Immigration and Refugee Board of Canada

Refugee Appeal Division

Commission de l'immigration et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD File No. / N° de dossier de la SAR : VB3-02285

Private Proceeding / Huis clos

Reasons and decision – Motifs et décision

Person(s) who is(are) the subject of the appeal	XXXX XXXX	**Personne(s) en cause**
Appeal considered / heard at	**Vancouver, BC**	**Appel instruit à**
Date of decision	January 16, 2014	**Date de la décision**
Panel	Philip MacAulay	**Tribunal**
Counsel for the person(s) who is(are) the subject of the appeal	Peggy Lee **Barrister and Solicitor**	**Conseil(s) du (de la/des) personne(s) en cause**
Designated representative	N/A	**Représentant(e) désigné(e)**
Counsel for the Minister	Mahshid Ranjbar	**Conseil du ministre**

Canada

REASONS FOR DECISION

[1] XXXX XXXX (the "appellant"), a national of Indonesia, appeals the determination of the Refugee Protection Division (the "RPD") rejecting her claim for refugee protection. The Notice of Decision was issued on September 11, 2013. The claim was heard on August 27, 2013 and a written decision was rendered on August 28, 2013.

DETERMINATION

[2] Pursuant to subsection 111(1)(a) of the *Immigration and Refugee Protection Act* ("*IRPA*" or the "*Act*"),[1] the Refugee Appeal Division (the "RAD") confirms the determination of the RPD that the appellant is neither a Convention refugee pursuant to section 96 of *IRPA* nor a person in need of protection pursuant to section 97 of that *Act*. Her appeal is dismissed.

BACKGROUND

[3] The Minister has intervened in this appeal,[2] as the Minister had done before the RPD. The Minister has also filed an Intervention Record (IR), including a memorandum.[3] The Minister does not rely on documentary evidence referred to in *IRPA* subsection 110(3) nor does the Minister request a hearing under *IRPA* subsection 110(6).

[4] Neither the appellant nor the Minister has provided a complete transcript of the RPD proceedings before the RAD. The Minister has provided selected extracts from that hearing.[4] A compact disc of the RPD hearing is included in the Refugee Protection Division Record (RPDR).[5]

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[1] *Immigration and Refugee Protection Act* (the "*Act*" or "*IRPA*"), S.C. 2001, c. 27.
[2] RAD Exhibit 5.
[3] RAD Exhibit 6, Intervention Record (IR), pps.12-19.
[4] RAD Exhibit 6 IR, pps.1-10.
[5] RAD Exhibit 4 Refugee Protection Division Record (RPDR), volume 3.

[5] The appellant seeks to present documents to the RAD pursuant to subection 110(4) of *IRPA* (referred to generally hereafter as "new evidence" or "new documents").[6] As well, the appellant seeks a hearing pursuant to subection 110(6) of *IRPA* in the circumstances cited in the Appellant's Record (AR).[7]

[6] The appellant filed a reply[8] to the Minister's intervention, a significant portion of which is a duplication of the appellant's initial memorandum found in the AR. The Minister then filed a copy of a recent Federal Court decision[9]. This was followed by the appellant's submission of additional new documents but without any submissions regarding them.[10]

Basis of The Claim

[7] The appellant is a 58-year-old Chinese-Indonesian Christian woman. She alleges that she is a long-time victim of violent physical, sexual, emotional and financial abuse at the hands of her former husband. Their relationship began in 1975. The appellant divorced her husband in 2009, yet the abuse allegedly continued. The appellant left the country for Canada in 2009. The appellant is advised by a daughter who remains in Indonesia that the ex-husband has continued to search out the appellant to do her harm, even after the appellant left the country. The appellant alleges that her efforts to secure police protection in Indonesia regarding her ex-husband did not result in adequate state protection for her. In addition, the appellant alleges that she faces a serious possibility of persecution, risk or danger arising from her minority ethnic and religious background. In the result, the appellant fears for her life and safety throughout Indonesia.

[6] RAD Exhibit 2 Appellant's Record (AR) pp.685-687, RAD Exhibit 3 and RAD Exhibit 9.
[7] RAD Exhibit 2 AR p. 687 para. 26 and RAD Exhibit 9.
[8] RAD Exhibit 7.
[9] RAD Exhibit 8 being a copy of *Czesak v. M.C.I.* 2013 FC 1149.
[10] RAD Exhibit 9.

RPD Decision

[8] The RPD Member stated that she applied the Immigration and Refugee Board (IRB) Chairperson's *Gender Guidelines*[11] with respect to the appellant and the hearing before the RPD.[12] I find that she had appropriately done so. With respect to this appeal, I have also applied the *Guideline*.

[9] The RPD accepted the appellant's identity as a national of Indonesia and as a member of the Chinese-Christian minority of that country. As well, the RPD concluded that the appellant was the victim of gender-based persecution at the hands of her ex-husband over the years.[13] However, the RPD concluded that the appellant, who had lived in a small village in XXXX, Java, Indonesia from 1981 until she left the country for Canada in 2009,[14] had a viable internal flight alternative (IFA) in either of two large cities in Indonesia, namely Jakarta or Medan.[15]

[10] The RPD rejected the allegation that the appellant would face more than a mere possibility of persecution in Indonesia as a Chinese-Indonesian Christian or that she would face section 97 *IRPA* risks or danger for that reason.[16]

[11] The RPD found that the availability of an IFA to the appellant was determinative of all claims under either section 96 or subsection 97(1) of the Act.[17]

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[11] IRB Chairperson's *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution*, Ottawa, Canada, March 1993, updated November 1996.
[12] RAD Exhibit 2, AR, RPD reasons, pp.5-6, paras. 3 and 8.
[13] RAD Exhibit 2, AR, RPD reasons, p. 10, para.24.
[14] RAD Exhibit 2, AR, RPD reasons, p. 7, para. 13.
[15] RAD Exhibit 2, AR, RPD reasons, p. 6, para.9.
[16] RAD Exhibit 2, AR, RPD reasons, p.10, para. 22.
[17] RAD Exhibit 2, AR, RPD reasons, p. 12, para. 28.

GROUNDS OF APPEAL

The Appellant

[12] The appellant raised three issues on the appeal namely,:[18]

a) Did the RPD err in its application and assessment of the first prong of the IFA test?

b) Did the RPD err in its application and assessment of the second prong of the IFA test?

c) Did the RPD err by ignoring or misconstruing contrary and relevant evidence?

The Minister's Intervention

[13] The Minister's position is that, with regard to the issues raised by the appellant, the RPD decision was reasonable, falling within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. The Minister submits that the appeal should be dismissed and that the RPD decision be confirmed.[19]

REMEDY SOUGHT

[14] The appellant seeks a decision from the RAD that the determination of the RPD be set aside and substituted with a determination that the appellant is a Convention refugee and/or a person in need of protection. Alternatively, the appellant seeks a decision from the RAD that the determination of the RPD be set aside and that the matter be referred to the RPD for re-determination, giving directions to the RPD that the RAD considers appropriate.[20]

[15] The Minister seeks a decision from the RAD that the determination of the RPD that the appellant is neither a Convention refugee nor a person in need of protection be confirmed.[21]

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[18] RAD Exhibit 2, AR, pp. 687-688, paras 27-29.
[19] RAD Exhibit 6, IR, pp. 12-16.
[20] RAD Exhibit 2, AR, p.700, paras. 59-60.
[21] RAD Exhibit 6, IR, p. 19, para. 37.

STANDARD OF REVIEW

[16] Both the appellanRAD Exhibit 2t[22] and the Minister[23] made brief submissions as to the appropriate standard of review the RAD should apply when considering the determinations of the RPD.

[17] When considering standards of review with regard to the judicial review of administrative tribunal determinations, the Supreme Court of Canada (SCC) in *Dunsmuir*[24] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a specific issue before a review court is well settled by past jurisprudence, a reviewing court may adopt that standard of review. It is when that search proves fruitless that a reviewing court must undertake a consideration of factors comprising the standard of review analysis.

[18] The RAD is a new appellate administrative tribunal about which, to the best of my knowledge, the Federal Court has yet to comment on the question of what standard of review the RAD should apply under various circumstances that might come before it. Accordingly, a standard of review analysis will be undertaken in this case. I am aware that the Federal Court has recently granted leave on an appeal seeking judicial review concerning the appropriate standard of review, if any, which should be applied by the RAD. Federal Court records indicate that the matter will be heard at a special sitting on April 1, 2014.[25]

[19] In its submissions noted above, the Minister suggests that I adopt the reasoning of my colleague in a previous RAD, publicly disclosed, determination on the appropriate standard of review.[26] I have reviewed this RAD determination and find nothing about it with which I differ. Nevertheless, at this stage, I will set out my approach on the topic. When considering the submissions of the Minister, I conclude that the Minister would generally agree with the

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[22] RAD Exhibit 2, AR, pps. 688-689, paras. 30-33.
[23] RAD Exhibit 6, IR, pps.12-13, paras. 3-4.
[24] *Dunsmuir v. New Brunswick* 2008 SCC 9.
[25] IMM-6362-13.
[26] *X (Re)*, 2013 CanLL 67019, http://canlii.ca/t/g119g.

conclusions I have reached on the issue as it applies to this case and the primary case authority I have relied upon.

[20] With respect to the standard of review, the appellant submits that the RAD, as an administrative appeal tribunal created under a statutory regime, is not a Superior Court and is not required to engage in a standard of review analysis. In support of this position, the appellant refers to the 2010 Nova Scotia Court of Appeal decision in *Halifax (Regional Municipality) v. Anglican Diocesan Center Corporation*[27].

[21] The *Anglican Diocesan* case dealt with a situation where the municipality of Halifax's Development Officer turned down a development application by the church to build a multistory building on its property, the top floors of which would provide housing for seniors. The municipality's officer turned down the application as, in his view, the top five floors would be too residential and were not allowed by zoning bylaws. The church appealed to the province's Utility and Review Board (the Board) under the applicable legislation. The one-member Board allowed the appeal and ordered the municipality to issue the development permit. A further appeal was taken to the Nova Scotia Court of Appeal, also pursuant to the applicable legislation. When considering the question of what standard of review the board should have applied, the Court came to the following conclusion (quoted by the appellant):

> [23] This court applies correctness to the Board's selection of the Board's standard of review: *Archibald*, ¶ 19 and authorities there cited. The Board, itself an administrative tribunal under a statutory regime, does not immerse itself in *Dunsmuir*'s standard of review analysis that governs a court's judicial review. The Board should just do what the statute tells it to do.
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> [24] Sections 265(2) and 267(2) of the *HRM Charter* allow the Board to overturn a development officer's refusal of a development permit only on the grounds that the development officer's decision "does not comply with the land-use by-law" [or with a development agreement or order – which are irrelevant here] or "conflicts with the provisions of the land-use by-law" [or with a subdivision by-law – irrelevant here]. The Board said (¶ 62) that it "may only allow this appeal if it determines that the Development Officer's decision 'conflicts with' or 'does not comply' with the provisions of the Land-Use By-Law". After its analysis, the Board concluded (¶ 109) that the development officer's "decision to refuse conflicts with, and does not comply with, the LUB", namely s. 67(1)(d) which permits an "other institution of a similar type" in the P Zone. The Board

[27] *Halifax (Regional Municipality) v. Anglican Diocesan Center Corporation* 2010 NSCA 38.

> correctly identified its standard of review, i.e. that prescribed by the *HRM Charter*, to the decision of the development officer.
>
> [25] The issue in this court is whether the Board's application of that standard involved an error of law in the Board's interpretation of s. 67(1)(d) and related provisions of the LUB.

[22] The Nova Scotia Court of Appeal concluded that the Board's finding that the Development Officer's decision did not comply with the land-use bylaw was reasonable and the appeal was dismissed.

[23] In my assessment the *Anglican Diocesan* decision is not as compelling on the question of standard of review for the RAD as is the approach taken in the Alberta Court of Appeal decision in *Newton v. Criminal Trial Lawyers Association*[28] which I discuss in detail in the following. One of the critical aspects of the process under review in the Nova Scotia case, contrasting greatly with the process of an appeal before the RAD, is that the Utility and Review Board essentially conducted a *de novo* hearing with full evidence of the parties provided. As was noted by the Court in that case:

> [17] The Board, sitting by its member Mr. Wayne Cochrane, Q.C., heard the appeal on July 23, 2009. The Church and HRM each were represented by counsel. Giving evidence for the Church were The Right Reverend Sue Moxley, Bishop of Nova Scotia, Mr. Jason Shannon, Chief Operating Officer of Shannex, and Mr. David Harrison, whom the Board qualified as an expert in land use planning. Mr. Faulkner, HRM's development officer, testified for HRM. Further to the Board's practice, the witnesses had filed written summaries of their evidence which they supplemented orally at the hearing by direct and cross examination.

[24] As is set out in the following, I find that the restrictions on the evidence and/or opportunity for oral hearings set out in the legislation with respect to the RAD are fundamentally different than the regime under which the *Anglican Diocesan* was determined.

[25] While there are similarities between the role of the RAD *vis-à-vis* the RPD and a court of judicial review with respect to administrative tribunal determinations, there are number of important differences. Some of the more important of these are:

- An appeal may be taken to the Federal Court only with leave of the court, while an appeal of right to the RAD from the RPD is available for those who fit one of

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[28] *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399.

the legislative categories of potential appellants, albeit with certain determinations of the RPD not being subject to appeal;

- A judicial review by the court is not with respect to the substantive merits of a case but, rather, considers the legality of the tribunal's decision and process. While both a reviewing court and the RAD will consider questions of law, fact or mixed fact and law, the RAD also considers the substantive merits of the matter and may make final decisions as to whether or not an individual should have refugee protection;

- With rare exceptions, new evidence is not permitted on a judicial review whereas there are provisions in the *IRPA* which provide limited circumstances whereby new evidence may be introduced before the RAD by an appellant and, in some specific situations, oral testimony may be taken by the RAD. The scope of new evidence which might be presented to the RAD by the Minister is not restricted; and

- The remedies available upon judicial review are, generally speaking, limited to a dismissal of the judicial review or, if successful, the referral of the matter back to the tribunal for a redetermination. In contrast, the RAD may confirm the RPD determination, set the determination aside and substitute its own determination, or, in limited situations, may refer the matter back to the RPD for redetermination with, or without, directions.

[26] Although both the RPD and the RAD may make determinations on refugee protection, there are notable differences between the two Divisions.

[27] A review of the legislation regarding the RAD makes it clear that an appeal from the RPD to that Division is not a *de novo* or new hearing. The appeal is based on the RPD Record with restrictions on the new evidence that may be presented by a claimant, and there are oral hearings only in limited circumstances. Importantly, such an appeal is not a re-litigation of the entire case nor is it intended to duplicate the work of the RPD. In my view, this distinction provides a basis for the RAD, which does not generally conduct hearings, to show deference to the findings of the RPD, particularly with respect to findings of fact or of mixed fact and law.

[28] Generally, the subject matter of such an appeal is party-driven. An appellant has the onus of demonstrating how and in what way the RPD might have erred. The RAD also plays the wider administrative function of promoting the consistency and quality of RPD decision-making by way

of three-person panel determinations which have legislated precedential value over the RPD and single member RAD panels.

[29] As the law has developed over the years with respect to the judicial review of determinations of tribunals, the courts have, generally speaking, determined that with respect to questions of fact and issues concerning mixed fact and law, the standard of review is "reasonableness". On questions of alleged errors of law (which includes questions of fairness and natural justice) the issue is not completely settled in all respects but, often, the courts will apply a standard of "correctness".

[30] The SCC in *Dunsmuir*[29] stated that any analysis of the standard of review must be contextual and is dependent on a number of relevant factors including:

- the presence or absence of a privative clause;
- the purpose of the tribunal as determined by the interpretation of the enabling legislation;
- the nature of the question at issue; and
- the expertise of the tribunal.

[31] It is important to note the particular context of this appeal as the SCC in *Dunsmuir* stated that it will not be necessary to consider all of the four factors in every case, as only some of them may be determinative in the application of the reasonableness standard in a specific case.

[32] The nature of this appeal primarily concerns the RPD's treatment of the issue of IFA and the question of race and religious persecution, risk or danger.

[33] Regarding judicial review, the courts have found that the determination of a viable IFA is a question of mixed fact and law. I find that there is no substantial reason why the RAD should not come to a similar conclusion. The race/religion persecution question is also one of mixed fact and law.

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[29] *Dunsmuir v, New Brunswick* 2008 SCC 9.

[34] As was set out in a brief synopsis of the law concerning IFA by Justice Heneghan in *Fatoyinbo*:[30]

> [4] The determination of a viable IFA is a question of mixed law and fact, reviewable on the standard of reasonableness; see the decision in *Agudelo v Canada (Minister of Citizenship and Immigration)*, 2009 FC 465 (CanLII), 2009 FC 465 at para 17 and *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 (CanLII), [2009] 1 SCR 339.
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> [5] The test for a viable IFA was set out in *Rasaratnam v Canada (Minister of Employment and Immigration)*, reflex, [1992] 1 FC 706 (FCA) at 710-711. It is a two-pronged test, as follows: first, the Board must be satisfied that there is no serious possibility of a claimant being persecuted in the IFA and second, it must be objectively reasonable to expect a claimant to seek safety in a different part of the country before seeking protection in Canada.
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> [6] In order to show that an IFA is unreasonable, the Applicant must provide evidence to show that conditions in the proposed IFA would jeopardize her life and safety in travelling or relocating to that IFA; see *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA), [1994] 1 FC 589 (FCA) at 596-598.

[35] Justice de Montigny commented as follows in *Garcia Guevara*[31] with respect to the onus on the claimant when a potential IFA is identified:

> [20] On the other hand, I am of the view that the panel could consider the possibility of an internal flight alternative for the applicant in Mexico City. It is settled law that the onus is on refugee claimants to establish that they cannot find refuge in their country of origin. For the purposes of this analysis, it is important to apply the two-stage test developed by the Court of Appeal in *Rasaratnam v Canada (Minister of Employment and Immigration)*, reflex, [1992] 1 FC 706. *The applicant therefore had the burden of proving, on a balance of probabilities, that she faced persecution everywhere in Mexico and that it was objectively unreasonable for her to avail herself of an internal flight alternative.*
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> [21] In this case, the panel noted that the applicant had always lived in the same city and that it would not be unreasonable for her to relocate to a large city like Mexico City. On the other hand, the panel found that there was nothing to indicate that she could not establish herself there; it is true that she has no family there, but she does not have any in Canada either. *In this respect, it should be reiterated that it is important to adduce concrete evidence showing that it would be unreasonable to seek refuge in her own country:*

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[30] *Fatoyinbo v. M.C.I.* 2012 FC 629.
[31] *Garcia Guevara v. M.C.I.* 2012 FC 195.

> We read the decision of Linden J.A. for this Court as setting up a *very high threshold for the unreasonableness test. It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area. In addition, it requires actual and concrete evidence of such conditions.*
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> *Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 at paragraph 15.
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> (RAD emphasis)

[36] In this case, is there any substantial reason why a similar standard of reasonability should not be applied by the RAD to the RPD determination on IFA regarding such matters as whether the ex-husband would find the appellant in either of the two proposed IFAs, if he would have the means or ability to do so or if the appellant's life or safety would otherwise be jeopardized in those cities because of race or religion? As discussed below, I find there is no such reason.

[37] The jurisprudence concerning the question of whether a correctness or reasonableness standard should be applied on judicial review turns on the amount of deference that should be given to the decision under appeal. With respect to findings of fact or mixed fact and law, deference is shown inasmuch as a tribunal, unlike the reviewing court (or, as noted above, the RAD in its legislative scheme) has had a full opportunity to directly hear the entire case, including the oral testimony of the claimant and apply their adjudicative and administrative expertise to the questions of fact before them.

[38] In my assessment, the RAD must be differentiated from other administrative appellate tribunals which do hold *de novo* hearings where the courts have determined that a non-deferential approach by those appellate tribunal reviews of lower tribunal decisions is appropriate, i.e., a correctness standard is more likely applied.[32] The RAD is not such a tribunal.

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[32] For example, see *Castellon v. MCI* 2012 FC 1086 concerning the Immigration Appeal Division; *Paul v. Bitish Columbia (Forest Appeals Commission)* 2003 SCC 55; *Murphy v. Canada (Attorney General)* 2007 FC 905 concerning the Veterans Review and Appeal Board and the *Halifax v. Anglican Diocese* case discussed earlier.

[39] In considering the appropriate standard of review I should apply to RPD findings of fact or of mixed fact and law, I have considered the guidance offered by the Alberta Court of Appeal in *Newton v. Criminal Trial Lawyers' Association*[33] with respect to an appellate administrative tribunal which has some similarities to the RAD. I find the discussion by that Court, including the way in which it tied into its determination the decision of the SCC in *Dunsmuir*, to be helpful and instructive.

[40] In *Newton*, the Alberta Court of Appeal reviewed an administrative appeal tribunal's decision regarding a first-instance administrative body's ruling concerning the discipline of a police officer. This appellate tribunal was the Law Enforcement Review Board. The Alberta Court stated that:

> [1] This appeal concerns the basic structure and interrelationship of the tribunals in Alberta that review the conduct of police officers when that conduct is called into question in disciplinary proceedings under the *Police Act*, R.S.A. 2000, c. P-17. The specific issue is the extent to which the Law Enforcement Review Board may conduct a fresh hearing based on fresh evidence when an appeal is launched from the decision of a presiding officer in a disciplinary matter.

[41] The Court's ultimate determination in *Newton* was as follows:

> [96] The appeal is allowed, and the decision of the Board set aside. The answers of [sic] the three questions on which leave was granted are as follows:
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> 1. The Board did err in law by conducting a *de novo* hearing, and by allowing the Criminal Trial Lawyers' Association to call evidence which was called or available at the disciplinary hearing, without requiring it to meet the legal test for new evidence;
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> 2. The Board did fail to apply the correct standard of review to the decision of the Presiding Officer;
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> 3. The Board did err in failing to consider the exhibits tendered, including the transcript of the hearing before the Presiding Officer.

[33] *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399.

[42] When assessing the appropriate standard of review for findings of fact or mixed fact and law made by the RPD, it is useful for the RAD to consider the factors outlined in *Newton,*[34] which also have regard to the list of factors listed in *Dunsmuir*.[35] The *Newton* factors include:

a. the respective roles of the tribunal of first instance and the appellate tribunal, as determined by interpreting the enabling legislation;

b. the nature of the question in issue;

c. the interpretation of the statute as a whole;

d. the expertise and advantageous position of the tribunal of first instance, compared to that of the appellate tribunal;

e. the need to limit the number, length and cost of appeals;

f. preserving the economy and integrity of the proceedings in the tribunal of first instance; and

g. other factors that are relevant in the particular context.

[43] As mentioned earlier, the SCC in *Dunsmuir* noted that all of the factors it had listed would not necessarily feature in every case. As well, that same Court in *Khosa*[36] noted that the factors used to decide the standard of review are not a checklist of criteria but that a contextualized approach is appropriate in deciding which factors are most relevant. In assessing the relationship between the RAD and the RPD in this case concerning the RPD's findings of fact having regard to the *Newton* factors, the following four are the most significant:

- the respective roles of the RPD and RAD in the context of *IRPA*;
- the nature of the question in issue;
- interpretation of the statute as a whole; and
- the expertise and advantageous position of the RPD Member compared to that of the RAD arising from the RPD's full hearing of all issues and all of the evidence as compared to the RAD's more limited role on appeal.

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[34] *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399, paragraph 44.
[35] *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9.
[36] *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339.

[44] All Divisions of the IRB derive their jurisdiction from, and they interpret, the same statute: the *IRPA*. Section 162 of *IRPA* gives each Division the same powers, (including the RPD and the RAD), "in respect of proceedings brought before it under this Act, sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction."

[45] While the powers of the RPD and the RAD are similar, their roles are not identical. The primary role of the RPD is to hear testimony, review evidence and determine a claim on its merits, while the RAD reviews those determinations based on, for the most part, the record of the RPD proceedings in light of the allegations of error formulated by the parties to the appeal. Even so, the fact that the RAD may substitute a different determination than that made by the RPD does make its role similar to the RPD in that both Divisions are engaged in refugee determination.

[46] The mere presence of a right of appeal, in and of itself, does not warrant a correctness standard of review, given the proscribed relationship between the RPD and RAD, and the limits imposed on RAD in *IRPA*.

[47] The RPD is a tribunal of first instance which has been given the authority under *IRPA* to make a decision to accept or reject a claim for protection.[37] RPD Members have expertise in interpreting and applying *IRPA* and, as well, expertise in assessing claims based on country conditions. The RPD must conduct a hearing[38] and assesses the totality of the evidence, including evidence related to the credibility of the appellant and witnesses, after it has had an opportunity to see the claimants, hear their testimony and question them. The RPD has expertise in making findings of fact after evaluating, first hand, the testimony of witnesses and other evidence.

[48] In contrast, *IRPA* limits the RAD's ability to gather and consider evidence. The RAD is not a tribunal of first instance and its principal role is to review the decision made by the RPD. As stated earlier, the RAD must generally proceed without a hearing and on the basis of the record,

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[37] *IRPA*, s. 107.
[38] *IRPA*, s. 170.

submissions by the parties, and, on occasion, new evidence.[39] The RAD's authority to consider new evidence and hold hearings is limited to evidence that arose after the rejection of the claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.[40] As well, oral hearings are limited to circumstances where the new evidence raises a serious credibility issue.[41]

[49] Given the RPD's role noted above, and the legislative limitations of the RAD process, I conclude that the RPD is in the best position to assess the credibility of the appellants and to make findings on issues of fact and mixed law and fact, related to the claims. This position is consistent with *Newton* where it found that, with respect to the appellate Board: 'The Board is not a tribunal of first instance, and cannot simply ignore the proceedings before the presiding officer, and the conclusions reached by him."[42]

[50] *Newton* also concluded that "a decision on such questions of fact by the presiding officer, as the tribunal of first instance, are entitled to deference. Unless the findings of fact are unreasonable, the Board should not interfere."[43]

[51] I consider that the analysis of the Alberta Court of Appeal is cogent, well-reasoned and assists me in coming to my determination that, in the case before me, the errors alleged by the appellant are ones of fact or mixed fact and law and, in either case, the RPD determinations on the applicable questions are to be given deference and be reviewed on a standard of reasonability.

[52] In assessing reasonability, the SCC in *Dunsmuir* noted in paragraph 47 of its decision:

> In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

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[39] *IRPA*, ss. 110(3).
[40] *IRPA*, ss. 110.(4).
[41] RAD Rule 57.
[42] *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399, paragraph 82.
[43] *Ibid*, paragraph 95.

[53] The SCC made clear that, on judicial review, a court should not lightly interfere with a decision, even when the decision may not have been the one which the reviewing court would have reached on its own. As the SCC noted further in its subsequent decision in *Khosa:*

> There may be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.[44]

ANALYSIS OF THE MERITS OF THE APPEAL

Section 110(4) documents and section 110(6) hearing before the RAD

[54] The appellant seeks to introduce a number of documents as evidence in this appeal pursuant to subsection 110(4) of *IRPA* (referred to generally hereafter as "new evidence" or "new document").

[55] The applicable page numbers in each RAD Exhibit are set out following each description. The first documents are contained as part of RAD Exhibit 2:[45]

a) appellant's XXXX XXXX XXXX counseling appointment slips (XXXX XXXX, 2013; XXXX XXXX, 2013), page 662;

b) letter of Vancouver XXXX XXXX XXXX XXXX XXXX XXXX XXXX Program, Clinical Counselor, XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX, 2012), page 663;

c) article - "How Indonesia's mentally ill are shackled and forgotten" (October 11, 2013) Agence France-Presse, pages 664-665;

d) article - "Mental disorders increase with Indonesia's aging population" (October 12, 2013) Asia News Network/Jakarta Post, pages 666-667;

e) article - "Disorder: Indonesia's mental health facilities by Andrea Star Reese" (September 3, 2013) Time Lightbox, pages 668-669;

f) article - "Time Lightbox features Andrea Star Reese heartbreaking series on Indonesia's mental health facilities (September 13) Lintroller, pages 670-671**;**

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[44] *Canada (Minister of Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para.59.
[45] RAD Exhibit 2, AR, pp. 662-678.

g) Human Rights Watch, "Peeling off Indonesia's veneer of tolerance" (October 4, 2013), pages 672-674;

h) Human Rights Watch, "Indonesia's rising intolerance" (September 3, 2013), pages 675-677.

[56] Additional documents are contained in RAD Exhibit 3:[46]

i) letter of XXXX XXXX XXXX Program Clinical Counselor XXXX XXXX XXXX, RSW (October 24, 2013), pages 2-3;

j) letter from appellant's daughter, XXXX XXXX (undated), page 4.

[57] Further documents are contained in RAD Exhibit 9:[47]

k) additional letter from appellant's daughter (December 20, 2013), page 1;

l) article- "New documentary explores Indonesian practice 'pasung'" (November 6, 2013) Australian Network News, pages 2-4;

m) article- "Tackling domestic violence in Indonesia's Papua Province" (December 13, 2013) IRIN Humanitarian News and Analysis, pages 5-7;

n) Published doctoral philosophy thesis of Elli Nur Hayati, Umea University of Sweden, Department of Public Health and Clinical Medicine, Epidemiology and Global Health (November 22, 2013), pages 7-93.

[58] Concerning new evidence, subsection 110(4) of the *Act* provides:

> 110(4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

[59] With respect to a hearing before the RAD, section 110(6) of the *Act* states:

> 110(6) The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3):
> (a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;
> (b) that is central to the decision with respect to the refugee protection claim; and

[46] RAD Exhibit 3, pp. 1-4.
[47] RAD Exhibit 9, pp. 1-93.

> (c) that, if accepted, would justify allowing or rejecting the refugee protection claim.

[60] Subection 110(3) provides:

> (3) Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.

[61] My assessment of the provisions of these sections with respect to new documents in this case is that the decision on whether or not they will be accepted and if a hearing will result must be made in the context of the particular facts involved in the claim and the issues raised on the appeal. Accordingly, my determination on the new documents will be made in the following issues analysis portions of this decision.

Issue 1: Did the RPD err in its application and assessment of the first prong of the IFA test?

a) With respect to the persecutor

[62] Regarding the safety of the appellant in the IFAs from her ex-husband, the appellant alleges that the RPD erred when it determined that her ex-husband would not locate the appellant in those areas.[48] As well, it is submitted that the RPD further erred in determining an IFA existed for the appellant from that man in that, for her to take advantage of whatever safety might exist in the IFA, would require the appellant to, effectively, go into hiding, a requirement the courts have determined is not reasonable.[49]

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[48] RAD Exhibit 2, AR. p. 681, para. 8 and p. 691, para. 41.
[49] RAD Exhibit 2, p. 692, paras. 42-45.

[63] The appellant submits that the ex-husband has a long history of violence used to achieve his goals. Even though the appellant left Indonesia in 2009, the ex-husband has continued to visit the daughter's home demanding to know the whereabouts of the appellant. Two of the new documents sought to be admitted on the appeal[50] are letters from the daughter stating that, in her opinion, the father would easily locate the appellant in either of the IFAs due to his large circle of friends and persistence. As well, his efforts to locate the appellant have continued since the RPD hearing. The daughter also alleges that her father would force her to divulge the appellant's location if the appellant returns to Indonesia to live in one of the IFAs. In this regard, in her reply to the Minister's intervention, the appellant submits that, if the appellant returns to Indonesia, the father would physically assault the daughter in order to ascertain the particular whereabouts of the appellant.[51] (In passing, I also note that the content of the reply repeats much of what is in the appellant's initial memorandum).

[64] The Minister submits that the RPD did not err in coming to its determinations with respect to the IFAs generally[52] and, with respect to the ex-husband, the RPD appropriately analyzed the evidence with respect to the "ex-husband means and abilities in locating the appellant in Indonesia either by himself, through alleged friends, or the appellant's daughter in Indonesia".[53] The Minister notes that when the appellant was queried at the RPD about her knowledge of the ex-husband's friends, she could provide very little evidence about her knowledge of them as she had only ever met one and that, therefore, there was insufficient credible evidence to suggest that the appellant's ex-husband could locate her through his friends based on the appellant's evidence.[54] With regard to the new evidence of the daughter, the Minister submits that the appellant was given the opportunity to call the daughter as a witness at the RPD but she chose not to do so. The Minister refers to the transcript of the RPD hearing where counsel decided not to

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[50] documents *j* and *k* noted in the above section concerning "new documents" and section 110(4) of *IRPA*.
[51] RAD Exhibit 7, appellant's reply to the Minister, p. 6, para.14 and p.14-15, para. 41.
[52] RAD Exhibit 6, IR, p.13-14, paras 9-12.
[53] RAD Exhibit 6, IR, p.14, para.16.
[54] RAD Exhibit 6, IR, p.14, para. 17.

call the daughter as a witness[55]. The Minister submits that it was reasonably open to the appellant to call the daughter as a witness and provide all supporting relevant evidence at the time of the hearing. The new documents primarily are an attempt to, after the fact, provide evidence that the daughter could have provided at the hearing. Therefore, the new documents from the daughter should be excluded.[56]

[65] The appellant also states[57] that the consequence of the RPD finding of IRAs in two large cities would require the appellant (as well as her daughter) to, effectively, go into hiding, contrary to the Federal Court's determination in *Zamora Huerta*[58] that such a requirement is unreasonable. For its part, the Minister's responds that the RPD did not expect the appellant to cease contact with her daughter and that, even if the daughter revealed that the appellant had returned to Indonesia, the ex-husband would not have the means or ability to find her in a large city such as Medan or Jakarta[59].

[66] The appellant also submitted that, with regard to the first prong of an IFA, the RPD misconstrued the evidence with respect to the possibility of persecution, risks or danger of a Christian such as the appellant in those two large cities.[60] The appellant seeks to introduce two brief post-RPD hearing articles as "new evidence" which touch upon ongoing religious harassment, threats and violence against religious minorities in Indonesia.[61] The Minister submits that the RPD analyzed the appellant's ethnic and religious background against the evidence and concluded that the appellant had not been persecuted as a Chinese-Christian in Indonesia and then analyzed, with clarity, the future possibilities of persecution on that basis in the proposed IFA areas[62].

[67] In my assessment the RPD correctly stated the appropriate test concerning IFAs when the member stated:

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[55] RAD Exhibit 6, IR, pp.6-7.
[56] RAD Exhibit 6, IR p.19. para. 36 referring to IR pp. 6-7, transcript of the RPD hearing.
[57] RAD Exhibit 2, AR, p. 692, paras. 42-45.
[58] *Zamora Huerta v. M.C.I.* 2008 FC 586.
[59] RAD Exhibit 6, IR, p.15, para.18.
[60] RAD Exhibit 2, AR, p.693.
[61] Documents *g* and *h* noted in the above section concerning "new documents" and section 110(4) of *IRPA*.
[62] RAD Exhibit 6, AR, p.14, paras. 13-15.

> [1] This being said, I find that the most determinative issue in this case is IFA. This issue was raised with the claimant at the outset of the hearing. I find that the claimant has a viable IFA away from her village and particularly in large cities, such as Jakarta or Medan.
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> [2] To find a viable IFA, the panel must be satisfied that (1) there is no serious possibility of the claimant being persecuted or, on the balance of probabilities, in danger of torture or subjected to a risk to life or cruel and unusual treatment or punishment in the IFA and (2) that conditions in that part of the country are such that it would be reasonable, in all the circumstances, including those particular to the claimant, for her to seek refuge there. [63] These are my reasons for believing that a viable IFA exists for the claimant.[64]

[68] As I noted in the earlier section of this decision concerning the Standard of Review, the law is clear that a person claiming refugee protection carries the onus of demonstrating that they would face a serious possibility of persecution or a probability of risk or danger throughout their country and that it is objectively unreasonable for them to seek refuge there.[65]

[69] With regard to the ex-husband and his ability to locate the appellant in the IFAs, the RPD found as follows:

> [11] The claimant listed her ex-husband, who has threatened to kill her, as the main reason for fearing to return to Indonesia. Even though the claimant has been in Canada for the past four years, she stated her husband continues to go to her home where the couple's daughter currently lives. The claimant's daughter has told her that her father, i.e. the claimant's ex-husband, visits often to inquire about the claimant's whereabouts and makes violent threats against her.
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> [12] The claimant testified that her ex-husband had gone to a XXXX school but was not sure whether he ever graduated. He then got a job as a salesman but lost his job in or about 1980 due to a fight with a co-worker. The claimant did not know whether he ever got another job. The claimant's ex-husband would spend certain periods away from home. When he returned, he would abuse the claimant and violently demand money and sex.
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> [13] The claimant lived at the same place from approximately 1981 until she left the country for Canada in 2009, a small village in XXXX, Java, Indonesia. The claimant was the sole legal owner of the home. She initiated divorce, obtained divorce and maintained the sole ownership of her house even after the

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[63] *Rasaratnam* v. *Canada (Minister of Employment and Immigration)*, [1992] 1 F.C. 706 (C.A.).
[64] RAD Exhibit 2, AR, RPD decision, pp.6-7.
[65] *Rasaratnam v. M.E.I.* [1992] 1 FC 706 (FCA).

divorce. She testified that in Indonesia, she ran a XXXX business. Her business, together with the sale of some of her personal assets were how the family survived financially. She testified that her ex-husband would get drunk, and in a state of intoxication, he would become particularly abusive. He always demanded money from the claimant and sexually assaulted her as well.

[14] The claimant was asked whether her ex-husband would learn of her return to the country, particularly if she did not return home but went to big and populous cities such as Jakarta or Medan instead. The claimant stated that her husband would learn of her return through the couple's daughter and that through his many friends. Then, he could reach her to inflict harm on her.

[15] The claimant's daughter provided the claimant with a letter of support and was willing to testify at her hearing. The claimant also testified that the daughter always avoided her father as much as she could. I find that based on the claimant's evidence, the daughter clearly favours her mother over her father. I therefore find it to be highly unlikely that the claimant's daughter would provide information on the claimant's whereabouts in another city to her father. I also find that it would be unreasonable for either the claimant or the daughter if they do not take reasonable precaution against sharing information with the claimant's ex-husband.

[16] Counsel argued that it would be unreasonable to expect the claimant to not be in touch with her daughter in Indonesia. I agree. However, I do not agree with the claimant's characterization that keeping in touch with her daughter would make it likely that her ex-husband would learn about her return to the country. Further, given the ex-husband [sic] financial needs, possible unemployment and drinking problem, even if he learnt of the claimant's return to a large city such as Jakarta or Medan, it would be unlikely that he would have the means of getting there or that he could locate the claimant within those large cities.

[17] The claimant testified that as someone who would spend a lot of time drinking, her ex-husband had a lot of friends. She suggested that it would be through those friends that he could locate the claimant anywhere in the country, including in Jakarta or Medan. The claimant testified that except for one co-worker from when the ex-husband worked as a salesman, she had never seen any of his friends. She did not know whose company he kept. She stated that generally, people who drink have a lot of friends. I find that I do not have sufficient credible evidence that the claimant's ex-husband would be able to locate the claimant through her [sic his] friends.

[70] The appellant raises the prospect that, through some means, the ex-husband would learn when the appellant returns to Indonesia if she does so. I find that there is insufficient evidence to reasonably conclude that this would happen, other than the vague assertion that his friends (specifically unknown to the appellant) would somehow learn of the return. These were

arguments made to the RPD and, in my assessment, reasonably rejected. Moreover, the appellant suggests that, if the ex-husband learns generally that the appellant has returned, he would beat the daughter until she revealed the appellant's specific whereabouts. However, I note the evidence presented in what was Exhibit 8 at the RPD (and which is referenced by the appellant in this appeal),[66] being a four-page notation prepared by the daughter recording over 60 visits of the ex-husband to the daughter's residence from 2009 into 2013. While these notes record the man attending at the house, often drunk, looking for information about the appellant, threatening the appellant's life and yelling, the daughter does not record instances of the ex-husband attacking the daughter.

[71] It is not until the daughter writes in one of her letters proposed as new evidence that she raises the prospect that her father would beat her for the purpose of locating the mother. In this regard I agree with the Minister that the two "new" letters should not be accepted into evidence on the appeal. As noted by the Minister and mentioned earlier, the appellant had a reasonable opportunity at the RPD to present the daughter to provide whatever evidence the appellant felt necessary in order to establish the claim. The appellant specifically chose not to do so. Moreover, I find that the daughter's assertion that the father would beat her to get the location of the appellant if the appellant is in one of the IFAs is speculative and, in my assessment, runs counter to years of experience as noted in Exhibit 8 from the RPD. The allegation found in the letter that the father continued to go to the daughter's home after the RPD hearing is "new" in the sense that the visit referred to has happened more recently but, I find it essentially immaterial as it is merely a repeat of what he had done over 60 times before, which information was before the RPD. Taking all of the above into account, the letters are not accepted as evidence in this appeal.

[72] The appellant submits that to require a claimant to go into hiding in order to achieve an IFA is an error. She relies on the Federal Court decision in *Huerta*[67] for that proposition and cites the following passage from that case:

> [29] The Applicant's evidence is that she did relocate to Queretaro in 2004, but was tracked down by her common-law spouse, a trained police interrogator, who assaulted the Applicant's mother, and forced her to disclose the Applicant's new

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[66] found at RAD Exhibit 2, AR, pp.501-504.
[67] *Huerta v. M.C.I.* 2008 FC 586.

> location. The Board did not expressly address these circumstances in considering the IFA in its reasons. But the Board did qualify its finding by stating that an IFA existed for the Applicant in Mexico, provided she took reasonable precautions and not reveal her new location to relatives and friends. Not to be able to share your whereabouts with family or friends is tantamount to requiring the Applicant to go into hiding. It is also an implicit recognition that even in these large cities, the Applicant is not beyond her common-law spouse's reach. In these particular circumstances, this cannot constitute an IFA for the Applicant. The Board's finding of an IFA does not fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law in the circumstances. As a result, the decision with respect to an IFA is unreasonable and must be set aside.

[73] I disagree with the appellant's submission and find that the RPD did not unreasonably suggest that the appellant and her daughter go into "hiding". What the Member found was that it would be unlikely that the daughter would reveal the whereabouts of the appellant to the ex-husband and that he would not, in any event, likely be able to find the appellant in either of the two large IFAs. I have concluded as well that, based on the accepted evidence, the appellant has not credibly established, on a balance of probabilities that the ex-husband would, first, learn that the appellant was in the country and, second, if he did, beat the information out of the daughter.

[74] Also, the situation in this case is very different than that in *Huerta*. In that case the agent of persecution was a trained police interrogator who beat the claimant's mother until she divulged the claimant's new location. In this case, the ex-husband is apparently an unemployed alcoholic without any obvious training or opportunity to be able to mount a search for the appellant throughout the very populous country of Indonesia. In my assessment, the RPD adequately considered the evidence about the husband's friends and reasonably concluded that the appellant would not be found through that source.

[75] In this case, I find reasonable the RPD's suggestion that the appellant should be circumspect in who she and her daughter might give details to about any return of the appellant to Indonesia. This would include those who they think, 1) might be in contact with the father and, 2) pass information to him. It will be their choice, based on their assessment of the circumstances.

[76] I agree that it would be unreasonable to expect the appellant to go "into hiding" to achieve an IFA. In my assessment, the limited suggestion to vet to whom information is shared does not

amount to, and is not tantamount to, the appellant being entirely cut off from family and friends such that it could be said that she must go into hiding. The prohibition in *Heurta* was far broader and encompassed all family and friends, given that the trained policeman persecutor had already beaten the location where the claimant had relocated out of the claimant's mother. That is not the case here.

b) With respect to the appellant's ethnicity and religion

[77] The appellant also submits that the RPD erroneously assessed the first prong of the IFA test by misconstruing the Christian persecution evidence as being random acts of violence. Rather than properly assess the evidence, the appellant alleges that the RPD made its IFA assessment based on an incorrect nexus to persecution.[68] In effect, the appellant submits that the RPD failed to take into account the particular aspects of the claimant being a Chinese-Christian when assessing the viability of an IFA in the two large cities and relies on case authorities to the effect that one must do so.[69] This is so even if the RPD considered the threat presented by the ex-husband in the proposed IFA. The appellant submits that the RPD did not consider the racial or religious aspects of the appellant living in Medan or Jakarta.

[78] The Minister submits[70] that the RPD made no such error and that the Member properly analyzed the possibility of persecution based on ethnicity and religion in the proposed IFAs. In support of that argument, the Minister makes reference to the following paragraphs from the RPD decision:

> [18] The claimant also testified that as a Chinese Christian, she would live in fear everywhere in the country. The claimant stated that she went to her Christian church regularly in Indonesia. When asked how she was harmed as a Christian Chinese, she stated that she chose non-Chinese names for her children to shield them from overt racism, and that all Christians would generally keep a low profile. When asked to provide an example of a negative experience as a Christian Chinese, she stated that generally, the villagers would not invite the Christians to community events.

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[68] RPD Exhibit 2, AR, p.693, paras.44-45
[69] *Gomez v. M.C.I.* [1998] F.C.J. No. 894; *Mimica v. M.C.I* [1996] F.C.J. No. 856.
[70] RAD Exhibit 6, IR, p. 14, paras. 13-15.

[19] The claimant was asked how she found clients for her XXXX business. She said that in addition to selling her products to her friends, she would take them to the market. There was no suggestion that people would not buy her goods because of her ethnicity or religion. I find that the claimant has not been persecuted as a Chinese Christian in Indonesia. The claimant testified that she was aware of a possible bombing of a Church in her village, but a number of police trucks attended and prevented the disaster. This clearly shows that terrorist style attacks by extremists is neither part of the government policy and nor is it endorsed by the government.

[20] I note that Christianity is one of Indonesia's officially recognized religion[s]. Even though there is evidence of some discrimination based on religious affiliation, there is no credible evidence that Christians, such as the claimant, would not be able to go to Church freely and publicly. Nor do I find that the claimant's ability to practice her faith freely and publicly will be hindered in any way by anyone. In fact, this is what the claimant had been doing in Indonesia prior to coming to Canada without any problems. Counsel argued that the government sometimes cites administrative problems to prevent the building of new houses of worship for religious minorities, or that churches are sometimes set on fire. This being said, members of official religions, including Christians, operate openly and with few restrictions.[71] Christians represent 10 to 12 percent of the population (of a total population of over 250 millions[72]) and report a surge in attendance and adherence to the faith.[73] *I am cognizant that there has been some arson or other terrorist style attacks against houses of worships of religious minorities, including churches, across the country by extremists, including in Jakarta and Sumatra, where Medan is located.* While not all perpetrators have faced justice, there have been incidents where police has offered protection during Sunday Service.[74] Closure of some churches does not affect the claimant as there are plenty of churches that she can attend. I find that the claimant will be able to attend church freely and publicly as she always has in both Indonesia and Canada. What the claimant fears is to become a victim to a random act of violence while in church. I find that while she may fear this, given the size of Indonesia and its population, and the number of such incidents in the documentary evidence before me, *she would face a less than a mere possibility of such incidents.*

[21] I find that the claimant is only speculating as to what may happen to her on her return and does not face a reasonable possibility of persecution because of her ethnicity or religion.

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[71] RPD Exhibit 3, National Documentation Package (NDP) Indonesia, July 31, 2013, Item 12.2, In Religion's Name: Abuses Against Religious Minorities in Indonesia, Human Rights Watch, February 2013, p2. http://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf

[72] NDP Indonesia, Item 1.4, Indonesia. The World Factbook, United States.Central Intelligence Agency, July 10, 2013 P3, https://www.cia.gov/library/publications/the-world-factbook/geos/id.html

[73] *Supra*., footnote 6 of RPD.

[74] Ibid. pp. 4-5 of RPD.

> [22] On the evidence before me, I find that there is no serious possibility of the claimant being persecuted either by her ex-husband or *because of her religion or ethnicity or on the balance of probabilities, of being in danger of torture or at risk to life or cruel and unusual treatment or punishment in either Jakarta or Medan.*
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> (RAD emphasis)

[79] In this regard, the appellant also submits that the RPD misconstrued or ignored contrary relevant evidence in its assessment of the entirety of the claim regarding religion, including the first prong of the IFA test. This submission is subsumed in the third issue raised by the appellant and I will consider that question generally in the subsequent portion of these reasons under the title, Issue Three. I will also consider in that section the new documents proffered by the appellant related to that issue.

[80] Taking all of the submissions into account, I find that the RPD's conclusions regarding the first prong of the analysis leading to the conclusion that the appellant would have a viable IFA in Medan or Jakarta and that the ex-husband would not likely locate her there is reasonable in the particular circumstances of this case and as that phrase is defined by the SCC in *Dunsmuir* and *Khosa* as discussed earlier. I find likewise (as will be discussed more completely later) with respect to the viability of the named IRAs in light of the appellant's race and religion. Most importantly, considering the onus on the appellant, I find that the appellant has not provided adequate credible evidence which, on a balance of probabilities, demonstrates that the proposed IFAs would not be viable based on the first prong of the IFA test.

Issue 2: Did the RPD err in its application and assessment of the second prong of the IFA test?

[81] The appellant submits that the RPD erroneously assessed the second prong of the IFA test by substituting its own opinion about the appellant's mental health and dismissing the report of Dr. XXXX set out in his medical-legal letter.[75]

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[75] RAD Exhibit 2, AR, p.685, para. 19 and p. 694-698, paras.47-53.

[82] The appellant submits that the RPD erred in rejecting expert medical evidence and substituting its own opinion about the appellant's mental state inasmuch as the RPD Member is not a medically trained expert in mental health. Such substitution has been found to be capricious and constitute a reviewable error.[76] The courts have held that when assessing a viable IFA, psychological evidence must not be disregarded,[77] and that the personal circumstances of a vulnerable individual must be considered in determining the reasonableness of an IFA, both with respect to the application of the Chairperson's *Gender Guidelines*[78] as well as medical evidence of any medical health hardship which might arise in the IFA.[79]

[83] In this regard, the appellant, in addition to stating that the RPD erred with regard to Dr. XXXX medical-legal letter which was before the RPD, requests that the RAD consider new evidence regarding the alleged inadequacy of mental health services throughout Indonesia which, it is submitted, renders any proposed IFA unreasonable. This is a reference to documents *c-f* referred to in the initial memorandum of the appellant[80] and in the earlier section of this decision concerning subsection 110(4) of *IRPA*, as well as to documents *l-n* found in RAD Exhibit 9. In addition, the appellant requests that the RAD accept documents *a,b* and *i* as providing additional evidence as to the mental state of the appellant. The first two documents are found in the initial AR[81] and the latter document in RAD Exhibit 3[82].

[84] The Minister's position[83] is that the RPD specifically considered the gender-based persecution that the appellant had faced from her ex-husband, giving consideration to the specific circumstances of the appellant in that assessment. As stated by the RPD:

> [24] I have been cognizant of the gender based persecution that the claimant has suffered at the hands of her ex-husband over the years. This being said, she always maintained her ability to run her business and maintain her home while she was in Indonesia. She initiated divorce against her husband's wish. She then came to Canada and maintained contact with her daughter by telephone. When asked whether she had made any concrete plans to see her daughter any time

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[76] *Tesema v. M.C.I.* 2006 FC 1417.
[77] *Cartagena v. M.C.I.* 2008 FC 289.
[78] *Syvyrn v. M.C.I.* 2009 FC 1027.
[79] *Okafor v. M.C.I.* 2011 FC 1002.
[80] RAD Exhibit 2, AR, pp.664-677.
[81] RAD Exhibit 2, AR p.662-663.
[82] RAD Exhibit 3, p.3-4.
[83] RAD Exhibit 6, IR, p.155, paras.20-21.

> soon, she said that her own safety was paramount to her. I find that the claimant demonstrated a lot of resilience in light of the adversities that she faced.[84]

[85] The Minister submits that, contrary to the appellant's arguments, it is clear from the above that the RPD gave consideration to the appellant's gender-based persecution. The RPD reasonably concluded that the appellant has shown a lot of resilience by divorcing her husband against his wishes, maintaining sole ownership of her home, sustaining and operating a business in Indonesia after the divorce, relocating to Canada and maintaining communication with her daughter.

[86] The Minister also submits[85] that, again, contrary to the appellant's arguments, the Member did not ignore the medical opinion of Dr. XXXX nor did it substitute its own medical opinion about the appellant. The Minister submits that the RPD assessed the report and ultimately afforded Dr. XXXX opinion little weight based on several factors. The Minister submits that the weight afforded to the evidence is within the purview of the RPD, meriting significant deference. The Minister refers to the following portion of the RPD decision:

> [26] Counsel argued that because of the claimant's long history of gender based persecution and her particular vulnerability, as documented by Dr. XXXX, it would be unreasonable to send her back anywhere in the country.[86] The claimant testified that she only met with Dr. XXXX once in a session that lasted between half an hour to an hour. Dr. XXXX never scheduled a follow up session and nor did he refer her to another professional. Based on his brief examination of the claimant, Dr. XXXX found that she is suffering from chronic and complex Post Traumatic Stress Disorder (PTSD), panic attack, and depression. He found that her prognosis is not good and that PTSD is difficult to overcome. I find that it is the duty of the panel, and not of the expert, to assess the legal test set for availability of IFA by Federal Court. Dr. XXXX finds that returning the claimant to Indonesia would result in a degeneration of her mental state because she would not be able to feel safe there, and that it is in the nature of the PTSD that it is triggered by places and sights associated with the trauma.[87] There is no evidence to suggest that the claimant has been to Jakarta or Medan with her husband. Her only association with the abuse was in her village. I therefore do not have sufficient credible evidence that a return to a large city which is very different than a village and that is located at a considerable distance to her village would trigger her memory, only because it is part of the same country. I note that Dr. XXXX expected the claimant to have difficulties at the hearing, which was not the case, as the claimant provided the panel with reasonable answers to most

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[84] RAD Exhibit 2, AR, p.10.
[85] RAD Exhibit 6, IR, p.16, paras.22-23.
[86] RPD Exhibit 7, pp. 31-35 found at RAD Exhibit 2, AR, 99. 146-150.
[87] Ibid, p.35 of Exhibit 7.

> questions and had a good recollection of events with a good display of concentration.[88] She never asked for a break during the hearing, even though she was instructed to tell the panel if she needed one. Given Dr. XXXX false expectation, and the fact that he based his entire opinion on a short visit, I give his opinion little weight.[89]

[87] In support of the appellant's proposition that the RPD improperly substituted its own opinion about the appellant's mental state for that of Dr. XXXX and that psychological evidence must not be disregarded when assessing a viable IFA, extracts from two cases are cited. The first is the Federal Court decision in *Tesema*[90]:

> [5] The issue for determination is whether, in rejecting the opinion, the RPD committed a reviewable error. In *Gina Curry v. Minister of Citizenship and Immigration*, IMM-10078-04, dated December 21, 2005, Justice Gauthier clearly delineates an immigration officer's discretion in assessing psychiatric or psychological evidence:
>
> > As it has been mentioned on numerous occasions by this Court, immigration officers are not experts in psychology or psychiatry. They cannot simply discard experts' opinions without giving at least one reason that stands to probing examination.
>
> Applying this opinion to the present case, I agree with Counsel for the Applicant's argument that the refusal to accept the psychological opinion does not meet the standard expressed.
>
> [6] In my opinion, the RPD's statement does not provide any legitimate reason for not accepting the professional opinion. Expressed in the words used is the RPD's belief that the opinion is unsubstantiated, and contrary to its own opinion of the Applicant's mental state. I find that it was not open to the RPD to reject a professional opinion on this basis, and to do so, constitutes the making of a capricious finding. As a result, the RPD's decision was rendered in reviewable error.
>
> (Appellants underlining)

[88] The second case cited by the appellant is *Cartagena*.[91]

> [11] The member noted the fragile mental health of Mr. Cartagena, but maintained his finding of the existence of a viable IFA despite the psychological opinion in evidence. Psychological evidence is central to the question of whether the IFA is reasonable and

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[88] Ibid. of Exhibit 7.
[89] RAD Exhibit 2, AR, p.11.
[90] *Tesema v. M.C.I.* 2006 FC 1417.
[91] *Cartagena v. M.C.I.* 2008 FC 289.

> cannot be disregarded: *Singh v. Canada (Minister of Citizenship and Immigration)*, 97 F.T.R. 139, [1995] F.C.J. No. 1044. The panel failed to thoroughly assess the reasonableness of the locations suggested as viable IFAs in the context of Mr. Cartagena's situation and vulnerable mind-set.

[89] In my assessment, when reviewing the comments set out by the Court in *Tesema* it is also useful to consider the recent decision of Justice Annis of the Federal Court in *Czesak*[92]. This case was referenced by the Minister[93] and concerns the question of the treatment of expert evidence with respect to the mental state of a claimant when considering an IFA. In that case, the applicant took exception to the RPD's conclusion that the applicants mental state as described by her doctors did not make it unreasonable for her to relocate to Warsaw. In order to better appreciate the Justice's comments, the following extract is somewhat lengthy:

> [29] In its reasons, the panel accepted that the claimant was abused, but noted that psychological intervention could be accessed in Warsaw. Similarly, the panel expressly stated that it considered counsel's submissions, as well as the medical report of Dr. Durish, which it described as inconclusive, including with respect to a diagnosis of the applicant suffering from Post-Traumatic Stress Disorder.
>
> [30] The applicant claims that the panel was not transparent on this issue in that it relied upon one line of Dr. Durish's report while ignoring the totality of the report. Moreover, the panel's review of the medical evidence was limited to Dr. Durish's report. Significantly, it failed to mention or consider other medical reports, particularly that of Dr. Maria Koczorowska, a medical psychiatrist.
>
> [31] With regard to these allegations, I am satisfied that Dr. Durish's report may be described as inconclusive in respect of the applicant's psychological state in many regards, and not just in relation to her PTSD symptoms. The report speaks to concerns about significant substance abuse, and notes that the applicant somaticizes her trauma symptoms to a significant degree, as well as finding it very difficult to assess her intellectual functioning. It is noted that Dr. Durish's area of clinical expertise is in the assessment and treatment of trauma, for which she has received considerable postgraduate and professional training.
>
> [32] In relation to Dr. Koczorowska's report, it states that the applicant was initially seen commencing April 19, 2012. I find that the two-page report is considerably more categorical in its conclusions than Dr. Durish's report. Dr. Koczorowska describes the applicant as suffering from a severe psychomotor retardation with a diagnosis of major

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[92] *Czesak v. M.C.I.* 2013 FC 1149
[93] RAD Exhibit 8.

depressive disorder, posttraumatic stress disorder associated with general medical condition and psychological factors linked to post-concussion syndrome.

[33] Moreover, Dr. Koczorowska specifically opines on the very issue of the applicant's removal to Poland, stating "I believe that she cannot return to Poland because it will for sure cause deterioration in his (sic) condition.… Therefore I fully support her request to be granted permanent residence in Canada on humanitarian basis." [Emphasis added]

[34] Medical reports from Dr. Stachula were also introduced into evidence. He initially treated the applicant in 2008 when she was involved in a motor vehicle accident. In his summary report of March 21, 2011, he noted that the applicant complained of low back pain and migraine headaches. He advised her to reduce her alcohol consumption because of headaches. He concluded that the patient definitely suffered from a grief reaction after her mother's death. His view was that her posttraumatic headaches related to her head injury. He states that she apparently was in good health before the accident, but after it took pain and anxiety medication regularly. No mention is made in his report of domestic violence, or domestic violence having contributed to her head injury issues.

[35] It is to be noted that Dr. Koczorowska also indicated that the applicant was doing well until detained by immigration authorities and that her symptoms got worse after her mother died, since which time she had been struggling.

[36] *In light of the foregoing evidence, including that of Dr. Koczorowska, I am satisfied that it was reasonable for the panel to conclude that the evidence regarding the applicant's medical condition was inconclusive.*

[37] *Moreover, I am of the view that decision-makers should be wary of reliance upon forensic expert evidence obtained for the purpose of litigation, unless it is subject to some form of validation. This remark would apply to the report of Dr. Koczorowska which went as far as to advocate on the applicant's behalf in the guise of an opinion on the very issue before the panel.*

[38] *Our legal system has a long experience in dealing with forensic experts testifying on matters relating to technical evidence for the purpose of assisting courts in their determinations. From that experience, the courts have developed what I would describe as a guarded and cautionary view on conclusions of forensic experts which have not undergone a rigorous validation process under court procedures.*

[39] *Some of these procedures intended to validate expert opinions include the early exchange of reports, by which I mean that normally there is a rebuttal report as a first line of validation. The parties are normally entitled to obtain extensive background information on the drafting of the reports, including production of correspondence between lawyers and experts and knowing whether there are other reports in existence not being relied upon. These procedures are further enhanced by the right to question opposing parties in discovery in relation to issues raised in reports. Most importantly, courts are provided the opportunity to assess the reliability of the expert opinions under*

> *cross-examination by competent lawyers, often under the direction of their own experts. In some cases, decision-makers will even involve neutral experts to assist resolution of more controversial points of opposing forensic experts.*
>
> [40] *This is not to say that every expert report prepared for litigation should be dismissed as having no, or little, weight. But what the court's experience with forensic experts does suggest in relation to these reports being proffered before administrative tribunals where there exists no defined procedure to allow for their validation, is that caution should be exercised in accepting them at face value, particularly when they propose to settle important issues to be decided by the tribunal. In my view therefore, unless there is some means to corroborate either the neutrality or lack of self interest of the expert in relation to the litigation process, they generally should be accorded little weight.*
>
> (RPD emphasis)

[90] In my assessment, the RPD's determination to give Dr. XXXX opinion[94] little weight was reasonable in all the circumstances. There is more than "one reason" for the RPD in doing so. The RPD noted that the appellant only met with the Doctor on only one occasion and, at that, only for one hour. This is based on the appellant's testimony before the RPD where, after considering the question, the appellant concluded that it was likely that the appointment was an hour rather than a half-hour.[95] As well, it is to be noted that the opinion was dated June 5, 2013, long after the appellant came to Canada in 2009. It is difficult to discern what, if any, impact the appellant's life in the interim in this country might have had on the symptoms to which the Doctor makes reference.

[91] When considering a diagnosis about the appellant's mental state, I also note that Doctor XXXX is neither a psychiatrist nor a psychologist. He describes himself in his letter as a physician having a certificate from the Canadian College of Family Physicians. He is also an associate professor of XXXX XXXX at a local university. He provides no *curriculum vitae* yet diagnosis the appellant with "chronic and complex posttraumatic stress disorder". His training and experience with regard to his psychological analysis is not at all clear.

[92] In my assessment the Doctor's conclusion that if the appellant:

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[94] RAD Exhibit 2 AR pp.146-151.
[95] RAD Exhibit 6, IR, pp.4-5.

> …is returned to Indonesia I think one can only reasonably expect a significant degeneration of her present mental state-think she will be unable to experience a feeling of safety there. It is in the nature of PTSD that it is triggered by the places, sights and sounds that were associated with the original trauma.

based on but one, one hour meeting, is worthy of the skepticism referred to by Justice Annis.

[93] The import of the Doctor's observation on what might trigger her PTSD that, "she is upset when she sees Chinese men on the street who remind her of her husband" is also not at all clear. The appellant's BOC indicates that the appellant lives in the lower mainland of British Columbia. Metropolitan Vancouver has a very significant Chinese and Asian population such that it is difficult to conclude that the observation of Chinese men on the street would be anything less than frequent in this country. It is not clear to me how this factor would make it problematic for the appellant to live in either of the two IFAs. As well, whatever impact this might have, the appellant apparently did not seek out any assistance in the many years she lived in Canada prior to visiting the Doctor.

[94] In my opinion, the RPD did not substitute its own evaluation of the appellant's mental state for that of Dr. XXXX but, rather, concluded reasonably that the appellant had not credibly established that she would be unable to avail herself of safety in Jakarta or Medan because of mental problems. As stated earlier, upon consideration of all of the evidence, I find that the treatment by the RPD of Dr. XXXX opinion in giving it little weight was reasonable.

[95] As noted previously, the appellant seeks to introduce three new documents with respect to the appellant's medical condition. The first[96] is simply two slips of paper indicating that the appellant had scheduled appointments at the XXXX XXXX Community Health Centre in Vancouver on XXXX XXXX XXXX 2003 and XXXX XXXX XXXX 2003. Beyond that, there is no indication whatever as to the reason why she was attending there. Given that question alone, these documents will not be accepted. The second is a XXXX XXXX XXXX 2013 letter[97] from a Ms. XXXX , a "Clinical Counselor with the XXXX XXXX XXXX XXXX Clinic, a Vancouver

[96] RAD Exhibit 2, AR, p.662.
[97] RAD Exhibit 2, AR, p.663.

XXXX XXXX facility that exclusively serves the refugee population" to counsel stating that, due to illness, the writer could not provide "requested documentation for the appeal" of the appellant and noting that she had met the appellant that morning "for further assessment and follow-up care". No further specifics are provided. The final new document is a one and a half page XXXX XXXX, 2013 letter[98] from Ms. XXXX to counsel.

[96] In this letter, the writer identifies herself as a Social Worker having a Masters in Social Work including the completion of a collaborative program in women's studies. She states she has worked "in the field of mental health as a psychotherapist for over 20 years" with the last five years "including a significant focus in the area of trauma". Once again, no *curriculum vitae* is provided so that one might assess whether or not the writer is qualified to state, what I find it be, wide-ranging conclusions and predictions of the future mental state of the appellant in speculative circumstances.

[97] Ms. XXXX records the fact that she reviewed Dr. XXXX report as well as the RPD Notice of Decision (by which I take her to mean the RPD reasons). She does not state if she agrees or disagrees with the opinion. She writes that recently completed "formal testing of PTSD" "reflected moderate symptoms of intrusive memories. She scored many other symptoms to a lesser degree." As noted by the Minister[99], most of the report contains generalized comments listing the symptoms of PTSD and research findings but does not indicate how those findings directly relate to the appellant. The exception being the apprehension the appellant reports after seeing man who looked like her ex-husband [i.e. Chinese men]. No treatment plan is outlined nor is there a comment about what, if any, follow up treatment is necessary.

[98] The report concludes that should the appellant:

> … be allowed to remain in Canada at this time she is assured a safe and timely treatment for mental health issues including PTSD. With what is known about the potential for individuals who remain untreated to develop increasing severity of PTSD symptoms, it is reasonable to consider that [the appellant] face potential serious deterioration of her mental health should she be required to return to Indonesia regardless of location. Should [the appellant] receive treatment for mental health challenges, she has the potential for full recovery and to lead a productive life.

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[98] RAD Exhibit 3, pp.3-4.
[99] RAD Exhibit 6, IR. paras.32-34.

[99] Given that this report considers the mental state of the appellant after the RPD hearing and touches upon somewhat the issue of the IFA, I accept the letter as evidence in the appeal. However, I find that the report is so generalized and speculative, containing the same curious reference to the trigger of the appellant seeing Chinese men without explaining how that trigger could be avoided in Vancouver as opposed to Jakarta, I find that this evidence does not credibly demonstrate that the RPD's assessment on the second prong of the IFA test was flawed or unreasonable.

[100] Tied into the question of whether the appellant's mental state would preclude her living in the IFAs is the topic raised on this appeal of whether or not adequate mental health care is available in Indonesia generally or in those two cities. In this regard, the appellant seeks to introduce six articles, all dated after the RPD hearing, concerning the lack of mental health care in the country. These include new documents *c-f* identified previously in these reasons from RAD Exhibit 2 and article *l* from RAD Exhibit 9.

[101] While these articles do deal with that topic, I accept the Minister's submission[100] that the whole question of the adequacy of mental health care in Indonesia could have been raised before the RPD but was not. I agree with the Minister that the fact that these articles are dated after the RPD hearing does not excuse the fact that the appellant chose not to raise this issue before the RPD and is attempting, *ex post facto*, to introduce it for the first time before the RPD. In this regard it must also be borne in mind that the appellant had the benefit of Dr. XXXX report and advice before the RPD hearing.

[102] I have reviewed the transcript[101] of the submissions of the appellant before the RPD and agree with the Minister that no submissions on the availability of mental health services or its adequacy as a factor for consideration by the RPD were made. On the question of whether or not the appellant ever sought psychological help in Indonesia, the only mention in the evidence before me was:

> Q; First of all, had you ever sought psychological help in Indonesia?
> A: Never. It is very expensive.[102]

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[100] RAD Exhibit 6, AR. pp.17-18, paras.28-31.
[101] RAD Exhibit 6, AR. Pp. 1-10.
[102] RAD Exhibit 6, p.4.

[103] This comment was not followed up in any way nor formed the basis for any submission.

[104] Not having been addressed before the RPD, I conclude that it is not appropriate for the appellant to, essentially, raise this additional ground regarding the IFA for the first time before the RAD. Accordingly, the new documents mentioned above are not accepted. I find that the issue could reasonably have been raised before and dealt with by the RPD but was not due to the fact that the appellant failed to do so.

[105] Given that the RPD analysis of the first prong of the IFA test led to what I have found to be a reasonable conclusion that the appellant would not likely be located by the ex-husband in the IFAs or face a serious possibility of persecution risks or danger there by reason of her race or religion, the analysis of the second prong must be conducted in light of that finding.

[106] The task is to determine if, given that the agent of harm will probably not locate her there, would it be harsh or unreasonable for the appellant to take up residence in the IFAs in all the circumstances, including those particular to the appellant. As was decided by the Federal Court of Appeal in 1992, in *Rasaratnam*,[103] the onus is on the appellants to demonstrate that it would be unreasonable for her to do so.

[107] The burden placed on a refugee claimant is fairly high in order to show that an IFA is unreasonable. In the Federal Court of Appeal decision of *Ranganathan*,[104] it was stated that the test is to show that the IFA is unreasonable, and that test requires nothing less than the existence of conditions that would jeopardize the life and safety of the claimant in relocating to a safe area. Actual and concrete evidence of adverse conditions is required. I have concluded that the appellant in this case has not discharged that onus. I conclude that the RPD reasonably analyzed both prongs of the IFA test.

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[103] *Rasaratnam* v. *M.E.I.*, [1992] 1 F.C. 706 (CA).
[104] *Ranganathan v. M.C.I,*. [2001] 2 F.C. 164 (CA).

[108] In 1994, Justice Linden of the Federal Court of Appeal in *Thirunavukkarasu*,[105] elaborated in some detail regarding the proper approach to be taken regarding the second prong of an IFA analysis. I have emphasized those portions of the following extract from the Justice's decision that are particularly germane to the case before me (the Justice's paragraphs are not numbered in the CanLII version of the decision):

> Mahoney J.A. expressed the position more accurately in *Rasaratnam*, supra, at page 711:
>
> > In my opinion, in finding the IFA, the Board was required to be satisfied, on a balance of probabilities, that there was no serious possibility of the appellant being persecuted in Colombo and that, in all the circumstances including circumstances particular to him, conditions in Colombo were such that it would not be unreasonable for the appellant to seek refuge there.
>
> Thus, IFA must be sought, if it is not unreasonable to do so, in the circumstances of the individual claimant. *This test is a flexible one that takes into account the particular situation of the claimant and the particular country involved. This is an objective test and the onus of proof rests on the claimant on this issue, just as it does with all the other aspects of a refugee claim. Consequently, if there is a safe haven for claimants in their own country, where they would be free of persecution, they are expected to avail themselves of it unless they can show that it is objectively unreasonable for them to do so.*
>
> Let me elaborate. It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, *the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere.* Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?
>
> An IFA cannot be speculative or theoretical only; it must be a realistic, attainable option. Essentially, this means that the alternative place of safety must be realistically accessible to the claimant. Any barriers to getting there should be reasonably surmountable. The claimant cannot be required to encounter great physical danger or to undergo undue hardship in travelling there or in staying

[105] *Thirunavukkarasu v. M.C.I.* [1994]1 F.C. 589 (CA).

> there. For example, claimants should not be required to cross battle lines where fighting is going on at great risk to their lives in order to reach a place of safety. Similarly, claimants should not be compelled to hide out in an isolated region of their country, like a cave in the mountains, or in a desert or a jungle, if those are the only areas of internal safety available. But neither is it enough for refugee claimants to say that they do not like the weather in a safe area, or that they have no friends or relatives there, or that they may not be able to find suitable work there. If it is objectively reasonable in these latter cases to live in these places, without fear of persecution, then IFA exists and the claimant is not a refugee.
>
> In conclusion, it is not a matter of a claimant's convenience or the attractiveness of the IFA, but whether one should be expected to make do in that location, before travelling half-way around the world to seek a safe haven, in another country. Thus, the objective standard of reasonableness which I have suggested for an IFA is the one that best conforms to the definition of Convention refugee. That definition requires claimants to be unable or unwilling by reason of fear of persecution to claim the protection of their home country in any part of that country. The prerequisites of that definition can only be met if it is not reasonable for the claimant to seek and obtain safety from persecution elsewhere in the country.

Issue Three: Did the RPD err by ignoring or misconstruing contrary relevant evidence?

[109] The appellant submits that the RPD ignored or misconstrued contrary relevant evidence with respect to the claim of religious persecution[106]. The appellant relies on the Federal Court decision in *Cepeda-Guitierrez*[107] in submitting that the RPD made unreasonable findings without regard to the evidence when considering the question of whether there is religious persecution against Christians in Indonesia. The appellant submits that the RPD ignored important contradictory evidence when it concluded that there was no more than a mere possibility that the appellant would suffer persecution for religious reason in Indonesia.

[110] The appellant notes the following portion of the RPD decision concerning this topic:

> [20]…I am cognizant that there has been some arson or other terrorist style attacks against houses of worships of religious minorities, including churches, across the country by extremists, including in Jakarta and Sumatra, where Medan is located. While not all perpetrators have faced justice, there have been incidents where police has offered

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[106] RDD Exhibit 2, AR, pp.698-700, paras. 54-59.
[107] *Cepeda-Guitierrez* v. *M.C.I.* 1998 CanLii 8667.

> protection during Sunday Service.[108] Closure of some churches does not affect the claimant as there are plenty of churches that she can attend. I find that the claimant will be able to attend church freely and publicly as she always has in both Indonesia and Canada. What the claimant fears is to become a victim to a random act of violence while in church. I find that while she may fear this, given the size of Indonesia and its population, and the number of such incidents in the documentary evidence before me, she would face a less than a mere possibility of such incidents.

[111] The appellant did not include in its citation the entirety of paragraph 20 of the RPD reasons which reads in full as follows:

> [20] I note that Christianity is one of Indonesia's officially recognized religion. Even though there is evidence of some discrimination based on religious affiliation, there is no credible evidence that Christians, such as the claimant, would not be able to go to Church freely and publicly. Nor do I find that the claimant's ability to practice her faith freely and publicly will be hindered in any way by anyone. In fact, this is what the claimant had been doing in Indonesia prior to coming to Canada without any problems. Counsel argued that the government sometimes cites administrative problems to prevent the building of new houses of worship for religious minorities, or that churches are sometimes set on fire. This being said, members of official religions, including Christians, operate openly and with few restrictions.[109] Christians represent 10 to 12 percent of the population (of a total population of over 250 millions[110]) and report a surge in attendance and adherence to the faith.[111] I am cognizant that there has been some arson or other terrorist style attacks against houses of worships of religious minorities, including churches, across the country by extremists, including in Jakarta and Sumatra, where Medan is located. While not all perpetrators have faced justice, there have been incidents where police has offered protection during Sunday Service.[112] Closure of some churches does not affect the claimant as there are plenty of churches that she can attend. I find that the claimant will be able to attend church freely and publicly as she always has in both Indonesia and Canada. What the claimant fears is to become a victim to a random act of violence while in church. I find that while she may fear this, given the size of Indonesia and its population, and the number of such incidents in the documentary evidence before me, she would face a less than a mere possibility of such incidents.

[112] The appellant cites the following extract from a Human Rights Watch report which was item 12.2 in RPD Exhibit 3 being the National Document Package (NDP) disclosed at the RPD:

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[108] Ibid. pp. 4-5.
[109] Exhibit 3, National Documentation Package (NDP) Indonesia, July 31, 2013, Item 12.2, In Religion's Name: Abuses Against Religious Minorities in Indonesia, Human Rights Watch, February 2013,p2. http://www.hrw.org/sites/default/files/reports/indonesia0213_ForUpload_0.pdf
[110] NDP Indonesia, Item 1.4, Indonesia. The World Factbook, United States.Central Intelligence Agency, July 10, 2013 P3, https://www.cia.gov/library/publications/the-world-factbook/geos/id.html
[111] *Supra*., footnote 6.
[112] Ibid. pp. 4-5.

> Indonesian government institutions have also played a role in the violation of the rights and freedoms of the country's religious minorities. Those institutions, which include the Ministry of Religious Affairs, the Coordinating Board for Monitoring Mystical Beliefs in Society (Badan Koordinasi Pengawas Aliran Kepercayaan Masyarakat, Bakor Pakem) under the Attorney General's office, and the semi-official Indonesian Ulama Council, have eroded religious freedom by issuing decrees and fatwas (religious rulings) against members of religious minorities and using their position of authority to press for the prosecution of "blasphemers".

[113] It is to be noted that this particular document, item 12.2 of the NDP, was directly footnoted by the RPD in its decision.

[114] The appellant also submits that the RPD also failed to explain why it ignored evidence also contained in the National Document Package (items 12.3, 2.2, and an article contained in Part 4 of the RPD Exhibit 7 disclosed by the appellant) which demonstrate that there was persecution against Christians in Indonesia.

[115] The Minister submits[113] that, in paragraphs 18-22 of the RPD decision, the RPD did analyze the appellant's ethnic and religious background against the evidence and ultimately concluded that the appellant had not been persecuted as a Chinese Christian in Indonesia. As well, the Minister states that the RPD clearly analyzed the possibility of persecution based on the appellant's ethnicity and religion in the proposed IFA regions. The Minister submits that the appellant "has failed to demonstrate that the conclusion reached by the RPD was not supported in any way on the evidence, is flawed, or that the findings were patently unreasonable". In passing, the use of the phrase "patently unreasonable" is no longer applicable and the test is rather, reasonability alone.

[116] Finally, the Minister submits that the RPD is presumed to have considered the evidence and is not required to mention, refer to, or address particular passages from adverse documentary evidence in its reasons[114]. The decision addresses the discrimination faced by Christians and references the NDP, contrary to the appellant's argument.

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[113] RAD Exhibit 6, p.14, paras. 13-15.
[114] *Florea v. M.E.I.* [1993], F.C.J. No.598.

[117] Assisting me in concluding that the RPD was mindful of the evidence considered important by the appellant is the transcript of the submissions portion of the RPD hearing[115] wherein the only specific documentation referred to the Member by the appellant's counsel was the Human Rights Watch report noted above which is item 12.2 from the NDP and a report specifically disclosed by the appellant in RPD Exhibit 7. With respect to item 12.2, the RPD Member stated that: "I will read that." and obviously did inasmuch as the Member specifically refers to that document in the RPD decision.

[118] Taking all of the above into account, I conclude that the RPD considered the country documents referred to her by the appellant and, while noting contrary evidence only generally, ultimately and reasonably came to the conclusion that there was not more than a mere possibility that the claimant would suffer persecution would suffer persecution by reason of race or religion in her country generally and, specifically, in the IFAs.

[119] The appellant seeks to include as new evidence two short articles previously referred to as documents *g* and *h* from RAD Exhibit 2[116]. There dated September 3, 2013 and October 4, 2013 and I find that they could not, therefore, reasonably be provided to the RPD.

[120] The articles are both similar, not only with respect to their dates of publication but are both publications of Human Rights Watch. Both are significantly focused on the alleged tolerance and perceived support exhibited by Indonesia's religious affairs Minister regarding certain segments of what the authors referred to as one of the country most violent Islamic organizations. For example, the Minister was a keynote speaker at one particular organization's annual Congress meeting. The authors' fault the country's President for tolerating the Minister's actions. An extract from the first article reads almost word for word the same comment noted earlier from items 12.2 of the NDP which was reviewed by the RPD:

> Yudhoyono [the President] should also reign in the Indonesian government institutions that effectively give official seals of approval to acts of religious intolerance and related violence. He could start with the Ministry of Religious Affairs, the Coordinating Board for the Monitoring Mystical Beliefs in Society (Bakor Pakem) under the Attorney General's office, and the semi-official Indonesian Ulema Council, which have eroded religious

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[115] RAD Exhibit 6, IR, pp.8-10.
[116] RAD Exhibit 2, AR pp.672-677.

> freedom by issuing decrees and fatwas (religious rulings) against members of religious minorities and using their position of authority to press for the prosecution of "blasphemers".

[121] The article also mentions that an institute that monitors religious freedom in Indonesia documented 264 cases of violent attacks on religious minorities in 2012, up from 216 in 2010. As it would be extremely difficult and, probably, inappropriate, for the RAD to conduct its own research, it is difficult to conclude that information relating to 2010 and, perhaps, even 2012 could not have been made available been made available b been made available to the RPD at its hearing on August 27, 2013.

[122] In any event, taken together these articles do not allege specific acts of persecution or violence by the government itself but, rather, criticize the government for not doing enough to combat religious violence and, in the case of one Minister, being particularly tolerant of at least one group. While these articles have been accepted into evidence, I have concluded that the information set out in them is not sufficiently different from the information reviewed by the RPD so as to lead me to the conclusion that the RPD's conclusion regarding race/religion persecution, risks or danger are unreasonable.

[123] There are two remaining documents which were submitted by the appellant in RAD Exhibit 9[117] as new evidence. These are articles *m* and *n*. The first is a one-page article about steps being taken in Indonesian Papua Province to combat domestic violence. The second is an 86 page doctoral thesis titled Domestic Violence against Women in Rural Indonesia: Searching for Multilevel Prevention. As the RPD concluded, before conducting its IFA analysis, that the appellant had suffered gender-based persecution at the hands of her ex-husband and without two articles were unaccompanied by any form of submission from the appellant highlighting what role they might play on this appeal, the information available to me is insufficient to conclude that the documents should be accepted into evidence. This is particularly the case with respect to the very lengthy doctoral thesis to which no particular portion am I directed. If the appellant wishes to have such documentation considered, it is incumbent upon her to point out how they relate to any

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[117] RAD Exhibit 9.

of the matters raised on the appeal and the RAD cannot be expected, without any guidance, to peruse lengthy publications in a search for some relevance.

[124] Finally, given my assessment noted above with respect to new documents, those that have been accepted do not, pursuant to section 110(6) of *IRPA* give rise to the need to hold a hearing as, in my opinion, the documentary evidence does not raise a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee claim; and that, if accepted, would justify allowing or rejecting the refugee protection claim.

[125] Taking all of the above into account I find that the determination of the RPD with respect to the appellant was reasonable and should be confirmed.

CONCLUSION

[126] For these reasons I find that XXXX XXXX is neither a Convention refugee nor a person in need of protection within the meaning of section sections 96 and 97 of the *Act* and her appeal is dismissed.

(signed) **"Philip MacAulay"**

Philip MacAulay

January 16, 2013

Date