T-1976-14 Bell J. Aug.10, 2015 2015 FC 960 Back to CA s.3	A-394-15 Stratas J.A. (Reasons) Webb J.A. Gleason J.A. (Dissenting) June 21, 2017 2017 FCA 132	*The certified question was reformulated by the FCA (the FCA refused to answer another question that had been certified by Bell J. as it found the question to be improper):* Are the words "other representative or employee [in Canada] of a foreign government" found in paragraph 3(2)(*a*) of the *Citizenship Act* limited to foreign nationals [falling within these words] who [also] benefit from diplomatic privileges and immunities?	Appeal allowed. **Answer**: Yes. Note: leave to appeal to SCC granted.
IMM-7050-14 Strickland J. September 2, 2015 2015 FC 1042 Back to IRPA s. 110	A-431-15	Does the admission of new evidence under s 110(4) involve the exercise of discretion by the RAD? If so, does this discretion permit the RAD to admit evidence which does not meet the test under s 110(4) and does its admission engage a consideration of *Charter* values?	Discontinued.
IMM-7152-14/ IMM-7153-14 Barnes J. November 26, 2015 2015 FC 1315 Back to IRPA s. 44	A-476-15 De Montigny J.A. Nadon J.A. Rennie J.A. December 21, 2016 2016 FCA 319	Does the duty of fairness require that a report issued under section 44(1) of the IRPA be provided to the affected person before the case is referred to the Immigration Division under section 44(2)? **Answer**: The duty of fairness does not require the transmission of an inadmissibility report to the affected person before a decision is made by the Minister or his delegate to refer that report to the Immigration Division pursuant to subsection 44(2), provided that such a report is communicated to the affected person before the hearing of the Immigration Division.	Appeal dismissed. See answer below question.
IMM-1133-15 Locke J. October 21, 2015 2015 FC 1190 Back to IRPA s. 95 Back to IRPA s. 108	A-495-15	Where a person has become a permanent resident under a visa application in the overseas Refugee and Humanitarian Resettlement Program by virtue of a member of the person's family listed in the visa application having been determined to be a Convention refugee (though the person was not themselves assessed as a Convention refugee), is that person a Convention refugee as contemplated in paragraph 95(1)(a) of the *IRPA* who is subject to cessation of refugee status pursuant to subsection 108(2) of the *IRPA*?	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
IMM-1937-15 Zinn J. October 23, 2015 2015 FC 1198 Back to IRPA s. 15 Back to Other	A-503-15 Nadon J.A. Dawson J.A. Webb J.A. August 29, 2016 2016 FCA 211	*The certified questions were reformulated by the FCA:* 1. Does a delegate of the Minister of Public Safety and Emergency Preparedness have jurisdiction and authority to examine a refugee claimant pursuant to subsection 16(1.1) of the *Immigration and Refugee Protection Act* about his or her refugee claim after the claim has been referred to the Refugee Protection Division for determination? 2. If a refugee claimant has indicated on the basis of claim form or elsewhere so that it appears on the record of the Refugee Protection Division that the claimant has counsel of record, is it a breach of subsection 167(1) of the *Immigration and Refugee Protection Act* and a breach of procedural fairness for an officer to examine the refugee claimant about their refugee claim after the claim has been referred to the Refugee Protection Division for determination without advising counsel of record of the proposed examination and providing counsel an opportunity to attend?	Appeal dismissed. **Answers**: 1. Yes 2. Yes
IMM-1376-14 Heneghan J. October 29, 2015 2015 FC 1186 Back to IRPA s. 170.2	A-493-15 Pelletier J.A. Webb J.A. Near J.A. August 31, 2016 2016 FCA 214	(1) Does section 170.2 of the *Immigration and Refugee Protection Act*, where it states, "The Refugee Protection Division does not have jurisdiction to reopen on any ground – including a failure to observe a principle of natural justice – a claim for refugee protection … in respect of which the Refugee Appeal Division or the Federal Court … has made a final determination", withdraw jurisdiction from the Refugee Protection Division to decide questions of law and, by implication, constitutionality, arising under that provision? (2) In spite of the availability of other possible applications under the *Immigration and Refugee Protection Act*, does section 170.2 of the *Immigration and Refugee Protection Act* unjustifiably breach a claimant's rights under section 7 of the *Charter of Rights and Freedoms* such that the provision must be found unconstitutional and declared to be of no force and effect?	Appeal dismissed for mootness.
IMM-4542-14 Manson J. November 13, 2015 2015 FC 1270 Back to IRPA s. 25		In a best interests of the child analysis, is an officer required first to explicitly establish what the child's best interests are, and then to establish the degree to which the child's interests are compromised by one potential decision over another, in order to show that the Officer has been alert, alive and sensitive to the best interests of the child?	No appeal filed.
IMM-879-15 Russell J. November 30, 2015 2015 FC 1329 Back to IRPA s. 67	A-100-16 Webb J.A. Scott J.A. Gleason J.A. March 31, 2017 2017 FCA 68	Does the Immigration Appeal Division of the Immigration and Refugee Board, in the exercise of its humanitarian jurisdiction, err in law in considering adverse to an appellant lack of remorse for an offence for which the appellant has pled not guilty but was convicted?	Appeal dismissed. **Answer**: No.

Trial	*Appeal*	*Question*	*Answer*
IMM-2838-15 / IMM-2840-15 Harrington J. December 11, 2015 2015 FC 1380 Back to IRPR s. 183		When a temporary resident has applied for an extension of the period authorized for his or her stay, but the Application is returned to the Applicant, due to the incompleteness, in accordance with section 12 of the *Immigration and Refugee Protection Regulations*, does the Applicant benefit from implied status until he or she actually submits a complete Application and that Application is either refused or allowed?	No appeal filed.
IMM-878-15 Fothergill J. January 7, 2016 2016 FC 14 Back to IRPA s. 98	A-52-16 Dawson J.A. Near J.A. Woods J.A. November 9, 2016 2016 FCA 274	*The certified questions were reformulated by the FCA:* 1. Should the Refugee Protection Division assess exclusion under Article 1E of the *United Nations Convention Relating to the Status of Refugees* at the time of the refugee hearing? **Answer**: In accordance with this Court's decision in *Canada (Citizenship and Immigration) v. Zeng*, 2010 FCA 118, [2011] 4 F.C.R. 3, an assessment of exclusion under Article 1E is to be made at the time of the hearing before the Refugee Protection Division. 2. When the Refugee Protection Division correctly concludes that a claimant is or is not excluded under Article 1E of the *United Nations Convention Relating to the Status of Refugees*, can the Appeal Division reassess the applicability of the exclusion on the basis of facts that arise after the hearing before the Refugee Protection Division? **Answer**: Unless the Appeal Division concludes that the decision of the Refugee Protection Division was made in error, the Appeal Division may not reconsider the issue of exclusion pursuant to Article 1E *de novo*.	Appeal dismissed. See answers below questions. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-547-15 Roussel J. January 15, 2016 2016 FC 49 Back to Other		Is an application for judicial review of a decision of the Refugee Protection Division moot where the individual who is the subject of the decision has involuntarily returned to his or her country of nationality, and, if yes, should the Court normally refuse to exercise its discretion to hear it?	No appeal filed.
IMM-1544-15 Strickland J. January 18, 2016		If an application for permanent residence is incomplete as it fails to meet the requirements prescribed by s 10 of the *Immigration and Refugee Protection Regulations* ("IRPA Regulations") and the application and all supporting documents are returned to the applicant pursuant to s 12 of the IRPA Regulations, does the application still "exist" such	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
2016 FC 51 Back to IRPR s. 10		that it preserves or "locks in" the applicant's position in time so that a subsequently submitted complete application must be assessed according to the regulatory scheme that was in effect when the first, incomplete application was submitted?	
IMM-968-15 Justice Annis January 19, 2016 2015 FC 1415 Back to IRPA s.107 Back to IRPA s.107.1	A-35-16 Stratas J.A. Webb J.A. Woods J.A. November 24, 2016 2016 FCA 300	*The certified question was reformulated by the FCA:* Considering the authority of the Refugee Protection Division under subsection 107(2) and section 107.1 of the *Immigration and Refugee Protection Act* to determine that a claim has no credible basis or is manifestly unfounded, is the Refugee Protection Division precluded from making such a determination after it has found that the claimant is excluded under section F of Article 1 of the Refugee Convention?	Appeal dismissed. **Answer**: Yes.
IMM-2919-15 Justice Diner February 8, 2016 2016 FC 152 Back to IRPA s. 98	A-79-16 Stratas J.A. Webb J.A. Woods J.A. November 21, 2016 2016 FCA 292	Does Article 1E of the Refugee Convention, as incorporated into IRPA, apply if a claimant's third country residency status (including the right to return) is subject to revocation at the discretion of that country's authorities?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified).
IMM-7935-14 Justice Gagné March 3, 2016 2016 FC 277 Back to Other	A-104-16 Scott J.A. Boivin J.A. De Montigny J.A. March 10, 2017 2017 FCA 48	*The certified question was reformulated by the FCA:* In the absence of a specific verdict, what impact do the Federal Court's directions have on an administrative decision-maker assigned to re-determine the case? **Answer**: The administrative decision-maker to whom the case is returned must always comply with the reasons and findings of the judgment allowing the judicial review, as well as with the directions and instructions explicitly stated by the Federal Court in its judgment.	Appeal allowed. See answer below question.
IMM-63-16/IMMA-502-16 Justice Harrington March 17, 2016 2016 FC 289 / 2016 FC		Does the Federal Court have jurisdiction to usurp the jurisdiction of the Immigration Division of the Immigration and Refugee Board of Canada to order the release of the detainee pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, by ordering that the detainee shall remain in detention until further Court order?	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
324 Back to Other			
IMM-2995-15 Justice Gagné April 18, 2016 2016 FC 425 Back to IRPA s. 37		For the purposes of paragraph 37(1)(*a*) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, what is the general definition of "member", and what test must one apply to determine whether a person is or was a "member" of an "organization" described in that paragraph?	No appeal filed.
IMM-1104-15 Justice Heneghan April 29, 2016 2016 FC 481 Back to IRPR s. 10	A-153-16 Pelletier J.A. Near J.A. Rennie J.A. February 10, 2017 2017 FCA 29	*The certified question was reformulated by the FCA:* If an application for permanent residence is incomplete as it fails to meet the requirements prescribed by s 10 of the *Immigration and Refugee Protection Regulations* ("IRPA Regulations") and the application and all supporting documents are returned to the applicant pursuant to s 12 of the IRPA Regulations, does the application still "exist" such that it preserves or "locks in" the applicant's position in time so that a subsequently submitted complete application must be assessed according to the scheme that was in effect when the first, incomplete application was submitted?	Appeal dismissed. **Answer**: No. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-4974-15 Justice Hughes July 26, 2016 2016 FC 740 and 2016 FC 875 Back to IRPA s. 110	A-291-16 Dawson J.A. Webb J.A. Near J.A. April 25, 2017 2017 FCA 84	Does the Federal Court have jurisdiction under paragraph 18.1(3)(b) of the Federal Courts Act to issue a direction requiring the Refugee Protection Division to remove from its decision a finding that there is no credible basis for a claim, thereby granting a right of appeal to the Refugee Appeal Division, which would otherwise be precluded by paragraph 110(2)(c) of the Immigration and Refugee Protection Act?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified).
T-232-16 Justice Russell August 3, 2016 2016 FC 896 Back to CA s.13.1 Back to IRPA s. 108	A-283-16 Near J.A. Boivin J.A. Rennie J.A. 2017 FCA 44	Can the Minister suspend the processing of an application for citizenship pursuant to his authority under s. 13.1 of the *Citizenship Act*, to await the results of cessation proceedings in respect of the applicant under s 108(2) of the *Immigration and Refugee Protection Act*?	Appeal allowed. **Answer:** Yes. Application for leave to appeal to Supreme Court of Canada dismissed.

Trial	*Appeal*	*Question*	*Answer*
IMM-1431-16 Justice Gagné November 23, 2016 2016 FC 1295 Back to IRPA s. 37	A-466-16 Pelletier J.A. Gauthier J.A. De Montigny J.A. August 1, 2018 2018 FCA 145	For the purposes of the application of paragraph 37(1)(a) of the Immigration and Refugee Protection Act, does the phrase "or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence" require that there also be evidence demonstrating that the actions in question constitute a criminal offence in the country where they were committed?	Appeal dismissed for lack of jurisdiction (FCA concluded that CQ not properly certified). Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-5590-15 Justice Southcott March 20, 2017 2017 FC 292 Back to IRPA s. 101	A-114-17	As a matter of statutory interpretation, does ineligibility under s.101(1)(d) of IRPA include those who are making a refugee claim against the country that has recognized them as refugees?	Appeal discontinued.
IMM-3178-16 Justice Russell April 26, 2017 2017 FC 409 Back to IRPR s. 133 Back to IRPR s. 134	A-169-17 Pelletier J.A. Gauthier J.A. De Montigny J.A. October 10, 2018 2018 FCA 181	a) Given that s. 133(1)(j) and s. 134 of the *Immigration and Refugee Protection Regulations (IRPR)* were amended and came into force on January 2, 2014, should the Immigration Appeal Division (IAD) have retroactively applied the amended version of these regulations to a case where the applicant's Notice of Appeal to the IAD was filed before the amended version of the regulations came into force? b) Does paragraph 133(1)(j) of the *Immigration and Refugee Protection Regulations* violate section 15 of the *Canadian Charter Rights and Freedoms* (the "*Charter*")? d) Does paragraph 133(1)(j) of the *Immigration and Refugee Protection Regulations* violate section 7 of the *Charter*?	Appeal dismissed. See Reasons. Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-1516-16 May 26, 2017 Justice Southcott 2017 FC 522 Back to IRPA	A-191-17 Stratas, J.A. Rennie, J.A. Woods, J.A. February 21, 2019	*The certified questions were reformulated by the FCA:* a. Do ss. 112(3)(a) and (c) of the IRPA require the Minister, when conducting a PRRA, to confirm that there remains a substantive basis for excluding the applicant from refugee protection? b. Must the Minister exercise discretion under s. 25.2 of the IRPA to exempt the Applicants from the application of s. 112(3), such that failure to consider their request for an exemption vitiates the PRRA decision?	Appeal dismissed. **Answer:** No (to all three questions).

Trial	*Appeal*	*Question*	*Answer*
s. 25.2 Back to IRPA s. 112 Back to IRPA s. 113 Back to IRPA s. 114	2019 FCA 34	c. If not, does the combined effect of ss. 112(3)(a) and (c), 113(d) and 114 of the IRPA violate s. 7 of the *Charter* insofar as it deprives an applicant of the right to be recognized as a refugee without confirmation that there remains a substantive basis for excluding the applicant from refugee protection?	Application for leave to appeal to Supreme Court of Canada dismissed.
IMM-475-17 July 24, 2017 Justice Fothergill 2017 FC 716 Back to IRPR s. 117	A-237-17 Pelletier J.A. Gauthier J.A. De Montigny J.A. 2018 FCA 143	*The certified question was reformulated by the FCA:* In order to determine if an applicant is a member of the family class pursuant to paragraph 117(1)(*h*) of the Regulations, does the Minister have to consider the likelihood of success of a hypothetical application for permanent residence that could be made by a relative listed in that provision in light of an alleged health condition that could render that person inadmissible? **Answer**: The answer mandated by the standard of review, as set out in *Kanthasamy*, is: on the reasonable interpretation of paragraph 117(1)(h) made by the IAD, the answer is no.	Appeal dismissed. See answer below question.
IMM-364-15 July 25, 2017 Justice Fothergill 2017 FC 710 Back to IRPA s. 57 Back to IRPA s. 58 Back to IRPR Part 14	A-272-17	Does the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 impose a requirement that detention for immigration purposes not exceed a prescribed period of time, after which it is presumptively unconstitutional, or a maximum period, after which release is mandatory?	Discontinued.
IMM-3411-16 October 12, 2017 Justice Kane 2017 FC 905 Back to IRPA Part I, Div.IV Back to Other	A-316-17 Stratus J.A. Near J.A. De Montigny J.A. October 18, 2019 2019 FCA 262	1. Is section 7 engaged at the stage of determining whether a permanent resident is inadmissible to Canada and if so, would section 7 be engaged where the deprivation of the right to liberty and security of the person of a permanent resident arises from their uprooting from Canada, and not from possible persecution or torture in the country of nationality? **Answer:** An inadmissibility determination does not engage section 7 of the Charter, and even if it does, the deportation of the appellant in the specific circumstances of this case would not infringe his section 7 right to liberty or security or be inconsistent with the principles of fundamental justice. 2. Does the principle of *stare decisis* preclude this Court from reconsidering the findings of the Supreme Court of Canada in *Chiarelli*, which established that the deportation of a permanent resident who has been convicted of serious criminal offence, despite that the circumstances of the permanent resident and the offence committed may vary, is in	Appeal dismissed. See answers below questions.

Trial	*Appeal*	*Question*	*Answer*
		accordance with the principles of fundamental justice. In other words, have the criteria to depart from binding jurisprudence been met in the present case? **Answer:** The criteria to depart from binding jurisprudence have not been met in the present case, and, therefore, this Court is bound to conclude that paragraphs 36(1)(*a*) and 37(1)(*a*) of the IRPA are consistent with section 7 of the Charter.	
IMM-5366-16 October 31, 2017 Justice Zinn 2017 FC 962 Back to IRPR s. 25.1	No appeal filed.	When is an inland refugee claim "made" for the purposes of subsection 25.1(9) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227?	
IMM-1273-17 Justice Manson in on November 1, 2017 2017 FC 981 Back to IRPA s. 25	A-345-17	Does the term "foreign national" in subsection 25(1.2)(b) of the IRPA pertain only to the section 25(1) request of a principal applicant, or does it also preclude the Minister from examining section 25(1) requests from all foreign nationals in Canada included in the application for permanent resident status, who have a claim for refugee protection pending before the RPD or the RAD?	Appeal dismissed for mootness.
IMM-4872-16 Justice Russell December 14, 2017 2017 FC 1151 Back to IRPA s. 40	A-32-18	Can a permanent resident be inadmissible for misrepresentation under s 40(1)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 where that permanent resident is the sponsor of another person or other persons and the misrepresentation is made in the sponsorship of another person or other persons?	Appeal dismissed for mootness.
IMM-3648-17 Justice Barnes Feb 1, 2018 2018 FC 110	A-78-18 Gauthier J.A. Boivin J.A Gleason J.A May 27, 2019	Does the IAD have the authority on an appeal from a family sponsorship refusal brought under subsection 63(1) of the IRPA to consider and set aside an earlier refusal of an ARC to the sponsored family member?	Appeal dismissed. **Answer**: No.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 63	2019 FCA 163		
IMM-3817-17 Justice Mosley March 16, 2018 2018 FC 306 Back to IRPA s. 40	A-96-18 Dawson J.A. Woods J.A. Rivoalen J.A. June 7, 2019 2019 FCA 169	Under s. 40 (1) (a) of the Immigration and Refugee Protection Act, which reads: 'A permanent resident or a foreign national is inadmissible for misrepresentation (a) or directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this act'… is a permanent resident inadmissible for indirectly representing a material fact if they are landed as a dependent of a principal applicant who misrepresented material facts on his application for landing.	Appeal dismissed. Question not answered (see paragraphs 61-68 and 85).
IMM-3193-15, IMM-248-16, IMM-932-16, IMM-1354-16 and IMM-1604-16 J. Heneghan May 4, 2018 2018 FC 481 Back to IRPA s. 110	A-153-18	Does paragraph 110(2)(d) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 infringe section 7 of the *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11*, and, if so, is this infringement justified by section 1?	Appeal dismissed. **Answer:** No. Section 7 is not engaged.
IMM-4079-17 J. Strickland May 9, 2018 2018 FC 496 Back to IRPR Part 13 Div. 4	No appeal filed.	What is the content of the duty of procedural fairness owed by officers of Canada Border Services Agency when making decisions, pursuant to s 238(2)(a), (b) or (c), of the *Immigration and Refugee Protection Regulations*, refusing to approve an applicant's choice of country of destination when voluntarily complying with a removal order?	
T-1615-17 J. Roussel May 30, 2018 2018 FC 562 Back to CA s.13.1	A-191-18 Nadon J.A. Pelletier J.A. De Montigny J.A. April 4, 2019 2019 FCA 71	Does section 13.1 of the *Citizenship Act*, RSC 1985, c C-29 allow the Minister to suspend an application for citizenship made before August 1, 2014, and which has not been disposed of before that date?	Appeal dismissed. **Answer**: Yes.

Trial	*Appeal*	*Question*	*Answer*
IMM-4585-16 / IMM-1531-17 J. Diner Aug. 16, 2018 2018 FC 839 Back to Other	A-263-18 Stratas J.A. Rennie J.A. Laskin J.A. Feburary 22, 2019 Unreported	1. Where it is argued that an interlocutory decision made in an ongoing proceeding before the IAD gives rise to abuse of process, but that interlocutory decision is not itself the subject of the application for judicial review, does the Federal Court have the jurisdiction to: (a) examine the interlocutory decision to determine whether it gives rise to an abuse of process; and (b) if an abuse of process is found, set aside all interlocutory decisions rendered in the IAD's proceeding and order that it be redetermined? 2. Is it an abuse of process for the IAD to make a determination of inadmissibility without first determining whether any of the evidence before it was obtained by torture, when the ID has found that evidence was obtained by torture and the point is disputed by the parties?	Appeal quashed for mootness.
IMM-5367-16 Justice Elliott October 30, 2018 2018 FC 1091 Back to IRPR s. 117 Back to IRPR s. 133	A-384-18 Webb J.A. Near J.A. Locke J.A. January 13, 2020 2019 FCA 314	1. In determining an application for permanent residence under section 117(1)(h) of the *Immigration and Refugee Protection Regulations* SOR/2002-227, (*IRPR*) is consideration of the financial eligibility criteria in section 133(1)(j)(i)(B) of the *IRPR* required by subparagraph 117(1)(h) of the *IRPR*? 2. If so, does the existence of a right of appeal to the Immigration Appeal Division require a sponsor to appeal the denial of an application to sponsor such a relative because of the financial ineligibility of the sponsor in order to establish that there are no relatives whom the sponsor may otherwise sponsor?	Appeal dismissed. **Answers:** 1. No 2. Since the answer to the first question is no, this question is not answered.
IMM-2645-17 Justice Diner November 14, 2018 2018 FC 1145 Back to IRPA s. 163 Back to Other		1. Was it reasonable for the RAD to conclude that, under IRPA, some of the RPD's findings are reviewable by it on a deferential (i.e. non-correctness) standard? 2. Was it reasonable for the RAD to conclude that the deferential standard applies where the RPD had a meaningful advantage in making the finding under review, and, if so, did the RAD articulate a reasonable framework for identifying such an advantage? 3. Was it reasonable for the RAD to adopt a deferential standard of RAD reasonableness, under which the RPD's findings will be deferred to where the RAD can understand how they were reached, and where they were based on evidence in the record?	No appeal filed.
IMM-1975-18 Justice Manson December 4, 2018 2018 FC 1215		In determining whether an individual is a prescribed senior official within the meaning of paragraph 35(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 on the basis that the individual may be a senior member of the public service as enumerated in subsection 16(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, when significant evidence is put forward that the individual was unable to exert significant influence or benefit from their position, can an officer conclude that an individual is a senior member of the public service solely on the basis that	No appeal filed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 35 Back to IRPR s. 16		the individual is within the top half of the government hierarchy, or is the officer required to conduct a broader analysis and consider such evidence?	
IMM-3855-15, IMM-3838-15, IMM-591-16, IMM-3515-16, IMM-1552-17 Justice Boswell March 20, 2019 2019 FC 335 Back to IRPA s. 112		1. Is paragraph 112(2) (b.1) of the *Immigration and Refugee Protection Act* inconsistent with subsection 15(1) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], insofar as this paragraph pertains to nationals of countries designated under section 109.1(1) of the *Immigration and Refugee Protection Act*? 2. If so, is paragraph 112(2) (b.1) a reasonable limit prescribed by law that can be demonstrably justified under section 1 of the *Charter*?	No appeal filed.
IMM-3411-18 Associate Chief Justice Gagné May 7, 2019 2019 FC 594 Back to IRPA s. 44		Do the Immigration Division and the Immigration Appeal Division of the Immigration and Refugee Board have the jurisdiction to grant a permanent stay of proceedings based on an abuse of process on the basis of a delay which is alleged to have occurred following the signing of the s. 44(1) report and/or s. 44(2) referral?	No appeal filed.
IMM-5130-17 Justice Annis May 16, 2019 2019 FC 706 Back to IRPA s. 170(h) Back to Other	A-213-19	1. When the Federal Court of Appeal held in *Jean Pierre* that "the same considerations apply to the review of an administrative tribunal's role as a finder of fact and a maker of inferences of fact as those discussed in the Supreme Court decision of *Housen*", does this preclude the Court from carrying out a reasonability analysis in the assessment of the evidence supporting a factual finding, in particular including a reasonability analysis of the inference drawing step that results in the finding of an inference of a fact, such that if the primary evidence is proved, it will be "hard-pressed" to intervene unless the error is plain to see, wholly unreasonable, or one made in the clearest of cases? 2. Is the statement in *Valtchev* that the Board's implausibility findings of credibility can only be made in the clearest of cases a correct statement of law? 3. Does the presumption of truthfulness of sworn statements in *Maldonado* only apply to the credibility of the truth of the claimant's sworn statement, and not to the trustworthiness of the statement under paragraph 170(h) of the IRPA, and if so, is the refugee claimant required to make genuine efforts to substantiate the statement, including pursuant to	Discontinued.

Trial	*Appeal*	*Question*	*Answer*
		Rule 11, as a condition to obtaining "the benefit of the doubt" that the statement is trustworthy in accordance with the UNCHR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*?	
IMM-4245-18 Justice Bell May 24, 2019 2019 FC 736 Back to IRPA s. 67 Back to IRPA s. 68	A-235-19 July 28, 2020 2020 FCA 126	1. Can the IAD consider the facts underlying criminal allegations for which the inadmissible individual was not convicted when exercising its discretion under paragraph 67(1) (c) and subsection 68 (1) of the IRPA? 2. Can the IAD consider facts that demonstrate that the appellant is a member of a criminal organization in application of paragraph 37 (1) (a) of the IRPA when exercising its discretion pursuant to paragraph 67 (1) (c) and subsection 68 (1) of the IRPA, if the only report and reference under section 44 of the IRPA is based only on serious criminality pursuant to paragraph 36 (1) (a) of the IRPA?	Appeal allowed. 1. Yes. 2. The second question was improperly certified because it did not arise on the facts of the case.
IMM-3347-18 Justice Annis June 12, 2019 2019 FC 806 Back to IRPA Part I, Div.IV Back to Other	Note: same questions currently before the FCA in A-316-17.	1. Is section 7 engaged at the stage of determining whether a permanent resident is inadmissible to Canada and if so, would section 7 be engaged where the deprivation of the right to liberty and security of the person of a permanent resident arises from their uprooting From Canada, and not from possible persecution or torture in the country of nationality? 2. Does the principle of *stare decisis* preclude this Court from reconsidering the findings of the Supreme Court of Canada in *Chiarelli*, which established that the deportation of a permanent resident who has been convicted of serious criminal offence, despite that the circumstances of the permanent resident and the offence committed may vary, is in accordance with the principles of fundamental justice. In other words, have the criteria to depart from binding jurisprudence been met in the present case?	
IMM-1061-18, IMM-2023-18, IMM-3358-18, IMM-3629-18 Justice Barnes June 26, 2019 2019 FC 862 Back to IRPA s. 44	A-279-19 Justice Stratas Justice Laskin Justice Mactavish April 21, 2021 2021 FCA 81	What is the scope of discretion afforded by s 44 of the IRPA to refer the case of a permanent resident to the Immigration Division for an admissibility hearing on the ground of misrepresentation under s 40 and was that discretion properly exercised in these cases?	Appeal dismissed, question not answered.
IMM-3242-18 Justice Heneghan	A-285-19 Justice Gauthier	Where a foreign national has previously been determined to be inadmissible pursuant to s.34, 35, or 37 of the Immigration and Refugee Protection Act, S.C 2001, c.27 (the "Act"), and there has been a subsequent change to the	Yes. Appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
July 11, 2019 2019 FC 919 Back to IRPA s. 25	Justice de Montigny Justice Locke November 23, 2020 2020 FCA 202	interpretation of the ground of inadmissibility, is the foreign national barred from making an application under s.25(1) of the Act?	
IMM-3433-17, IMM-3373-18 Chief Justice Crampton September 4, 2019 2019 FC 1126 Back to IRPA s. 159	A-382-19 November 13, 2020 2020 FCA 196	1. Does the Chairperson of the Immigration and Refugee Board have the authority pursuant to paragraph 159(1)(h) of the *Immigration and Refugee Protection Act* to issue jurisprudential guides that include factual determinations? 2. Do the Jurisprudential Guides that the Chairperson issued with respect to Nigeria, Pakistan, India, and China unlawfully fetter the discretion of members of the Refugee Protection Division and the Refugee Appeal Division to make their own factual findings, or improperly encroach upon their adjudicative independence?	Cross-appeal granted; appeal dismissed. 1. Yes 2. No
IMM-729-19 Justice Manson September 11, 2019 2019 FC 1152 Back to IRPA s. 37	A-392-19 August 5, 2021 2021 FCA 163	In determining whether an individual is inadmissible under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, are the Immigration Division and Immigration Appeal Division of the Immigration and Refugee Board entitled to consider the defence of duress?	Yes. Appeal dismissed.
IMM-1645-19 Justice Grammond October 2, 2019 2019 FC 1251 Back to IRPA s. 34	A-415-19 A-37-20 July 29, 2021 2021 FCA 156	Is it reasonable to interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in a manner that does not require proof of conduct that has a nexus with "national security" or "the security of Canada?"	Yes. Appeal dismissed.
IMM-4426-18, IMM-4427-18 Justice Barnes October 21, 2019 2019 FC 1314	A-20-20	To what extent does a Minister's Delegate acting pursuant to s 44(2) of the IRPA have an obligation to consider personal mitigating circumstances including Charter values before referring the case of a permanent resident to the Immigration Division on the ground of serious criminality and was the discretion reasonably exercised in this case?	Appeal discontinued January 11, 2021.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 44			
IMM-1915-19 Justice Heneghan October 21, 2019 2019 FC 1318 Back to IRPA s. 44	A-414-19 Note: same question currently before the FCA in A-279-19. April 21, 2021 2021 FCA 81.	What is the scope of discretion afforded by s 44 of the IRPA to refer the case of a permanent resident to the Immigration Division for an admissibility hearing on the ground of misrepresentation under s 40 and was that discretion properly exercised in these cases?	Application found to be premature. Question not answered. Appeal dismissed.
T-1981-18 Justice Noël December 2, 2019 2019 FC 1543 Back to CA s. 5 Back to SCCA s. 31	A-483-19 September 28, 2021 2021 CAF 192 [French]	Is a citizenship application, made pursuant to paragraph 5(1) of the version of the *Citizenship Act*, RSC, 1985, c C-29 in effect prior to the enactment of *An Act to amend the Citizenship Act and to make consequential amendments to other Acts*, SC 2014, c 22, considered to be "*finally disposed of*" as per the terms of paragraph 31(1) of the *SCCA* following a positive decision by a Citizenship judge as well as a positive attribution by a person authorized by the minister?	No. Appeal dismissed.
IMM-1508-18 Justice Barnes December 9, 2019 2019 FC 1569 Back to IRPA s. 25	A-7-20 February 27, 2022 2022 FCA 21	Does subsection 25(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, which bars access to a process for the review of humanitarian and compassionate factors for persons inadmissible under ss. 34, 35 and 37, violate section 2(e) of the *Canadian Bill of Rights*, S.C. 1960, c. 44?	No. Appeal dismissed.
IMM-4199-19 Justice Barnes January 16, 2020 2020 FC 59 Back to IRPA s. 34	A-37-20 A-415-19 July 29, 2021 2021 FCA 156 Note: leave to appeal to SCC granted March 3,	Is it reasonable to interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in a manner that does not require proof of conduct that has a nexus with "national security" or "the security of Canada"?	Yes. Appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
	2022, File No. 39855.		
IMM-6388-18 Justice O'Reilly January 17, 2020 2020 FC 63 Back to IRPA s. 101	A-159-20 February 23, 2022 2022 FCA 33	Are persons ineligible for refugee protection under s 101(1)(*d*) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 if they have obtained refugee status in another country, even if they have a well-founded fear of persecution in that country?	Appeal found to be moot and dismissed on that basis. Question not answered.
IMM-977-19 Justice Pamel January 22, 2020 2020 FC 97 Back to IRPA s. 98	Note: similar question currently before the FCA in A-112-20.	If the decision-maker has already concluded that the refugee claimant has status substantially similar to that of nationals in the claimant's country of residence (an affirmative answer to the first question of the test set out in *Zeng*), must the decision-maker consider the fear or risk raised by the claimant in his or her country of residence before excluding the claimant through the combined operation of Article 1E of the *United Nations Convention Relating to the Status of Refugees* and section 98 of the *Immigration and Refugee Protection Act*?	No appeal filed.
IMM-2155-19 Justice Fuhrer February 6, 2020 2020 FC 213 Back to IRPA s. 95 Back to IRPA s. 108	A-79-20 March 29, 2022 2022 FCA 50	1. Where a person is recognized as a Convention refugee or a person in need of protection by reason of being listed as a dependent on an inland refugee claim heard before the Refugee Protection Division [RPD], but where the RPD's decision to confer protection does not confirm that an individual or personalized risk assessment of the dependent was performed, is that person a Convention refugee as contemplated in paragraph 95(1)(a) of the IRPA and therefore subject to cessation of refugee status pursuant to subsection 108(2) of the IRPA? 2. If yes to Question 1, can evidence of the refugee's lack of subjective [let alone any] knowledge that use of a passport confers diplomatic protection be relied on to rebut the presumption that a refugee who acquires and travels on a passport issued by their country of origin to travel to a third country has intended to avail themselves of that state's protection? 3. If yes to Question 1, can evidence that a refugee took measures to protect themselves against their agent of persecution [or that of their family member who is the principal refugee applicant] be relied on to rebut the presumption that a refugee who acquires [or renews] a passport issued by their country of origin and uses it to return to their country of origin has intended to avail themselves of that state's protection?	1. This question no longer needs to be answered. 2. Yes. 3. Yes.
IMM-2379-19 Justice St-Louis	A-112-20	If the decision maker concludes that the claimant, a citizen of one country, has residence status in another country and that this status confers rights similar to those of citizens of that country (an affirmative answer to the first part of the	Motion for judgment on consent and appeal granted.

Trial	*Appeal*	*Question*	*Answer*
April 7, 2020 2020 FC 493 Back to IRPA s. 98		*Zeng* test), should the decision maker take into account the fear or risk raised by the refugee protection claimant in respect of their country of residence before excluding the claimant by the combined effect of Article 1E of the *United Nations Convention Relating to the Status of Refugees* and section 98 of the *Immigration and Refugee Protection Act*?	
IMM-2973-19 Justice Bell April 16, 2020 2020 FC 525 Back to IRPA s. 98	A-114-20 June 30, 2021 2021 CAF 131 [French]	For the purposes of the application of *Majebi v Canada (Citizenship and Immigration)*, 2016 FCA 274, must the RAD first determine whether there is—and, if so, consider the probative value of—evidence that a person is not recognized by the competent authorities of the country in which this person has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country that arose after the date of the RPD hearing, pursuant to which the RPD had concluded that the individual in question was excluded from refugee protection by operation of Article 1E of the *Convention* and section 98 of the IRPA because of that "resident status" ?	Appeal found to be moot and dismissed on this basis. Question not answered.
IMM-3566-19 Justice Norris May 20, 2020 2020 FC 631 Back to IRPA s. 34	A-148-20	Is a person inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act* for being a member of an organization with respect to which there are reasonable grounds to believe it has engaged in, engages in, or will engage in acts of espionage that are "contrary to Canada's interests" within the meaning of paragraph 34(1)(a) of the Act if the organization's espionage activities take place outside Canada and target foreign nationals in a manner that is contrary to the values that underlie the *Canadian Charter of Rights and Freedoms* and the democratic character of Canada, including the fundamental freedoms guaranteed by section 2(b) of the *Charter*?	
IMM-4154-19 Justice Russell June 15, 2020 2020 FC 689 Back to IRPA s. 109	A-216-20 February 1, 2022 2022 FCA 18	Before vacating a decision granting refugee protection under s 109(1) of the *IRPA*, is the Respondent required to demonstrate, and is the RPD required to find, a misrepresentation or withholding of a material fact that would have led to a different conclusion by the original RPD panel, or is it sufficient for the RPD to find a misrepresentation or withholding of a material fact that could have led to a possible line of inquiry that may, or may not, have resulted in a denial of refugee protection by the original RPD panel?	Yes. Appeal granted.
IMM-2977-17 Justice McDonald July 22, 2020 2020 FC 770 Back to IRPR s. 159.3	A-204-72 April 15, 2021 2021 FCA 72 Note: leave to appeal to SCC granted December 16, 2021, File No.	1. Is the designation of the United States of America as a "safe third country" under paragraph 159.3 of the *Immigration and Refugee Protection Regulations ultra vires* [of] the *Immigration and Refugee Protection Act*? 2. Does the combined effect of section 101(1)(e) of the *Immigration and Refugee Protection Act* and paragraph 159.3 of the *Immigration and Refugee Protection Regulations* result in violation(s) of sections 15(1) and/or 7 of the *Charter of Rights and Freedoms*, and if so is/are such violation(s) justified under section 1 of the *Charter*?	1. No 2. No. Appeal allowed, cross-appeal dismissed.

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 101	39749.		
IMM-3490-19 Justice O'Reilly August 18, 2020 2020 FC 833 Back to IRPA s. 34	A-222-20	Is a person inadmissible to Canada pursuant to paragraph 34(1)(f) of the *Immigration and Refugee Protection Act* for being a member of an organization with respect to which there are reasonable grounds to believe it has engaged in, engages in, or will engage in acts of espionage that are "contrary to Canada's interests" within the meaning of s 34(1)(a) of the Act if the organization's espionage activities take place outside Canada and target foreign nationals in a manner that is contrary to the values that underlie the *Canadian Charter of Rights and Freedoms* and the democratic character of Canada, including the fundamental freedoms guaranteed by section 2(b) of the *Charter*?	
IMM-6722-19 Justice Annis September 24, 2020 2020 FC 927 Back to IRPA s. 67 Back to IRPA s. 68 Back to IRPA s. 25	Appeal not filed.	i. Is the decision of the Supreme Court *in Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 distinguishable on the basis that the Court did not conduct an interpretation in accordance with *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 with the intention of comprehensively and exhaustively interpreting sections 67(1)(c) and 68(1) of the *IRPA*? ii. Can appellants succeed under either section 67(1)(c) or 68(1) if unable to first establish a positive H&C claim on the same basis as a claim made pursuant to section 25(1) the *IRPA*? iii. Can appellants, inadmissible for serious criminality, succeed on an appeal pursuant to section 67(1)(c) of the *IRPA*, if unable to prove, at the time the appeal is disposed of, as a likelihood that they will not reoffend, and further in light of a positive assessment of all the other relevant equitable and public safety and security factors? iv. Can appellants, inadmissible for serious criminality, succeed on a request to stay their removal pursuant to section 68(1) of the *IRPA*, if unable to prove as a likelihood that they will not reoffend after completion of the stay of removal, and further in light of a positive assessment of all the other relevant equitable and public safety and security factors?	
IMM-7880-19 Justice Annis, April 7, 2021 2021 FC 300 Back to IPRA s. 72	A-133-21	a. Does the phrase "any right of appeal" in s. 72(2)(a) of the IRPA encompass an application to reopen an appeal for failure to observe a principle of natural justice pursuant to rule 49(1) of the Refugee Appeal Division Rules, such that applicants are barred from seeking judicial review on that basis where they have not first exhausted their right to request a reopening? b. Should applicants who have been refused a reopening of their RAD appeal under rule 49(1) be exempt from having to seek judicial review of the reopening decision in a separate application on the basis that a waiver of the collateral attack rule is warranted by underlying policy considerations? c. With respect to the prejudice component of the test for incompetence of counsel is the applicable threshold for the effect of a counsel's incompetence on the outcome of the impugned decision a reasonable probability or a serious possibility?	Appeal found to be moot and dismissed on this basis. Question not answered.

Trial	*Appeal*	*Question*	*Answer*
IMM-6270-19 Justice Roussel April 21, 2021 2021 FC 348 Back to IRPA s. 63 Back to IRPA s. 44	Appeal not filed.	For the purposes of determining its jurisdiction to hear an appeal pursuant to subsection 63(2) of the IRPA, shall the validity of the permanent resident visa be assessed by the IAD at the time of arrival in Canada, at the time the report under subsection 44(1) is made, at the time it is referred to the ID, as the case may be, or at the time the exclusion order is issued?	
IMM-2106-20 Justice Simpson May 25, 2021 2021 FC 475 Back to Other	Appeal not filed.	Does the decision of the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v R. K.*, 2016 FCA 272 mean that there is no discretion on Judicial Review to consider an issue not raised on appeal to the Refugee Appeal Division?	
IMM-6785-19 Justice Brown June 29, 2021 2021 FC 683 Back to IRPA s. 37	A-207-21 Justice Pelletier Justice de Montigny Justice Gleason June 29, 2023 2023 FCA 151	May a Minister's Delegate under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] 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 of the Immigration and Refugee Board of Canada, in relation to which IRPA bars consideration of H&C and may bar BIOC factors?	Appeal dismissed.
IMM-5379-20 and IMM-5380-20 Justice Manson August 20, 2021 2021 FC 831 Back to IRPA s. 44	A-262-21 Justice Stratas Justice Laskin Justice Mactavish June 13, 2022 2022 FCA 113	To what extent does a Minister's delegate acting pursuant to section 44(2) of the IRPA have an obligation to consider Canada's obligations under the *Refugee Convention*, including the reliability of the evidence it is relying upon, whether the allegations are tied to state persecutory efforts, and/or whether the allegations would ultimately give rise to invoking an exception to non-refoulement principle in deciding to refer the case of a refugee claimant to the Immigration Division on the grounds of organized criminality?	Question does not meet the test for certification, appeal dismissed.
IMM-7283-19 Justice Roussel	Appeal not filed.	Does paragraph 110(2)(d) of the Immigration and Refugee Protection Act, SC 2001, c 27 infringe subsection 15(1) of the Charter in a manner that cannot be justified by section 1 of the Charter?	

Trial	*Appeal*	*Question*	*Answer*
August 27, 2021 2021 FC 892 Back to IRPA s. 110			
IMM-7772-19 Justice McHaffie October 15, 2021 2021 FC 1071 Back to IRPA s. 40 Back to IRPA s. 25	A-315-21 Justice Boivin Justice de Montigny Justice Locke October 20, 2022 2022 CAF 179	Can a foreign national inadmissible for misrepresentation pursuant to subsection 40(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) apply, during the period set out in paragraph 40(2)(*a*) of the *IRPA*, for permanent resident status on humanitarian and compassionate grounds under subsection 25(1) of the *IRPA*, despite the prohibition on applying for permanent resident status set out in paragraph 40(3) of the *IRPA*?	Motion to dismiss the appeal granted, appeal dismissed
IMM-5445-19 Justice Fuhrer December 9, 2021 2021 FC 1388 Back to RPDR s. 62	Appeal not filed.	Does the phrase “any right of appeal” in paragraph 72(2)(a) of the Immigration and Refugee Protection Act, SC 2001, c 27 include an application to reopen a claim determined by the Refugee Protection Division, where the applicant does not have a right of appeal to the Refugee Appeal Division, for failure to observe a principle of natural justice, pursuant to rule 62(1) of the Refugee Protection Division Rules, or alternatively, is the availability of an application to reopen a claim an adequate alternative remedy, such that in either case the applicant first must seek to exhaust the right to reopen the claim on natural justice grounds before the applicant can seek judicial review?	
IMM-2696-21 Justice Roussel February 21, 2022 2022 FC 222 Back to IRPA s.101	A-61-22	Does paragraph 101(1)(c.1) of the IRPA, by way of the operation of section 309 of the [Budget Implementation Act, 2019, No 1, SC 2019, c 29 [BIA]], bar the referral of refugee protection claims to the RPD when the refugee claimant has, before making a claim for refugee protection in Canada, made a claim for refugee protection in a country other than Canada, with which Canada has an agreement or arrangement for the purpose of information sharing to assist in the administration and enforcement of immigration and citizenship laws, if the prior claim outside Canada was made before the introduction of the BIA on April 8, 2019?	
IMM -5594 -20 Justice Roy July 29, 2022 2022 FC 1147 Back to IRPA s. 40	A-193-22	1) Can a foreign national inadmissible for misrepresentation pursuant to subsection 40(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA) apply, during the period set out in paragraph 40(2)(a) of the IRPA, for permanent resident status on humanitarian and compassionate grounds under subsection 25(1) of the IRPA, despite the prohibition on applying for permanent resident status set out in subsection 40(3) of the IRPA? (Question also certified in decision 2021 FC 1071) 2) Is the decision about an application sponsoring for permanent residence presented by a person inadmissible under	Appeal discontinued

Trial	*Appeal*	*Question*	*Answer*
Back to IRPA s. 25		subsection 40(1) of the Act, during the inadmissibility period set out in paragraph 40(2)(a), where there is a request to seek a remedy concerning the effect of subsection 40(3) in accordance with section 25 of the Act (in Appeal discontinued. 137 Trial Appeal Question Answer view of humanitarian and compassionate considerations), subject to a right of appeal before the Immigration Appeal Division given subsections 63(1) and 64(3), and section 65 of the Act?	
IMM-5522-21 Justice Roy March 10, 2023 2023 FC 329 Back to IRPA s. 36	A-98-23	Does paragraph 36(3)(a) of the Immigration and Refugee Protection Act violate subsection 15(1) of the Canadian Charter of Rights and Freedom, despite subsection 6(1) of the Charter, and is it therefore of no force or effect under section 52 of the Charter?	