

Partial Status Report
Immigration - Certified Questions
Updated on June 19, 2007

NOTE: This list is not necessarily exhaustive. Questions, certified in Orders, which do not appear in Reasons for Order may not appear on this list.

To facilitate the lecture of this document, decisions rendered before the coming in force of the *Immigration and Refugee Protection Act*, S.C. 2001, c.27 are no longer listed in this report.

If you are aware of any other certified question not appearing in this list, please contact us at medias-cf@cf-fct.gc.ca .

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-3020-02 Kelen J. March 7, 2003 2003 FCT 281	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 <i>Immigration and Refugee Protection Regulations</i> 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 on the grounds of 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 <i>Immigration Regulations, 2002</i> , <i>ultra vires</i> the <i>Immigration And Refugee Protection Act</i> in that the statutory provision the respondent asserts provides its <i>raison d'être</i> , i.e., s. 190; is not <i>à propos</i> because (a) s. 190 applies only to (i) matters "under the former [Immigration] Act", not the <i>Federal Court Act</i> , 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 her refusal letter on 9 April 2001?	Appeal dismissed for delay.
IMM-1603-01 O'Keefe J. March 28, 2003	A-177-03 Décary J.A. Létourneau J.A.	Is subsection 350.(3) of the Regulations, <i>supra</i> , <i>ultra vires</i> of IRPA?	Appeal dismissed for delay.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
2003 FCT 368	Noël J.A. December 11, 2003		
IMM-4060-02 Snider J. May 20, 2003 2003 FCT 634	A-249-03 Rothstein J.A. (Concurred) Evans J.A. (Reasons) Pelletier J.A. (Dissenting Reasons) March 3, 2004 2004 FCA 85	Does the word “stay” in section 196 of the IRPA contemplate a stay that came into effect under the <i>Immigration Act</i> , R.S.C. 1985, c. I-2 as a result of the operation of paragraph 49(1)(b)?	Appeal dismissed. See Reasons.
IMM-377-02 Campbell J. May 21, 2003 2003 FCT 639	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	<p>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?</p> <p>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?</p> <p>3. Can a reviewing Judge apply a Federal Court Trial Division case retroactively to a decision of an Adjudicator which pre-dated the case?</p>	<p>Appeal allowed. Questions not answered.</p> <p>Question 2 recertified by Layden-Stevenson J. October 1, 2004</p> <p>Appeal dismissed. Answer question 2: yes September 20, 2005</p>

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-4088-02 Campbell J. May 27, 2003 2003 FCT 661	A-267-03 Rothstein J.A. (Concurred) Evans J.A. (Reasons) Pelletier J.A. (Dissenting Reasons) March 3, 2004 2004 FCA 85	Does the word “stay” in s.196 of the <i>Immigration and Refugee Protection Act</i> , S.C. 2001, c.27 contemplate a stay that came into effect under the <i>Immigration Act</i> , R.S.C. 1985, c. I-2 as a result of the operation of s.49(1)(b)? <i>Note: Appeal heard together with:A-249-03 and A-374-03(Full minutes on A-249-03)</i>	Appeal allowed. See Reasons.
IMM-98-01 Layden-Stevenson J. June 13, 2003 2003 FCT 743	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?	Appel dismissed. Answer: No.
IMM-4491-02 Dawson J. July 29, 2003 2003 FC 930	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	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)? <i>Note: Appeal heard together with:A-249-03 and A-267-03</i>	Appeal allowed. See Reasons.
IMM-3873-02 Campbell J. July 8, 2003 2003 FC 847	A-359-03 Rothstein J.A. Malone J.A. Sharlow J.A. (Reasons)	Does the word “stay” in s.196 of the <i>Immigration and Refugee Protection Act</i> , S.C. 2001, c. 27 contemplate a stay that came into effect under the <i>Immigration Act</i> , R.S.C. 1985, c. I-2 as a result of the operation of s.49(1)(b)? <i>Note: In a recent decision of this Court, that question was answered in the negative: Medovarski v. Canada (Minister of</i>	Appeal allowed. Answer: No.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
	March 22, 2004 2004 FCA 120	<i>Citizenship and Immigration</i>), [2004] F.C.J. No. 366 (QL) (F.C.A.).	
IMM-923-03 Kelen J. September 4, 2003 2003 FC 1023	A-422-03 Décary J.A. Létourneau J.A. Pelletier J.A. (Reasons) June 30, 2004 2004 FCA 250	<p>1. Can a refugee claimant be excluded from protection under Article 1F(b) of the <i>Refugee Convention</i> for committing a purely economic offence?</p> <p>2. In light of <i>Suresh</i>, 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?</p> <p><i>Note: Appeal heard together with: A-249-03 and A-374-03 (Full minutes on A-249-03)</i></p>	Appeal dismissed. See Reasons.
IMM-5236-02 Noël J. September 24, 2003 2003 FC 1085		In cases where a Visa Officer believes an applicant may have committed an offense referred to in section 4 to 7 of the <i>Crimes against Humanity Act</i> and that therefore the applicant may be inadmissible to Canada pursuant to section 35(1)(a) of the <i>Immigration and Refugee Protection Act</i> or section 19(1)(j) of the former <i>Immigration Act</i> 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	A-479-03 Stone J.A. Rothstein J.A. (Reasons) Sharlow J.A. January 9, 2004 2004 FCA 4	<p>Are the detention reviews made pursuant to s. 57(2) and 58 of the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c.27, hearings <i>de novo</i> 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?</p> <p>Answer: At each detention review made pursuant to sections 57 and 58 of the <i>Immigration Refugee Protection Act</i>, 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 <i>prima facie</i> 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.</p>	Appeal dismissed. See answer below question.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
<p>IMM-5696-01 Kelen J. November 8, 2003 2002 FCT 1162</p>	<p>A-694-02 Rothstein J.A. (Reasons) Sexton J.A. Malone J.A. December 19, 2003 2003 FCA 482</p>	<p>1. Where the Minister has unsuccessfully engaged a permanent resident in removal proceedings under a particular section of the <i>Immigration Act</i> for more than eight years, is it an abuse of process for the Minister to commence a new removal proceeding against the permanent resident on a ground available to the Minister to use for eight years?</p> <p>2. Does section 27(1)(a) of the <i>Immigration Act</i> permit exposure of a permanent resident to deportation on a ground that did not barr [<i>sic</i>] the person's admission to Canada? (i.e. Can the applicant be deported on the basis of a legislative provision that did not exist at the time of his admission to Canada as a permanent resident.)</p> <p>Answers:</p> <p>1. In the circumstances of this case, even though the Minister has unsuccessfully engaged a permanent resident in inadmissibility proceedings for more than eight years, it is not an abuse of process for the Minister to commence a new proceeding against the permanent resident on a different ground, even though that ground has been available to the Minister since February 1, 1993.</p> <p>2. Under paragraph 27(1)(a) of the <i>Immigration Act</i>, a permanent resident can be found inadmissible to Canada under clause 19(1)(f)(iii)(B) on the grounds that there are reasonable grounds to believe the permanent resident is or was a member of an organization that there are reasonable grounds to believe is or was engaged in terrorism, even if the membership ceased prior to the enactment of clause 19(1)(f)(iii)(B).</p>	<p>Appeal dismissed. See answers below questions.</p>
<p>IMM-5125-02 Mackay J. December 8, 2003 2003 FC 1429</p>	<p>A-597-03 Strayer J.A. Rothstein J.A. (Reasons) Malone J.A. May 28, 2003 2004 FCA 212</p>	<p>Does the procedure pursuant to ss. 44(2), 86 and 87 of the <i>Immigration and Refugee Protection Act</i> engage section 7 of the <i>Charter of Rights and Freedoms</i> and if so, is any deprivation of liberty and security of person contrary to the principles of fundamental justice.</p>	<p>Appeal dismissed. Answer: No.</p>
<p>IMM-4502-02 O'Reilly J. December 16, 2003 2003 FC 1466</p>	<p>A-12-04</p>	<p>Does the word "stay" in section 196 of the IRPA contemplate a stay that came into effect under the <i>Immigration Act</i>, R.S.C. 1985, c. I-2 as a result of the operation of paragraph 49(1)(b)?</p>	<p>Appeal allowed.</p>

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-1304-02 Gibson J. December 17, 2003 2003 FC 1478		Is a Court entitled to give weight to entries in CAIPs notes that form part of a Tribunal Record on an application for judicial review where the entries only speak to the transmission of a correspondence on a particular date where the accuracy of such entries is not attested to by the individuals who made the entries?	No appeal filed.
IMM-5838-02 Gauthier J. December 22, 2003 2003 FC 1514	A-31-04 Rothstein J.A. (Reasons) Noël J.A. (Concurred) Malone J.A. (Concurred) January 5, 2005 2005 FCA 1	<ol style="list-style-type: none"> 1. Does section 97 of the <i>Act</i> 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)? <p>Answer:</p> <ol style="list-style-type: none"> 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.
IMM-3260-03 Pinard J. January 8, 2004 2004 FC 7	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 <i>Immigration and Refugee Protection Act</i> ?	Discontinued
IMM-2139-03 Campbell J.	A-79-04 Evans J.A. (Judgment)	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 <i>Immigration and Refugee Protection Act</i> ?	Appeal dismissed for delay.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
January 16, 2004 2004 FC 63	Sharlow J.A. Pelletier J.A. September 29, 2004		
IMM-4500-02 Gauthier J. January 26, 2004 2004 FC 121	A-93-04	Does the word “stay” in section 196 of the <i>Immigration and Refugee Protection Act</i> , S.C. 2001, c. 27, contemplate a stay that came into effect under the <i>Immigration Act</i> , R.C.S. (1985) C I-2, as a result of the operation of paragraph 49(1)(d)?	
IMM-4006-01 O’Reilly J. January 28, 2004 2004 FC 134		Are an applicant’s wealth and family support relevant factors in determining whether his or her admission to Canada would place excessive demands on social services?	No appeal filed.
IMM-819-03 Russell J. February 26, 2004 2004 FC 331	A-134-04	Must the Appeal Division always address the genuineness of the parent-child relationship under ss. 2(1) of the <i>Immigration Regulations, 1978</i> , even when the adoption in question is established as lawful in accordance with the laws of the province or country other than Canada?	Discontinued
IMM-655-03 Kelen J. February 27, 2004 2004 FC 293	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 <i>Immigration Act</i> so that person had no right of an appeal to the IAD under the former <i>Immigration Act</i> , does subsection 326(2) of the <i>Immigration and Refugee Protection Regulations</i> , 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.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
<p>IMM-1357-03 Le juge Gibson March 4, 2004 2004 FC 310</p>	<p>A-207-04 Rothstein J.A. Noël J.A. Malone J.A. March 4, 2005 2005 FCA 85</p>	<p>Having regard to section 7 of the <i>Canadian Charter of Rights and Freedoms</i> and international human rights instruments to which Canada is a signatory, including the <i>Convention on the Rights of the Child</i>, 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 <i>Immigration and Refugee Protection Act</i>?</p> <p>Answer:</p> <p>(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;</p> <p>(b) the <i>Convention on the Rights of the Child</i> does not apply when the proceedings and decision involving an individual take place when the individual is no longer a minor;</p> <p>(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</p> <p>(d) in the present case, Mr. Poshteh's age was properly considered by the Immigration Division and it was open to the Immigration Division to determine that he was a member of a terrorist organization for purposes of paragraph 34(1)(f) of the Act.</p>	<p>Appeal dismissed. See answer below question.</p>
<p>IMM-4621-02 O'Reilly J. March 9, 2004 2004 FC 349</p>	<p>A-229-04 Noël J.A. Sexton J.A. Evans J.A. April 8, 2005 2005 FCA 122</p>	<p>In order to prove membership in a criminal organization under s.37(1)(a) of the <i>Immigration and Refugee Protection Act</i>, S.C. 2001, c. 27, is evidence of involvement in the organization's activities sufficient or must there be indicia of actual membership?</p>	<p>Appeal Allowed. Question not answered.</p>
<p>IMM-3069-03</p>	<p>A-217-04</p>	<p>In a case where a claimant has suffered persecution, is the Refugee Protection Division of the Immigration and Refugee</p>	<p>Appeal</p>

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
<p>Campbell J. March 18, 2004 2004 FC 415</p>	<p>Nadon J.A. Sharlow J.A. (Reasons) Malone J.A. March 8, 2005 2005 FCA 91</p>	<p>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:</p> <p>“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”</p> <p>or is this presumption not part of Canadian law?</p> <p>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.</p>	<p>dismissed. See answer below question.</p>
<p>IMM-3194-02 Mackay J. March 19, 2004 2004 FC 179</p>	<p>A-191-04 Richard C.J. Sharlow J.A. Malone J.A. (Reasons) April 11, 2005 2005 FCA 125</p>	<p>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?</p> <p>(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?</p> <p>(c) Is the Refugee Division required to state in its decision the specifics of criminal acts committed by the claimant?</p> <p>2. Does the decision of the Supreme Court in <i>Suresh v. M.C.I.</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.</p>	<p>Appeal dismissed. Answer: 1. (a) No. (b) No. (c) No. 2. Not answered.</p>

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-1145-03 Russell J. March 25, 2004 2004 FC 446		Does a ministerial designation made under sub-section 19(1)(l) of the former <i>Immigration Act</i> continue to be valid and applicable for the purposes of sub-section 35(1)(b) of <i>IRPA</i> or is the Minister required to re-designate under <i>IRPA</i> ?	No appeal filed.
IMM-4181-03 Pinard J. April 6, 2004 2004 FC 511	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 <i>Immigration and Refugee Protection Act</i> 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-1076-03 Harrington J. April 14, 2004 2004 FC 569	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 2004 FC 872	A-363-04 Linden J.A. (reasons) Sexton J.A. Evans J.A. May 4, 2005 2005 FCA 160	Does section 97 of the <i>IRPA</i> 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.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-7369-03 Kelen J. July 7, 2004 2004 FC 964	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?	Dismissed as Moot.
IMM-491-99 IMM-488-99 Campbell J. July 27, 2004 2004 FC 1163 & 2004 FC 1039	A-419-04 A-420-04 Evans J.A. (Reasons) Décary J.A. Sharlow J.A. March 27, 2006 2006 FCA 124	Did the IRB have jurisdiction to conduct a “lead case” under the <i>Immigration Act</i> ?	Appeals allowed. Not necessary to answer the question
IMM-4964-03 Gibson J. August 13, 2004 2004 FC 1120	A-549-04 Linden J.A. Rothstein J.A. (Reasons) Noël J.A. May 27, 2005 2005 FCA 202	<p>(a) Does the issuance of a deportation order pursuant to paragraph 45(d) of the <i>Immigration and Refugee Protection Act</i>, 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 <i>Immigration and Refugee Protection Act</i> (“<i>IRPA</i>”) for such a person as a whole, engage liberty interest and section 7 of the <i>Canadian Charter of Rights and Freedoms</i> (the “Charter”)?</p> <p>(b) If the answer to the first question is yes, does the statutory scheme enacted under the <i>IRPA</i>, 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?</p> <p>Answer:</p> <p>(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</p> <p>(b)for purposes of this appeal and assuming without deciding that the appellant’s liberty interest is engaged, the scheme of the <i>IRPA</i> which may result in the removal of the appellant does not violate principles of fundamental justice.</p>	Appeal dismissed. See answers below questions.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-5086-03 Mactavish J. August 26, 2004 2004 FC 1174		Is a determination under sub-section 34(1) of the <i>Immigration and Refugee Protection Act</i> 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.
IMM-8447-03 Kelen J. September 20, 2004 2004 FC 1276	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 <i>Immigration Refugee Protection Regulations</i> 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.
IMM-377-02 Layden-Stevenson J. October 1, 2004 2004 FC 1356	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 <i>Crimes Against Humanity and War Crimes Act</i> include complicity therein?	Appeal dismissed. Answer: Yes.
IMM-150-04 Harrington, J. October 12, 2004	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

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-7941-03 Gibson J. October 27, 2004 2004 FC 1511	A-627-04	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?	
IMM-9593-03 Harrington J. October 27, 2004	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. le 25 novembre 2004		Dans le cas où la demande de revendication du statut de réfugié a été rejetée, que le revendicateur n'a pas quitté le pays dans le délai prescrit, et que l'interdiction de séjour est devenue une mesure d'expulsion: a) Quels critères doivent être pris en considération par un agent en déterminant si un revendicateur devrait être autorisé à retourner au Canada en vertu de la section 52 de la <i>Loi sur l'immigration de la protection des réfugiés</i> ? b) est-ce que l'agent doit considérer les raisons pour le départ tardif? c) est-ce que l'agent doit demander au revendicateur d'expliquer, de façon spécifique, la raison pour laquelle son départ était tardif? d) Dans quelle mesure l'historique du revendicateur au Canada est-il pertinent?	No appeal filed.
IMM-2347-03 Lemieux J. December 3, 2004	A-688-04 Décary J.A. (Reasons) Noël J.A. Pelletier J.A.	1. What is the scope of the Minister's Delegate's discretion under subsection 44(2) of the <i>Immigration and Refugee Protection Act</i> 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	Appeal allowed. See Reasons for answer.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
	March 29, 2006 2006 FCA 126	44(2) of the <i>Immigration and Refugee Protection Act</i> when making a removal order ?	
IMM-356-04 Gibson J. December 17, 2004	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. January 17, 2005 2005 FC 60	05-A-9 A-126-05 Nadon J.A. Sexton J.A. Sharlow J.A.(Reasons) October 25, 2005 2005 FCA 347	a) Does the words “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? 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)	Appeal dismissed. See answers below questions.
IMM-10482-03 Teitlebaum J. February 9, 2005	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 <i>simpliciter</i> ?	Appeal dismissed. Certified question not answered.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-9571-03 Simpson J. February 18, 2005 2005 FC 262	A-51-05	Does this case involve exceptional circumstances in which the balancing required by section 113 of the IRPA could justify deportation to torture?	
IMM-9332-03 O'Reilly J. March 7, 2005 2005 FC 326		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	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 <i>IRP Regulations</i> 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.
IMM-3402-03 Lemieux, J. March 25, 2005	A-170-05 Décary J.A. Sexton J.A. Evans J.A. (Reason) 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	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	Discontinued.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-7038-04 Snider J. March 31, 2005 2005 FC 429		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?	
IMM-1868-04 Mosley J. April 1 st , 2005 2005 FC 437	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 <i>Indochinese Designated Class Regulations</i> 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	A-208-05	1. Does the issuance of a deportation order pursuant to paragraph 45(d) of the <i>Immigration and Refugee Protection Act</i> , 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 <i>Immigration and Refugee Protection Act</i> for such a person as a whole, engage liberty interests in section 7 of the <i>Canadian Charter of Rights and Freedoms</i> ? 2. If the answer to the first question is yes, does the statutory scheme enacted under the <i>Immigration and Refugee Protection Act</i> , 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 <i>Canadian Charter of Rights and Freedoms</i> , fundamental justice?	Discontinued.
IMM-735-04 Rouleau J. April 7, 2005	A-210-05 Sexton J.A. (Reason) Linden J.A. Noël J.A. December 9, 2005	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 28 th , 2002, but the conviction occurred after the coming into force of the IRPA, and be reconciled with the whole of the Act? Answer:	Appeal dismissed. See answer below question.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
	2005 FCA 417	The appropriate interpretation of the time of breach, as regards section 197 of the <i>IRPA</i> , is the time of the offence. Section 197 is retrospective 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 <i>IRPA</i> . The wording of the section, particularly when it is read in the context of its companion transitional provisions in the <i>IRPA</i> , reveals that Parliament intended section 197 to have retrospective effects. Even of 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.	
IMM-8863-04 Mactavish J. April 12, 2005 2005 FC 479	A-169-05 Létourneau, J.A. Rothstein, J.A. (Reasons) Malone, J.A. September 28, 2005 2005 FCA 308	<p>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</p> <p>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?</p> <p>Answer:</p> <p>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.</p> <p>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</p>	Appeal allowed. See answer below question.
IMM-3111-04 Pinard, J. May 6, 2005 2005 FC 615	A-254-05 Décary, J.A. (Reason) Sexton, J.A. Evans, J.A. December 13, 2005 2005 FCA 426	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. Answer: No

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-3758-04 Snider, J. May 12, 2005 2005 FC 663	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 <i>Immigration and Refugee Act</i> ?	Appeal dismissed for delay.
IMM-9071-04 Gibson J. May 27, 2005 2005 FC 759		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		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-5154-04 Mactavish J. May 27, 2005 2005 FC 757		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 <i>Immigration and Refugee Act</i> ? And 2. Does the word "punished" used in subsection 64(2) of <i>IRPA</i> 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	A-296-05 Décary J.A. Sexton J.A. Evans J.A. (Reasons)	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.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
	December 12, 2005 2005 FCA 422		
IMM-3377-04 Lutfy C.J. June 13, 2005 2005 FC 834	A-390-05 Evans J.A (Reasons) Nadon J.A. Sexton J.A. April 26, 2006 2006 FCA 151	<p>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 <i>Immigration and Refugee Protection Act</i>, 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 <i>Canadian Charter of Rights and Freedoms</i> and <i>Suresh v. Canada (Minister of Citizenship and Immigration)</i>, 2002 SCC 1, concerning the person’s presence in Canada and the injustice that could be caused to the individual upon deportation?</p> <p>Answer: Paragraph 115(2)(a) of the <i>IRPA</i> 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.</p>	Appeal allowed. See answer below question.
IMM-1737-04 Heneghan, J. June 15, 2005 2005 FC 855		<p>1. Are stepparents included in the family class and, in particular, does the word “mother” in paragraph 117(1)(c) of the <i>Immigration and Refugee Protection Regulations</i> include a stepmother?</p> <p>2. Does the word “parent” in French include “stepparent”?</p>	No appeal filed.
IMM-9283-04 Tremblay-Lamer, J. June 16, 2005 2005 FC 852		<p>Is the PRRA officer required to send the notice under section 160 of the <i>Immigration and Refugee Protection Regulations</i> <u>before the departure order becomes a deportation order</u>, thereby putting the foreign national in an irregular situation?</p> <p>Should the answer to the preceding question be positive, should the deportation order be set aside?</p>	No appeal filed.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-6961-03 Lemieux, J. July 7, 2005 2005 FC 950	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 <i>IRPA</i> 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		Does s.40(1)(c) of the <i>IRPA</i> 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	A-481-05	Should <i>IRP Regulation 117(9)(d)</i> 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 <i>Immigration and Refugee Protection Act</i> or does it extend to the granting of permanent resident status?	Discontinued.
IMM-5815-04 O’Keefe, J. August 3, 2005 2005 FC 1059	A-420-05 Noël J.A. Evans J.A. (Reasons) Malone J.A. October 24, 2006 2006 FCA 345	Under s. 40(1)(a) of the <i>Immigration and Refugee Protection Act</i> , which reads: 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?	Appeal dismissed. Question not answered.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-1760-04 O'Keefe, J. August 3, 2005 2005 FC 1063		Is subsection 117(9)(d) of the <i>Immigration Refugee Protection Regulations</i> 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		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	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. May 18, 2006 2006 FCA 186	1. Can the doctrine of legitimate expectations be relied on to avoid the application of section 190 of the <i>Immigration and Refugee Protection Act</i> , S.C. 2001, c. 27? 2. Does the phrase “at the time of that application” in paragraph 117(9)(d) of the <i>Immigration and Refugee Protection Regulations</i> , SOR/2002-227, contemplate the time at which the application for permanent residence was made?	Appeal allowed. See answers below questions.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		<p>Answers:</p> <p>1. No.</p> <p>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.</p>	
<p>IMM-6045-04 Mosley, J. September 1, 2005 2005 FC 1193</p>	<p>A-418-05 Linden J.A. (Reasons) Nadon J.A. Malone J.A. November 10, 2006 2006 FCA 365</p>	<p>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 <i>Immigration and Refugee Protection Act</i> infringe the <i>Canadian Charter of Rights and Freedoms</i> in a manner that does not accord with the principles of fundamental justice, and which cannot be justified under section 1 of the <i>Charter</i>?</p>	<p>Appeal dismissed. Question not answered.</p>
<p>IMM-8912-04 Hughes J. September 6, 2005 2005 FC 1211</p>	<p>A-473-05 Linden J.A. (Reasons) Nadon J.A. Sexton J.A. October 12, 2006 2006 FCA 326</p>	<p>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?</p> <p>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?</p> <p>Answers:</p> <p>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.</p> <p>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 <i>Thanaratnam, supra</i>, 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</p>	<p>Appeal dismissed. See answers below questions.</p>

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		within this meaning.	
IMM-3634-04 Simpson J. September 7, 2005 2005 FC 1212	A-464-05 Linden J.A. (Reasons) Nadon J.A. Malone J.A. October 19, 2006 2006 FCA 340	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 or removal so that <i>Chieu</i> 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.
IMM-88-05 Snider, J. September 8, 2005 2005 CF 1224		a) Is s. 16(1) of <i>IRPA</i> 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 <i>IRPA</i> and not on grounds that he found to be inadmissible as per the classes of inadmissible persons under section 32 to 43 of <i>IRPA</i> ?	No appeal filed.
IMM-3635-04 Phelan J. September 14, 2005 2005 FC 1209	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 <i>Immigration and Refugee Protection Regulations</i> , 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 answers below questions.
IMM-9744-04 Pinard, J. September 16, 2005 2005 FC 1255	A-495-05	In interpreting paragraph 117(9)(d) of the <i>Immigration and Refugee Protection Regulations</i> , 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 took place after the respondent had filled out her original forms with the visa office at the Canadian Embassy in	Discontinued.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		Haïti ?	
IMM-8736-04 Hughes, J. September 19, 2005 2005 FC 1280	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 CF 1321	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 C.J. Lutfy October 5, 2005	A-500-05	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 dismissed Answers: 1. Yes. 2. No.
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 <i>Immigration and Refugee Protection Regulations</i> , must the conditions of the inability of the child to be financially self-supporting	Discontinued.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
2005 FC 1522		due to a 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		Does the Immigration Appeal Division have the jurisdiction to determine a constitutional challenge to section 68(4) of the <i>Immigration and Refugee Protection Act</i> ?	No appeal filed.
IMM-9245-04 Snider, J. December 1, 2005 2005 FC 1632	A-632-05 Evans J.A. (Reasons) Sexton J.A. Nadon J.A. June 12, 2006 2006 FCA 217	<p>(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?</p> <p>(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 <i>Immigration and Refugee Protection Regulations</i>, 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?</p> <p>Answers: (a) Not answered.</p> <p>(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 <i>Immigration and Refugee Protection Regulations</i>, 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.</p>	Appeal allowed. See answers below questions.
IMM-7688-04 IMM-10094-04 Heneghan, J.	A-20-06	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?	Appeal dismissed Answers: 1. Yes.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
December 14, 2005 2005 FC 1694		<p>C.A. restated question 1. as follows:</p> <ol style="list-style-type: none"> 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? 2. Is a continuing “danger opinion” a “disqualification” flowing from convictions that have been pardoned and therefore contrary to section 5 of the <i>Criminal Records Act</i>? 	2. Not answered.
IMM-2866-05 Snider, J. January 16, 2006 2006 FC 30	A-63-06	<p>If a permanent resident:</p> <ol style="list-style-type: none"> (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 reached the conditions of his stay but has not been convicted of any offence that would meet the threshold of s. 68(4) of the <i>IRPA</i>; <p>does s. 197 operate to discontinue his appeal to the IAD?</p>	Discontinued.
IMM-7836-04 Blanchard, J. January 19, 2006	A-38-06 Evans J.A. (Reasons) Décary J.A. Sharlow J.A. May 25, 2007 2007 FCA 198	<ol style="list-style-type: none"> 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? 	<p>Appeal allowed.</p> <p>Answers:</p> <ol style="list-style-type: none"> 1. No. 2. No. 3. Question not answered.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-8987-04 Campbell, J. January 26, 2006 2006 FC 79	A-79-06	1. Does s.71 of the <i>IRPA</i> 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?	
IMM-8360-04 Layden-Stevenson, J. January 31, 2006 2006 FC 102	A-88-06	Where the section 197 thresholds of the <i>IRPA</i> 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?	
IMM-2453-05 Beaudry, J. February 3, 2006 2006 FC 124	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 <i>Immigration and Refugee Protection Act</i> ?	Discontinued.
IMM-2757-05 Mosley, J. February 17, 2006 2006 FC 221	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	A-142-06 Desjardins J.A. (Reasons) Noël J.A.	Can the judgment of a provincial court refusing to order the return of a child pursuant to the <i>Convention on the Civil Aspects of International Child Abduction</i> , [1989] Can. T.S. No. 35, and s. 20 of the <i>Act respecting the Civil Aspects of International and Interprovincial Child Abduction</i> , 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 <i>Immigration and</i>	Appeal allowed. Answer: No.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
	Pelletier J.A. March 16, 2007 2007 FCA 75	<i>Refugee Protection Act</i> , S.C. 2001, c. 27, ("the IRPA")?	
IMM-4236-05 Snider J. March 23, 2006 2006 FC 372	A-176-06	(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?	
IMM-2168-05 Mactavish J. March 31, 2006 2006 FC 420	A-182-06	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 <i>Handbook</i> ?	Appeal dismissed. Question not answered.
IMM-5571-05 Mactavish J. March 31, 2006 2006 FC 421	A-185-06	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 <i>Handbook</i> ?	Appeal dismissed. Question not answered.
IMM-9766-04, IMM-9220-04, IMM-9452-04, IMM-9797-04, IMM-353-05,	A-164-06 A-187-06 A-188-06 A-196-06 A-197-06	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 <i>Charter of Rights and Freedoms</i> 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?	Appeals dismissed. Answers: 1. No. 2. No.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
<p>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 Mosley J. April 10, 2006 2006 FC 461</p>	<p>A-198-06 A-199-06 A-200-06 Evans J.A (Reasons) Décary J.A. Sharlow J.A. May 25, 2007 2007 FCA 199</p>	<p>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 <i>ultra vires</i> the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the <i>Immigration and Refugee Protection Act</i>? 7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?</p>	<p>3. No. 4. Question not answered. 5. No. 6. No. 7. Question not answered.</p>
<p>IMM-3370-05 Snider J. April 21, 2006 2006 FC 506</p>	<p>A-238-06</p>	<p>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 <i>Charter of Rights and Freedoms</i> 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?</p>	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		<p>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?</p> <p>6. Is Guideline 7 unlawful because it is <i>ultra vires</i> the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the <i>Immigration and Refugee Protection Act</i>?</p> <p>7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?</p>	
IMM-4127-05 Gibson J. April 26, 2006 2006 FC 513	A-241-06	In view of this Court's finding in <i>Ramalingam v. M.C.I.</i> , IMM-1298-97 and <i>Chidambaram v. M.C.I.</i> , [2003] F.C.J. No. 81, 2003 FCT 66, that the authenticity of documents is not within the Refugee Protection Division's specialized knowledge, can the RPD conclude that a state-issued identity document is not authentic, based upon some physical aspect of the document, without either an expert's report or direct extrinsic evidence that those apparent physical anomalies are indicative or conclusive of malfeasance?	
IMM-3310-05 Gibson J. April 26, 2006 2006 FC 512	A-240-06	When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	
IMM-4375-05 Phelan J. April 28, 2006 2006 FC 533	A-216-06	Does the phrase "at the time of that application" in paragraph 117(9)(d) of the <i>Immigration and Refugee Protection Regulations</i> , 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.	A-259-06	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 <i>Charter of Rights and Freedoms</i> by unduly interfering with claimants' right to be heard and right to counsel?	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
May 4, 2006 2006 FC 563		<p>2. Does the implementation of paragraphs 19 and 23 of the Chairperson’s Guideline 7 violate principles of natural justice?</p> <p>3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members’ discretion?</p> <p>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?</p> <p>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?</p> <p>6. Is Guideline 7 unlawful because it is <i>ultra vires</i> the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the <i>Immigration and Refugee Protection Act</i>?</p> <p>7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?</p>	
IMM-5107-05 Martineau J. June 8, 2006 2006 FC 726	A-293-06	Under the <i>Immigration and Refugee Protection Act and Regulations</i> , 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?	
IMM-3818-05 Barnes J. June 12, 2006 2006 FC 732	A-310-06 Richard C.J. (Reasons) Sharlow J.A. Malone J.A. March 8, 2007 2007 FCA 99	<p>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 a such determination?</p> <p>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</p>	Appeal dismissed. See answer below question.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		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.	
IMM-5637-05 Barnes J. June 12, 2006 2006 FC 734	A-300-06	<ol style="list-style-type: none"> 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 <i>Charter of Rights and Freedoms</i> 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 <i>ultra vires</i> the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the <i>Immigration and Refugee Protection Act</i>? 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	A-363-06 Décary J.A. (Reasons) Linden J.A. Sexton J.A.	<ol style="list-style-type: none"> 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.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
	May 29, 2007 2007 FCA 205		2. No.
IMM-3387-05 O'Reilly J. July 25, 2006 2006 FC 910	A-383-06	<p>1. In light of <i>Dehghani v. Canada (Minister of Employment and Immigration)</i>, [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?</p> <p>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)?</p>	Discontinued.
IMM-6316-05 Phelan J. July 26, 2006 2006 FC 921		<p>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 <i>Charter of Rights and Freedoms</i> by unduly interfering with claimants' right to be heard and right to counsel?</p> <p>2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice?</p> <p>3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion?</p> <p>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?</p> <p>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?</p> <p>6. Is Guideline 7 unlawful because it is <i>ultra vires</i> the guideline-making authority of the Chairperson under paragraph</p>	No appeal filed.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		<p>159 (1) (h) of the <i>Immigration and Refugee Protection Act</i>?</p> <p>7. When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?</p> <p>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?</p>	
<p>IMM-7697-05 Harrington J. July 27, 2006 2006 FC 892</p>	<p>A-374-06</p>	<p>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 <i>Charter of Rights and Freedoms</i> by unduly interfering with claimants' right to be heard and right to counsel?</p> <p>2. Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice?</p> <p>3. Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion?</p> <p>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?</p> <p>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?</p> <p>6. Is Guideline 7 unlawful because it is <i>ultra vires</i> the guideline-making authority of the Chairperson under paragraph 159 (1) (h) of the <i>Immigration and Refugee Protection Act</i>?</p>	
<p>IMM-7261-05 Blais J. August 9, 2006</p>		<p>When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?</p>	<p>No appeal filed.</p>

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
2006 FC 959			
IMM-5186-05 Barnes J. August 15, 2006 2006 FC 978	A-366-06	Does the reasoning of the Supreme Court of Canada in <i>Hilewitz v. Canada (Minister of Citizenship and Immigration)</i> , [2005] 2 S.C.R. 706 apply to individuals applying to immigrate to Canada as skilled workers?	
IMM-7131-05 Kelen J. September 1, 2006 2006 FC 1055	A-409-06	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?	
IMM-396-06 Mactavish J. September 13, 2006 2006 FC 1087		<ol style="list-style-type: none"> 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.
IMM-184-06 Noël J. September 28, 2006 2006 FC 1134	A-467-06	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?	
IMM-7109-05 Snider J.	A-451-06	<ol style="list-style-type: none"> 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 <i>IRPA</i>, does the Minister of Citizenship and Immigration have 	Appeal dismissed on the grounds of

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
September 29, 2006 2006 FC 1159		<p>authority to:</p> <p>(a) set annual target ranges for the total number of immigrants to Canada?</p> <p>(b) determine how the annual target range will be distributed among the three immigrant classes (economic, refugee and family class)?</p> <p>(c) distinguish between members of the same class, by processing spouses, partners and children, in priority to parents and grandparents?</p> <p>2. Given the answers to Question #1, have the Applicants established an entitlement to the discretionary and equitable remedy of <i>mandamus</i>, given all the circumstances of this case?</p>	mootness.
IMM-7766-05 Blais J. October 26, 2006 2006 FC 1287		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		<p>1. Is an application for restoration pursuant to section 182 of the <i>Regulations</i> 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?</p> <p>2. Does a foreign national who has applied for restoration within the delay set out in section 182 of the <i>Regulations</i>, automatically lose the benefit of his or her application when an enforcement officer considers issuing a report under section 44(1) on the basis of a failure to comply with section 29(2) of IRPA?</p>	No appeal filed.
IMM-7770-05 Blais J. November 8, 2006 2006 FC 1349		Has the implementation of Guideline 7 led to fettering of Refugee Protection Division Members' discretion?	No appeal filed.

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-325-06 Barnes J. November 9, 2006 2006 FC 1359		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	A-570-06	When must an applicant raise an objection to Guideline 7 in order to be able to raise it upon judicial review?	
IMM-4817-05 Russell J. November 16, 2006 2006 FC 1256	A-534-06	<ol style="list-style-type: none"> 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? 	
IMM-2814-06 Phelan J. November 30, 2006 2006 FC 1451		<ol style="list-style-type: none"> 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 2006 FC 1385	A-11-07	<ol style="list-style-type: none"> 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? 	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-1552-06 Blanchard J. December 13, 2006 2006 FC 1485		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 48(1)(b) and 46(1)(c), sections 2 and 63 of the <i>Immigration Refugee Protection Act</i> ?	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.
IMM-3084-06 Beaudry J. December 21, 2006 2006 FC 1540	A-52-07	Does subsection 117(9)(d) of the <i>Immigration and Refugee Protection Regulations</i> (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?	
IMM-63-05 Hughes J. January 15, 2007 2006 FC 1489	A-57-07	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?	
IMM-885-06 Campbell J. January 24, 2007 2007 FC 78		1. What is the correct standard of review of an officer's decision, made pursuant to the discretion set out in section 48 of the <i>Immigration and Refugee Protection Act</i> to defer removal of persons from Canada?	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-7202-05 Dawson J. January 25, 2007 2007 FC 74		<p>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?</p> <p>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?</p>	
IMM-1177-06 Gauthier J. February 2, 2007 2007 FC 118		<p>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 <i>Charter of Rights and Freedoms</i> by unduly interfering with claimants' right to be heard and right to counsel?</p> <p>b) Does the implementation of paragraphs 19 and 23 of the Chairperson's Guideline 7 violate principles of natural justice?</p>	
IMM-1472-06 Hughes J. February 26, 2007		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 <i>Thamotharem</i> until the Federal Court of Appeal rules on <i>Thamotharem</i> (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?	
IMM-6447-05 Kelen J. February 28, 2007 2007 FC 229		1. If, in the preparation of an opinion under paragraph 115(2) of the <i>Immigration and Refugee Protection Act</i> , 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)?	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
		<p>2. If the lack of risk identified in question #1 is not determinative, is paragraph 115(2)(b) of the <i>Immigration and Refugee Protection Act</i> 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)?</p>	
<p>IMM-4055-06 de Montigny J. March 1, 2007 2007 FC 240</p>		<p>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?</p> <p>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?</p> <p>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?</p> <p>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?</p>	
<p>IMM-5395-05 Dawson J. March 9, 2007</p>		<p>Is a determination of inadmissibility under 34(1) of the <i>Immigration and Refugee Protection Act</i> 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?</p>	
<p>IMM-1835-06 Mactavish J. March 22, 2007 2007 FC 310</p>		<p>Does the phrase “the control of a percentage of equity of the qualifying business”, as it appears in subsection 88(1) of the <i>Immigration and Refugee Protection Regulations</i>, refer only to the legal or <i>de jure</i> control of the shares in issue, or does it include cases where an applicant may have <i>de facto</i> control over the shares in question, notwithstanding the fact that legal control over the shares may temporarily rest in another person?</p>	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
<p>IMM-2669-06 De Montigny J. April 5, 2007 2007 FC 361</p>		<ol style="list-style-type: none"> 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 <i>IRPA</i>, 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? 	
<p>IMM-4022-06 Layden-Stevenson J. April 13, 2007 2007 FC 387</p>		<p>Does paragraph 3(3)(f) of the <i>IRPA</i> require that an immigration officer, exercising discretion under section 25 of the <i>IRPA</i>, 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?</p>	
<p>IMM-3375-06 Gibson J. April 17, 2007</p>		<p>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?</p>	

<i>Trial</i>	<i>Appeal</i>	<i>Question</i>	<i>Answer</i>
IMM-822-06 O'Reilly J. April 25, 2007		What is meant by the presumption of state protection (as mentioned in <i>Canada (Attorney General) v. Ward</i> , [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?	
IMM-2281-06 De Montigny J. May 28, 2007 2007 FC 558		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?	