

Federal Court



Cour fédérale

Date: 20120830

Docket: IMM-1304-12

Citation: 2012 FC 1038

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, August 30, 2012

PRESENT: The Honourable Justice Boivin

BETWEEN:

GURPAL SINGH

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [the Act] from a decision rendered January 6, 2012, in which the Refugee Protection Division of the Immigration and Refugee

Panel (the Panel) found that the applicant was neither a refugee nor a person in need of protection pursuant to sections 96 and 97 of the Act.

I. Background

A. *Factual background*

[2] Gurpal Singh (the applicant) is a citizen of India seeking refugee protection in Canada under sections 96 and 97 of the Act.

[3] On July 12, 2008, the applicant claims he was participating in a cultural program in Delhi when he was arrested and accused of being a member of a Sikh militant organization. The police accused him of funding these organizations because he had travelled outside India a number of times, particularly to Canada. The applicant was held for two days and tortured. He was released on July 14, 2008, after paying a large bribe.

[4] On September 14, 2008, after a bombing in Bombay, the applicant claims that the police went to his residence, close to the places targeted by the attacks, and arrested him again. The applicant submits that he was suspected of being a member of a Sikh militant group that was responsible for the previous night's attacks. The applicant states that he was detained for four days and then released on September 18, 2008, after paying another large bribe.

[5] Because of his detention, the applicant explains that he was hospitalized for two days. On his family's advice, he decided to flee India. The applicant applied for a Canadian

visa and a work permit with the support of the International Sikh Missionary Centre (ISMC). The applicant states that he hid while his application was being processed.

[6] The applicant received his Canadian visa in December 2008, and left India on February 18, 2009, arriving in Canada that same day.

[7] The applicant filed his refugee claim on March 12, 2009. The hearing before the Panel took place over two days, November 25, 2011, and December 9, 2011.

B. The decision under review

[8] The Panel rejected the applicant's refugee claim, finding the applicant's story lacked credibility. The Panel concluded that the applicant did not show a serious possibility of persecution or that he was a person in need of protection under the Act.

[9] At the hearing, Singh Oberoi, a relative of the applicant and President of the ISMC, gave testimony that contradicted the applicant's story and alleged that he invented a fraudulent refugee claim. However, the Panel chose to grant little probative value to Mr. Oberoi's testimony. The Panel also decided to ignore issues about the applicant's true city of residence and his employment, and chose to focus on the central issues of the applicant's refugee claim.

[10] The Panel doubted the applicant's credibility and rejected his refugee claim.

II. The issues

[11] The Court feels that the case raises the following questions:

- (1) Did the Panel breach the principles of natural justice by allowing Oberoi Singh to testify?
- (2) Was the Panel's decision reasonable?

III. Relevant legislative provisions

[12] The relevant legislative provisions are reproduced in the Appendix to this judgment.

IV. Applicable standards of review

[13] For the first question, it is recognized in the case law that the standard of correctness applies to all issues of law, procedural fairness and violations of the principles of natural justice (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 [*Dunsmuir*]; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339).

[14] As to the second question, whether the Panel rendered a reasonable decision, the case law has established that the standard of review for the Panel's findings of fact is reasonableness (*Dunsmuir, supra*). The Court must show some deference to the Panel's decision and reasonableness is assessed in terms of justification, transparency and intelligibility within the decision-making process (*Dunsmuir, supra*, at para. 47).

Question 1: *Did the Panel breach the principles of natural justice by allowing Oberoi Singh to testify?*

[15] The applicant states that the Panel breached the principles of natural justice by allowing a third party—Oberoi Singh—to intervene at the hearing. The applicant claims that

this intervention was illegal under the *Refugee Protection Division Rules* [the Rules] and the Act, that the intervention constituted a breach of confidentiality in the applicant's refugee claim and that the Panel assumed a jurisdiction it did not have. More specifically, the applicant claims that the Panel did not respect the procedure set out at Rule 25 of the Rules, and paragraph 170(e) of the Act because the Rules in question only allow the Minister to intervene. Additionally, the applicant notes that the Panel itself recognized the following: "[i]n the opinion of the Panel, to call a third party witness during a hearing would have been inappropriate and, at best, would have provided information which would have potentially derailed the attention from the main issues of this claim" (Panel decision, para. 9).

[16] As for the respondent, he states that Mr. Oberoi's testimony was allowed because he complied with the applicable rules, specifically the Act, the *Refugee Protection Division Rules* and the Policy on the Treatment of Unsolicited Information in the Refugee Protection Division, and did not violate the principles of natural justice. The Court shares this opinion.

[17] The Court notes, as the respondent did, that the applicant was represented before the Panel. Nothing in the applicant's records show that his representative intervened during or prior to the hearing to object to Mr. Oberoi's testimony. Moreover, the Court notes that, despite the fact he had the opportunity to cross-examine the witness and make submissions at the hearing, the applicant's representative remained silent on this issue.

[18] Also, the Court notes that the Panel sent two notices to the applicant before the hearing, dated November 4, 2011 (Tribunal record, p.122) and November 15, 2011

(Tribunal record, p. 30), informing the applicant of the intervention by conference call.

These notices informed the applicant that he could object to the testimony and provided him with the opportunity to prepare himself. Similarly, the Court notes that the November 4, 2011, notice contained a copy of three poison-pen letters received from Mr. Oberoi and the ISMC (Tribunal record, pp. 205-213).

[19] The Court notes that it is well established case law that a party is responsible for raising all issues regarding the conduct of the hearing and any alleged violations of a principle of natural justice at the first occasion—in this case, during the hearing or prior to it. The Court feels that the applicant did not suffer any prejudice—moreover, the Panel had granted little probative value to Oberoi Singh's testimony—and it is too late to raise such an argument at the judicial review stage (see *Toora v Canada (Minister of Citizenship and Immigration)*, 2006 FC 828 at para 18, [2006] FCJ 1057; *Lawal v Canada (Minister of Citizenship and Immigration)*, 2008 FC 861 at para 43, [2008] FCJ 1082). In light of the preceding, the Court dismisses the applicant's arguments.

Question 2: Was the Panel's decision reasonable?

[20] Second, the applicant states that the Panel's decision is unreasonable because it neglected to consider many facts and evidence in question, did not consider the applicant's main allegation, and did not comment on all the documentary evidence.

[21] First, the applicant claims the Panel neglected to consider that the applicant is a baptized Sikh priest and ignored this fact when evaluating the likelihood of his arrests.

Similarly, the applicant submits that the Panel failed to assess the main allegation in his refugee claim: that he was accused of having facilitated and financed terrorist organizations. The applicant affirms that the Panel ignored documentary evidence the applicant submitted that showed that in 2010 the Indian Prime Minister identified Sikhs in Canada as separatists and militants and instead considered documents that established that explosions in September 2008, in the capital of Delhi were not the work of Sikh groups but Muslim groups. Therefore, the applicant submits that his story is likely because Sikhs caused the explosions in Delhi in 2005.

[22] Second, the applicant claims that the Panel did not consider the Canadian medical report (exhibit C-6) and the PRAIDA medial report that confirm serious injuries and trauma he experienced. Moreover, the applicant submits that the Panel neglected to consider relevant documentary evidence—specifically, documents that showed that extremist groups could have helped each other regardless of their religious or political affiliation. The applicant also claims that the Panel did not consider the letter by the secretary of Gurdwara. Pursuant to *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No.1425, 157 FTR 35, the applicant claims that the Panel should process these documents because of their importance.

[23] Contrary to the applicant's allegations, the Court feels that the Panel's decision was reasonable and supported by the evidence on record. The Panel drafted a clear and coherent decision that provided many reasons for doubting the applicant's credibility. The Court feels

it is appropriate at this point to repeat the Panel's findings regarding the applicant's credibility:

[TRANSLATION]

- The Panel found that the evidence showed that the Indian police forces did not target Sikh militants but rather Moujahideen groups and other Muslim extremists based in Pakistan as being responsible for the bombings in September 2008. The Panel noted that it was surprising the police force had arrested and detained the applicant considering his profile as Sikh militant associated with the separatist movements in Punjab. The Panel also noted that the applicant could not provide any satisfactory explanations for these matters.
- The Panel noted that the only evidence the applicant submitted about his arrests were the medical notes from the Shams Health Care (Tribunal record, pp 95-97) that the Panel considered vague and had errors.
- The Panel noted that the applicant could not provide detailed explanations about the treatment he received following the torture inflicted at the hands of the police during his detention.
- The Panel found it unlikely the applicant would have been arrested and accused of being involved with Sikh militant groups twice. Moreover, the Panel found it was unlikely that the applicant would have simply been released after paying a bribe after being arrested for his alleged involvement in the bombing in Bombay.
- The Panel found it unlikely that the applicant would have been able to obtain a Canadian visa and leave the country with his own identification if he was suspected of having ties with and funding terrorist organizations.
- The Panel found it strange that the applicant indicated he had not experienced any problems in India from September 2008 to February 2009 when letters from his wife showed hundreds of police visits during the applicant's absence.
- The Panel noted that the letters written by the applicant's wife were very similar and contained repeated passages.

[24] Contrary to the applicant's proposals, the Court feels that the Panel considered the central issues of the refugee claim. Although the applicant claims the Panel did not rule on the applicant's claim that he is at risk as a baptized Sikh priest, this ground for refugee claim

is new and was not raised during the hearing before the Panel. As a result, the Court cannot fault the Panel for not taking this personal characteristic into consideration, as the judicial review of a decision should proceed only on the evidence that was available to the administrative tribunal (*Ghotra v Canada (Minister of Citizenship and Immigration)*, 2009 FC 764 at para 14, [2009] FCJ 924; see also *Paramanathan v Canada (Minister of Citizenship and Immigration)*, 2012 FC 338 at para 15, [2012] FCJ No. 377).

[25] As for the applicant's injuries, although the evidence shows he did in fact break his collarbone at some time, the evidence does not in any way indicate that this injury was caused by the police during his detention. The Panel could also reasonably find that it was surprising that, considering the applicant's claims, the authorities released him so quickly upon the presentation of a bribe.

[26] It is settled law that the Panel is presumed to have considered all the evidence on file and is not required to comment on each document in its reasons (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 598). Similarly, pursuant to *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCA No. 732, 160 NR 315, the assessment of evidence and testimony and the probative value granted are the Panel's responsibility (see *Li v Canada (Minister of Citizenship and Immigration)*, [2002] FCJ No. 470; *Shahamati v Canada (Minister of Employment and Immigration)*, [1994] FCJ No. 415). It is well-established Federal Court case law that it is the refugee claimant's responsibility to prove the key elements of his or her application—something the applicant did not do in this case.

[27] A finding on the lack of credibility is a determining factor in itself (*Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at para 147; *Salim v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1592, [2005] FCJ No.1963; *Sellan v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 381, [2008] FCJ No.1685).

[28] The Court feels that the applicant simply disagrees with the Panel's decision and, considering the above, the Court finds that the Panel's decision to dismiss the applicant's refugee claim falls within the range of possible acceptable outcomes that are defensible in respect of the facts and law. As a result, the application for judicial review is dismissed.

[29] No question was raised by the parties for certification.

JUDGMENT

THE COURT RULES as that:

1. This application for judicial review be dismissed.
2. No question will be certified.

"Richard Boivin"

Judge

Certified true translation
Elizabeth Tan, Translator

APPENDIX

Federal Courts Rules
SOR/98-106

Règles des Cours fédérales,
DORS/98-106

**AFFIDAVIT EVIDENCE AND
EXAMINATIONS**

**PREUVE PAR AFFIDAVIT ET
INTERROGATOIRES**

Affidavits

Affidavits

Content of affidavits

Contenu

81. (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.

81. (1) Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

[...]

...

Federal Courts Immigration and Refugee Protection Rules
SOR/93-22

Règles des cours fédérales en matière d'immigration et de protection des réfugiés
DORS/93-22

**PERFECTING APPLICATION FOR
LEAVE**

**MISE EN ÉTAT DE LA DEMANDE
D'AUTORISATION**

10. (1) The applicant shall perfect an application for leave by complying with subrule (2)

10. (1) Le demandeur met sa demande d'autorisation en état en se conformant au paragraphe (2) :

(a) where the application sets out that the

a) s'il indique dans sa demande qu'il a reçu

applicant has received the tribunal's written reasons, within 30 days after filing the application; or

(b) where the application sets out that the applicant has not received the tribunal's written reasons, within 30 days after receiving either the written reasons, or the notice under paragraph 9(2)(b), as the case may be.

(2) The applicant shall serve on every respondent who has filed and served a notice of appearance, a record containing the following, on consecutively numbered pages, and in the following order

(a) the application for leave,

(b) the decision or order, if any, in respect of which the application is made,

(c) the written reasons given by the tribunal, or the notice under paragraph 9(2)(b), as the case may be,

(d) one or more supporting affidavits verifying the facts relied on by the applicant in support of the application, and

(e) a memorandum of argument which shall set out concise written submissions of the facts and law relied upon by the applicant for the relief proposed should leave be granted,

and file it, together with proof of service.

les motifs écrits du tribunal administratif, dans les 30 jours suivant le dépôt de sa demande;

b) s'il indique dans sa demande qu'il n'a pas reçu les motifs écrits du tribunal administratif, dans les 30 jours suivant la réception soit de ces motifs, soit de l'avis envoyé par le tribunal administratif en application de l'alinéa 9(2)b).

(2) Le demandeur signifie à chacun des défendeurs qui a déposé et signifié un avis de comparution un dossier composé des pièces suivantes, disposées dans l'ordre suivant sur des pages numérotées consécutivement :

a) la demande d'autorisation,

b) la décision, l'ordonnance ou la mesure, s'il y a lieu, visée par la demande,

c) les motifs écrits donnés par le tribunal administratif ou l'avis prévu à l'alinéa 9(2)(b), selon le cas,

d) un ou plusieurs affidavits établissant les faits invoqués à l'appui de sa demande,

e) un mémoire énonçant succinctement les faits et les règles de droit invoqués par le demandeur à l'appui du redressement envisagé au cas où l'autorisation serait accordée,

et le dépose avec la preuve de la signification.

**Immigration and Refugee Protection Act
SC 2001, c 27**

***Loi sur l'immigration et la protection des réfugiés
LC 2001, ch 27***

PARTIE 2

PROTECTION DES RÉFUGIÉS

SECTION 1

NOTIONS D'ASILE, DE RÉFUGIÉ ET DE
PERSONNE À PROTÉGER

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention – le réfugié – la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

PART 2

REFUGEE PROTECTION

DIVISION 1

REFUGEE PROTECTION, CONVENTION
REFUGEES AND PERSONS IN NEED OF
PROTECTION

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

- (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
- (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
- (iii) la menace ou le risque ne résulte pas de sanctions légitimes – sauf celles infligées au mépris des normes internationales – et inhérents à celles-ci ou occasionnés par elles,
- (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Personne à protéger

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

SECTION DE LA PROTECTION DES RÉFUGIÉS

Fonctionnement

170. Dans toute affaire dont elle est saisie, la Section de la protection des réfugiés :

a) procède à tous les actes qu'elle juge utiles à la manifestation du bien-fondé de la demande;

b) dispose de celle-ci par la tenue d'une audience;

c) convoque la personne en cause et le ministre;

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
- (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
- (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
- (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Person in need of protection

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

REFUGEE PROTECTION DIVISION

Proceedings

170. The Refugee Protection Division, in any proceeding before it,

(a) may inquire into any matter that it considers relevant to establishing whether a claim is well-founded;

(b) must hold a hearing;

(c) must notify the person who is the subject of the proceeding and the Minister

- d*) transmet au ministre, sur demande, les renseignements et documents fournis au titre du paragraphe 100(4);
- e*) donne à la personne en cause et au ministre la possibilité de produire des éléments de preuve, d'interroger des témoins et de présenter des observations;
- f*) peut accueillir la demande d'asile sans qu'une audience soit tenue si le ministre ne lui a pas, dans le délai prévu par les règles, donné avis de son intention d'intervenir;
- g*) n'est pas liée par les règles légales ou techniques de présentation de la preuve;
- h*) peut recevoir les éléments qu'elle juge crédibles ou dignes de foi en l'occurrence et fonder sur eux sa décision;
- i*) peut admettre d'office les faits admissibles en justice et les faits généralement reconnus et les renseignements ou opinions qui sont du ressort de sa spécialisation.
- of the hearing;
- (d)* must provide the Minister, on request, with the documents and information referred to in subsection 100(4);
- (e)* must give the person and the Minister a reasonable opportunity to present evidence, question witnesses and make representations;
- (f)* may, despite paragraph (b), allow a claim for refugee protection without a hearing, if the Minister has not notified the Division, within the period set out in the rules of the Panel, of the Minister's intention to intervene;
- (g)* is not bound by any legal or technical rules of evidence;
- (h)* may receive and base a decision on evidence that is adduced in the proceedings and considered credible or trustworthy in the circumstances; and
- (i)* may take notice of any facts that may be judicially noticed, any other generally recognized facts and any information or opinion that is within its specialized knowledge.

**Refugee Protection Division Rules
SOR/2002-228**

***Règles de la Section de la protection des réfugiés*
DORS/2002-228**

INTERVENTION DU MINISTRE	INTERVENTION BY THE MINISTER
Avis d'intention d'intervenir	Notice of intention to intervene
25. (1) Pour intervenir dans une demande d'asile, le ministre transmet :	25. (1) To intervene in a claim, the Minister must provide
<i>a)</i> au demandeur d'asile, une copie de l'avis d'intention d'intervenir;	<i>(a)</i> to the claimant, a copy of a written notice of the Minister's intention to intervene; and
<i>b)</i> à la Section, l'original de cet avis ainsi qu'une déclaration écrite indiquant à quel moment et de quelle façon une copie de l'avis a été transmise au demandeur d'asile.	<i>(b)</i> to the Division, the original of that notice and a written statement of how and when a copy was provided to the claimant.
Contenu de l'avis	Contents of notice
(2) Le ministre indique dans l'avis la façon dont il interviendra et fournit les coordonnées de son conseil.	(2) In the notice, the Minister must state how the Minister will intervene and give the Minister's counsel's contact information.
Motif d'intervention — clauses d'exclusion	Intervention — exclusion clauses
(3) S'il croit que les sections E ou F de l'article premier de la Convention sur les réfugiés pourraient s'appliquer à la demande d'asile, le ministre énonce également dans l'avis les faits et les règles de droit sur lesquels il s'appuie.	(3) If the Minister believes that section E or F of Article 1 of the Refugee Convention may apply to the claim, the Minister must also state in the notice the facts and law on which the Minister relies.
Délai	Time limit
(4) Les documents transmis selon la présente règle doivent être reçus par leurs destinataires au plus tard vingt jours avant l'audience.	(4) Documents provided under this rule must be received by the Division and the claimant no later than 20 days before the hearing.

COMMUNICATION DE DOCUMENTS

DISCLOSURE OF DOCUMENTS

Communication de documents par une partie

Disclosure of documents by a party

29. (1) Pour utiliser un document à l'audience, la partie en transmet une copie à l'autre partie, le cas échéant, et deux copies à la Section, sauf si les présentes règles exigent un nombre différent de copies.

29. (1) If a party wants to use a document at a hearing, the party must provide one copy to any other party and two copies to the Division, unless these Rules require a different number of copies.

Communication de documents par la Section

Disclosure of documents by the Division

(2) Pour utiliser un document à l'audience, la Section en transmet une copie aux parties.

(2) If the Division wants to use a document at a hearing, the Division must provide a copy to each party.

Preuve de transmission

Proof that document was provided

(3) En même temps qu'elle transmet les copies à la Section, la partie lui transmet également une déclaration écrite indiquant à quel moment et de quelle façon elle en a transmis une copie à l'autre partie, le cas échéant.

(3) Together with the copies provided to the Division, the party must provide a written statement of how and when a copy was provided to any other party.

Délai

Time limit

(4) Tout document transmis selon la présente règle doit être reçu par son destinataire au plus tard :

(4) Documents provided under this rule must be received by the Division or a party, as the case may be, no later than

a) soit vingt jours avant l'audience;

(a) 20 days before the hearing; or

b) soit, dans le cas où il s'agit d'un document transmis en réponse à un document reçu de l'autre partie ou de la Section, cinq jours avant l'audience.

(b) five days before the hearing if the document is provided to respond to another document provided by a party or the Division.

***The Treatment of Unsolicited Information
in the Refugee Protection Division
Policy no. 2003-04***

***Traitement des renseignements non sollicités
à la Section de la protection des réfugiés,
Politique n° 2003-04***

3. Context

From time to time, the IRB receives unsolicited information in respect of RPD proceedings. It is important that the IRB, as an independent tribunal adjudicating the merits of a claim for refugee protection, not take on an active investigative role with respect to unsolicited information received from anonymous sources or from informants who are unwilling or unable to appear as witnesses at the hearing of the claim.

However, all relevant evidence should be made available to decision-makers of the RPD. Unsolicited information may be taken into consideration in a refugee protection hearing, provided that it can adequately be tested. This policy ensures that unsolicited information received by the IRB enters the decision-making process of the RPD only if it can adequately be tested. The Refugee Protection Division's use of unsolicited information, subject to this policy, is in keeping with the concept of refugee protection determination as a process of inquiry.

4. Définitions

Les définitions qui suivent s'appliquent à la présente politique.

« éléments de preuve éventuels »
Renseignements, communiqués de vive voix

3. Contexte

De temps en temps, la CISR reçoit des renseignements non sollicités en vue des audiences de la SPR. Il importe que la CISR, à titre de tribunal indépendant chargé de statuer sur le bien-fondé d'une demande d'asile, n'enquête pas activement sur des renseignements non sollicités communiqués sous le couvert de l'anonymat ou par un informateur qui ne veut pas ou ne peut pas comparaître comme témoin à l'audition de la demande d'asile.

En revanche, il importe que toutes les preuves pertinentes soient mises à la disposition des décideurs de la SPR. Les renseignements non sollicités peuvent être pris en compte à l'audition d'une demande d'asile à condition qu'ils puissent être convenablement vérifiés. La présente politique permet de veiller à ce que les renseignements non sollicités reçus par la CISR ne soient pris en compte dans le processus décisionnel de la SPR que s'ils peuvent être convenablement vérifiés. L'utilisation de renseignements non sollicités par la SPR, sous réserve des dispositions de la présente politique, est conforme au concept du processus d'enquête en matière d'octroi de l'asile.

4. Definitions

For the purposes of this policy:

"**potential evidence**" means information, oral or in some tangible form, that may be

ou sous une forme tangible, que la SPR peut divulguer conformément aux Règles de la SPR. Sous réserve de leur recevabilité et de leur valeur probante, déterminées par le commissaire de la SPR dans l'exercice de son pouvoir discrétionnaire, ces renseignements peuvent être utilisés aux fins du règlement de la demande d'asile.

« renseignements non sollicités »
Renseignements 1) qui sont fournis par des personnes ne participant pas aux audiences de la SPR et 2) qui ne sont pas demandés par des agents de la CISR, des représentants du ministre, un demandeur d'asile ou son représentant. Les renseignements non sollicités peuvent être reçus de vive voix ou sous une forme tangible, telle qu'une lettre, une photographie, un message électronique ou un rapport dans les médias.

5. Énoncé de politique

La Section de la protection des réfugiés (SPR) considère comme éléments de preuve éventuels les renseignements non sollicités lorsque les trois conditions suivantes sont réunies :

- les renseignements concernent une demande d'asile identifiable qui n'a pas été traitée;
- les renseignements proviennent d'un informateur identifiable;
- l'informateur autorise la divulgation des renseignements et accepte de comparaître comme témoin, s'il y a lieu.

Par souci de clarté et aux fins de la délivrance d'un avis fourni aux termes des articles 23 et 24 des *Règles de la Section de la protection des réfugiés*, les renseignements concernant la possibilité qu'un demandeur d'asile soit exclu de la Convention, interdit de territoire ou que sa demande soit jugée irrecevable, ou qu'il

disclosed by the RPD in accordance with the RPD rules. Subject to its admissibility and probative value as determined by the RPD member in the exercise of his or her discretion, this information may be used in the determination of a claim for refugee protection.

"unsolicited information" means information: 1) provided by persons not party to the proceedings before the RPD; and 2) not requested by officials of the IRB, representatives of the Minister, a claimant, or a claimant's representative. Unsolicited information may be received orally or in some tangible form such as a letter, photograph, e-mail message, or media report.

5. Policy Statement

The Refugee Protection Division treats unsolicited information as potential evidence when

- the information concerns an identifiable claim that has not been finalised;
- the information originates from an identifiable informant; and
- the informant agrees to disclosure of the information and to appear as a witness if subsequently requested.

For further clarity, for the purpose of providing notice under *Refugee Protection Division* rules 23 and 24, information relating to a claimant's potential exclusion, inadmissibility, ineligibility or outstanding charge for an offence that may be punishable by a term of ten years, is not considered

fasse l'objet d'une accusation en instance pour une infraction punissable d'un emprisonnement de dix ans, ne sont pas considérés comme éléments de preuve éventuels, à moins qu'ils ne répondent aux conditions préalables mentionnées ci-dessus.

La SPR considère également comme éléments de preuve éventuels les rapports dans les médias non sollicités présentés par une personne anonyme ou connue, pourvu que :

- ces rapports concernent une demande d'asile identifiable qui n'a pas été traitée;
- ces rapports puissent être facilement vérifiés avant la date de l'audience.

La conservation et le traitement des renseignements non sollicités à titre d'éléments de preuve éventuels par la Section de la protection des réfugiés n'équivalent nullement à une opinion quant à leur recevabilité, leur pertinence, leur crédibilité ou leur valeur probante. Toutes les parties et l'agent de protection des réfugiés (APR) dans un cas donné ont la possibilité de faire des observations au tribunal au sujet de ces questions en cours d'instance.

Lorsque les renseignements non sollicités ne peuvent être considérés comme des éléments de preuve éventuels, la CISR ne conserve pas de copie ni de dossier de ces renseignements. Tout dossier de la CISR concernant des renseignements non sollicités est transféré à Citoyenneté et Immigration Canada (CIC) et :

- les renseignements sous une forme tangible sont transférés à CIC;
- la personne désireuse de fournir de tels renseignements de vive voix est renvoyée au bureau approprié de CIC.

Les renseignements confiés à CIC sont accompagnés d'un énoncé comprenant le nom du demandeur d'asile, le numéro de dossier de

potential evidence unless it meets the pre-conditions noted above.

The RPD also treats unsolicited media reports, submitted anonymously or by known sources, as potential evidence, provided that

- such reports concern an identifiable claim that has not been finalised; and
- such reports can readily be authenticated before the hearing date.

The Refugee Protection Division's retention and processing of unsolicited information as potential evidence does not constitute an opinion as to its admissibility, relevance, credibility, or weight. All parties and the Refugee Protection Officer (RPO) in a given case will have an opportunity to address the panel on these issues during the course of the proceedings.

When unsolicited information cannot be treated as potential evidence, the IRB does not retain any copy or record of such information. Any IRB record concerning the unsolicited information is transferred to Citizenship and Immigration Canada (CIC), and

- the information in tangible form is transferred to CIC; and / or
- the person seeking to provide such information orally is referred to the appropriate CIC office.

The information transferred to CIC is accompanied by a statement of the claimant's name, IRB file number, and CIC

la CISR et le numéro d'identification de CIC, s'il est connu. Lorsque les renseignements non sollicités se rapportent à une affaire en instance, la notification à CIC doit comporter la date prévue pour l'audience. Aux fins de la gestion des dossiers, un profil de document minimal est conservé par la CISR.

CIC, qui est investi d'un pouvoir et d'un mandat d'enquête que la SPR n'a pas, peut décider de pousser l'enquête plus loin ou d'intervenir dans un cas donné. Si le ministre décide d'intervenir, il est habilité à présenter à la Section de la protection des réfugiés tout renseignement, sollicité ou non. Le ministre communique les renseignements à toutes les parties, à titre d'éléments de preuve, conformément aux *Règles de la Section de la protection des réfugiés* et aux dispositions relatives aux renseignements du ministre des *Instructions concernant l'obtention et la divulgation de renseignements lors des instances devant la Section de la protection des réfugiés*.

identification number, if known. When the unsolicited information relates to a case yet to be heard, the communication to CIC will indicate the scheduled hearing date. For record management purposes, a minimal document profile is maintained by the IRB.

CIC, which has an investigative capacity and mandate that the RPD does not, may choose to investigate further or to intervene in any particular case. Should the Minister decide to intervene, the Minister may submit any information to the Refugee Protection Division, whether solicited or unsolicited. The Minister shall disclose such information in evidence to all parties in accordance with the *Refugee Protection Division Rules* and provisions for Minister's information in the *Instructions for the Acquisition and Disclosure of Information for Proceedings in the Refugee Division*.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1304-12

STYLE OF CAUSE Gurbal Singh v MCI

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 18, 2012

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