**THE CROWN COURT OF CANADA**

**(ON APPEAL FROM THE FEDERAL COURT OF CANADA)**

B E T W E E N:

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

APPELLANTS

- and -

**ISABELLA BARBOSA REIS, a.k.a. Isabella Santos Reis**

**PEDRO REIS BARBOSA, by his litigation guardian, Angelique Charles**

**ALANDRA REIS BARBOSA, by her litigation guardian, Angelique Charles**

RESPONDENTS

**APPELLANT’S MEMORANDUM OF ARGUMENT**

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Counsel for the Appellant

**OVERVIEW**

1. The Parliament of Canada has equipped the Refugee Protection Division (“RPD”), a specialized tribunal empowered by the Immigration and Refugee Protection Act (“*IRPA*”) to make well-reasoned decisions on refugee matters.[[1]](#footnote-2) The RPD is permitted to make findings of fact and consider probative evidence in pursuit of the truth, without being constrained by the rules of evidence in judicial proceedings. The proposed exclusion of credible and probative evidence in the adjudication of the Respondent’s refugee claim would subvert the truth-seeking function of the RPD and put the administration of *IRPA* into disrepute. Thus, the certified question must be answered in the affirmative. The RPD is a master of its own procedure and has significant discretion to admit and consider unsolicited and untested evidence in a refugee claim proceeding.
2. The RPD has satisfied its duty of procedural fairness by processing the refugee claim without undue delay; acting in accordance with *IRPA* and the *Refugee Protection Division Rules* (the “*RPD Rules*”) regarding documentary and oral evidence disclosure and assessment; and providing rational and cohesive reasons for their credibility decision.[[2]](#footnote-3) Mr. Barbosa’s evidence was responsive to contested issues in the claim, and the RPD was not obligated to cross-examine the unsolicited evidence after it was found credible and trustworthy. The onus was on the Respondent to file an application to cross-examine Mr. Barbosa on the evidence or to find an alternative means to test the evidence. In effect, the Respondent cannot argue a breach of procedural fairness after being afforded ample notice of the disclosure of evidence into her claim, along with an opportunity to compel Mr. Barbosa as a witness for cross-examination.
3. The Respondent has inappropriately invited this court to re-assess and re-weigh the evidence and credibility findings of the RPD. This court’s role is circumscribed and supervisory on appeal, and the RPD’s credibility findings should be afforded great deference considering their consequential advantage in 1) hearing the oral testimony of the Respondent; and 2) assessing the credibility and relevance of the documentary and oral evidence.
4. The Application Judge failed to appreciate the RPD’s statutory authority with respect to evidence disclosure and assessment and instead, supplemented their own views of the appropriate approach toward the assessment of the evidence. Accordingly, the Federal Court committed a reviewable error, and the RPD decision should be restored.

**PART I: FACTS**

***Parties***

1. The Respondent, Ms. Isabella Reis, and her two children - Pedro Reis Barbosa and Alandra Reis Barbosa (the “Minor Claimants”) - are citizens of Brazil.[[3]](#footnote-4)
2. In 2020, the Respondent fled to Canada with Mr. Alves Barbosa who is the Minor Claimants’ father and formerly, the Respondent’s husband. The family applied for refugee protection at the port of entry citing a perceived threat of extortion by a gang in Brazil, with Mr. Barbosa listed as the principal claimant on the family’s Basis of Claim (“BOC”) form.
3. On June 1, 2021, prior to the family’s refugee hearing date, the Respondent filed an application with the RPD to sever her refugee claim from her husband pursuant to Rule 56 of the *RPD Rules.* In the amended BOC form, the Respondent alleged she was a victim of ongoing domestic abuse between 2015 to 2017. The Respondent alleged that the abuse continued upon their arrival to Canada in February 2020. Ms. Barbosa did not amend the BOC Narrative, at any point, to include specific incidents of abuse against the Minor Claimants.[[4]](#footnote-5)
4. On June 11, 2021, the application to sever the claims was granted and a Designated Representative (the “DR”) was appointed to represent the Minor Claimants. As a result of the young age of the Minor Claimants, who were 2 and 4 at the time of the hearing, the DR did not file a separate BOC form for them.[[5]](#footnote-6)

***Admissibility of Unsolicited Information and Transcript Evidence***

1. On August 13, 2021, the Minister of Citizenship and Immigration (the “Appellant”) applied to intervene and admit excerpts of the transcript from Mr. Barbosa’s oral refugee hearing and the RPD decision (the “Transcript Evidence”), as it controverted the Respondent’s key allegations.[[6]](#footnote-7)
2. On August 16, 2021, the Board received a package of unsolicited information from parallel family law proceedings involving the Respondent and Mr. Barbosa (the “Unsolicited Evidence”). The package included documentary evidence filed by Mr. Barbosa in the family law proceedings, including “his sworn affidavit and letters from family members and friends in Brazil.”[[7]](#footnote-8)
3. The Minister argued that the Unsolicited Evidence was relevant to assessing the Respondent’s risk of persecution and failing to admit it would result in an “impermissible holding of material information, prevent a full and proper determination of the claim, and bear negatively on the integrity of the Canadian refugee protection system.”[[8]](#footnote-9)
4. On August 26, 2021, the RPD wrote to the parties involved that the Minister’s application to admit the Transcripts Evidence from Mr. Barbosa’s refugee claim proceeding was accepted.[[9]](#footnote-10) The Respondent received notice of the disclosure of Transcript Evidence into her claim, and she voiced her objections to the RPD.[[10]](#footnote-11)
5. The RPD noted that the Unsolicited Evidence was admissible and material to the allegations of risk characterized by the Respondent. The RPD reasoned that they have the authority to act outside of legal or technical rules of evidence and to receive and rely on evidence they deem to be credible and trustworthy in the adjudication of a refugee claim under ss. 170(g)(h) of *IRPA.*[[11]](#footnote-12)
6. The Unsolicited Evidence and Transcript Evidence from Mr. Barbosa showed that he was “a good father to his two young children.” At the hearing, neither counsel nor the Respondent cross-examined the evidence of Mr. Barbosa.[[12]](#footnote-13)

***The RPD’s Credibility Decision***

1. The RPD found that the determinative issue in the refugee claim was credibility. The RPD found a material omission from the Respondent’s BOC narrative regarding allegations of child abuse.[[13]](#footnote-14) The inconsistency between the assertions in the Respondent’s family law affidavit, BOC narrative, and her *viva voce* testimony, led to a rebuttal of the presumption of truthfulness.[[14]](#footnote-15)
2. The RPD proceeded to consider the sworn affidavit of Mr. Barbosa, the decision in his refugee claim, and documentary evidence from the family law proceedings. After a comprehensive review of the parties’ evidence, the RPD found that Mr. Barbosa’s evidence painted a more “believable version of events.”[[15]](#footnote-16)
3. Based on the evidentiary record before the panel, the RPD concluded that, on a balance of probabilities, the Respondent lacked credibility as a witness.[[16]](#footnote-17) Accordingly, the RPD’s decision on October 25, 2021, established that the Respondent and the Minor Claimants were not convention refugees or persons in need of protection within the ambit of ss. 96 and 97 of *IRPA*.[[17]](#footnote-18)

***The Federal Court Decision***

1. The Respondent applied for judicial review of the RPD decision made on October 25, 2021, arguing that the RPD erred in admitting the Transcript Evidence and Unsolicited Evidence of Mr. Barbosa, and in determining that the Respondent is not a credible or trustworthy witness.[[18]](#footnote-19)
2. The Application Judge stated that reasonableness was the appropriate standard of review to be applied to the RPD decision. The Application Judge found the RPD rendered an unreasonable decision as they relied on Mr. Barbosa’s evidence to make an adverse inference with respect to credibility.[[19]](#footnote-20)
3. The Application Judge granted the application for judicial review and the matter was remitted for redetermination by a differently constituted panel.[[20]](#footnote-21)
4. The Application Judge certified the following question:

Can unsolicited evidence, including affidavit evidence, filed by the agent of persecution be admitted and considered by the Refugee Protection Division? [[21]](#footnote-22)

**II. POINTS IN ISSUE**

1. The RPD has satisfied its duty of procedural fairness in the adjudication of the Respondent’s refugee claim.
2. The certified question of the Federal Court should be answered in the affirmative, and the RPD should be able to consider unsolicited evidence, including affidavit evidence, filed by the agent of persecution.
3. The RPD’s credibility decision was reasonable and responsive to the evidentiary record.
4. The Federal Court’s analysis of the RPD decision strays outside the bounds of reasonableness review.

**III. ARGUMENT**

**STANDARD OF REVIEW**

1. The Application Judge properly determined that the RPD decision is reviewable on a reasonableness standard. The admission of evidence and evaluation of credibility are delegated to the RPD within its enabling statute, *IRPA,* and therefore fall within the tribunal’s expertise.[[22]](#footnote-23) This gives rise to a presumption of reasonableness, which has not been rebutted here, nor is it at issue in this judicial review.[[23]](#footnote-24)
2. The appellate standard of review will “depend primarily on the nature of the questions that have been raised.”[[24]](#footnote-25) In this case, the certified question involves two distinct issues: (1) the proper role of the RPD; and (2) the interpretation of the rules of evidence governing refugee claims. In *Hurligica v Canada,* the Federal Court of Appeal stated that while a certified question may be of general importance to the refugee law system, it does not fall under any of the exceptions to the standard of reasonableness.[[25]](#footnote-26) Accordingly, this Court must “step into the shoes” of the Application Judge and examine the impugned administrative decision and certified question in accordance with the standard of reasonableness.[[26]](#footnote-27)
3. **The Refugee Protection Division satisfied its duty of procedural fairness in the adjudication of the Respondent’s refugee claim.**
4. **The exclusion of Unsolicited Evidence and Transcript Evidence would impede the truth-seeking function of the RPD.**
5. The RPD has satisfied its duty of procedural fairness, as the Respondent received adequate notice of the disclosure of the Transcript Evidence and an opportunity to test the evidence of Mr. Barbosa.[[27]](#footnote-28) While administrative tribunals must be responsive to the procedural right of applicants to present their case, the RPD must consider all relevant evidence in the full and proper determination of a claim to ensure fairness.[[28]](#footnote-29)
6. The RPD is a specialized tribunal with the ability to operate as a “master of its own procedure”, subject to the provision that they comply with the rules of fairness.[[29]](#footnote-30) It is vital to the RPD’s procedural duty of fairness to fully consider Mr. Barbosa’s relevant and credible evidence to ensure a fair determination of the claim.
7. Under *IRPA,* the RPD is required to “deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.”[[30]](#footnote-31) Accordingly, all relevant evidence which pertains to the subject matter of a claim should be presented to the RPD in a timely manner. The premature exclusion of evidence would subvert the truth-seeking function of the RPD and preclude a cohesive understanding of the allegations made by the Respondent.
8. In *Olah v Canada,* the Federal Court stated that “*IRPA* makes a number of allowances to permit refugee determinations to be made fairly and expeditiously, without all the procedural formalities of a court proceeding, and on the basis of a broader range of evidence than would be typically admissible in other types of legal proceedings.”[[31]](#footnote-32) The RPD has the authority to investigate matters deemed relevant to the existence or absence of a well-founded claim, question the refugee claimant and other witnesses, and assess the evidence that the RPD considers credible and trustworthy.[[32]](#footnote-33)
9. The *Policy on the Treatment of Unsolicited Information in the Refugee Protection Division* (the “Unsolicited Information Policy”) allows the RPD to treat unsolicited information as potential evidence when “(1) the information concerns an identifiable claim that has not been finalized; (2) the information originates from an identifiable informant; (3) and the informant agrees to the disclosure of the information and to appear as a witness if subsequently requested.”[[33]](#footnote-34)
10. The Unsolicited Evidence, in this case, pertains to the “character and conduct of Mr. Alves Barbosa, and contradicts the core of the principal claimant’s claim.”[[34]](#footnote-35) The domestic abuse allegations in the Respondent’s BOC are contested by Mr. Barbosa, and the RPD is entitled to hear the balance of evidence to determine the truth. Unlike a criminal trial, as witnessed in *Lyttle,* where the probative value of the evidence must outweigh (or sometimes far outweigh) the prejudicial value, the RPD “is not bound by any legal or technical rules of evidence.”[[35]](#footnote-36) Thus, it would be contrary to the principles of fundamental justice to solely consider the evidence of the Respondent on a contested issue when the Unsolicited Evidence has been regarded as credible pursuant to section 3 of the Unsolicited Information Policy.
11. The RPD’s findings of fact in relation to the Unsolicited Evidence and Transcript Evidence should be granted deference:

The total evidence relating to a disputed fact is considered **“sufficient” if its cumulative weight warrants a finding that the fact exists**. Assessing sufficiency requires the exercise of practical judgment on a case-by-case basis and will attract much deference on judicial review [emphasis added].[[36]](#footnote-37)

1. While the Appellant recognizes there was no independent credibility assessment in Mr. Barbosa’s refugee claim; the presumption of truthfulness prevails due to the RPD’s assessment of the sworn testimony.[[37]](#footnote-38) At Mr. Barbosa’s refugee claim proceeding, the Minister and the RPD cross-examined Mr. Barbosa and found his evidence to be credible and trustworthy under s.170(h) of *IRPA*.[[38]](#footnote-39) Excluding Mr. Barbosa’s evidence or diminishing the weight attributed to it would prevent the truth-seeking function of the RPD, as Mr. Barbosa had remained consistent in his testimony throughout his refugee claim proceeding and the parallel family law proceedings.
2. There were multiple avenues open to the Respondent to “correct or contradict” the contents of the Unsolicited Evidence and Transcript Evidence.[[39]](#footnote-40) Written questions and alternative reports are persuasive methods the RPD could consider when determining the weight of contradictory evidence. The Respondent did not use any alternative methods of testing the evidence but was nonetheless afforded a fair opportunity to respond.
3. The RPD analyzed the Unsolicited Evidence and Transcript Evidence of Mr. Barbosa in accordance with ss. 170(g)(h) of *IRPA* andthe Unsolicited Information Policy and reasoned that Mr. Barbosa’s evidence was admissible. The evidence had significant probative value as it was credible and responsive to a contested issue in the proceedings.[[40]](#footnote-41) Accordingly, the RPD was entitled to consider this evidence with the balance of all other relevant evidence in adjudicating the Respondent’s refugee claim.
4. **The certified question should be answered in the affirmative, as the rules of evidence in a court of law differ from the evidentiary rules in refugee protection proceedings.**
5. It is well-established in the statute and jurisprudence, that administrative tribunals including the RPD, are “masters in their own house on matters of procedure and the admissibility of evidence” and they are “not bound by the rules of evidence in judicial proceedings.”[[41]](#footnote-42) The Unsolicited Information Policy, which governs evidence disclosure in refugee claim proceedings, highlights the evidentiary differences between administrative and civil proceedings.[[42]](#footnote-43)
6. The Unsolicited Information Policy guides the treatment and use of unsolicited information in refugee claim proceedings, as follows:

**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.[emphasis added].[[43]](#footnote-44)

1. The RPD has a standardized process with respect to gathering and considering untested and unsolicited evidence. Once the preliminary assessment of testing the evidence has been conducted under section 5 of the Unsolicited Information Policy, the RPD has significant discretion to determine whether evidence is relevant to the material issues in the claim and would therefore be admissible under ss.170(g)(h) of *IRPA.*[[44]](#footnote-45)
2. In *Cambie Hotel (Nanaimo) Ltd. v British Columbia (General Manager, Liquor Control and Licensing Branch*), the British Columbia Court of Appeal reviewed a decision of the Supreme Court to import the rules of evidence from civil proceedings, regarding hearsay evidence, into an administrative proceeding.[[45]](#footnote-46) The court noted that administrative tribunals are masters of their own procedure, and their duty to consider all relevant evidence is a matter of procedure, not substance.[[46]](#footnote-47) Unlike a court of law, “most evidence in IRB proceedings is admitted and any deficiencies in the evidence will go towards the weight the panel [chooses to] assigns to it,” to satisfy the truth-seeking and inquisitorial function of the RPD.[[47]](#footnote-48)
3. The technical rules of evidence used by courts are far more stringent than the evidentiary rules under the RPD’s Unsolicited Information Policy.[[48]](#footnote-49) There is a strict adherence to the technical rules of evidence in criminal and civil proceedings, due to the *Evidence Act* and the jurisprudence governing the admissibility and exclusion of evidence in adversarial proceedings*.*[[49]](#footnote-50)The adversarial nature of the court process places an obligation on parties to adduce credible evidence to support their position, but there are many exclusionary principles that operate in tandem with the general admissibility rule. In contrast, the Unsolicited Information Policy reflects the inquisitorial function of the RPD, to ascertain the truth and hear the balance of evidence.
4. It is important to note that the Unsolicited Evidence in the Respondent’s case derived from family law and refugee claim proceedings. The Appellant submits that 1) a relaxed standard applies to the admission of untested evidence in family law proceedings as compared to other civil and criminal proceedings; and 2) despite this relaxed standard, the rules of evidence employed in the family law context are still discernable from the evidentiary rules of the RPD.
5. In the family law context, there is a relatively relaxed standard for the admission of untested evidence to ensure the best interests of the child are met.[[50]](#footnote-51) For instance, in *JLZ v CMZ*, the Court of Appeal assessed the issue of untested evidence in the family law context with respect to parental alienation.[[51]](#footnote-52) In this case, the mother had appealed a parenting decision based on untested affidavit evidence. The appellate court dismissed the appeal stating that parenting decisions are exercises of discretion and should stand unless the judge has made a reviewable error of law or fact.[[52]](#footnote-53) The admission of untested evidence was not characterized as an error of law as the impugned evidence was central to the determination of the best interests of the child.[[53]](#footnote-54) The Ontario Superior Court reiterated this relaxed standard in *Rifai v Green,* where they noted that “immediate determinations must be made upon incomplete and untested evidence.”[[54]](#footnote-55)
6. While the rules of evidence in family law permit the admission of untested evidence in narrow circumstances where the best interests of the child are at stake, the evidentiary rules of a court are still discernable from that of an administrative tribunal.[[55]](#footnote-56) The Unsolicited Information Policy does not constrain the RPD to the “technical and legal rules of evidence” even where the evidence derives from family law or other judicial proceedings.[[56]](#footnote-57) Further, the RPD is not obligated to test the evidence if they believe it is credible and trustworthy.[[57]](#footnote-58)
7. The certified question presented to this court should be answered in the affirmative. The RPD is a master of its own procedure and has been delegated the authority to render decisions on the admissibility and credibility of all relevant evidence. The primary consideration for this court is whether unsolicited evidence from previous judicial or administrative proceedings can be considered and weighed in a refugee claim proceeding pursuant to the Unsolicited Information Policy and ss. 170(g)(h) of *IRPA.*
8. **The RPD is not obligated to cross-examine the Unsolicited Evidence and Transcript Evidence of Mr. Barbosa.**
9. There is no onus on the RPD to compel an informant of unsolicited evidence to appear for cross-examination, and it is not part of the RPD’s duty of procedural fairness to ensure that credible evidence is subject to cross-examination. According to the IRB’s reference paper on weighing evidence, “the IRB is entitled to admit documentary evidence even if the author is not called or is unavailable to testify, as long as the evidence is considered credible or trustworthy in the circumstance.” [[58]](#footnote-59)
10. It is within the purview of the RPD to determine whether unsolicited information is to be “subsequently tested”, or alternatively, whether it is “credible and trustworthy” and should be admitted and considered.[[59]](#footnote-60) The RPD correctly found the third criterion of section 5 of the Unsolicited Information Policy as a “non-mandatory one”, and found it unnecessary to test Mr. Barbosa’s evidence “in light of the July 9, 2021, RPD decision and the affidavit evidence itself.” [[60]](#footnote-61)
11. The RPD properly interpreted the third criterion of the Unsolicited Information Policy as being discretionary. The third criterion is a clear example of the legislator’s use of broad and open-ended language when considering the use of “if” and “requested”, which intend to provide the RPD with the discretion to determine when testing the evidence is necessary.
12. In *Zaloshnja* *v Canada*, the Federal Court found that the RPD was not obligated to call an immigration officer as a witness for the purpose of cross-examination during a claimant’s refugee protection proceedings. The RPD employed their discretion in declining to cross-examine the immigration officer’s credible evidence. Justice Tremblay-Lamer stated “there was no duty on the Refugee Division to call the immigration officer” and “if the applicant believed that cross-examining the officer would assist her claim, it was up to her to call him as a witness.”[[61]](#footnote-62)
13. The RPD acted within their statutory authority under ss. 170(g)(h) of *IRPA* when they declined to cross-examine Mr. Barbosa’s credible evidence. The RPD did not owe an independent duty to the Respondent to summon Mr. Barbosa to court, without a Rule 45 application.
14. **The Respondent was afforded an opportunity to cross-examine Mr. Barbosa on the Unsolicited Evidence and Transcript Evidence, in accordance with the principles of procedural fairness.**
15. The RPD satisfied its procedural duty in providing the Respondent with an opportunity to cross-examine Mr. Barbosa on his evidence. A refugee claimant has the right to know the case to meet, and they must be given a fair opportunity to respond.[[62]](#footnote-63) The RPD gave the Respondent sufficient notice of the disclosure of Unsolicited Evidence and Transcript Evidence into her claim. The RPD stated that the Respondent was “entitled to make a formal request, in accordance with Rule 45, to compel Mr. Alves Barbosa to appear as a witness in their claim. This would allow a full opportunity to cross-examine him about the content of the Transcript.”[[63]](#footnote-64)
16. When a party declines to cross-examine a witness on hearsay or other evidence, they “cannot rely on that omission to raise the spectre of procedural fairness.”[[64]](#footnote-65) Accordingly, the Respondent waived her right to cross-examine Mr. Barbosa on his evidence under Rule 45.
17. The Respondent received ample notice of the disclosure of evidence into her claim, along with an opportunity to compel Mr. Barbosa as a witness for cross-examination. If the Respondent was uncomfortable with cross-examining Mr. Barbosa, she could have engaged in alternative measures to test the evidence such as written questions and alternative reports.[[65]](#footnote-66) Her failure to do so does not result in a breach of procedural fairness.
18. **The cross-examination of Mr. Barbosa will not undermine the intent of section 166(c) of *IRPA.***
19. The cross-examination of Mr. Barbosa on the Unsolicited Evidence and Transcript Evidence does not undermine the intent of Section 166(c) of *IRPA*, which was described by the Application Judge as ensuring that “refugee proceedings do not themselves add to the risk faced by the claimants or others, that they are fair, and that public security is not compromised.”[[66]](#footnote-67) The RPD is confronted with multiple, often competing, interests in determining whether a hearing should be conducted in private or public under section 166(b).[[67]](#footnote-68)
20. Sections 166 (a) and (c) of *IRPA* indicate that all hearings should be held in public except for refugee claim proceedings. However, irrespective of whether ss. 166(a) and (c) apply, the RPD may on its own initiative, conduct the proceedings in public under sections 166(b) and (d).[[68]](#footnote-69) The Application Judge found that it would be a violation of section 166(c) of *IRPA* to cross-examine Mr. Barbosa on his Unsolicited Evidence and Transcript Evidence, as it would pose a psychological risk to the Respondent.[[69]](#footnote-70) However, the burden was with the Respondent to demonstrate with facts, established on a balance of probabilities, that a public hearing would either i) offend section 7 *Charter* rights; ii) fairness of the proceedings; or iii) public security under section 166(b).[[70]](#footnote-71) The RPD reasonably found that the Respondent failed to demonstrate the existence of one of the three situations set out in paragraph 166(b) of *IRPA*, on a balance of probabilities.
21. The RPD reasoned that any risk of juxtaposing the Respondent and Mr. Barbosa during cross-examination would be outweighed by the RPD’s duty of procedural fairness as it pertains to the admission of probative evidence.[[71]](#footnote-72) Thus, they acted within their statutory authority under section 166(b) and (d) when deciding to permit the cross-examination of Mr. Barbosa in the Respondent’s refugee claim proceedings.
22. **The Refugee Protection Division’s credibility decision was reasonable and responsive to the evidentiary record.**
	1. **The role of this court on judicial review is limited and supervisory.**
23. The Respondent has inappropriately invited this court to re-examine the RPD’s findings of fact, assessment of evidence, and credibility determination. The RPD’s credibility findings should be given deference by this court, as credibility findings rendered by the RPD demand “a high level of judicial deference and should only be overturned in the clearest of cases.”[[72]](#footnote-73) The law is clear that a reviewing court must not “parse or dissect the adjudicator’s reasoning or substitute their own credibility findings in place of those of the adjudicator.”[[73]](#footnote-74) On reasonableness review, it is irrelevant whether the court would attribute different weight to a particular piece of evidence, “since the court is not tasked with developing, asserting and enforcing its own view of the matter.”[[74]](#footnote-75)
24. The Federal Court’s reasons show they have effectively usurped the role of the RPD in making credibility inferences based on findings of fact. The RPD’s negative credibility finding was in large part, based on the inconsistencies between the Respondent’s amended BOC, oral testimony, and responding family law affidavit, which collectively resulted in the rebuttal of the presumption of truthfulness.
25. While refugee applicants are presumed to tell the truth pursuant to *Maldonado[[75]](#footnote-76),* this presumption can be rebutted if 1) the evidence is inconsistent with sworn testimony; or 2) where the RPD is unsatisfied with the explanation for the inconsistencies.[[76]](#footnote-77) The RPD concluded that the explanation for the omission was unreasonable, and the adverse credibility finding was therefore responsive to the evidence. While the Unsolicited Evidence and Transcript Evidence were relevant to the RPD’s credibility analysis, they were not the primary basis for the adverse inference on credibility, nor were they given disproportionate weight in the analysis of the Respondent’s credibility.

**b. There was a material omission from the Respondent’s BOC narrative.**

1. The RPD’s decision to render a negative credibility finding was fair, on a balance of probabilities, as there were material omissions and inconsistencies between the Respondent’s amended BOC narrative, her responding affidavit filed in parallel family law proceedings, and her oral testimony at the refugee claim hearing. The accumulation of inconsistencies in the Respondent’s evidence undermined her credibility as a witness to her refugee claim, premised on the risk of future domestic violence.
2. First, the Applicant made general and vague allegations of child abuse in her amended BOC narrative but included detailed allegations in both the family law affidavit from parallel proceedings and during her oral testimony in the refugee claim hearing.[[77]](#footnote-78)
3. Second, the RPD found that the Respondent’s justifications with respect to the omission of allegations concerning child abuse, were vague and unreasonable given the young age of the claimants and the materiality of the omission:

When asked why this information was not included in her BOC narrative, she testified that she believed that the DR would file a narrative with the allegations for her children and that she would be able to provide additional detail as to the abuse of her children at the hearing. I **find that this explanation is not reasonable due to the age of her children and that this constitutes a material inconsistency between her Basis of Claim narrative and the evidence** [emphasis added].[[78]](#footnote-79)

1. As stated in *Sary v Canada,* the “accumulation of contradictions, inconsistencies, and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant's credibility.”[[79]](#footnote-80) The RPD is permitted to make adverse credibility findings based on the omissions in a BOC of “important aspects of a claim.”[[80]](#footnote-81) The omission of serious child abuse allegations from the BOC narrative was material to the Respondent’s alleged risk of domestic abuse. The RPD found the Respondent’s justification for the omission to be vague and questionable due to the young age of the Minor Claimants, which further impacted her credibility as a witness. However, the RPD proceeded to assess the cumulative effect of the oral and documentary evidence on the record, to render a finding on the Respondent’s credibility.
2. The RPD is entitled to the benefit of a full evidentiary record, encompassing all relevant evidence when assessing the credibility of a refugee claimant.[[81]](#footnote-82) As stated in *Magonza v Canada (Citizenship and Immigration),* “if a piece of evidence has some probative value, it is relevant.”[[82]](#footnote-83) Accordingly, the RPD was entitled to consider the Unsolicited Evidence and Transcript Evidence of Mr. Barbosa in conjunction with the Respondent’s material omission to draw inferences with respect to the Respondent’s credibility.[[83]](#footnote-84)
3. In *Naqui v Canada (Minister of Citizenship and Immigration)*, the court stated that “[t]he nature of the omission, and the context in which the new information is brought forward, have to be examined in order to determine the materiality of the omission.”[[84]](#footnote-85) The Respondent omitted significant recent events about serious child abuse allegations from her amended BOC narrative despite modifying the BOC at the outset of the hearing to include detailed allegations of intimate partner violence against Mr. Barbosa.
4. The allegations of child abuse were highly relevant to the Respondent’s refugee claim and the assessment of risk under s.96 of *IRPA*. The Respondent’s addition of details respecting the alleged child abuse were not omissions that address minute details of her claim; rather, they address the likelihood of domestic abuse risk which is directly relevant to the success of the claim.[[85]](#footnote-86)
5. The RPD recognized that 1) the Respondent omitted a detailed allegation of child abuse made in a family law affidavit dated April 21, 2015, from her BOC narrative; and 2) her oral testimony had limited probative value when viewed in conjunction with the balance of all other documentary and oral evidence.[[86]](#footnote-87) In *Occulius,* the Federal Court determined thata claimant’s contradictory evidence may undermine their entire oral testimony.[[87]](#footnote-88) The oral testimony of the Respondent raised detailed allegations of abuse against the Minor Claimants; allegations and accounts that she had not raised prior. The inconsistencies in the Respondent’s evidence had the effect of further undermining the probative value of her documentary evidence, as it raised more questions than it answered with respect to her credibility. [[88]](#footnote-89)
6. The Respondent has raised novel allegations of child abuse to bolster her refugee claim. The RPD acted reasonably in concluding that the Respondent’s omissions and inconsistencies were central to her credibility determination, and the omissions went beyond mere peripheral details of the refugee claim.

**c. *Gender Guidelines* are not a cure-all for the Respondent’s wavering credibility and deficient application.**

1. The RPD properly situated its credibility findings in the context of the *Gender Guidelines* by exercising the principles of trauma-informed adjudication in the adjudication of the Respondent’s claim. The RPD approached the Respondent with heightened sensitivity and recognized that potential trauma could influence her recollection of events.[[89]](#footnote-90)
2. The Respondent is now asking this court to utilize the *Gender Guidelines* to remedy her deficient refugee application. A line of case authorities confirms that the “*Gender Guidelines* are not a cure-all for a lack of credibility.”[[90]](#footnote-91) Although, the *Gender Guidelines* are directed towards ensuring a fair hearing, they do not provide a remedy for a deficient application, nor can they be used to exclude credible and probative evidence which is responsive to the alleged risk in a refugee claim.[[91]](#footnote-92)
3. As Justice Pelletier indicated in *Newton v Canada (Minister of Citizenship and Immigration)*, “the Guidelines cannot be treated as corroborating any evidence of gender-based persecution so that the giving of the evidence becomes proof of its truth.”[[92]](#footnote-93) A contested and material issue in the Respondent’s refugee claim concerns the allegations of domestic abuse. The *Gender* *Guidelines* should not be used to corroborate the evidence provided by the Respondent in respect of these allegations, particularly where she has provided inconsistent evidence thereby undermining her credibility.
4. The Federal Court asserts that the cross-examination of Mr. Barbosa will undermine the meaningful application of the *Gender Guidelines,* and in doing so, they are incorrectly characterizing the *Gender Guidelines* as binding, not directive.[[93]](#footnote-94) The RPD was never inattentive or insensitive to the Respondent’s vulnerable position as a female alleging risk of gender-based violence. The RPD meaningfully considered the vulnerable position of the child refugee claimants and appointed a DR to ensure fairness in the proceedings.[[94]](#footnote-95)
5. If the Respondent felt prejudiced in appearing before Mr. Barbosa for cross-examination, she should have sought an adjournment or employed one of the alternative means of testing evidence such as written questions or alternative reports.[[95]](#footnote-96) Respondent’s counsel could have also requested procedural accommodations in advance of the hearing date under subsection 5.3.2. of the *Gender Guidelines*,if they believed the proceedings would trigger the Respondent.[[96]](#footnote-97)
6. The RPD was attentive to the *Gender Guidelines* in respect of women and child refugee claimants, but ultimately, the *Gender* *Guidelines* are a directive instrument andcannot supplement the deficient application and wavering credibility of the Respondent.
7. **The Federal Court’s analysis of the Refugee Protection Division’s decision strays outside the bounds of reasonableness review.**
8. **The Application Judge erroneously substituted its own view of the rules of evidence with respect to the Unsolicited Evidence and Transcript Evidence.**
9. The Application Judge made a reviewable error when they failed to defer to the RPD on their findings of fact and assessment of the evidence. The Application Judge’s assessment of the evidence and credibility decision strays outside the bounds of reasonableness review and usurps the role of the RPD. The Federal Court is in effect, instructing the RPD on how evidence should be scrutinized to arrive at a credibility determination. This is not the role of the Federal Court on an Application for Judicial Review.
10. The Federal Court found there was “unequal scrutiny” between the evidence presented by both parties, as the RPD chose to test the evidence of the Respondent by way of cross-examination, and not the evidence of Mr. Barbosa.[[97]](#footnote-98) Respectfully, the Federal Court has erred in concluding there was impermissible and unequal scrutiny of the parties’ evidence. The Application Judge attempts to supplement technical rules of evidence from criminal proceedings into the refugee claims context by referencing *R v Chanmany*, a criminal case where the “uneven scrutiny” argument was raised and denied as a ground of appeal.[[98]](#footnote-99)
11. The Appellant contends that *R v Chanmany* is distinguishable from the Respondent’s case, as it draws from the technical rules of evidence in criminal proceedings. Notwithstanding the evidentiary differentiations between the criminal and administrative contexts, the court in *R v Chanmany* declined the uneven scrutiny argument and commented on the difficulty of successfully making such an argument where a credibility finding had been rendered at trial.[[99]](#footnote-100) Similarly, the RPD has rendered a credibility finding based on the oral and documentary evidence of the Respondent and Mr. Barbosa, which is entitled to deference on review.
12. As stated in *R v Chanmany,* the reviewing court must substantiate its unequal scrutiny argument by referencing specific examples or evidence from the reasons of the lower court.[[100]](#footnote-101) The Application Judge simply stated there had been unequal scrutiny between the Unsolicited Evidence, Transcript Evidence, and the cross-examined testimony of the Respondent, without providing supporting evidence to show that the RPD made a reviewable error under *IRPA.* The RPD has the authority to determine when it is necessary to test evidence by means of cross-examination. Therefore, the unequal scrutiny argument of the Federal Court cannot stand in the refugee claims context.
13. The Immigration and Refugee Board’s (“IRB”) reference paper on weighing evidence states that “when there is a conflict in the record, the IRB is entitled to choose, within the range of reasonableness, the evidence it prefers, and it is not the role of the reviewing court to re-weigh the evidence.”[[101]](#footnote-102) A reviewing court may narrowly intervene if material evidence on a contested issue is not addressed, but that is not the case here.[[102]](#footnote-103) The RPD member’s reasons demonstrate that they considered and grappled with the contradicting evidence of the Respondent and Mr. Barbosa, regarding the alleged risk. The RPD found that Mr. Barbosa’s evidence was credible, and they were not under an obligation to test his evidence. Contrarily, the Respondent’s material omission and inconsistencies in her evidence led to a rebuttal of the presumption of truthfulness. It was reasonably open to the RPD to cross-examine her on the documentary evidence in light of the inconsistencies.
14. **The Application Judge erred in the Application of Rule 21(5) of the Refugee Protection Division Rules to the Transcript Evidence of Mr. Barbosa.**
15. The Application Judge erred in law with respect to its interpretation of Rule 21(5) which governs evidence disclosure by the RPD. The safeguard outlined in Rule 21(5) does not apply to the Minister’s disclosure of evidence into the Respondent’s refugee claim.
16. Rule 21(5) states that the RPD should not disclose personal or other information unless they are satisfied that disclosing the information will not endanger the life, liberty, or security of any person; and disclosing the information will not cause an injustice.[[103]](#footnote-104)
17. The Application Judge stated that the RPD acted unreasonably by failing to consider the identity of the alleged agent of persecution when deciding to disclose the Transcript Evidence under Rule 21(5) of the *RPD Rules*.[[104]](#footnote-105) However, Rule 21(5) does not apply when the Minister seeks to disclose the Transcript Evidence from a prior refugee claim proceeding, and it only applies where the RPD has sought to introduce the evidence themselves. [[105]](#footnote-106)
18. Further, any personal or other information which originated before the Respondent severed her claim from Mr. Barbosa is not subject to the safeguard in Rule 21(5).[[106]](#footnote-107) The Respondent cannot ask the RPD to exclude any personal information that was part of their joint claim under Rule 21(6).
19. Contrary to the Application Judge’s assertion, the RPD did not have to assess or satisfy the conditions under Rule 21(5). The Minister is the party that sought disclosure of the Transcript Evidence into the Respondent’s claim and they are not subject to Rule 21(5). Further, any evidence that has been previously volunteered by the Respondent as part of her joint refugee claim with Mr. Barbosa is not subject to the safeguard in Rule 21(5).
20. **The Application Judge failed to review the reasons in light of the evidentiary record and administrative regime that bear on the RPD decision.**
21. The RPD has provided adequate reasons for their credibility decision leading to the denial of the Respondent’s claim under ss.96 and 97 of *IRPA.* The Federal Court placed an unfair expectation on the RPD to “respond to every argument or line of possible analysis” in admitting and considering the Unsolicited Evidence and Transcript Evidence, but this level of scrutiny is unnecessary to determine that the decision was reasonable, and the reasons were valid.[[107]](#footnote-108)
22. In *Vavilov,* the Supreme Court of Canada determined that where reasons are required, they must be based on “internally coherent reasoning” and “justified in relation to the legal and factual constraints that bear on the decision.”[[108]](#footnote-109) The inadequacy of reasons will not constitute an independent basis to quash a decision; rather, the evaluation of reasons will be incorporated into the analysis of the reasonableness of a decision as a whole.[[109]](#footnote-110)
23. The Application Judge stated that the RPD failed to provide “clear and unmistakable reasons” for admitting and considering Mr. Barbosa’s evidence, and “found the principal Applicant’s version of events not credible, based in large part on accepting the evidence of Mr. Alves Barbosa as the unshakable truth.”[[110]](#footnote-111) This is an erroneous interpretation of the RPD’s reasons. First, the RPD provided intelligible reasons regarding the admission and weight afforded to the credible evidence of Mr. Barbosa. Second, the credibility determination of the Respondent was mainly due to 1) the material omission from her BOC; and 2) the inconsistencies between her responding family law affidavit, BOC form, and oral testimony.
24. The RPD provided an intelligible reason in favouring the evidence of Mr. Barbosa over the *viva voce* evidence of the Respondent. The RPD found “the sworn affidavit of Mr. Alves Barbosa, the decision in the refugee claim, and copies of documents relating to the family law proceedings” presented a consistent and “believable version of events.”[[111]](#footnote-112) Contrarily, the Respondent’s *viva voce evidence* raised new allegations and inconsistencies between her oral and documentary evidence, thereby undermining her credibility further.
25. Notwithstanding this, the Application Judge failed to consider that the Respondent’s presumption of truthfulness had been rebutted after the discovery of the material omission and inconsistencies between her oral and documentary evidence.[[112]](#footnote-113) The credibility finding of the RPD was predominantly based on the inconsistencies and omissions of the Respondent during her refugee claim proceeding. The Unsolicited Evidence and Transcript Evidence were credible and probative as they disproved the Respondent’s allegations of risk, but they were not the principal reason for the negative credibility finding.
26. The RPD considered the totality of evidence and “[meaningfully grappled] with the key issues and central arguments” raised by the Respondent.[[113]](#footnote-114) The RPD reasoned that the Respondent’s corroborating evidence could not prove significant parts of her refugee claim, and it could not rebut the credible evidence of Mr. Barbosa.
27. In reviewing the Respondent’s evidence, the RPD reasoned as follows:

[43] I have reviewed the letters from the neighbours provided by the claimant and note that all but one provides their **speculation as to abuse**, despite not being witness to any actual abuse. The remaining letter, from Mr. Henry Robinson, is insufficient to overcome the preponderance of credible evidence from Mr. Alves Barbosa.

…

I also note that the psychiatric report is based on a one-time psychiatric assessment and reliant upon information provided by the principal claimant. As per *Kanthasamy*, the **report does not prove that the incident of abuse happened, and a psychiatrist cannot usurp the role of the RPD in making findings of fact** [emphasis added].[[114]](#footnote-115)

1. At this stage of the RPD’s analysis, the presumption of truthfulness had been rebutted and the Respondent’s corroborating evidence was assessed in light of this finding. The RPD acknowledged the circumstantial nature of the evidence from the Respondent’s neighbours and psychiatrist. Consequently, they found that the evidence was not sufficient to re-establish her credibility as a witness or to rebut the credible evidence of Mr. Barbosa.
2. The RPD decision, when viewed holistically, provides a rational and coherent chain of analysis which leads to the denial of the Respondent’s claim. The reasons are responsive to the evidence and arguments presented by the Respondent and Mr. Barbosa.[[115]](#footnote-116)

**PART IV: ORDERS SOUGHT**

1. For all the foregoing reasons, the Appellant respectfully asks this court to allow the Minister’s appeal, reinstate the Refugee Protection Division’s decision, and answer the certified question in the affirmative.

**APPENDIX: LIST OF AUTHORITIES**

**LEGISLATION**

*Canada Evidence Act*, RSC 1985, c C-5.

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

*Refugee Protection Division Rules,* SOR/2012-256.

**JURISPRUDENCE**

*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36.

*Ali v Canada (Citizenship and Immigration)*, 2018 FC 1178*.*

*Aragon v Canada (Citizenship and Immigration)*, 2008 FC 144.

*British Columbia (Securities Commission) v Alexander*, 2013 BCCA 111.

*Bushati v Canada (Citizenship and Immigration)*, 2018 FC 803.

*Cambie Hotel (Nanaimo) Ltd v British Columbia*, 2006 BCCA 119.

*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

*Cui v Canada (Public Safety and Emergency Preparedness)*, 2009 (CA IRB).

*Daramie v Canada (Citizenship and Immigration)*, 2022 FC 1570.

Delios v Canada (Attorney General), 2015 FCA 117.

*Denbel v Canada (Citizenship and Immigration)*, 2015 FC 629.

*Huruglica v Canada (Citizenship and Immigration)*, 2016 FCA 93.

*JLZ v CMZ*, 2021 ABCA 200.

*Kanthasamy v Canada (Citizenship and Immigration,* 2015 SCC 61.

*Kenyon v British Columbia (Superintendent of Motor Vehicles)*, 2015 BCCA 485.

*Khan v Canada (Citizenship and Immigration)*, 2011 FC 1330.

*Klair v British Columbia (Superintendent of Motor Vehicles)*, 2022 BCSC 1559.

*Lawani* *v Canada (Citizenship and Immigration)*, 2018 FC 924.

*Liang v Canada (Citizenship and Immigration)*, 2020 FC 720.

Lin v Canada (Minister of Citizenship & Immigration), 2010 FC 183.

*Magonza v Canada (Citizenship and Immigration),* 2019 FC 14.

*Maldonado v Canada (Minister of Employment and Immigration)*, 1980 FC 302, 1 A.C.W.S. (2d) 167.

*Mason v Canada (Citizenship and Immigration),* 2019 FC 1251.

*Mouvement laïque québécois v Saguenay (City)*,2015 SCC 16.

*Naqui v Canada (Minister of Citizenship and Immigration),* 2005 FC 282.

*Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

*Newton v Canada (Minister of Citizenship and Immigration)*, 2000 15385 (FC).

*Occilus v Canada (Citizenship and Immigration),*2020 FC 374

*Okpanachi v Canada (Citizenship and Immigration)*, 2022 FC 212.

*Olah v Canada (Citizenship and Immigration)*, 2019 FC 401.

*Prassad v* *Canada (Minister of Employment and Immigration)*, [1989] 1 SCR 560, 57 D.L.R. (4th) 663.

*R v Chanmany*, 2016 ONCA 576.

*R v Lyttle*, 2004 SCC 5, [2004] 1 SCR 193.

*Ren v Canada*, 2006 FC 766.

*Rifai v Green*, 2014 ONSC 1377.

*Sary v Canada*, (Citizenship and Immigration) 2016 FC 178.

Su v Canada (Citizenship and Immigration), 2015 FC 666.

*Thamotharem v Canada (Citizenship and Immigration)*, 2007 FCA 198.

*Torales Bolanos v Canada (Citizenship and Immigration)*, 2011 FC 388.

*Torrance v Canada (Attorney General),* 2020 FC 634.

*Williams Lake Indian Band v Canada* *(Aboriginal Affairs and Northern Developmen*t), 2018

SCC 4.

*X(Re)*, 2016 CanLII 107465 (CA IRB).

*Zaloshnja* *v Canada* *(Minister of Citizenship and Immigration)*, 2003 FCT 206.

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2. *Refugee Protection Division Rules,* SOR/2012-256 [*RPD Rules*]. [↑](#footnote-ref-3)
3. RPD decision: Barbosa Reis (Re) 12345 CA IRB [*RPD Reasons*]. [↑](#footnote-ref-4)
4. *RPD Reasons*, *supra* note 3 at paras 9, 15. [↑](#footnote-ref-5)
5. *Ibid.*  [↑](#footnote-ref-6)
6. *Ibid* at para 17. [↑](#footnote-ref-7)
7. *Ibid* at para 24. [↑](#footnote-ref-8)
8. *RPD Reasons*, *supra* note 3 at para 26. [↑](#footnote-ref-9)
9. *Ibid* at paras 17 and 19. [↑](#footnote-ref-10)
10. *Ibid* at para 18. [↑](#footnote-ref-11)
11. *Ibid* at para 31. [↑](#footnote-ref-12)
12. *Ibid* at para 42. [↑](#footnote-ref-13)
13. *Ibid at* para 40. [↑](#footnote-ref-14)
14. *RPD Reasons*, *supra* note 3 at para 39. [↑](#footnote-ref-15)
15. *Ibid* at para 41. [↑](#footnote-ref-16)
16. *Ibid* at paras 44-45. [↑](#footnote-ref-17)
17. *Ibid* at para 45. [↑](#footnote-ref-18)
18. *Barbosa Reis v Canada (the Minister of Citizenship and Immigration)*, 2022 FC 90210 [*Okoro J’s Reasons*]. [↑](#footnote-ref-19)
19. *Ibid* at paras 11-13. [↑](#footnote-ref-20)
20. *Okoro J’s Reasons supra* note 18at para 24. [↑](#footnote-ref-21)
21. *Ibid* at para 44-47. [↑](#footnote-ref-22)
22. *Ibid* at para 12. [↑](#footnote-ref-23)
23. Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development),2018 SCC 4 at para 138. [↑](#footnote-ref-24)
24. *Mouvement laïque québécois v Saguenay (City*)*,* 2015 SCC 16 at para 46. [↑](#footnote-ref-25)
25. *Huruglica v Canada (Citizenship and Immigration),* 2016 FCA 93 at paras 27, 34, citing *Kanthasamy v Canada (Citizenship and Immigration,* 2015 SCC 61 at para 44. [↑](#footnote-ref-26)
26. *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 46. [↑](#footnote-ref-27)
27. *RPD Reasons*, *supra* note 3 at paras 7 and 10. [↑](#footnote-ref-28)
28. Immigration, Refugees and Citizenship Canada, “Procedural fairness” (last modified: 22 August 2018), online: Government of Canada <www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/procedural-fairness.html> [*Immigration Canada: Procedural Fairness*]. [↑](#footnote-ref-29)
29. *Ren v Canada*, 2006 FC 766 at para 9 [*Ren*], citing *Prassad v* *Canada (Minister of Employment and Immigration)*, 1989 131 (SCC), [1989] 1 SCR 560 [*Prassad*]. [↑](#footnote-ref-30)
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34. *RPD Reasons*, *supra* note 3 at para 30. [↑](#footnote-ref-35)
35. *R v Lyttle*, 2004 SCC 5, [2004] 1 SCR 193 at para 1 [*Lyttle*]; *IRPA, supra* note 1 ats 170(g). [↑](#footnote-ref-36)
36. Immigration and Refugee Board of Canada, “Weighing Evidence” (2020), Chapter 2: “General Principles” at s 2.4, online (pdf): *Government of Canada <*https://irb.gc.ca/en/legal-policy/legal-concepts/Pages/EvidPreu.aspx> [*IRB*, “Weighing Evidence”]. [↑](#footnote-ref-37)
37. *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, 1 A.C.W.S. (2d) 167 at para 5 [*Maldonado*]. [↑](#footnote-ref-38)
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41. *Ren*, *supra* note29at para 9, citing *Prassad*, *supra* note 29; *IRPA*, *supra* note 1 ats 170(g). [↑](#footnote-ref-42)
42. See *Unsolicited Information Policy*, *supra* note 33 at s 5. [↑](#footnote-ref-43)
43. *Ibid* at s 3. [↑](#footnote-ref-44)
44. *Unsolicited Information Policy*, *supra* note 33at s 5. [↑](#footnote-ref-45)
45. See *Cambie Hotel (Nanaimo) Ltd. v British Columbia (General Manager, Liquor Control and Licensing Branch),* 2006 BCCA 119 [*Cambie Hotel*]. [↑](#footnote-ref-46)
46. *Ibid* at para 38. [↑](#footnote-ref-47)
47. *IRB,* “Weighing Evidence”, *supra* note 36 at Chapter 3: “Evidence and the decision-making process” at s 3.2.1. [↑](#footnote-ref-48)
48. *Unsolicited Information Policy*, *supra* note 33 at s 3. [↑](#footnote-ref-49)
49. *Canada Evidence Act*, RSC 1985, c C-5. [↑](#footnote-ref-50)
50. *Rifai v Green*, 2014 ONSC 1377 [*Rifai*]. [↑](#footnote-ref-51)
51. *JLZ v CMZ,* 2021 ABCA 200 [*JLZ*]. [↑](#footnote-ref-52)
52. *Ibid* at para 11. [↑](#footnote-ref-53)
53. *Ibid* at paras 27 and 42. [↑](#footnote-ref-54)
54. *Rifai, supra* note 50 at para 16. [↑](#footnote-ref-55)
55. *JLZ, supra* note51 at para 10. [↑](#footnote-ref-56)
56. *IRPA, supra* note 1 at s 170(g). [↑](#footnote-ref-57)
57. *Ibid* at s 170(a). [↑](#footnote-ref-58)
58. *IRB*, “Weighing Evidence”, *supra* note 36 at Chapter 6: “Documentary Evidence”, Chapter 6.8 “Opportunity to cross-examine”, referring to *Ali v Canada (Citizenship and Immigration)*, 2018 FC 1178 at paras 68-69. [↑](#footnote-ref-59)
59. *Unsolicited Information Policy*, *supra* note 33 at s 5. [↑](#footnote-ref-60)
60. *RPD Reasons*, *supra* note 3 at para 20. [↑](#footnote-ref-61)
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62. *Immigration Canada: Procedural Fairness*, *supra* note 28. [↑](#footnote-ref-63)
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64. *British Columbia (Securities Commission) v Alexander*, 2013 BCCA 111 at paras 73-75. [↑](#footnote-ref-65)
65. *Heckman, supra* note 39 at p 250-251. [↑](#footnote-ref-66)
66. *Okoro J’s Reasons*, *supra* note18 at para 23. [↑](#footnote-ref-67)
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68. *Cui v Canada (Public Safety and Emergency Preparedness)*, 2009 78165 (CA IRB) at para 28. [↑](#footnote-ref-69)
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75. *Maldonado*, *supra* note 37 at para 5. [↑](#footnote-ref-76)
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78. *Ibid.*  [↑](#footnote-ref-79)
79. *Sary v Canada (Citizenship and Immigration)* 2016 FC 178 at para 19. [↑](#footnote-ref-80)
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91. *Okpanachi v Canada (Citizenship and Immigration),* 2022 FC 212 at para 20 [*Okpanachi*]; *Olah*, *supra* note 31 at para 34. [↑](#footnote-ref-92)
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93. *Okoro J’s Reasons*, *supra* note 18 at para 24; *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 at para 68; *Gender Guidelines supra* note 89 at s 1. [↑](#footnote-ref-94)
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98. *R v Chanmany,* 2016 ONCA 576 at paras 26-28 [*Chanmany*]. [↑](#footnote-ref-99)
99. *Ibid* at paras 25- 29. [↑](#footnote-ref-100)
100. *Chanmany, supra* note 98 at paras 24-29. [↑](#footnote-ref-101)
101. *IRB*, “Weighing Evidence”, *supra* note 36 at Chapter 6: “Documentary Evidence” and Chapter 6.6 “Selective reliance (‘Picking and Choosing’).” [↑](#footnote-ref-102)
102. *Mason v Canada (Citizenship and Immigration),* 2019 FC 1251 at para 26. [↑](#footnote-ref-103)
103. *RPD Rules*, *supra* note 2 at s 21(5). [↑](#footnote-ref-104)
104. *Okoro J’s Reasons*, *supra* note 18 at para 30. [↑](#footnote-ref-105)
105. See *RPD Rules, supra* note 2 at s 21(1). [↑](#footnote-ref-106)
106. *Ibid* at s 21(6). [↑](#footnote-ref-107)
107. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 102 and 105 [*Vavilov*]. [↑](#footnote-ref-108)
108. *Newfoundland and Labrador Nurses’ Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 14. [↑](#footnote-ref-109)
109. *Vavilov*, *supra* note 107 at paras 102 and 105. [↑](#footnote-ref-110)
110. *Okoro J’s Reasons*, *supra* note18 at para 41. [↑](#footnote-ref-111)
111. *RPD Reasons*, *supra* note 3 at para 41. [↑](#footnote-ref-112)
112. *Ibid* at para 39. [↑](#footnote-ref-113)
113. *Torrance v Canada (Attorney General),* 2020 FC 634 at para 54. [↑](#footnote-ref-114)
114. *RPD Reasons*, *supra* note 3 at para 43. [↑](#footnote-ref-115)
115. *Vavilov, supra* note 107 at para 99. [↑](#footnote-ref-116)