

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

Jeyankannan KANTHASAMY

Appellant
(Appellant in the Court of Appeal)

-and-

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent
(Respondent in the Court of Appeal)

-and-

**BARBRA SCHLIFER COMMEMORATIVE CLINIC AND CANADIAN CENTRE
FOR VICTIMS OF TORTURE, CANADIAN ASSOCIATION OF REFUGEE
LAWYERS, CANADIAN COUNCIL FOR REFUGEES, JUSTICE FOR CHILDREN
AND YOUTH, and PARKDALE COMMUNITY LEGAL SERVICES**

FACTUM OF THE INTERVENERS,
THE BARBRA SCHLIFER COMMEMORATIVE CLINIC
and
THE CANADIAN CENTRE FOR VICTIMS OF TORTURE
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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MEMORANDUM OF ARGUMENT

PART I – FACTS

A. Overview of position and statement of facts

1. The personalized hardship approach to decision making under section 25(1) of the *Immigration and Refugee Protection Act (IRPA)*¹ set out by the Federal Court of Appeal in *Kanhasamy*² has a disproportionate negative impact on vulnerable populations such as survivors of gender-based violence and torture. This approach should be rejected in favour of broad and flexible discretion that is able to account for the unique experiences and barriers faced by these vulnerable populations.
2. The Barbra Schlifer Commemorative Clinic (BSCC) and the Canadian Centre for Victims of Torture (CCVT) accept the statement of facts as set out in the factum of the Appellant.

PART II – ISSUES

3. BSCC and CCVT will address the second issue identified in the Appellant's factum.

PART III – ARGUMENT

A. Humanitarian and Compassionate discretion under section 25(1) is broad

4. Humanitarian and compassionate relief under section 25(1) of the *IRPA* is not limited to applicants who face unusual, undeserved and disproportionate hardship in their country of origin. Humanitarian and compassionate relief is also granted in a variety of circumstances unrelated to adverse conditions in the country of origin. Public policy considerations, experiences of violence within Canada, sponsorship breakdown, compelling past experiences of trauma and psychological issues, the best interests of children, among other factors, may also warrant the granting of relief.³

¹ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 25(1)

² *Kanhasamy v Canada (MCI)*, 2014 FCA 113; 459 N.R. 367

³ *IRPA*, *supra* note 1, s. 25(1), 25.2(1), IP5 Manual – Immigrant Applications in Canada made on Humanitarian and Compassionate Grounds, at 5.11; the example of gender-based violence is illustrative. The circumstances of survivors of gender-based violence do not always lend themselves to a future-oriented hardship analysis. For example, the abhorrent past experiences of rape and violence endured by a victim of human trafficking who does not face a further related risk in her country of origin may be sufficiently compelling to warrant relief. Similarly, a woman whose sponsorship broke down due to domestic violence that occurred in Canada may also warrant relief.

5. Furthermore, section 25(1) of the *IRPA* does not only apply to applications for permanent residence from within Canada. Section. 25(1) can be used to grant an exemption from any applicable criteria or obligations of this *Act*.⁴ For example, s. 25(1) has been relied upon by: a Convention refugee applying for permanent residence as a protected person to overcome criminal inadmissibility to Canada⁵; a foreign national applying for permanent residence in the Provincial Nominee Class seeking an exemption from his son's medical inadmissibility⁶; a live-in-caregiver seeking a waiver from the requirement of the live-in-caregiver class⁷; and a foreign national requesting a waiver of the processing fees for an H&C application.⁸
6. Given the multiple ways in which discretion under section 25(1) of the *IRPA* is utilized, it is important to recognize that this discretion is broader and more flexible than the unusual, undeserved and disproportionate hardship on return standard often applied by immigration officers and the lower Courts.

B The personalized hardship approach disproportionately impacts vulnerable communities.

7. When assessing adverse circumstances in the country of origin, decision-makers and the Federal Court have applied the threshold standard of “unusual, undeserved and disproportionate hardship.” However, the Federal Court of Appeal’s decision below regarding the interpretation of section 25(1.3) was the first time that the terms “directly and personally experiencing” were added to this hardship standard.⁹
8. The Federal Court has since interpreted this new personalized hardship standard inconsistently. Some judgments from the Federal Court clearly hold that generalized risk can no longer form the basis of a positive decision under section 25(1).¹⁰ Other judgments hold the opposite.¹¹ Still other judgments are more nuanced, taking different approaches regarding when generalized country conditions will be

⁴ *IRPA*, *supra* note 1, s. 25(1), *Toussaint v. Canada (MCI)*, 2011 FCA 146 at paras 7, 10-11, 39, 55; [2013] 1 F.C.R. 3

⁵ *Kathirgamathamby v. Canada (MCI)*, 2013 FC 811 at paras 25-26; 18 Imm. L.R. (4th) 318

⁶ *Velasquez Perez v. Canada (MCI)*, 2011 FC 1336; 400 F.T.R. 285

⁷ *Aoanan v. Canada (MCI)*, 2009 FC 734 at para. 35; 353 F.T.R. 283

⁸ *Toussaint*, *supra* note 4

⁹ *Singh v Canada (MCI)*, 2014 FC 10; [2014] F.C.J. No. 5 is the only pre-*Kanthisamy* case that uses the phrase “directly and personally” in relation to s. 25 hardship consideration.

¹⁰ *Felix v. Canada (MCI)*, 2014 FC 582 at para. 22; 27 Imm. L.R. (4th) 130

¹¹ *Maroukel v. Canada (MCI)*, 2015 FC 83 at para. 33-35; [2015] F.C.J. No. 40; *Devadawson v. Canada (MCI)*, 2015 FC 80 at para. 51; [2015] F.C.J. No. 38

sufficiently linked to an individual such that they can be reasonably found to directly and personally face undue hardship in their country of origin.¹² Guidance is therefore needed from this Court regarding the scope of humanitarian and compassionate discretion available under section 25(1), in particular with regard to the proper interpretation of section 25(1.3), as well as the evidentiary expectations that should be employed by immigration decision-makers under this section.

9. In the experience of BSCC and CCVT, the new personalized hardship test set out by the Court below disproportionately impacts vulnerable populations in two primary ways. First, the interpretation of the new test has resulted in hardship factors being dismissed that are uniquely important to vulnerable populations. These factors include systemic discrimination and histories of marginalization. Second, the application of the personalized hardship test has resulted in evidentiary expectations that are disproportionately difficult for vulnerable populations to meet. Given that applications under section 25(1) are often the only means for vulnerable populations to regularize their immigration status in Canada, and given the role that humanitarian and compassionate discretion plays in ensuring flexibility and compassion in Canadian immigration decision making, the personalized hardship standard should be rejected in favour of broad humanitarian and compassionate discretion.

Interpretation of the personalized hardship standard and systemic discrimination

10. When interpreting what factors are relevant under the new personalized hardship standard, immigration officers are regularly dismissive of systemic discrimination and histories of marginalization as factors that contribute to undue hardship on return.¹³ Immigration Officers, for example, will find insufficient evidence of personalized hardship when the documentary evidence on country conditions fails to mention the applicant by name.¹⁴ Of particular concern are decisions suggesting that membership

¹² *Aboubacar v. Canada (MCI)*, 2014 FC 714 at para. 12; [2014] F.C.J. No. 747

¹³ *Nicolas v. Canada (Citizenship and Immigration)*, 2014 FC 903 at paras 25-26; *Melgoza v. Canada (MCI)*, 2014 FC 649 at para. 11; [2014] F.C.J. No. 677; *Gallai v Canada (MCI)*, 2015 FC 52 at paras. 39, 42; [2015] F.C.J. No. 18

¹⁴ *Melgoza*, *supra* note 13; *Devadawson*, *supra* note 11 at para. 19

in a group objectively established to experience disproportionate hardship is not sufficient to establish a direct and personal link to this same hardship.¹⁵

11. In the refugee context it is well established that a well-founded fear of persecution can be substantiated through evidence of similarly situated persons experiencing persecution.¹⁶ Evidence of similarly situated individuals facing systemic discrimination and historic marginalization should therefore be equally important factors when assessing what circumstances warrant humanitarian and compassionate relief. Otherwise, an absurd result occurs wherein refugee claimants are more easily able to meet the evidentiary expectations applicable under section 96 of the *Act*, but applicants seeking the more flexible and permissive relief available under section 25(1) of the *Act* are unable to do so. For example, evidence of generalized gender violence has been found capable of substantiating a well-founded fear of persecution in a claim for protection made by a woman from Haiti; however, similar evidence was found insufficient to demonstrate undue hardship in the context of a similarly situated woman's H&C application.¹⁷

12. Vulnerable populations are likely to face adverse country conditions rooted in systemic discrimination or a history of marginalization. The example of gender-based violence is helpful. Violence against women is rooted in patriarchy and women's unequal position in society.¹⁸ Generalized violence or poverty often disproportionately impact women due to their historic gender disadvantage.¹⁹ As a result, survivors of gender-based violence and discrimination routinely rely on general country conditions with regard to poverty, gender inequality, incidence of violence against women and

¹⁵ *Nicayenzi v. Canada (Citizenship and Immigration)*, 2014 FC 595 para.31; 27 Imm L.R. (4th) 140; *Diaz v Canada (MCI)*, 2015 FC 373 at paras 10-11; [2015] F.C.J. No 333; *Maroukel*, *supra* note 11; *Devadawson*, *supra* note 11.

¹⁶ *Canada (AG) v Ward*, [1993] 2 SCR 689 at pp. 724-726

¹⁷ *Dezameau v. Canada (MCI)*, 2010 FC 559, paras. 24 – 27; 369 F.T.R. 151; *Nicolas*, *supra* note 13

¹⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, 1-6 at p. 2. Available at: <http://www.refworld.org/docid/52d920c54.html>. And see: UN General Assembly, Resolution adopted by the General Assembly on 20 December 2012: Intensification of efforts to eliminate all forms of violence against women, A/RES/67/144 (27 February 2013) 1-11 at pp.3-4. Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/144&Lang=E.

¹⁹ Pearce, D., "The Feminization of Poverty: Women, Work and Welfare," *The Urban and Social Change Review*, Vol. 11, Nos. 1 & 2, 1978, 28-33 at pp. 34-35. The feminization of poverty has previously been recognized by the Supreme Court of Canada as an "entrenched social phenomenon" in *Moge v Moge*, [1992] 3 S.C.R. 813 at pp. 853-854. See also: Oosterveld, Valerie, "Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention", UNHCR Division of International Protection, September 2012 at pp. 4, 11-19.

girls and sexual minorities, discrimination in social life (health, education, work), as well as the situation of similarly-situated individuals to demonstrate the hardships they would face if removed from Canada.

13. Humanitarian and compassionate discretion under section 25(1.3) of the *IRPA* must be broad enough to permit consideration of systematic disadvantage, societal discrimination and histories of marginalization. Otherwise, some of the most marginalized and vulnerable applicants will not have their circumstances fairly considered.

Application of the personalized hardship standard and evidentiary expectations

14. When applying the personalized hardship test, immigration officers routinely expect applicants to submit unattainable evidence to substantiate their applications.²⁰ This disproportionately impacts vulnerable populations who are often unable to substantiate the adverse circumstances they face on return in the manner expected by immigration decision makers.²¹
15. For example, women’s experiences of gender based discrimination and domestic abuse regularly go underreported.²² Survivors of domestic abuse are reluctant to disclose their experiences to medical, counselling or other professionals working within social service systems. Some states may not collect data on incidents of domestic abuse and gender discrimination, unwilling to put public resources towards addressing these issues.²³ As such, public, medical, police and other professional third party verification of domestic abuse, as well as the nature and scope of gender-based discrimination in a particular country, may not exist.²⁴

²⁰ *Nicayenzi*, *supra* note 15; *Melgoza*, *supra* note 13; *Basaki v Canada (MCI)*, 2015 FC 166 at para. 21; [2015] F.C.J. No. 144

²¹ Guruge, Sepali and Janice Humphreys, “Barriers Affecting Access to and Use of Formal Social Supports Among Abused Immigrant Women,” *CJNR* 2009, Vol. 41, No. 3, at pp. 72-75. See also: Smith, Ekuwa, “Nowhere to Turn: Responding to Partner Violence Against Immigrant and Visible Minority Women”, Canadian Council on Social Development (Renouf Publishing Canada, 2004) at pp. vii – xi

²² Smith, Ekuwa, *supra* note 21 at p. 19: See also: Garcia-Monero, Claudia et. al. “Multi-country study on women’s health and domestic violence against women: summary report”, World Health Organization, 2005 at pg. 18-20

²³ World Health Organization/London School of Hygiene and Tropical Medicine. Preventing intimate partner and sexual violence against women: taking action and generating evidence. Geneva, World Health Organization, 2010, 1-102 at pp. 63-66.

²⁴ In the refugee context, the *Gender Guidelines* alert decision makers to the fact that objective documentary evidence will not always be available in cases of gender-related persecution: *Gender Guidelines*. Available online at: <http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir04.aspx>; Officers

16. Vulnerable populations also experience barriers to accessing necessary resources in Canada that would traditionally provide third party evidence to assist them with substantiating applications under section 25(1) of the *Act*. For example, vulnerable populations are more likely to be homeless or under-housed, unable to maintain stable contact with medical and social service providers or secure employment or to access legal counsel.²⁵
17. Evidentiary expectations for substantiating a request for humanitarian and compassionate relief, both in relation to adverse circumstances faced in the country of return and with respect to the individual's circumstances in Canada, must not be so onerous that those vulnerable populations most in need of this relief are prevented from accessing it.

Humanitarian and compassionate discretion is sometimes the only option

18. Due to recent changes in Canada's immigration legislation, humanitarian and compassionate applications are now sometimes the only means by which vulnerable populations can apply to remain in Canada and thereby establish safety and security for themselves and their children. A narrow understanding of humanitarian and compassionate discretion will further reduce the options open to these vulnerable populations to have their circumstances, risks and hardships considered through the immigration system.
19. Currently, persons seeking to regularize their status in Canada are barred from filing an H&C application within one year of their refugee decision. Prospective applicants are also barred from filing an H&C application contemporaneously with a refugee claim.²⁶ As a result, individuals whose circumstances do not fall easily within either

assessing exemptions from the conditional permanent residence requirement are also cautioned that immigrant women face increased barriers to reporting abuse and seeking help, resulting in circumstances where there is little evidence to substantiate the abuse: Government of Canada, Operations Bulletin 480 (modified June 11, 2014) online: <http://www.cic.gc.ca/english/resources/manuals/bulletins/2012/ob480.asp>.

²⁵ Wayland, Sarah V., "Unsettled: Legal and Policy Barriers for Newcomers to Canada", Law Commission of Canada, 2006, 1-66 at p. 21. Vulnerable populations are more likely to have insufficient funds to pay legal counsel for representation in an H&C application. In Ontario, limited legal aid funding for H&C applicants results in many applications being made without legal representation. The legal services available through BSCC and pro bono counsel assisting CCVT are few of the limited resources that these vulnerable populations have to access legal counsel.

²⁶ *IRPA*, *supra* note 1, s. 25(1.2)(b) and (c)

category must choose which avenue to pursue, a complex decision difficult to navigate even with the assistance of counsel.²⁷

20. Furthermore, Permanent Residents and Convention Refugees now have limited access to appeal a removal order to the Immigration Appeal Division.²⁸ Eligibility requirements incorporated into section 101 of the *IRPA* also limit access to the refugee board based on criminality.²⁹ A narrow understanding of humanitarian and compassionate discretion will therefore further reduce the options open to these vulnerable populations to have their circumstances, risks and hardships considered through the immigration system.

C The treatment of psychological evidence in applications under section 25(1)

21. In the experience of BSCC and CCVT, psychological and psychiatric evidence submitted in support of applications for humanitarian and compassionate relief are routinely dismissed by immigration decision makers in a manner that fails to take into account the purpose for which the reports were submitted, the nature of trauma and the barriers to accessing ongoing care experienced by vulnerable populations. For example, reports are routinely given little weight because there is no evidence of follow up care in Canada³⁰ or because there is care available in the home country suggesting that the assessors' prognoses are speculative.³¹ The Courts below have

²⁷ For example, a survivor of domestic violence from a Designated Country of Origin who suffers from severe depression and Post-Traumatic Stress Disorder, and who has Canadian children, must carefully consider whether to submit a refugee claim or an H&C.

²⁸ *IRPA*, *supra* note 1, 64(2)

²⁹ *IRPA*, *supra* note 1, s. 101(1)(f) and s. 101(2). Victims of gender-based violence, torture and other forms of serious trauma are at an increased risk of developing mental health and substance abuse issues: Golding, Jacqueline M., "Intimate Partner Violence as a Risk Factor for Mental Disorders: A Meta-Analysis", *Journal of Family Violence*, Vol. 14., No. 2, 1999, 99-132 at pp.126-128. See also: Mechanic, M.B., Weaver, T.L., Resick, P.A., "Mental Health Consequences of Intimate Partner Abuse: A Multidimensional Assessment of Four Different Forms of Abuse", *Violence Against Women*, Vol. 14, No. 6, June 2008, 634-654 at pp. 647-649. Persons with mental health conditions and substance abuse issues are also at an increased risk of coming into contact with the criminal justice system: Chaimowitz, G., (2012) "The Criminalization of People with Mental Illness", *Canadian Journal of Psychiatry*, 57(2) [Insert] 1-6 at p.3. See also, Centre for Addiction and Mental Health, *Mental Health and Criminal Justice Policy Framework*, October 2013, 1-18 at p.2.

³⁰ *Perez Arias v. Canada (MCI)*, 2011 FC 757; 3 Imm. L.R. (4th) 100; *Din v. Canada (MCI)*, 2013 FC 356; 430 F.T.R. 208; *Carrillo v. Canada (MCI)*, 2015 FC 233; [2015] F.C.J. No. 193; *Basaki*, *supra* note 20

³¹ *Azer v. Canada (MCI)*, 2012 FC 988; [2012] F.C.J. No. 1067; *Carillo*, *supra* note 30

inconsistently determined whether these findings are reasonable suggesting that guidance is needed from this Court.³²

22. BSCC and CCVT are organizations that provide holistic short-term and long-term counseling for survivors of gender-based violence and survivors of torture.³³ A common experience of both organizations is that the demand for their counseling services far exceeds the resources that they have available.³⁴ As a result, many individuals who need treatment are unable to receive it. The absence of evidence of follow-up treatment is therefore more indicative of shortages of such treatment available in Canada rather than an indication of the individual's lack of need for such treatment or the credibility of their symptom presentation.
23. Other barriers to accessing services include: the loss of traditional supports such as the presence of extended family, isolation resulting from leaving an abusive relationship, limited English or French language proficiency, lack of cultural competency or racism on the part of service providers, living in shelters and struggling to meet the daily survival needs for themselves and their children.³⁵
24. The focus on whether the individual has accessed ongoing treatment also fails to account for the fact that, due to the very nature of trauma, effective treatment may not be possible or cannot commence until certain foundational supports are in place. For traumatized individuals without status, this often means establishing a sense of safety, security and stability first such as through the finalization of their immigration proceedings.³⁶ Dismissal of the valuable information contained in psychological reports because there is no evidence of follow-up treatment or counseling fails to account for the difficulty in accessing treatment experienced by vulnerable populations.

³² *Perez Arias*, *supra* note 30; *Din*, *supra* note 30; *Carillo*, *supra* note 30; *Azer*, *supra* note 31; *Shah v Canada (MCI)*, 2011 FC 1269; 3 Imm L.R. (4th) 269; *Davis v Canada (MCI)*, 2011 FC 97; 96 Imm. L.R. (3d) 267, *Basaki*, *supra* note 20

³³ Affidavit of Amanda Dale at paragraph 16-17; Affidavit of Mulugeta Abai at para 2-7

³⁴ Affidavit of Amanda Dale at paragraphs 16 and 18; Affidavit of Mulugeta Abai at para 7.

³⁵ Smith, Ekuwa, *supra* note 21 at pp. vii-xi and 2. See also: Canadian Collaboration for Immigrant and Refugee Health (CCIRH), "Common mental health problems in immigrants and refugees: general approach in primary care", *Canadian Medical Association Journal*, September 6, 2011, 183(12) at p. 8.

³⁶ Herman, Judith L., "Recovery from psychological trauma," *Psychiatry and Clinical Neurosciences* (1998) 52 (Suppl.), S145-S150 at p. S147.

25. Psychological and psychiatric reports are also commonly dismissed because Immigration decision makers find that prognoses for re-traumatization are speculative or dependent on country conditions, which are found to be matters outside the scope of the assessor's expertise.³⁷ For example, decision makers routinely dismiss prognoses for re-traumatization because of the existence of care in the country of origin.³⁸ However, dismissing the information contained in such reports on these grounds fundamentally misunderstands the nature of trauma and its impacts.³⁹
26. Psychological and physical manifestations of trauma are distinct from fear. With trauma, even when the source of danger or harm is over or non-existent, the impacted individual is reminded of their experiences through symptoms such as flashbacks, hyper-arousal, nightmares, numbing and other physical manifestations of terror. Repeated exposure to circumstances and stimuli that remind the individual of their experiences of trauma will expose the individual to these symptoms, which over time can have a detrimental impact on their overall physical and psychological well-being.⁴⁰
27. The prognosis that repeated experience of symptoms will have an eventual negative impact on the individual's well-being is not rooted in predictions for further danger in the country of origin, but rather in what medical and psychiatric experts know about the nature of trauma itself.⁴¹ Therefore, there is nothing speculative about the possibility of re-traumatization for survivors of torture or gender-based violence. Trauma is not a singular event but is rather characterized by ongoing cycles of complex symptoms as demonstrated and documented by trauma survivors and the professionals who work with them. Furthermore, re-traumatization will occur regardless of any care available in the country of origin.
28. Given the long-term and profound impact of trauma on individuals who have experienced state or intimate partner violence, the humanitarian question to be asked

³⁷ *Shah*, *supra* note 32 at para 59; *Damte v. Canada (MCI)*, 2011 FC 1212 at para. 17; 5 Imm L.R. (4th) 175

³⁸ *Johnson v. Canada (MCI)*, 2010 FC 311 at para. 25; [2010] F.C.J. No. 364; *Melgar Reyes v. Canada (MCI)*, 2013 FC 847 at para. 12; [2013] F.C.J. 1020, *Shah*, *supra* note 32; *Charles v Canada (MCI)*, 2014 FC 772 at para. 37; [2014] F.C.J. No. 811

³⁹ Ramsay, R., et al. "Psychiatric morbidity in survivors of organized state violence including torture." *British Journal of Psychiatry*. 1993 Jan; 162, 55-59.

⁴⁰ Herman, Judith L., "Trauma and Recovery: The Aftermath of Violence – From Domestic Abuse to Political Terror", Basic Books, 1992 at pp. 33-35.

⁴¹ *Ibid*

in applications by trauma survivors then is often not whether they would be tortured again by their abusers, or whether care may exist in their country of origin, but rather what harm would be caused, in terms of re-traumatization, by requiring the individual to return to the place where she fears harm or where harm took place.⁴²

29. The purpose of the assessment and the role of the assessor are to speak to matters within their professional expertise including the credibility and impact of disclosed symptoms, diagnosis and prognosis. As held by Russell J. in *Gyarchie*, raising the evidentiary bar so high as to require evidence that is outside the scope of the assessor's role and expertise "places abused women at a further disadvantage and becomes part of the problem of barriers that vulnerable women world-wide must face in order to gain access to various services to establish safety and security."⁴³

D. CONCLUSION

30. Given the disproportionate impact that the personalized hardship standard has on vulnerable populations, the Federal Court of Appeal's language of direct and personalized hardship should not be adopted by the Court. Any interpretation of humanitarian and compassionate discretion that is adopted should be sufficiently flexible to account for the unique barriers vulnerable populations such as survivors of gender-based violence and survivors of torture experience when substantiating claims of hardship, as well as permitting consideration of systemic discrimination and histories of marginalization.

PART IV – COSTS

31. BSCC and CCVT seek no costs and respectfully requests that none be awarded against them.

PART V – ORDER REQUESTED

32. BSCC and CCVT take no position on the disposition of this appeal but respectfully request that it be determined in light of the submissions set out above. BSCC and CCVT request leave to be heard in oral argument.

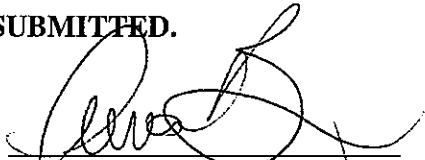
⁴² Courtois, Christine A., "Complex Trauma, Complex Reactions: Assessment and Treatment", *Psychotherapy: Theory, Research, Practice, Training* 2004, Vol. 41, No. 4, 412-425 at pp. 415 and 419.

Newman v. Canada (MCI), 2014 FC 803 at para. 56; [2014] F.C.J. No. 839.


⁴³ *Gyarchie v. Canada MCI*, 2013 FC 1221 at para. 53; 444 F.T.R. 81.

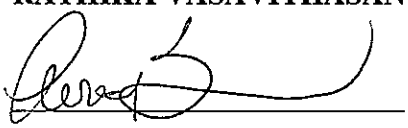
ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 2nd day of April, 2015.


per ALYSSA MANNING


AVIVA BASMAN


per RATHIKA VASAVITHASAN


per LAILA DEMIRDACHE

**Of Counsel for the Interveners,
Barbra Schlifer Commemorative Clinic and
The Canadian Centre for Victims of Torture**

PART VI – TABLE OF AUTHORITIES

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PART VII – STATUTES AND REGULATIONS

1. Immigration and Refugee Protection Act, S.C. 2001, c. 27

<p>25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.</p> <p>...</p> <p>(1.2) – The Minister may not examine the request if</p> <p>...</p> <p>(b) the foreign national has made a claim for refugee protection that is pending before the Refugee Protection Division or the Refugee Appeal Division; or</p> <p>(c) subject to (1.21), less than 12 months have passed since the foreign national’s claim for refugee protection was last rejected, determined to be withdrawn after substantive evidence was heard or determined to be abandoned by the Refugee Protection Division or the Refugee Appeal Division.</p> <p>...</p> <p>(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into</p>	<p>25. (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d’un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c’est en raison d’un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d’un étranger se trouvant hors du Canada — sauf s’il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s’il estime que des considérations d’ordre humanitaire relatives à l’étranger le justifient, compte tenu de l’intérêt supérieur de l’enfant directement touché.</p> <p>...</p> <p>(1.2) – Le ministre ne peut étudier la demande de l’étranger faite au titre du paragraphe (1) dans les cas suivants :</p> <p>...</p> <p>(b) il a présenté une demande d’asile qui est pendante devant la Section de la protection des réfugiés ou de la Section d’appel des réfugiés;</p> <p>(c) sous réserve du paragraphe (1.21), moins de douze mois se sont écoulés depuis le dernier rejet de la demande d’asile, le dernier prononcé de son retrait après que des éléments de preuve testimoniale de fond aient été entendus ou le dernier prononcé de son désistement par la Section de la protection des réfugiés ou la Section d’appel des réfugiés.</p> <p>...</p> <p>(1.3) Le ministre, dans l’étude de la demande faite au titre du paragraphe (1) d’un étranger se trouvant au Canada, ne tient compte</p>
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<p>account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.</p> <p>...</p> <p>25.2(1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.</p> <p>...</p> <p>64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.</p> <p>(2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(b) or (c).</p> <p>...</p> <p>101. (1) A claim is ineligible to be referred to the Refugee Protection Division if</p> <p>...</p> <p>(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).</p> <p>(2) A claim is not ineligible by reason of</p>	<p>d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.</p> <p>...</p> <p>25.2(1) Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.</p> <p>...</p> <p>64. (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.</p> <p>(2) L'interdiction de territoire pour grande criminalité vise, d'une part, l'infraction punie au Canada par un emprisonnement d'au moins six mois et, d'autre part, les faits visés aux alinéas 36(1)b) et c).</p> <p>...</p> <p>101. (1) La demande est irrecevable dans les cas suivants :</p> <p>...</p> <p>f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) — , grande criminalité ou criminalité organisée.</p> <p>(2) L'interdiction de territoire pour grande</p>
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<p>serious criminality under paragraph (1)(f) unless</p> <p>(a) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or</p> <p>(b) in the case of inadmissibility by reason of a conviction outside Canada, the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.</p>	<p>criminalité visée à l'alinéa (1)f) n'emporte irrecevabilité de la demande que si elle a pour objet :</p> <p>a) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;</p> <p>b) une déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.</p>
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