# Zrig v. Canada (Minister of Citizenship and Immigration) (T.D.)

Mohamed Zrig (applicant)
v.
The Minister of Citizenship and Immigration (respondent)

[2002] 1 F.C. 559
[2001] F.C.J. No. 1433
2001 FCT 1043
Court File No. imm-601-00

**Federal Court of Canada - Trial Division**
**Tremblay-Lamer J.**

Heard: Montréal, June 12, 13, 14, 15, 18, 19, 2001.
Judgment: Ottawa, September 24, 2001.
(160 paras.)

*Citizenship and Immigration — Status in Canada — Convention refugees — Judicial review of IRB's decision applicant not refugee on ground excluded under United Nations Convention Relating to the Status of Refugees, Art. 1F(b) — Applicant joining MTI/Ennahda in Tunisia in 1988, responsible for Gabès political office thereof from 1990 until 1991 — IRB holding serious reasons for considering committed serious non-political crimes, including fatal 1991 arson — Application dismissed — Standard of evidence in phase "serious reasons for considering" requiring more than suspicion or conjecture, but not balance of probabilities — In view of serious consequences for parties, exclusion clauses given limiting interpretation — Whether crime "political" depending on political objective, nexus between objective, alleged crime — Crime probably not political when atrocious or barbarous act or grossly disproportionate to object — "Seriousness" of crime often determined by looking at severity of punishment attracts — Rules concerning complicity by association developed under Art. 1F(a), (c) apply to Art. 1F(b) — Association with person, organization responsible for crimes may constitute complicity if personal, knowing participation, or toleration of crimes — Closer one is to position of leadership within organization, easier inference of awareness of crimes and participation therein — Since single serious non-political crime suffices for exclusion, and evidence regarding applicant's responsbility especially credible, only 1991 arson considered — IRB finding that arson committed by MTI/Ennahda not patently unreasonable — Arson barbarous, atrocious — Difficult to say political crime — No close, direct causal link between arson, Ennahda's political objective of establishing Islamist state in Tunisia — Act of violence grossly disproportionate to any legitimate political objective — Not acceptable form of political protest — IRB's inference applicant*

*not unaware of acts of violence from his important role in movement supported by evidence — Since applicant not withdrawing from organization unlike three prominent members, not unreasonable to conclude [page560] applicant knowingly tolerated crime, accomplice by association in serious non-political crime — Questions certified: (1) whether rules in Sivakumar v. Canada on complicity by association for purposes of implementing Art. 1F(a) applicable for purposes of exclusion under Art. 1F(b); (2) whether association with organization responsible for perpetrating serious non-political crime within Art. 1F(b) entailing complicity of complainant simply because knowingly tolerating such crime, whether committed during, before association with organization.*

*Administrative Law — Judicial Review — Certiorari — Judicial review of IRB's decision applicant not refugee on ground excluded under United Nations Convention Relating to the Status of Refugees, Art. 1F(b) — Decision of first panel set aside on judicial review — Matter referred back to panel of different members — Applicant alleging panel not independent, impartial — Appointment of members of second panel by coordinating member of first panel made in ordinary course of duties — Neither involved in nor exercising control over panel's decision on merits, as latter not in any way under his control — Argument members chosen because lower approval "rating" on Maghreb claims not accepted — Mere suspicion based on "rates" not meeting standard of well-informed individual considering matter in depth in realistic, practical way — That panel member's term of office ended, had to be renewed by Cabinet during proceeding not compromising independence — S.C.C. holding limited terms of office acceptable for administrative tribunals performing judicial functions — Concept of bias referring to state of mind of decision-makers, not tribunal's staff — IRB employees not part of panel, decision-making process — Acts done by staff without knowledge of panel members i.e. temporary payment of costs relating to security of two of Minister's expert witnesses, not influencing panel members — Panel not attaching any evidentiary value to testimony when not appearing for cross-examination — IRB's neutrality not compromised by action of which unaware, conferring no benefit upon it — No reasonable apprehension of bias as regarding decisions on administration, assessment of evidence.*

This was an application for judicial review of the Immigration and Refugee Board, Refugee Division's decision that the applicant was not a refugee on the ground that he was excluded from the definition of "Convention refugee" based on Article 1F(b) and (c) of the United Nations Convention Relating to the Status of Refugees. The definition of "Convention refugee" in Immigration Act, subsection 2(1) excludes persons who fall within the scope of Convention, Article 1F which provides that the Convention shall not apply to any person with respect to whom there are serious reasons for considering that (b) he has committed a serious non-political crime and (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

The applicant is a citizen of Tunisia. In 1988 he became a member of the Mouvement de la tendance islamique (MTI), which became Ennahda. In 1990 he assumed responsibility for the Gabès political office. In 1991, after the police searched his home, he went into hiding and ceased his activities for Ennahda. In 1992 he left Tunisia, arriving in Canada in October, at which time he claimed refugee status. In the

meantime he was convicted in absentia in Tunisia for membership in a criminal association, supporting such an association, participating in an unauthorized organization, manufacturing explosives, possession of weapons without a licence and collecting money without authorization. He feared that he would be tortured and killed if returned to Tunisia. A first panel of the Refugee Division excluded the applicant from the definition of Convention refugee. That decision was set aside on judicial review, and the case was referred to a second panel composed of different members for a rehearing. The second panel found that, despite his well-founded fear of persecution for his political opinions, the applicant had to be excluded as he came within Convention, Article 1F(b). The panel held that there were serious reasons for considering that the applicant was an accomplice to the commission of serious non-political crimes including the use of Molotov cocktails, the throwing of acid in people's faces, physical attacks at educational institutions, the burning of automobiles, conspiracy to commit murder, arson resulting in a fatality, and [page562] conspiracy to violently overthrow the former President. It also concluded that the applicant should be excluded pursuant to Article 1F(c) because it had serious reasons for considering that he had been involved in a terrorist movement headed by a terrorist leader and using terrorist methods, and opposing human rights, sexual equality and freedom of religion.

The applicant argued, on various grounds, that the panel was not independent and impartial. First, the members of the second panel were named by the coordinating member of the first panel and, the applicant submitted, those members had a lower acceptability rate for Maghreb claimants. Second, the term of one of those members expired during the proceeding and was renewed by the federal Cabinet. Third, the acts of IRB administrative personnel irreparably damaged the independence and neutrality of the panel. For example they temporarily paid the costs relating to the security of two of the Minister's expert witnesses. The applicant also argued that the panel made factual errors by arriving at erroneous findings of fact made in a perverse or capricious manner or without regard for the material before it, and erred in law in assessing and applying the Convention to serious non-political crimes and acts contrary to the purposes and principles of the United Nations.

The issues were: (1) whether the panel committed an error regarding exclusion of the applicant that warranted the Court's intervention; and (2) whether there was a reasonable fear of bias or lack of independence by the panel.

**Held**, the application should be dismissed.

The standard of evidence comprised in the phrase "serious reasons for considering" requires more than suspicion or conjecture but does not attain the level of a balance of probabilities. However, in view of the serious consequences for the parties concerned, exclusion clauses should be given a limiting interpretation.

The test to determine whether an offence is of a political character involves the political objective, and the nexus between the objective and the alleged crime. It has been recognized that a crime will probably not be considered to be political in nature when it is

an atrocious or barbarous act or grossly disproportionate to the object. The "seriousness" of a crime has been determined by looking at the severity of the punishment that the crime attracts.

There is no Canadian precedent on the concept of complicity by association in connection with the application of [page563] Article 1F(b). However, the rules developed by the courts pursuant to Article 1F(a) and (c) can be applied with respect to Article 1F(b). Association with a person or organization responsible for crimes may constitute complicity if there is personal and knowing participation or toleration of the crimes. Mere membership in a group responsible for international crimes, unless it is an organization that has a "limited brutal purpose" is not enough. The closer one is to a position of leadership or command within an organization, the easier it will be to draw an inference of awareness of the crimes and participation in them. It is possible to be held responsible for such crimes and commit them as an accomplice without having personally committed the act constituting the crime.

In view of the serious consequences for the applicant and the limiting interpretation that should be given to the exclusion clauses, the concept of complicity by association should not be given retroactive effect, so that the applicant could be excluded for crimes committed before he joined the Ennahda movement. Only the serious non-political crimes committed after 1988, in particular the fatal arson at Bab Souika in 1991, were considered since a single serious non-political crime suffices for exclusion of the applicant and the evidence regarding that crime was especially important and credible so far as the applicant's responsibility for the act and involvement in leadership of the Ennahda movement was concerned.

The Court can only intervene in the findings of fact made by the Refugee Division if those findings are patently unreasonable i.e. when a reasonable view of the evidence cannot support a finding of fact. Based on overwhelming and credible evidence, the Refugee Division concluded that the Bab Souika arson was committed by MTI/Ennahda. That finding was not patently unreasonable since there was no doubt that the evidence considered can serve as a basis for that conclusion. There was overwhelming and persuasive evidence clearly establishing that following this vicious attack, three prominent members of the Ennahda published a news release in which they dissociated themselves from this act of violence. The Refugee Division found that the leaders left MTI/Ennahda because of the movement's violence. As this finding of fact was based on credible evidence, there was no basis for intervention. The arson at Bab Souika was barbarous and atrocious, making it harder to say that this was a political crime. There was no close and direct causal link between the Bab Souika arson and Ennahda's political objective of establishing an Islamic state in Tunisia. This act of violence was grossly disproportionate to any legitimate political objective, and it could not be regarded as an acceptable form of political protest.

In view of his important involvement in the movement, the Refugee Division concluded that the applicant could not have been unaware that acts of violence were taking place. This inference was reasonably made from the evidence and did not provide

any basis for intervention. The applicant did not leave the movement at this time and continued to carry out his duties as a leader. The IRB correctly concluded that he knowingly tolerated this crime. The applicant's complicity by association could therefore be accepted solely on the basis of this crime.

It was not necessary to rule on whether the applicant should be excluded under Article 1F(c) given the conclusion about Article 1F(b).

(2) The appointments to the second panel by the coordinating member of the first panel were made in the ordinary course of his duties as coordinating member. He was never involved in, nor did he exercise any control over, the panel's decision on the merits, as the latter was not in any way under the control of the coordinating member. The argument that the members were chosen because they had a lower approval "rating" on Maghreb claims than other members of the Refugee Division was not accepted. Such an assertion reflects directly on the integrity of the members in question and cannot be accepted unless there is good evidence. Mere suspicion based on "rates" does not meet the applicable standard of the well-informed individual considering the matter in depth in a realistic and practical way.

The Supreme Court of Canada has held that limited terms of office are acceptable for administrative tribunals performing judicial functions. At the same time, removal during such a term should not be a matter for executive discretion. Members of the Refugee Division are appointed during good behaviour for a maximum term of seven years.

The concept of bias means the state of mind or attitude of the decision-makers, not a tribunal's staff or employees. The Board consists of the Chairperson and members of each division. The Board's employees are appointed pursuant to the Public Service Employment Act, and are not part of the panel. Their duties do not in any way make them part of the decision-making process. The evidence was that the acts complained of were done without the knowledge of panel members. An act done by staff cannot influence the state of mind or attitude of members of the panel who were not aware of it. Furthermore, the costs were only paid temporarily since it was agreed that the Department of Citizenship and Immigration would reimburse these costs to the Board. The Department thus obtained no financial benefit. The panel attached no evidentiary value to the testimony of the two expert witnesses because they did not appear for their cross-examination. An informed person viewing the matter [page565] realistically and practically and having thought the matter through would have no reasonable apprehension that the Refugee Division lacked impartiality because the Board's administrative staff, unknown to the Division temporarily paid the costs relating to the security of two expert witnesses for the Minister whose testimony the panel did not accept.

As regards decisions made by the panel on the administration and assessment of the evidence, there was no reasonable apprehension of bias.

The following questions were certified for consideration by the Federal Court of Appeal: (1) whether the rules laid down in Sivakumar v. Canada on complicity by association for purposes of implementing Convention, Article 1F(a) are applicable for purposes of an exclusion under Article 1F(b); and if so, (2) whether a refugee claimant's association with an organization responsible for perpetrating a serious non-political crime within the meaning of that expression in Article 1F(b) entails the complicity of the claimant for the purposes of applying the provisions simply because he knowingly tolerated such crimes, whether committed during or before his association with the organization in question.

Statutes and Regulations Judicially Considered

Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, [1982] Can. T.S. No. 31.
Convention Refugee Determination Division Rules, SOR/93-45, R. 37(3).
Immigration Act, R.S.C., 1985, c. I-2, ss. 2(1) "Convention refugee" (as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 1), 57(2) (as am. by S.C. 1992, c. 49, s. 47), 61(1) (as am. idem, s. 50), (3) (as am. idem).
Public Service Employment Act, R.S.C., 1985, c. P-33.
United Nations Convention Relating to the Status of Refugees, July 28, 1951, [1969] Can. T.S. No. 6, Art. 1F(a),(b),(c).
Universal Declaration of Human Rights, GA Res. 217 A (III), UN GAOR, December 10, 1948, Art. 18.

Cases Judicially Considered

Applied:
Ramirez v. Canada (Minister of Employment and Immigration), [1992] 2 F.C. 306; (1992), 89 D.L.R. (4th) 173; [page566] 135 N.R. 390 (C.A.).
Sivakumar v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 433; (1993), 163 N.R. 197 (C.A.).
2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool), [1996] 3 S.C.R. 919; (1996), 140 D.L.R. (4th) 577; 42 Admin. L.R. (2d) 1; 205 N.R. 1.
In the matter of B, [1997] E.W.J. No. 700 (C.A.) (QL).
Mohammad v. Canada (Minister of Citizenship and Immigration) (1995), 115 F.T.R. 161 (F.C.T.D.).
Van Rassel v. Canada (Superintendant [sic] of the RCMP), [1987] 1 F.C. 473; (1986), 31 C.C.C. (3d) 10; 7 F.T.R. 187 (T.D.).
Committee for Justice and Liberty et al. v. National Energy Board et al., [1978] 1 S.C.R. 369; (1976), 68 D.L.R. (3d) 716; 9 N.R. 115.
Legault v. Canada (Minister of Citizenship and Immigration), [2001] 3 F.C. 277 (T.D.).
Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817; (1999), 174 D.L.R. (4th) 193; 14 Admin. L.R. (3d) 173; 1

Imm. L.R. (3d) 1; 243 N.R. 22.

Distinguished:
MacBain v. Lederman, [1985] 1 F.C. 856; (1985), 22 D.L.R. (4th) 119; 16 Admin. L.R. 109; 6 C.H.R.R. D/3064; 85 CLLC 17,023; 18 C.R.R. 165; 62 N.R. 117 (C.A.).

**Considered:**

Zrig v. Canada (Minister of Citizenship and Immigration), [1995] F.C.J. No. 1037 (T.D.) (QL).
Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982; (1998), 160 D.L.R. (4th) 193; 11 Admin. L.R. (3d) 1; 43 Imm. L.R. (2d) 117; 226 N.R. 201; amended reasons [1998] 1 S.C.R. 1222; (1998), 11 Admin. L.R. (3d) 130.
Gil v. Canada (Minister of Employment and Immigration), [1995] 1 F.C. 508; (1994), 119 D.L.R. (4th) 497; 25 Imm. L.R. (2d) 209; 174 N.R. 292 (C.A.).
T. v. Secretary of State for the Home Department, [1996] 2 All E.R. 865 (H.L.).
Valente v. The Queen et al., [1985] 2 S.C.R. 673; (1985), 52 O.R. (2d) 779; 24 D.L.R. (4th) 161; 23 C.C.C. 3d) 193; 49 C.R. (3d) 97; 19 C.R.R. 354; 37 M.V.R. 9; 64 N.R. 1; 14 O.A.C. 79.

Referred to:
Moreno v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 298; (1993), 107 D.L.R. (4th) 424; 21 Imm. L.R. (2d) 221; 159 N.R. 210 (C.A.).
Canadian Union of Public Employees, Local 301 v. Montreal (City), [1997] 1 S.C.R. 793; (1997), 144 D.L.R. (4th) 577; 8 Admin. L.R. (3d) 89; 210 N.R. 101.

Authors cited

Hathaway, James C. The Law of Refugee Status. Toronto:

Butterworths, 1991.

United Nations. Office of the United Nations High Commissioner for Refugees. Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, reedited January 1992.

APPLICATION for judicial review of the Immigration and Refugee Board, Refugee Division's decision that the applicant was not a refugee on the ground that he was excluded from the definition of "Convention refugee" because there were serious reasons

for considering that he was an accomplice to the commission of serious non-political crimes, including a fatal arson, pursuant to Article 1F(b) of the United Nations Convention Relating to the Status of Refugees (Y.C.F. (Re), [2000] D.S.S.R. No. 7 (QL)). Application dismissed.

**Appearances:**

Daniel Paquin and Mathieu Roy for applicant.
Normand Lemyre and François Joyal for respondent.

Solicitors of record:

Alarie Legault Beauchemin Paquin Jobin Brisson & Philpot, Montréal, for applicant.
Deputy Attorney General of Canada for respondent.

---

The following is the English version of the reasons for order and order rendered by

1 **TREMBLAY-LAMER J.**:— This is an application for judicial review of a decision by the Refugee Division of the Immigration and Refugee Board (the Refugee Division) [Y.C.F. (Re), [2000] D.S.S.R. No. 7 (QL)] on January 27, 2000 that the applicant is not a refugee within the meaning of the United Nations Convention Relating to the Status of Refugees [July 28, 1951, [1969] Can. T.S. No. 6] (the Convention), as defined in subsection 2(1) of the Immigration Act, R.S.C., 1985, c. I-2 [as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 1], on the ground that he is excluded from the definition of refugee status based on Article 1F(b) and (c) of the Convention.

FACTS

2 The applicant was born at Gabès in Tunisia on August 29, 1957.

3 In October 1979 he began his studies at the science faculty of the University of Tunis. At that time he started his union and political activities.

4 According to his testimony, in 1980 he became a sympathizer of the Mouvement de la tendance islamique (MTI), but without having any particular duties to perform in the movement. In January 1988 he became a member of the MTI movement (which became Ennahda).

5 In 1981 the applicant gave up his studies. He returned to Gabès where he found employment with the Société Arabe des Engrais Phosphatés et Azotés (plant 2) in the Gabès industrial area. Accordingly, he began his employment on November 16, 1981 as head of the specific functional unit.

6 While he was working for this company the applicant was apparently involved in the union known as the Union générale des travailleurs tunisiens (UGTT) at the end of 1982.

7 In January 1988 he was elected secretary general of the company union in plant 2.

8 In that same year the applicant was involved in the cultural and union committees of the Gabès regional executive office of Ennahda.

9 In late November and early December 1990 the applicant was required to assume responsibility for the Gabès political office after the organization and the organizational structure of Ennahda were destroyed by waves of arrests of leading figures in Ennahda.

10 On April 9, 1991 the Tunisian police conducted a search at his home. From that time on, he ceased working for the Société Arabe des Engrais Phosphatés et Azotés and lived in hiding.

11 He went into hiding in the town of Gabès until October 30, 1991. He later left to seek refuge in the town of Kibili. He consequently also ceased his activities for Ennahda.

12 In February 1992 an examining magistrate in Gabès summoned the applicant for trial together with 143 co-accused who were linked directly or indirectly to Ennahda.

13 On March 10, 1992 the applicant left Tunisia with the intention of coming to Canada. He stayed in Libya from March 10 to 30, 1992. He then stayed in Sudan until April 20, 1992, and on that date returned to Libya. He left Libya on June 16, 1992, stopped briefly in Malta and Austria and arrived in Germany on June 23, 1992. On October 2, 1992 he left Germany for Canada, where he claimed refugee status.

14 On May 20, 1992 the applicant was sentenced in absentia to 21 1/2 years' imprisonment by the Gabès Appeal Court. The conviction was broken down as follows:

-- 8 years' imprisonment for membership in a criminal association;

-- 8 years for supporting such an association;

-- 2 years for participating in an unauthorized organization;

-- 2 years for manufacturing explosives;

-- 1 year for possession of weapons without a licence;

-- 4 months for carrying weapons without a licence;

-- 2 months for collecting money without authorization.

15 If he had to return to Tunisia, the applicant said, he feared that he would die, that he would be tortured by the Tunisian regime, the judicial system and the police system because of the fact that he was not arrested as he fled, he crossed the border illegally, he spent several years abroad, he was known as a member of Ennahda and he believed his refugee status claim in Canada was known to the Tunisian authorities.

16 On June 30, 1994 the Refugee Division excluded the claimant from the definition of a "Convention refugee".

17 An application for judicial review of that decision was made to this Court. On July 6, 1995 the Court allowed the application on the following grounds (Zrig v. Canada (Minister of Citizenship and Immigration), [1995] F.C.J. No. 1037 (T.D.) (QL), at paragraphs 3-4):

> The large number of extracts from the documentary evidence reproduced in the panel's decision were the principal evidence which led it to doubt the applicant's credibility and to condemn the activities of the El-Nahdha group in which he had important responsibilities. Accordingly, it is clear that the content of these extracts had a determining influence on the whole decision.
>
> A comparison between the complete documents and the passages cited in the decision indicates significant omissions, whether of punctuation, words or complete phrases, the effect of which is to confuse the reader or even to mislead him as to the true source of the information, the identity of the author of certain words and the very existence of views opposed to those set out. In view of the extensive and cogent documentation submitted to the panel on the general situation of human rights in Tunisia, in particular Exhibits P-8, P-10, P-11, P-13, P-17, P-19, P-20, P-21 and A-12, the selection and reproduction of the documentary evidence made by the panel lead me to conclude that it intended to present only the position of the Tunisian authorities and ignored important points in the evidence of opposed positions contained in the record.

18 The case was sent back to a panel of different members for a rehearing, and this began in May 1996 and ended in May 1999.

19 On January 27, 2000 the panel decided that the applicant was not [TRANSLATION] "a Convention refugee". In its reasons the panel concluded that despite the fact he had a well-founded fear of persecution for his political opinions, the applicant had to be excluded as he came within Article 1F(b) and (c) of the Convention.

20 The panel summarized the reasons why the applicant should be excluded under Article 1F(b) of [page571] the Convention as follows (at paragraph 454 of the reasons for decision of January 27, 2000):

> [TRANSLATION] ... we have serious reasons for considering that the claimant was an accomplice to the commission of serious non-political crimes, here the use of Molotov cocktails, acid thrown in people's faces, physical attacks in schools and universities, burning of automobiles, threatening letters, conspiracy to murder leading figures in the Tunisian government, attempted fires in faculties, bomb attacks at Sousse and Monastir on August 2, 1987, arson at Bab Souika in February 1991, where a man died, a bomb attack in France in 1986, weapons trafficking in 1987 and conspiracy to violently overthrow the former President Habib Bourguiba ... .

21 The Refugee Division also concluded that the applicant should be excluded pursuant to Article 1F(c) of the Convention, for the following reasons (at paragraph 455 of the reasons for decision of January 27, 2000):

> [TRANSLATION] ... we have ... serious reasons for considering that the claimant was guilty of "acts contrary to the purposes and principles of the United Nations", in this case being involved in a terrorist movement headed by a terrorist leader and using terrorist methods, and opposing human rights, sexual equality and freedom of religion.

PARTIES' ARGUMENTS

Applicant

1. Panel's bias and lack of independence

22 The applicant argued that he was not heard by an independent and impartial panel, for the following reasons.

23 First, the applicant objected that Mr. Shore, coordinating member of the panel sitting at the first hearing of this case, named Mr. Handfield and Mr. Ndejuru to conduct the rehearing of the case and dispose of the applicant's motion for particulars, contrary to the decision of this Court on July 6, 1995.

24 The applicant also pointed to the fact that Mr. Ndejuru's assignment ended in August 1996 while the proceeding was under way and was renewed by the Governor in Council. The procedure for renewing a member's mandate is a matter for the Cabinet, which includes the Minister of Citizenship and Immigration, and he was a party before the panel.

25 Further, the applicant noted that Mr. Handfield and Mr. Ndejuru are less accepting of claimants from the Maghreb than other members of the panel.

26 Second, the applicant objected that the Board had contributed to financing the Minister's case through services and supplies for the Minister's expert witnesses unknown to the applicant and his counsel and contrary to the panel's duty of neutrality, independence and impartiality toward all parties.

27 Third, he objected to certain decisions by the panel regarding administration and assessment of evidence. For example, it agreed to provide simultaneous French-English interpretation for two expert witnesses for the Minister. The applicant maintained that he did not receive the same treatment when he asked the panel for a German interpreter to be available for translating Arabic to French during the testimony of his wife, who was called as a witness at the instance of the members.

28 The applicant further complained of the favour shown by the panel to the Minister and his expert witnesses, Messrs. Khalid Duran and Abdelwahab Héchiche, and the fact that the panel did not dismiss the testimony by Abdelwahab Héchiche.

29 Finally, the applicant objected to the panel basing its reasons in respect of Article 1F(c) of the Convention on the legal opinion of the Institut Suisse de droit comparé, although the panel dismissed the testimony by Raphaël Tinkley Abiem on the ground that his deposition was mere speculation, and the legal opinion was essentially to the same effect as Mr. Abiem's reports and testimony.

2. Lack of objective assessment of evidence by panel

30 The applicant argued that the panel made factual errors by arriving at erroneous findings of fact made in a perverse or capricious manner or without regard for the material before it, and erred in law in assessing and applying the Convention to serious non-political crimes and acts contrary to the purposes and principles of the United Nations.

31 In short, the applicant maintained that the evidence favourable to the applicant and the Ennahda movement was not weighed by the panel, which preferred to select evidence which, taken out of context, could support the panel's preconceived opinion. Such a procedure by the panel is illegal and constitutes an error of law.

32 The applicant noted that the panel had carried out the same exercise regarding the existence of an armed branch of the Ennahda movement and its responsibility for the commission of acts of violence. There was no material evidence to support the panel's findings on the link between MTI-Ennahda and the Islamic Jihad.

33 The applicant further criticized the panel for preferring incriminating to exculpatory evidence, explaining the existence of contradictory documentary evidence by Ennahda's use of the double-speak tactics for the purpose of creating confusion and trying to mislead observers. In the applicant's submission, there was no good reason for this approach and it should not have been used by the panel.

34 The applicant noted in respect of the 1990-1991 period that the Ennahda movement had only tried to exercise its freedom of speech by demonstrations in the cities, since Tunisian government oppression left it no other choice.

35 Counsel for the applicant admitted at the hearing that the Bab Souika incident in February 1991, namely the fire in RCD premises which killed a guard, was a serious non-political crime but noted that this [page574] incident was immediately condemned by the Ennahda movement and there was no credible evidence that the fire was the work of the movement's leaders.

36 The applicant was never in the national leadership, having only been responsible for activities in Gabès. There was no evidence to indicate that Mr. Zrig had prior knowledge of the Bab Souika incidents.

3. Error of law in applying Convention to serious non-political crimes and actions contrary to purposes and principles of United Nations

37 The applicant submitted that there was no reliable evidence to show that the Ennahda movement tried to commit serious non-political crimes on a regular basis and that by his membership and association with the movement Mr. Zrig could have approved such activities.

38 The documentary evidence also could not establish that the Ennahda movement pursued a limited, brutal purpose within the meaning of Ramirez v. Canada (Minister of Employment and Immigration), [1992] 2 F.C. 306 (C.A.).

39 As to the assessment of Article 1F(c) of the Convention, the Supreme Court of Canada has clearly held in Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982, that it is necessary to establish that there is a consensus in international law that particular acts constitute sufficiently serious and sustained violations of fundamental human rights to amount to persecution or are explicitly recognized as contrary to the purposes and principles of the United Nations.

40 The evidence in the record cannot support such a finding by the panel.

41 In the applicant's submission, it is dangerous and contrary to the purposes and the objective of [page575] Article 1F(c) of the Convention to exclude an individual from international protection on the basis of a hypothetical analysis of political thought and such a procedure is likely to undermine the objective of Article 1F(c) of the Convention, in favour of a trial for opinions on a political, philosophical or social trend. Such an exercise is not the role of a tribunal exercising judicial functions, the essential duty of which is to assess the objective facts, apply the law and penalize the infringement of a right or duty which has been infringed or contravened.

Respondent

1. Exclusion under Article 1F(b) of the Convention

42 First, the respondent set out the evidence on the 12 counts of exclusion adopted by the Refugee Division, so as to establish that these offences were serious non-political crimes on which the panel was justified in concluding that the applicant was guilty by association. However, he noted that under Article 1F(b) only 1 of these 12 counts was needed for the exclusion of the applicant.

43 The respondent maintained that on seven of the exclusion counts, namely: (1) the bombing attacks in France in 1986; (2) those at Sousse and Monastir; (3) the attack at Bab Souika and other similar attacks at the same time; (4) the automobile fires; (5) the attempted fire at a university building; (6) the physical attacks at schools and universities; and (7) the acid thrown in the faces of certain individuals, that there was no direct and close causal connection between these crimes and Ennahda's political objective of setting up an Islamist state in Tunisia.

44 Further, on eight of the exclusion counts, namely: (1) the bombing attacks in France in 1986; (2) those at Sousse and Monastir; (3) the attack at Bab Souika and other similar attacks at the same time; (4) the automobile fires; (5) the attempted fire at a university building; (6) the physical attacks at schools and universities; (7) the use of Molotov cocktails; and (8) the acid thrown in the faces of certain individuals, [page576] he contended that the perpetrators of these crimes could not reasonably expect that such offences, separately or as a group, would produce a result directly linked to the ultimate political objective mentioned above.

45 Additionally, four exclusion counts concerned crimes that can readily be described as barbarous atrocities, namely the bombing attacks in France in 1986, those at Sousse and Monastir, the attack at Bab Souika and other similar attacks in 1990-1991 and the cases of acid thrown in the faces of certain individuals.

46 Where the coup d'État attempts against the Bourguiba and Ben Ali governments are concerned, it is established that in certain circumstances a coup d'état may be regarded as a political crime within the meaning of Article 1F(b) of the Convention.

47 However, the respondent argued that since the long-term objective of overthrowing Bourguiba and Ben Ali was not in keeping with fundamental rights, the plot to murder leading figures in the Tunisian government was a serious non-political crime.

48 On Ennahda's weapons trafficking, the respondent maintained that the supplying of weapons by this movement to the FIS (Front islamique du salut) made Ennahda an accomplice to the criminal acts committed by the FIS.

49 On these crimes, the respondent argued that it was not unreasonable for the panel to conclude that there were serious reasons for considering that the applicant had been guilty by association of the commission of several serious non-political crimes and so was a person covered by Article 1F(b) of the Convention.

50 In the respondent's submission, it was not necessary, in order to conclude there had been guilt by association, to connect the applicant personally with a specific crime committed by the movement to which he belonged. In Sivakumar v. Canada (Minister of [page577] Employment and Immigration), [1994] 1 F.C. 433 (C.A.), the Federal Court of Appeal held that a person may be regarded as an accomplice who remains in a leadership position within the organization although he or she knows that it has been responsible for crimes.

51 The respondent further noted that mere membership will suffice when the very existence of the organization is based on attaining political or social objectives by any means thought necessary.

52 As a member, the applicant took an oath that he would comply with its aims. The applicant himself stated that he did not think anything could happen inside Ennahda that he was not aware of. Between December 1990 and October 1991 he presided at meetings of the Ennahda political office in Gabès. On November 26, 1998 the applicant was still a member of Ennahda.

53 In view of the important functions he held, he knew of the serious non-political crimes committed by this movement and never left the movement when he could have done so.

2. Exclusion of applicant under Article 1F(c) of the Convention

54 The applicant maintained that in view of the evidence and applicable law it was not unreasonable for the Refugee Division to have serious reasons for considering that the applicant had been guilty of acts contrary to the purposes and principles of the United Nations as a result of his complicity by association in terrorist crimes and promotion of the infringement of certain human rights.

55 With respect to MTI/Ennahda terrorism, the respondent referred to the following crimes committed by MTI/Ennahda: use of Molotov cocktails, acid thrown in people's faces, physical attacks in schools and universities, threatening letters, bombing attacks in France in 1986, in Sousse and Monastir and attacks in 1990-1991, including that at Bab Souika.

56 On the promotion of infringement of certain human rights, the Refugee Division accepted two [page578] points, namely the action by MTI/Ennahda against sexual equality, contrary to the human rights of women, and its encouragement of the infringement of the right to religious freedom.

57 In short, the respondent maintained that there was no question that the promotion and effective observance of human rights without distinction was among the purposes and principles of the United Nations, so that anyone who sought to deprive, or encourage others to deprive, people of such rights was covered by Article 1F(c), provided the rights

were fundamental and their infringement was serious, sustained or systematic and constituted persecution in a situation that was not a war situation.

58 MTI/Ennahda is an Islamic movement, that is a politico-religious movement seeking the complete, radical Islamization of the law, institutions and government in Tunisia.

59 According to MTI in 1985, a Muslim woman does not have the right to marry a non-Muslim, on pain of death.

60 The Shari'ah, as interpreted by the Islamists, is clearly contrary to the Universal Declaration of Human Rights [GA Res. 217 A (III), UN GAOR, December 10, 1948] and the Convention on the Elimination of All Forms of Discrimination against Women [December 18, 1979, [1982] Can. T.S. No. 31], which guarantees a woman's freedom to choose her husband with no restrictions as to religion.

61 The respondent maintained that the fact that Ennahda had prohibited Muslim women from marrying non-Muslims on pain of death was serious, sustained and systematic infringement of a fundamental human right and constituted persecution.

62 As to the second ground, based on promotion of disregard for religious freedom, the respondent maintained that the evidence showed that Ennahda supported the death penalty for the offence of apostasy.

63 The Islamic rule which punishes an apostate with death is especially shocking as it is a serious infringement of religious freedom. The Shari'ah, as interpreted by the Islamists, is clearly contrary to Article 18 of the Universal Declaration of Human Rights, which guarantees the freedom to choose one's religion.

64 In fact, as a regional leader of Ennahda the applicant, together with other leaders of the movement, worked vigorously to establish an Islamist government in Tunisia which would have infringed the rights of Muslim women to marry non-Muslims and the right to religious freedom.

65 By thus lending his support for at least three and a half years to the effort to establish an Islamist government which, once in power, could only have caused several infringements of human rights, constituting persecution, the applicant was guilty of acts contrary to the purposes and principles of the United Nations.

3. Errors of fact raised by applicant

66 The respondent submitted that the panel was fully empowered to weigh the evidence presented, and as such to determine the evidentiary value of each of the documents or pieces of testimony given. Where the evidence was contradictory, it was for the panel to decide which seemed more in keeping with reality.

67 In any event, the panel expressly recognized the quite consistent nature of the evidence on the nature of the MTI/Ennahda movement and cited various documents indicating that the movement was moderate and rejected violence. Nevertheless, the panel preferred to accept other evidence, more numerous and more persuasive, indicating that it was in fact a radical, violent and terrorist movement.

68 The respondent noted that the panel had excluded the testimony of Messrs. François Burgat and E. G. H. Joffé, because they had demonstrated a clear bias toward the applicant and in several respects their statements were inconsistent with what they had written previously. In the circumstances it was not [page580] unreasonable for the Refugee Division to rely on these texts, since at the time they were written the writers could have had no reason to favour the applicant.

69 As to the documents supporting the position of the Tunisian government authorities, the applicant noted that none of the documents referred to by the panel in support of its decision originated specifically with the Tunisian authorities. Further, the panel expressly said in its reasons that it was attaching no weight to the documents originating with participants in this dispute, namely the Tunisian government and MTI/Ennahda.

4. Panel's bias and lack of independence

70 First, the respondent submitted that the decisions made by Mr. Shore as coordinating member were not contrary to the decision of this Court on July 6, 1995, by which it only set aside the panel's decision and referred the matter back to a panel of different members, which was the case here.

71 Mr. Shore's decisions on the appointment of the members to sit in the rehearing of the case and dispose of the applicant's motion for particulars were made in the ordinary course of his duties as coordinating member. Further, Mr. Shore's duties as coordinating member did not allow him to exercise any control over the decisions made by the members appointed.

72 The respondent maintained that the argument raised by the applicant about the lower acceptability rate for Maghreb claimants of the members chosen by Mr. Shore directly impinged on the integrity of those members and was not based on any evidence. Further, those "rates" did not show that the members had any negative preconceptions, anymore than they indicated that other members of the panel had a preconception in favour of Maghreb claimants. Any claim stands on its merits and the members of the Refugee Division assess each case to the best of their ability based on the evidence and the law.

73 The respondent maintained that Mr. Ndejuru's independence was not in any way affected by the fact that his mandate ended while the case was proceeding and its renewal was a matter for the federal Cabinet.

74 Since the members of the panel are appointed during good behaviour for a maximum period of seven years, it is clear that their conditions of employment are consistent with the minimal requirements of administrative independence, as recognized in 2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool), [1996] 3 S.C.R. 919. The fact that renewal of a member's mandate is a Cabinet responsibility thus is not likely to adversely affect the requirements of administrative independence.

75 Secondly, the respondent maintained that the actions of the Board's administrative staff had in no way affected the impartiality and independence of panel members.

76 As to the administration and assessment of the evidence, the respondent contended that the decision to provide simultaneous interpretation to its expert witness Mr. Duran was in no way a sign of bias, since it was done to speed up the progress of an already lengthy hearing. This simultaneous interpretation benefited all parties.

77 Further, the respondent maintained that the applicant could not blame the panel for not making a German interpreter available to him in order to translate a document from Arabic to French.

78 Subsection 37(3) of the Convention Refugee Determination Division Rules, SOR/93-45, is clear: the panel cannot accept a document in any language other than French or English unless it is accompanied by an official translation the cost of which is to be borne by the party.

79 On the testimony of Messrs. Duran and Héchiche, the respondent noted that the panel had very clearly explained why it did not accept the testimony by those expert witnesses. Consequently, the applicant's objection on this point was invalid.

80 As to acceptance of the legal opinion from the Institut suisse de droit comparé and the dismissal of Mr. Abiem's testimony, the respondent noted that the applicant's objection related to the evidentiary value of that evidence.

81 Further, the respondent made a point of noting that the panel did not base its reasons relating to Article 1F(c) of the Convention on the allegedly speculative portion of the legal opinion, but on the promotion already undertaken by the applicant of acts contrary to the purposes and principles of the United Nations. There is thus no contradiction between the reasons given by the panel for dismissing Mr. Abiem's testimony and those it gave for relying on the legal opinion.

POINTS AT ISSUE

> Did the panel commit an error regarding exclusion of the applicant that warrants the Court's intervention?
>
> Do certain facts in this case raise a reasonable fear of bias or lack of independence by the panel?

ANALYSIS

1. Exclusion of applicant

82 The definition of a "Convention refugee" contained in subsection 2(1) of the Immigration Act excludes persons who fall within the scope of sections E and F of Article 1 of the United Nations Convention Relating to the Status of Refugees.

83 In the case at bar, the applicant was excluded pursuant to Article 1F(b) and (c) of the Convention. Article 1F(b) and (c) of the Convention reads as follows:

ARTICLE I

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

...

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

84 It is first worth noting that the standard of evidence comprised in the phrase "serious reasons for considering" is well below that required in connection with the criminal law ("beyond a reasonable doubt") or the civil law ("on a balance of probabilities or preponderance of evidence") (Moreno v. Canada (Minister of Employment and Immigration), [1994] 1 F.C. 298 (C.A.)).

85 As Linden J.A. noted in Sivakumar, supra, this standard requires more than suspicion or conjecture but does not attain the level of a balance of probabilities. However, I would note that in view of the serious consequences for the parties concerned, exclusion clauses should be given a limiting interpretation (Moreno, supra).

(A) Exclusion of applicant under Article 1F(b) of Convention

(i) Meaning of "serious non-political crime"

86 In Gil v. Canada (Minister of Employment and Immigration), [1995] 1 F.C. 508 (C.A.), the Federal Court of Appeal, relying on precedents from the United Kingdom, the United States and elsewhere, applied the so-called "incidence" test for determining whether an offence is of a political character. There were two parts to this test: the first concerned the political objective and the second the nexus between the objective and the

alleged crime. The headnote offers a concise summary of the Court's decision on this point, at page 509:

> The first requirement of the test is that the alleged crimes must be committed in the course of and incidental to a violent political disturbance such as of war, revolution or rebellion. The "political offense" exception is thus applicable only when a certain level of violence exists and when those resorting to violence are seeking to accomplish a particular objective such as to bring about political change or to combat violent political opposition. The second branch of the test is focused on the need for a nexus between the [page584] crime and the alleged political objective. The nature and purpose of the offense require examination, including whether it was committed out of genuine political motives or merely for personal reasons or gain, whether it was directed towards a modification of the political organization or the very structure of the state, and whether there is a close and direct causal link between the crime committed and its alleged political purpose and object. The political element should in principle outweigh the common law character of the offence, which may not be the case if the acts committed are grossly disproportionate to the objective, or are of an atrocious or barbarous nature.

87 I also note in this passage that the Federal Court of Appeal recognized that it will be difficult to accept that a crime was political in nature when it is an atrocious or barbarous act or grossly disproportionate to the object.

88 More recently, a majority of the judges in the House of Lords, in T. v. Secretary of State for the Home Department, [1996] 2 All E.R. 865, after citing with approval the Federal Court of Appeal's decision in Gil, supra, defined a non-political crime for the purposes of paragraph (b) as follows at page 899:

> A crime is a political [sic] crime for the purposes of Article 1F(b) of the Geneva Convention if, and only if;
>
> (1) it is committed for a political purpose, that is to say, with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and
>
> (2) there is a sufficiently close and direct link between the crime and the alleged political purpose. In determining whether such a link exists, the court will bear in mind the means used to achieve the political end, and will have particular regard to whether the crime was aimed at a military or governmental target, on the one hand, or a civilian target on the other, and in either event whether it was likely to involve the indiscriminate killing or injuring of members of the public.

89 On the meaning of the word "serious", James Hathaway in Law of Refugee Status, Toronto: Butterworths, 1991, at page 222, mentioned that these are crimes that warrant an especially severe punishment, thus making clear the commitment of signatories of the Convention to withholding protection from those who have committed truly abhorrent wrongs. [page585] The following passage at page 224 of his text is relevant:

> Atle Grahl-Madsen interprets this clause to mean that only crimes punishable by several years' imprisonment are of sufficient gravity to offset a fear of persecution. UNHCR defines seriousness by reference to crimes which involve significant violence against persons, such as homicide, rape, child molesting, wounding, arson, drugs traffic, and armed robbery. These are crimes which ordinarily warrant severe punishment, thus making clear the Convention's commitment to the withholding of protection only from those who have committed truly abhorrent wrongs.

90 The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (United Nations High Commission for Refugees, reedited, Geneva, January 1992) gives the following definition of what constitutes a "serious" non-political crime [at page 36]:

> 155. What constitutes a "serious" non-political crime for the purposes of this exclusion clause is difficult to define, especially since the term "crime" has different connotations in different legal systems. In some countries the word "crime" denotes only offences of a serious character. In other countries it may comprise anything from petty larceny to murder. In the present context, however, a "serious" crime must be a capital crime or a very grave punishable act. Minor offences punishable by moderate sentences are not grounds for exclusion under Article 1 F(b) even if technically referred to as "crimes" in the penal law of the country concerned.

91 In Pushpanathan, supra, Bastarache J. said at paragraph 73 that "Article 1F(b) contains a balancing mechanism in so far as the specific adjectives 'serious' and 'non-political' must be satisfied". He added that serious "non-political" crimes in Article 1F(b) are those which may result in extradition pursuant to a treaty:

> It is quite clear that Article 1F(b) is generally meant to prevent ordinary criminals extraditable by treaty from seeking refugee status, but that this exclusion is limited to [page586] serious crimes committed before entry in the state of asylum.

92 From this passage I conclude that he provided a general indication of the nature of crimes which may be the subject of exclusion under Article 1F(b). I do not think that Bastarache J. intended to limit non-political crimes to those which were extraditable

under a treaty, since such an approach would have the effect of excluding from Article 1F(b) countries with which no extradition treaty existed.

93 I also note the distinction made by the Court of Appeal in Gil, supra, at page 518: "The refugee exception is limited to 'serious' crimes; extradition law has no such qualification" (my emphasis). In my opinion, therefore, caution should be used in comparing serious non-political crimes with extraditable crimes.

(ii) Law regarding complicity by association

94 The Federal Court of Appeal has ruled on the concept of complicity by association in connection with the application of Article 1F(a) and (c). However, there is no Canadian precedent on application of Article 1F(b).

95 Counsel for the respondent submitted to the Court a decision by the Court of Appeal for England and Wales in In the matter of B, [1997] E.W.J. No. 700 (C.A.) (QL), where the Court refused to intervene in a decision of a tribunal which in applying Article 1F(b) had relied on the concept of complicity by association. The Court of Appeal emphasized in particular the fact that in those circumstances it was not necessary, in order to conclude there had been complicity by association by the claimant, to link him personally to a specific crime committed by the movement to which he belonged.

96 I entirely agree. I conclude that the rules developed by the courts pursuant to Article 1F(a) and (c) can also be applied with respect to Article 1F(b).

97 The concept of complicity by association was clearly summarized by Linden J.A. in Sivakumar, supra. At page 442, he said the following:

> To sum up, association with a person or organization responsible for international crimes may constitute complicity if there is personal and knowing participation or toleration of the crimes. Mere membership in a group responsible for international crimes, unless it is an organization that has a "limited, brutal purpose", is not enough (Ramirez, supra, at page 317). Moreover, the closer one is to a position of leadership or command within an organization, the easier it will be to draw an inference of awareness of the crimes and participation in the plan to commit the crimes.

98 He recalled the conclusions of MacGuigan J.A. in Ramirez, supra, at page 438, that it is possible to be held responsible for such crimes and commit them as an accomplice without having personally committed the act constituting the crime.

99 More recently, in Mohammad v. Canada (Minister of Citizenship and Immigration) (1995), 115 F.T.R. 161 (F.C.T.D.), Nadon J. provided a concise summary at page 178 of the following rules contained in the observations of Linden J.A.:

1. A person who commits a crime must be held responsible therefor.

2. A person may be responsible for a crime he or she did not personally commit, that is, as an accomplice.

3. The starting point for the existence of complicity is "personal and knowing participation" by the person in question.

4. Mere bystanders are not accomplices.

5. A person who aids in or encourages the commission of a crime may be responsible therefor.

6. A superior may be responsible for crimes committed by those under his or her command if the superior knew about them.

7. A person may be held responsible for crimes committed by others because of his or her close association with those who committed them.

8. The more important the position held by a person in an organization that has committed one or more crimes, the more likely his or her complicity.

9. A person who continues to hold a leadership position in such an organization with full knowledge that the organization is responsible for crimes may be considered an accomplice.

10. Evidence that the individual protested against the crime, tried to stop its commission or attempted to withdraw from the organization must be taken into consideration in determining whether he or she is responsible. (My emphasis).

(iii) Serious non-political crimes by MTI/Ennahda found by Refugee Division

100 The Refugee Division found 12 non-political crimes, namely use of Molotov cocktails, acid thrown in the faces of individuals, physical attacks in schools and universities, automobile fires, threatening letters, conspiracy to murder figures in the Tunisian government, attempted fires at faculties, bombing attacks at Sousse and Monastir on August 2, 1987, arson at Bab Souika in February 1991 where a man died, a bombing attack in France in 1986, weapons trafficking in 1987 and conspiracy to violently overthrow the former President Habib Bourguiba.

101 Several of these crimes attributed to the MTI/Ennahda movement occurred in a period prior to the time the evidence clearly established that the applicant had become a member of Ennahda. Although the applicant's involvement took place between 1980 and

1988, the latter said he was only a sympathizer and did not become a member of the movement until 1988.

102 In view of the serious consequences for the applicant and the restrictive interpretation that should be given to the exclusion clauses, I am not prepared to give the concept of complicity by association retroactive effect, so that the applicant may be excluded for crimes committed before he joined the Ennahda movement. I will therefore only consider the serious non-political crimes committed after the 1988 period, and in particular the arson at Bab Souika in 1991, since a single serious non-political crime suffices for exclusion of the applicant and the evidence regarding [page589] that crime is especially important and credible so far as the applicant's responsibility for the act and involvement in leadership of the Ennahda movement is concerned.

103 Before turning to analysis of the evidence in the record, I should like to make the following preliminary observation. I note that the Refugee Division examined the oral and documentary evidence with great care to determine the weight that should be given to testimony by various persons and the evidentiary value of certain documents, excluding for example sources originating with the Tunisian government. It devoted some time to the credibility of certain witnesses, providing a clear justification for the reasons why it accepted or rejected the testimony in question.

104 I note that the Court can only intervene in the findings of fact made by the Refugee Division if those findings are patently unreasonable. This is a very high standard. It is only when a reasonable view of the evidence cannot support a finding of fact that it will be patently unreasonable (Canadian Union of Public Employees, Local 301 v. Montreal (City), [1997] 1 S.C.R. 793, at pages 828-829).

105 Did the evidence support the Refugee Division's decision that the Bab Souika arson was a serious non-political crime committed by MTI/Ennahda?

106 The evidence clearly showed that on February 17, 1991 a commando group of about 30 persons attacked the RCD headquarters in the Bab Souika section of Tunis. During that attack two guards were bound hand and foot, sprinkled with gasoline and burnt after the attackers had started a fire. One of the guards died of his burns and the other had to have amputations and became an invalid for life.

107 Based on overwhelming and credible evidence to this effect, the Refugee Division concluded that the crime was perpetrated by MTI/Ennahda. The panel relied on the following evidence [at paragraph 249]:

> "Three members of al-Nahda involved in an attack in February 1991 on a RCD headquarters in Tunis in which a night-watchman was burnt to death, were sentenced to death and hanged in October 1991." (Exhibit P-6, supra note 98, page 248.)
>
> "Attacks like those directed against the RCD's (Rassemblement

Constitutionnelle (sic) Democratique, the government party) central office in Bab Souika (Tunis) in February 1991, which caused the death of one security guard and seriously wounded others, have not been repeated." (Exhibit P-11, supra note 180, page 4.)

"The spectre of civil war that hangs over this country, the vicious attacks, and especially the crime at Bab Souika in Tunis committed by members of the Nahdha on February 17, 1991--three night-watchmen at the headquarters of the RCD, the party in power, tied up, sprinkled with gasoline and burnt--have henceforward deprived the Islamic movement of all popular support. (Exhibit A-16, combined newspaper articles, Le Point, No. 1041, 29/8/92, page 39.)

A group of students set fire to a police station and so on until the attack on the RCD premises at Bab Souika, in the centre of Tunis, on February 17, 1991. One watchman was killed and another seriously wounded, the perpetrators, Ennahda militants, were arrested, sentenced to death and executed. (Exhibit A-16, combined newspaper articles, Jeune Afrique, no 1652, September 3-9, 1992, page 14, also filed under M-7, supra, note 334.)

"Physical attack, violence in schools, sporadic street demonstrations, threatening letters and, finally, the vicious attacks at the RCD headquarters in Bab Souika, where one of the guards was killed (burned alive), made the Tunisian government decide to adopt a repressive approach." (Exhibit M-2, supra, note 201, pages 91-92.)

"However, things worsened on February 17: about 30 people identifying with the Nahda attacked the coordinating committee headquarters of the RCD at Bab Souika, two guards were sprinkled with gasoline, one died and the attackers wounded three. This vicious attack was strongly condemned by the entire political class, including Nahda, which denied any participation. (Usual strategy.) However, the perpetrators of the attack were arrested and confessed. N. Bihri, a member of the Nahda leadership, was arrested." (Exhibit M-4, supra, note 123, pages 942-943.)

"For most Tunisians, the excesses committed by the "Renaissance" militants have recently become too frequent: physical attacks, violence in schools and universities, uncontrolled sporadic street demonstrations, threatening letters. Psychologically the last straw was the attack on the RCD headquarters in Bab Souika, where one of the [page591] guards, an old man, died. Burned alive." (Exhibit M-6, supra, note 256, page 2.)

"Feeling they were about to lose their support from intellectuals the fundamentalists, who (officially) only received 17% of the votes in the elections, tried a show of strength. An office of the governing party was burnt in the centre of the old town." (Exhibit M-13, Guy Sitbon, "Comment la Tunisie a triomphé des barbus, quand les voiles tombent", Le

Nouvel Observateur, December 8 to 14, 1994, page 16.)

"An armed attack by young Ennahda radicals on the RCD headquarters in February was compounded by the publication of details of a coup plot in May." (Exhibit M-153, Extraits de Claire Spencer, The Maghreb in the 1990s, Political and Economic Developments in Algeria, Morocco and Tunisia, Adelphi Paper 274, London, The International Institute for Strategic Studies, February 1993, page 29.)

"Whatever appeal An [sic] Nahdha might have had to mainstream tunisians was lost in February, 1991, when, during the tension over the Persian Gulf War, it [sic] supporters bound and burned to [sic] guards in a firebomb attack on a branch office of Tunisia's dominant political party." (Exhibit M-179, David Lamb, A Nice Place in a Bad Neighborhood? Los Angeles Times, 28/8/95, page 3.)

"Its exiled leader, Rachid Ghannouchi, came out strongly in favour of Iraq, and some of its more extreme members attacked the offices of the ruling Democratic Constitutional Rally." (Exhibit M-245, "The Maghreb: whatever he did, they love him", The Economist, 30/3/91.)

108 After carefully considering the evidence on which the Refugee Division relied, I cannot conclude that the panel's finding of fact regarding Ennahda's involvement in the Bab Souika fire is patently unreasonable since there is no doubt that the evidence considered can serve as a basis for that conclusion.

109 I further note that there was overwhelming and persuasive evidence clearly establishing that following this vicious attack Fadhel Beldi, president of the Ennahda advisory committee, and two other members of the executive, Abdel Fattah Mourou and Ben Aissa Semni, published a news release in which they dissociated [page592] themselves from this action. On March 7, 1991 the three signed a second news release describing the acts as [TRANSLATION] "irresponsible acts" done "with the approval of certain leaders of our movement". They announced that they had "frozen" their membership and activities in the Ennahda movement [at paragraph 251].

"Tunisia's Islamic mouvement Nahdha, the second most powerful political force in the country, is in a state of virtual collapse after the gulf war.

Abdelfattah Mourou, the No. 2 figure in the movement, and two other members of its executive bureau have announced they have "frozen" their membership. So have members of some local executive committees.

...

Nahdha (Renewal) has been split by the recent war in Iraq.

[...]

The split deepened after the offices of the ruling Rassemblement Constitutionnel Democratique party were attacked Feb. 17. Mourou and the other leaders who "froze" their membership said there was evidence that some young members of Nahdha were implicated in the attack." (Exhibit M-246, supra note 372.)

"In March 1991 there was evidence of division within the ranks of the Islamists, when three senior officials of an-Nahdah who were still at liberty dissociated themselves from the acts of violence allegedly perpetrated by certain members of the organization. In particular they deplored a recent attack on the headquarters of the RCD, in which one person had been killed and several others injured." (Exhibit A-2, The Europa World Year Book, 1995, page 3028.)

"The effect of the brutality was not only to shock public opinion. Three weeks later, on March 7, 1991, 'abd al-Fathah [sic] Mourou issued a statement to the effect that he, Fadhel Beldi (a former acting leader of the movement) and Benaissa Demni were "freezing" their membership in Al-Nahda because of the use of violence in the Bab Souika attack. Mourou announced that he still sought dialogue with the government and denounced Ghannouchi and the in-country leadership for having chosen the path of violence. It is true that the toll of the Bab Souika attack was small compared to some Islamist-related attacks in other countries, but in Tunisia's generally nonviolent political culture, it marked a turning point. Mourou's split strongly suggested that the movement had decided on violent confrontation. The government was soon to try to make a case proving just that." (Exhibit M-147, Michael Collins Dunn, "The [page593] Al-Nahda Movement in Tunisia: From Renaissance to Revolution", in Islamism and Secularism in North Africa, New York, St. Martin's Press, 1994, page 160.)

"In February Islamists attacked an RCD office in Bab Souika (Tunis), killing one guard and injuring another. As a result, the Secretary General of An Nahda and three other members of its Executive Bureau suspended their involvement with An Nahda in protest." (Exhibit M-166, 1991, Human Rights Report, February 1992, page 1, also filed as M-263.)

[TRANSLATION] "The political class in general strongly condemned the Bab Souika attack at the time. Some prominent figures in Ennahda, including most notably one of its founders, Abdelfattah Mourou, distanced themselves from the movement, denouncing its "slide towards terrorism"." (Exhibit M-411, Jacques de Barrin, "Tunisie: leur grâce ayant été rejetée par le président Ben Ali, trois islamistes ont été exécutés", Le Monde 11/10/91.)

"while the Saudis of course cut off support of Islamic movements which had condemned them, leading to various splits like the one in Tunisia which divided Al Nahdha into moderates closer to Saudi Arabia (Abdel Fatah Mouro [sic]) and radicals (Ghannouchi)." (Exhibit M-45, supra note 295, page 155.)

"This split within the organization also reveals the existing tensions between the radicals and the traditionalists on the issues of Islamic practice and Islamic Nationalism (ibid). According to Radio France International, Abdel Fattah Mourou and a group of followers dissociated themselves from the structures of the Al-Nahdha movement in order to write a new political group which would stand for a more moderate vision of Islam (27 Oct. 1991). On the other hand, a Lawyers' Committee for Human Rights (LCHR) report states that Al-Nahdha's exiled leader Rachid Ghannouchi has become increasingly associated with radical Islamic leaders from Iran, Sudan and other countries noted for their poor human rights record (Oct. 1993, 6)." (Exhibit A-14, supra note 113, page 2.)

"Another key leader, Abdelfattah Mourou, left Ennahda altogether in an attempt to form a more moderate and politically acceptable movement." (Exhibit M-153, supra note 388, page 24.)

"When Hizb al-Nahda (The Renaissance party) was refused authorization for either the 1989 national election or the 1990 local elections, relations with the state turned sour again, and the movement returned to its clandestine, violent conflict with the authorities, especially in the realm of student politics (in which it represents a dominant faction): when it provoked campus confrontations, urban bombings, [page594] and a military plot in the first half of 1991, it again was subject to heavy arrests and underwent a second split, with Mourou considering the creation of a legalized Party and Ghannouchi in exile, speaking for the embattled militants." (Exhibit M-138, supra note 106, page 116.)

"Nevertheless, some Renaissance leaders including Abdul Fattah Moro [sic], IBN'Issa Al Dumny and Fadel Al Balady condemned the escalating wave of violence. They froze their membership in the movement based on what they perceived as an increasing militancy 'contradicting sharply with religious values'".

...

The disagreement was between the two most important leaders in the movement; namely Ghanushy and Moro [sic]. Such difference of opinion has a historical dimension and is related to a number of cases, though in the 90s it was basically over the issue of violence. Moro [sic] hesitated in using violence and attacking the authorities as this represented a violation

> of the movement's political statement that publicly condamned [sic] militancy. Interestingly, in the late 80s Moro [sic] shared Ghanushy's toleration of violence in confronting the regime's escalating repressive campaigns. But while he changed his mind concerning this view, Ghanushy stuck to it." (Exhibit M-268, Extraits de Hoda Mitkis, The religious trends in the Arab Maghreb, a comparative analysis, Kurasat Istratijiya, no. 34, Al-Ahram Centre for Political and Strategic Studies, Le Caire, Égypte, 1995, page 42.)
>
> [TRANSLATION] "Fouad Mansour Qassen, a member of the political bureau of the banned Islamist movement Ennahda, who lives abroad and was a candidate in the 1989 legislative elections for the Tunis area, resigned last Sunday from the leadership of the movement, the Saudi daily El Hayat announced on Tuesday August 9. In a news release, Mr. Qassen blamed his chief, Rached Ghannouchi, for having no clear approach, "preferring force to reason", giving inflammatory, irresponsible and unrealistic speeches leading to clashes with authority which resulted in the imprisonment and exile of many others." (Exhibit M-319, "Selon un quotidien saoudien. Démission d'un responsable du mouvement islamiste tunisien", Le Monde, 11/8/94.)

110 In this regard, the Refugee Division found that the leaders left MTI/Ennahda because of the movement's violence. Here again, as this finding of fact was based on credible evidence there is no basis for intervention by this Court.

111 In short, a rational view of the evidence could be a basis for the panel's finding regarding the Ennahda movement's involvement in the Bab Souika affair.

112 Is that crime a serious non-political crime within the meaning of Article 1F(b)?

113 First, I consider that the arson at Bab Souika may be described as barbarous and atrocious, so that it is harder to say that this was a political crime: Gil, supra.

114 Then, although I admit that the existing regime was repressive in nature, there is no doubt that there is no close and direct causal link between the Bab Souika arson and Ennahda's political objective of establishing an Islamist state in Tunisia. This act of violence is grossly disproportionate to any legitimate political objective. It cannot be regarded as an acceptable form of political protest.

(iv) Applicant's complicity by association

115 The Refugee Division, relying, inter alia, on the applicant's PIF and testimony, found that the Ennahda leadership had instructed the applicant to take responsibility for the Gabès office beginning in November/December 1990. He was the most senior authority in Gabès.

116 Between December 1990 and October 30, 1991 he presided over meetings of the Ennahda political office in Gabès and passed on directions and positions taken by the movement on events in Tunisia or elsewhere in the world. In its decision the Refugee Division noted an important fact in the applicant's testimony, namely that he was aware of everything taking place inside his MTI/Ennahda movement (reasons, at page 119 [paragraph 323]): [TRANSLATION] "I do not think, I do not imagine anything could happen inside Ennahda that I am not aware of, that I was not aware of".

117 Several contradictions were noted by the Refugee Division regarding his responsibilities and [page596] importance in the movement, and this affected the applicant's credibility. The panel inferred that he had tried to minimize his role and importance in order to avoid being connected with acts attributed to the movement as a whole. In view of his important involvement in the movement, the Refugee Division concluded that the applicant could not have been unaware that acts of violence were taking place.

118 This inference may reasonably be made from the evidence and does not provide any basis for intervention by this Court.

119 It is important to note that the applicant did not leave the movement at this time and continued to carry out his duties as a leader. He did not separate himself from the movement and its leader Mr. Ghannouchi, as other members of the movement did. In view of this, the panel was right to conclude that he knowingly tolerated this crime. The applicant's complicity by association could therefore be accepted by the panel solely on the basis of this crime.

120 In the circumstances, there is no reason to consider the panel's finding on the limited and brutal purposes of the MTI/Ennahda movement, since the exception mentioned in Ramirez, supra, in such a case (which allows complicity to be assumed simply from membership in the movement) does not apply in view of the applicant's involvement and position as a leader at that time.

121 I need only recall the comments made by Nadon J. in Mohammad, supra [at paragraph 38]:

> 9. A person who continues to hold a leadership position in such an organization with full knowledge that the organization is responsible for crimes may be considered an accomplice.
>
> 10. Evidence that the individual protested against the crime, tried to stop its commission or attempted to withdraw from the organization must be taken into consideration in determining whether he or she is responsible. [Underlining added.]

122 Although it would have been easy to do so, the applicant did not withdraw from the organization as three influential members of Ennahda did.

123 For these reasons, it was not unreasonable for the Refugee Division to conclude that it had serious reasons to consider that the applicant committed the aforesaid non-political crime as an accomplice by association.

124 As I said earlier, since only one serious non-political crime will suffice for exclusion of the applicant, there is no need to consider the validity of the panel's decision on the other exclusionary points.

(B) Exclusion of applicant under Article 1F(c) of the Convention

125 In view of my conclusion that the applicant is a person covered by Article 1F(b), and in view of the serious consequences of such a finding, I do not think it would be appropriate for me to rule on this point since doing so is not required to determine whether the applicant is excluded from the protection of the Convention.

2. Panel's impartiality and independence

(A) Panel's independence

126 First, the applicant argued that Mr. Shore's decisions as coordinating member conflicted with an order by the Court which set aside the Refugee Division's decision and referred the matter back to a panel of different members. I do not think this is a reasonable interpretation of the Court's order.

127 Mr. Shore's decisions were made in the ordinary course of his duties as coordinating member. He was never involved in, nor did he exercise any control over, the panel's decision on the merits, as the latter was not in any way under the control of the coordinating member.

128 See, for example, Van Rassel v. Canada (Superintendant [sic] of the RCMP), [1987] 1 F.C. 473 (T.D.), in which the Federal Court dismissed a similar allegation: in that case the applicant was [page598] alleging apprehension of bias against members of a disciplinary tribunal because they had been appointed by the Commissioner, whom he suspected of having made negative statements about him. Joyal J. concluded (at page 487):

> The Commissioner of the RCM Police is not the tribunal. It is true that he has appointed the tribunal but once appointed, the tribunal is as independent and as seemingly impartial as any tribunal dealing with a service-related offence. One cannot reasonably conclude that the bias of the Commissioner, if bias there is, is the bias of the tribunal and that as a result the applicant would not get a fair trial.

129 I also cannot accept the applicant's argument that the members were chosen because they had a lower approval "rating" on Maghreb claims than other members of the Refugee Division.

130 Each claim stands on its own merits and the members of the Refugee Division have to assess each case based on the evidence and applicable law. Such an assertion reflects directly on the integrity of the members in question and cannot be accepted unless there is good evidence. Mere suspicion based on "rates" does not meet the applicable standard of the well-informed individual considering the matter in depth in a realistic and practical way. I therefore dismiss this objection.

131 The applicant also maintained that Mr. Ndejuru's independence had been compromised by the fact that his term of office ended while the proceeding was under way and the federal Cabinet was responsible for renewing it.

132 In Valente v. The Queen et al., [1985] 2 S.C.R. 673, the Supreme Court of Canada recognized that security of tenure was one of the essential conditions of judicial independence.

133 However, in 2747-3174 Québec Inc., supra, it recognized that so far as administrative tribunals performing judicial functions are concerned the requirements of independence for administrative tribunals are not, like judges, that they hold office during good behaviour. Limited terms of office are [page599] acceptable. At the same time, removal during such a term should not be a matter for executive discretion.

134 In the case at bar, members of the Refugee Division are appointed during good behaviour for a maximum term of seven years. Under subsections 61(1) [as am. by S.C. 1992, c. 49, s. 50] and (3) [as am. idem] of the Immigration Act, the term of office and its renewal is a matter for the Governor in Council, not the Minister of Citizenship and Immigration.

135 The circumstances differ from MacBain v. Lederman, [1985] 1 F.C. 856 (C.A.), in which the prosecutor was the tribunal. There is not the same nexus here between one party and the decision-making body.

(B) Acts by IRB administrative personnel

136 The applicant argued that the acts of the IRB administrative personnel had the effect of irreparably damaging the independence of the panel, its neutrality and impartiality and favouring the Minister's interests at the expense of those of the applicant.

137 The IRB administrative personnel temporarily paid the costs relating to the security of two of the Minister's witnesses.

138 For his part, the respondent argued that a well-informed person considering the matter in depth in a realistic and practical way would not reasonably fear that the panel

lacked impartiality or independence because the Board's administrative personnel temporarily paid the costs relating to the security of two of the Minister's witnesses. The Board had a duty to provide security for all persons appearing before it, whether representatives of the parties, their witnesses or the parties themselves. In the case at bar the Minister's witnesses received no services from the Board to which the applicant's witnesses would not have been entitled if they had requested them.

139 The respondent noted that it was because of the urgency of the situation and the familiarity of the administrative personnel with this kind of measure that the Board agreed to temporarily assume the costs in question. In particular, it was agreed that the Department would repay these amounts to the Board, and this was done in the case at bar.

140 At no time did members of the panel take part in the discussions. It was not until counsel for the applicant sent the panel an application for a public hearing that the members were informed of it.

141 In Committee for Justice and Liberty et al. v. National Energy Board et al., [1978] 1 S.C.R. 369, de Grandpré J. developed the test applicable to a reasonable apprehension of bias, at page 394:

> ... the apprehension of bias must be a reasonable one held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information ... . that test is "what would an informed person, viewing the matter realistically and practically--and having thought the matter through--conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

142 The Supreme Court of Canada further noted that the grounds for the apprehension must be substantial and that the test was not that of a person with a sensitive or scrupulous conscience.

143 I considered the applicant's allegations about the panel's apparent bias in accordance with this test.

144 Even if it would have been wise for the administrative tribunal not to even temporarily pay the costs relating to security for the two expert witnesses and leave this up to the party itself, I feel that such an action, especially as it took place unknown to the "decision-making" members, can create no appearance of bias.

145 First, it is important to note that the concept of bias means the state of mind or attitude of the [page601] decision-makers, not a tribunal's staff or employees (Valente, supra, at page 685):

> Impartiality refers to a state of mind or attitude of the tribunal in relation to

the issues and the parties in a particular case.

146 In the case at bar, subsection 57(2) [as am. by S.C. 1992, c. 49, s. 47] of the Immigration Act provides that the Board shall consist of the Chairperson and members of each division.

> 57... .
>
> (2) The Board shall consist of the Chairperson of the Immigration and Refugee Board and the members of the Refugee Division, the Appeal Division and the Adjudication Division.

147 The Board's employees are appointed pursuant to the Public Service Employment Act [R.S.C., 1985, c. P-33]. They are in no way part of the panel. Their duties do not in any way make them part of the decision-making process. The evidence was that the acts complained of by the applicant were done without the knowledge of panel members. As I said earlier, it was not until counsel for the applicant sent the Refugee Division an application for a public hearing that the panel learned of this. It cannot be said that an act done by staff can influence the state of mind or attitude of members of the panel who were not aware of it and who took no part in the discussions on the matter.

148 Further, as the respondent noted, the costs were only paid temporarily, since it was agreed that the Department of Citizenship and Immigration would reimburse these costs to the Board. The Department thus obtained no financial benefit.

149 I also note that the issue concerned the security of two expert witnesses, Messrs. Duran and Héchiche, who failed to appear for their cross-examination, and this led the panel to attach no evidentiary value to their testimony.

150 In my view, an informed person viewing the matter realistically and practically, and having thought the matter through, would have no reasonable apprehension that the Refugee Division lacked impartiality because the Board's administrative staff, unknown to the Division, temporarily paid the costs relating to the security of two expert witnesses for the Minister, whose testimony the panel did not accept.

151 Would such a person believe that the panel's independence and neutrality could be affected by an action of which it was not aware and which conferred no benefit upon it, directly or indirectly, and would the person think it likely that the panel would not render a fair decision? I do not think so.

(C) Administration of evidence

152 As regards the decisions made by the panel on the administration and assessment of the evidence, I feel that it cannot be blamed for deciding to offer the Minister's expert

witness simultaneous translation, since the effect of doing so was to speed up this party's testimony at a hearing that was already very lengthy. I also consider that the panel's refusal to offer the applicant the translation services requested was justified by subsection 37(3) of the Rules (document in German) and the short duration of the testimony by the applicant's wife (simultaneous translation from Arabic to French).

153 As I mentioned earlier, the panel attached no weight to the testimony by Messrs. Duran and Héchiche. As regards the legal opinion by the Institut suisse de droit comparé, it was the panel's function to assess the evidentiary value of the evidence submitted and accept what seemed to it to be consistent with the reality. Further, it appeared from the reasons for decision that the panel based its decision regarding Article 1F(c) of the Convention on the promotion already done by the applicant of acts contrary to the purposes and principles of the United Nations.

154 The applicant sought to enter the memoranda written by employees of the Department of Citizenship [page603] and Immigration, discussing the chances of success of the instant case, in evidence before the panel without success. The Refugee Division objected to their production on the ground that these documents were trivial and irrelevant.

155 In my opinion, the Refugee Division properly refused to allow them since the Minister did not accept the opinion of the employees who wrote them. The employees' opinion about the chances of a claim's success are not in any way binding on the Minister and have no relevance to the outcome of a case. The Minister adopted the contrary view and defended his position before the panel on the basis of abundant and credible evidence.

156 In short, therefore, I consider that an informed person viewing the matter realistically and practically, and having thought the matter through, would not fear that the panel had been partial because of acts done by the administrative staff, decisions made by Mr. Shore as coordinator, the renewal of Mr. Ndejuru's mandate or the panel's decision on the administration and assessment of the evidence.

157 For these reasons, the application for judicial review is dismissed.

158 The applicant asked that the following questions be certified:

> [TRANSLATION]
> 1. In light of the rules set out by the Federal Court of Appeal in MacBain v. Lederman, [1985] 1 F.C. 856, specifically regarding decision-making independence as a component of judicial independence, was the appointment of members holding a hearing by a coordinating member who had sat at the hearing of the first decision, quashed by the Federal Court Trial Division, which ordered a trial de novo, likely to create a reasonable apprehension of bias in a person who was reasonably well-informed about the matter?

2. Was the renewal of the mandate of a member at the hearing by the government, on the recommendation of the Minister of Citizenship and Immigration, made when the said Minister was acting as a party in a proceeding before that member, likely to create a [page604] reasonable apprehension of bias in the mind of an informed person in light of the principles set out in R. v. Généreux, [1992] 1 S.C.R. 259, and Canadian Pacific Ltd. v. Matsqui Indian Band, [1995] 1 S.C.R. 3?

3. Does the fact that an administrative tribunal which has to dispose of a party's inculpatory allegations becomes financially involved for the benefit of the said party unknown to the opposing party, infringe the rules of judicial independence?

4. If a negative answer was given to each of these questions taken separately, is the fact that they were raised jointly in the same proceeding so likely to adversely affect judicial independence as to make the decision rendered null and void?

159 The respondent asked that the following questions be certified:

[TRANSLATION]
1. For the purposes of applying art. 1F(b) of the United Nations Convention Relating to the Status of Refugees, is the atrocious nature of a crime a clear indication that it is a non-political crime?

2. For the purposes of implementing art. 1F(b) of the United Nations Convention Relating to the Status of Refugees, should the most serious crimes such as assassination, murder, serious bodily injury, attacks on property by fire or explosion be considered non-political crimes in all cases?

3. For the purposes of implementing art. 1F(b) of the United Nations Convention Relating to the Status of Refugees, does the fact that the political objectives sought by the perpetrator(s) of the crime in question consists of the establishment of a government, the political program of which includes several serious, sustained or systematic infringements of certain fundamental human rights, mean that the crime cannot be regarded as a political offence?

4. For the murder of a head of state to be regarded as a political offence within the meaning of art. 1F(b) of the United Nations Convention Relating to the Status of Refugees, must the perpetrator of the crime, who commits murder by political conviction, have reasonably expected that the act would, beyond its immediate consequence,

result in a change in the political or social organization of the government?

5. Are the rules laid down by the Federal Court of Appeal in Sivakumar v. Canada, [1994] 1 F.C. 433, on complicity by association for purposes of implementing art. 1F(a) of the United Nations Convention Relating to the Status of Refugees, applicable for purposes of an exclusion under art. 1F(b) of the said Convention?

6. If so, can a refugee status claimant's association with an organization responsible for perpetrating "serious non-political crimes" within the meaning of that expression in art. 1F(b) of the United Nations Convention Relating to the Status of Refugees, entail the complicity of the claimant for purposes of applying the said provision simply because he knowingly tolerated such crimes, whether committed during or before his association with the organization in question?

7. For the purposes of implementing art. 1F(c) of the United Nations Convention Relating to the Status of Refugees, can the fact of having promoted the commission of acts contrary to the purposes and principles of the United Nations for several years be regarded in itself as an act contrary to the purposes and principles of the United Nations?

8. For purposes of implementing art. 1F(c) of the United Nations Convention Relating to the Status of Refugees, does a person who has worked vigorously for several years to bring to power a political movement whose program includes several serious, sustained or systematic infringements of fundamental human rights, constituting persecution, become guilty of acts contrary to the purposes and principles of the United Nations?

9. For purposes of implementing art. 1F(c) of the United Nations Convention Relating to the Status of Refugees, is a person who for several years has actively promoted the implementation of a political program the application of which would probably create Convention refugees guilty of acts contrary to the purposes and principles of the United Nations?

160 As Nadon J. pointed out in Legault v. Canada (Minister of Citizenship and Immigration), [2001] 3 F.C. 277 (T.D.), the Supreme Court of Canada indicated in Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, that when a question of general importance is certified the Court of Appeal is not limited simply to that question and may consider all questions raised by the case. Accordingly, it will suffice for me to certify the following questions, which are decisive in the case at bar:

Are the rules laid down by the Federal Court of Appeal in Sivakumar v. Canada, [1994] 1 F.C. 433, on complicity by association for purposes of

implementing Article 1F(a) of the United Nations Convention Relating to the Status of Refugees, applicable for purposes of an exclusion under Article 1F(b) of the said Convention?

If so, can a refugee status claimant's association with an organization responsible for perpetrating "serious non-political crimes" within the meaning of that expression in Article 1F(b) of the United Nations Convention Relating to the Status of Refugees, entail the complicity of the claimant for purposes of applying the said provision simply because he knowingly tolerated such crimes, whether committed during or before his association with the organization in question?