Federal Court  Cour fédérale

Date: 2011-01-06

Docket: IMM-688-10

Citation: 2011 FC 12

Ottawa, Ontario, January 6, 2011

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ANDREI KIRICHENKO

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, R.S.C. 1985, C. 1-2 (Act) for judicial review of the decision of the Refugee Protection Division (RPD) of the Immigration and Refugee Board, dated 5 January 2010 (Decision), which refused the Applicant's application to be deemed a Convention refugee or a person in need of protection under sections 96 and 97 of the Act.

BACKGROUND

[2] The Applicant is a citizen of Russia, by birth, and a citizen of Israel, by marriage. He arrived in Canada on 7 December 2006 and made a refugee claim that same day. He alleges that he is at risk in both countries and fears returning to either.

[3] The Applicant grew up in Russia. He claims that, in 1995, while residing in the city of Budennovsk, he was taken hostage by Chechen rebels and suffered injuries to his legs during his captivity. In 1997, he appeared as a witness at the trial of one of the hostage takers and subsequently was subjected to threats of bodily harm. The Applicant had been prepared to give evidence that Russian officials had been complicit in the 1995 hostage taking, and he believed that Russian officials did not want this evidence presented in court. Fearing for his safety, he and his wife immigrated to Israel later that year. A daughter was born to the Applicant and his wife in Israel and, although he would ordinarily have been required to serve in the Israeli military, he was exempt because he had a young child.

[4] The Applicant and his wife returned to Russia in late 2000. They divorced in 2001. In 2003, the Applicant again was called as a witness during the trial of the Chechen hostage takers and again began to receive threats, this time to his life. He appeared in court in 2005 and claims that, on the day following his appearance, he was attacked by three men, one of whom had a knife. Later that year, the driver of a car attempted to run the Applicant over while he was walking on the sidewalk.

The following year, in the summer of 2006, the Applicant was called to appear in court a third time and, again, his life was threatened. He decided to leave Russia.

[5] In June 2006, the Applicant travelled to Israel. He had been absent from Israel for more than three years. Upon his arrival, he discovered that his bank accounts had been closed and that the documentation he would need to work had expired. He was concerned that he would now be forced to serve in the Israeli military because his earlier exemption as the father of a young child was no longer available to him. In October 2006, the Applicant left Israel for Germany. He stayed there for two months but did not claim asylum. Thereafter, he came to Canada.

DECISION UNDER REVIEW

[6] The Applicant appeared before the RPD in June 2009 and was represented by counsel. The RPD stated that it would be analyzing his claim against Israel because "he will not experience persecution nor cruel or unusual treatment or punishment if returned there."

[7] The RPD found that the Applicant had not established that he was a conscientious objector to military service in Israel and that this was the determinative issue. Also, the RPD did not find the Applicant to be credible.

[8] In the RPD's view, the Applicant failed to establish a risk of persecution. Countries by right can conscript citizens into military service. See *Popov v. Canada (Minister of Employment and*

Immigration) (1994), 75 F.T.R. 90 (*Popov*). There was no evidence before the RPD to indicate that Israel's conscription laws are not laws of general application and are prejudicial to the Applicant. Moreover, fear of combat and fear of punishment for evasion of military service are insufficient to constitute fear of persecution under the Act. See *Garcia c. Canada (Secrétaire d'État)*, [1994] A.C.F. no 147 (T.D.) at paragraph 2.

[9] The Applicant provided no submissions to suggest that he was a conscientious objector based on his religious beliefs and, therefore, that ground was not open to him.

[10] The RPD found as fact that the Applicant had earlier been conscripted into the Russian army, based on the Applicant's military booklet, which noted that in 1994 and 1995 he was "fit for service, with restrictions." The RPD did not accept the Applicant's oral evidence that "fit for service, with restrictions" effectively means unfit for service. The RPD also found, again based on the military booklet, that the Applicant's status in 2003 changed to "fit for service" and that this status was reaffirmed in 2006. The RPD observed that service in the Russian military was similar to service in the Israeli military and that conscientious objectors "cannot select which armies they will fight in. It's either one is willing to fight or one is not. Having served in the Russian army negates … [the Applicant's] status as a CO [conscientious objector] in the Israeli armed forces."

[11] The RPD was not persuaded by the Applicant's argument that, in effect, conscientious objector status does not exist in Israel. The RPD listed the exemptions from military service available to males in Israel to refute these submissions. It found that the Applicant had two avenues

open to him if he wanted to avoid service in the Israeli military. He could apply for reduced service, based on time served in the Russian army or apply for conscientious objector status. The RPD acknowledged that successful applications for conscientious objector status are rare but stated that the Applicant was obliged to try to obtain such a status before seeking protection in Canada. Furthermore, because Israel is a democracy, the Applicant has a higher threshold to meet in order to show that the state is unable or unwilling to help him avoid military service and that, therefore, he is a Convention refugee under section 96 of the Act. Because the Applicant made no attempt to pursue either avenue, he could not claim Convention refugee status.

[12] Equally unpersuasive in the RPD's view was the Applicant's assertion that Israeli forces have acted with impunity and therefore are the subject of international condemnation. The RPD did not consider this to be a proper determination for it to make because the Israeli forces were not "on 'trial'" in the hearing. Rather, the question before the RPD was whether or not the Applicant had fulfilled his obligation to seek conscientious objector status in Israel before seeking refuge in Canada.

[13] The RPD also found that the Applicant was not credible. He did not make the required efforts to re-establish himself in Israel, and he did not make serious efforts to re-open his bank account or renew his documents. He did contact an agency that helps Russians in Israel but, upon hearing that it would take him eight months to acquire an identity document, he chose to spend money on an airline ticket out of Israel rather than living on his savings until the required document was issued. The RPD also found that the Applicant withheld information about his response to the

agency official's inquiry into why the Applicant left Israel. He said that he had forgotten the answer provided to the official. From this the RPD drew a negative inference.

[14] The RPD found the Applicant's oral evidence that he had assumed he would still be exempt from service in the Israeli military to be illogical or, at minimum, a wrong assumption.

[15] Finally, the RPD found that the Applicant did not provide oral evidence about how he had obtained the medical document that had allowed him to get a "fit for service, with restrictions" designation in his Russian military booklet. Instead, he said that he could not get a similar exemption in Israel because he had no doctor in Israel who could issue such a letter. The RPD stated that it had "reasons to believe … that more likely than not [the Applicant had] … purchased such a letter" and that the designation was not given as a result of the injuries that the Applicant allegedly had incurred during the 1995 hostage taking. The RPD drew a negative credibility finding from this as well.

[16] Ultimately, the RPD found that the Applicant had failed to establish his status as a conscientious objector, and that he was not truthful, both generally and with respect to material facts. For these reasons, the RPD rejected the Applicant's claim that he is a Convention refugee or a person in need of protection in Israel. This is the Decision under review.

ISSUES

[17] The Applicant states the following issues:

1. Whether the RPD breached the duty of fairness and the principles of natural justice;
2. Whether the RPD's determination that the Applicant was not at risk in Israel was based on contradictory findings, erroneous findings of fact and findings unsupported by the evidence;
3. Whether the RPD erred in finding that the Applicant was not credible.

STATUTORY PROVISIONS

[18] The following provisions of the Act are applicable in these proceedings:

Convention refugee	**Définition de « réfugié »**
96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,	**96.** A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
(*a*) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of	*a*) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces

each of those countries; or

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

pays;

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

Person in need of protection

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

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

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

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

Personne à protéger

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

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

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

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) elle y est exposée en tout lieu de ce pays alors que d’autres personnes originaires de ce pays ou qui s’y trouvent ne le sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
Person in need of protection	**Personne à protéger**
(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.	(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

STANDARD OF REVIEW

[19] The Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to the particular question before the court is well-settled by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis.

[20] The Applicant has brought an issue before the Court concerning the RPD's treatment of the evidence before it. In considering whether the RPD ignored certain evidence, incorrectly dismissed the probative value of certain documents or misunderstood the evidence, the appropriate standard is one of reasonableness. See *Dunsmuir*, above, at paragraphs 51 and 53.

[21] The RPD's decision is based, in part, on its assessment of the Applicant's credibility. The determination of credibility is within the expertise of the RPD. For this reason, credibility findings attract a standard of reasonableness on review. See *Aguirre v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 571, [2008] F.C.J. No. 732 at paragraph 14.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at paragraph 47. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[23] The Applicant also raises issues of procedural fairness and natural justice. These are reviewed on a standard of correctness. See *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1.

ARGUMENTS

The Applicant

RPD Breached the Duty of Fairness and the Principles of Natural Justice

[24] The Applicant argues that the RPD did not render a proper Decision with regard to the evidence.

[25] The Applicant has alleged a well-founded fear of persecution in both Israel and Russia. Paragraph 5 of the Decision states that, with respect to the claim against Russia, the Applicant is neither a Convention refugee nor a person in need of protection and that reasons for this finding are forthcoming. However, the RPD never undertakes an analysis of the Russian claim. In paragraphs 1 and 21 of the Decision, the RPD says that it will address only the Israeli claim. Given the statement in paragraph 5, this is an internal contradiction, and one that is not explained by the RPD.

[26] The Applicant also argues that the RPD's finding that he served in the Russian military is unsupported by the evidence. The Applicant repeatedly denied that he served in the Russian military. He explained that the designation in his military booklet—"fit for service, with restrictions"—was commonly understood to mean that such a person will not serve, which is why the Applicant described himself as "unfit for service." During a hearing recess, research conducted on the Russian military regulations confirmed the Applicant's testimony that he had a medical restriction, and this information was presented to the RPD. Indeed, the RPD later confirmed at the hearing that it had accepted the evidence that the Applicant was able to defer military service for

medical reasons. That this same evidence was contradicted in the Decision is unfair to the Applicant.

[27] In addition, the Applicant advised the RPD at the hearing that pages were missing from the version of his military booklet that had been entered into evidence. He also stated his belief that information relevant to his military service could be on those missing pages. Counsel asked the RPD to obtain the pages if the Applicant's service in the military was still an issue. The RPD responded that it was on notice. Further, the Applicant argues that the notations that did appear in the military booklet were insufficient to prove that he had performed military service. They showed only that he had been examined and the result of the examination. They include no places nor dates of service. The RPD's finding that the Applicant had served in the Russian military was central to its determination of his claim. The Applicant argues that the RPD acted in a perverse and capricious manner when it made this finding without regard to the missing pages and that the RPD's failure to obtain the pages was a breach of the duty of fairness and of natural justice.

[28] The Applicant further argues that the RPD relied upon a document that was not in evidence. The RPD cites Response to Information Request ISR36779, 17 April 2001, at paragraph 15 of the Decision, but the Applicant argues that this document was not part of the National Documentation Package, and the RPD does not indicate where it obtained this document. During the hearing, the RPD made reference to another document that was not in evidence and subsequently agreed that documentation not properly before the RPD could not be relied upon if not disclosed to the

Applicant. The Applicant submits that the RPD erred in relying upon Response to Information Request ISR36779.

[29] Mr. Justice Le Dain of the Supreme Court of Canada in *Cardinal v. Kent Institution*, [1995] 2 S.C.R. 643 stated as follows:

> [D]enial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[30] The Applicant argues that the breach of procedural fairness and the breach of natural justice are sufficient to allow this application for judicial review, but there are other errors in the Decision as well.

RPD Erred in Dealing with the Evidence

[31] The RPD found that the Applicant had provided no evidence to suggest that he was a conscientious objector based on his religious beliefs and, consequently, that ground was not open to him. However, the Applicant points out instances where he did offer such evidence. At paragraph 23 of his Personal Information narrative, he stated: “I am morally opposed to serving in the military, no matter where the action might be.” Also, in his oral evidence at the hearing, the Applicant stated:

"I cannot carry arms and kill." He also reported that when he was employed as a security guard he refused to carry a weapon and was paired with another guard who did carry one. The Applicant's sworn evidence is presumed to be true unless there is a valid reason to doubt its truthfulness. See *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.). Regardless of this evidence, the RPD at no time questioned the Applicant about his religious or moral beliefs.

[32] The RPD also committed a reviewable error in dismissing the Applicant's argument that his claim as a conscientious objector is justified under section 96 of the Act because Israel's military actions have been "judged by the international community to be contrary to the basic rules of conduct." See *Zolfagharkhani v. Canada (Minister of Employment and Immigration)*, [1993] 3 F.C. 540 (C.A.) (*Zolfagharkhani*) at paragraph 30. There was evidence before the RPD that the 2009 World Reports for both Amnesty International and Human Rights Watch observe that Israeli forces have committed unlawful killings with impunity. In *Ciric v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1277 (T.D.) at paragraph 22, Justice Bud Cullen of this Court held that observations by credible non-governmental organizations, such as Amnesty International, constitute international condemnation. The RPD had a duty to consider this evidence.

[33] The Applicant argues that the RPD's statement that "either one is willing to fight or one is not" is contrary to the principles set out in *Zolfagharkhani*, above, which recognizes that one can justifiably agree to fight in some wars but not others.

[34] The Applicant also comments that paragraph 15 of the Decision suggests that Israel has a law that provides for conscientious objection, but it does not cite this law. The Applicant submits that there is no such written law; rather there is a policy.

[35] The Applicant objects to the RPD's finding that he failed to avail himself of the two avenues that were open to him. The RPD found that the Applicant could have applied for reduced service based on his service in a foreign army. However, the Applicant's evidence was that he had never served in the Russian army, which this makes the option a "false" one. With respect to the other option—applying for conscientious objector status—the Applicant argues that such exemptions are so rare that it is more likely than not that the Israeli forces would reject his application.

RPD's Credibility Findings Were Unjustified

[36] The Applicant also argues that the RPD's negative credibility findings are unjustified. With respect to the doctor's letter that the Applicant obtained in Russia to secure a deferral of military service, the Applicant admitted at the hearing that he paid a doctor to provide such a letter. He did not deny it and he did not say, as the RPD indicates, that his deferrals were based on injuries he received when he was a hostage.

[37] Also, the Applicant argues that he was not withholding information from the RPD regarding the answer he had provided to the Israeli official when asked why he left Russia; he simply forgot what his response was at the time and he was upset.

[38] Finally, the RPD's finding that the Applicant could have stayed in Israel and waited the eight months for his identity document is flawed. Among other things, it assumes that the Applicant had savings on which he could live, but the Applicant's oral evidence indicates that he had to borrow money for his plane ticket to Germany; it did not come from his savings. Most importantly, however, it ignores the fact that the Applicant left Israel because he was afraid he would be conscripted.

The Respondent

[39] In written argument, the Respondent submits that the Applicant was unable to establish that he was a conscientious objector, first and foremost, because he had previously served in the Russian army. See *Popov*, above, at paragraph 7.

[40] In addition, he had failed to seek out conscientious objector status or a reduced service in the Israeli military based upon his previous service in the Russian army, both of which were protections available to him in Israel. The onus was on the Applicant to adduce "relevant, reliable and convincing evidence which satisfies the trier of fact on a balance of probabilities that the state protection is inadequate." See *Flores Carrillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, at paragraph 30. International protection is a surrogate, "coming into play where no alternative remains to the claimant." See *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 726.

[41] As the Decision states, the laws governing compulsory military service and punishment for evasion of service are laws of general application, which are presumed to be valid and neutral. The onus was on the Applicant to show that the law in question is persecutory in relation to one of the five Convention refugee grounds set out in section 96 of the Act. See *Zolfagharkhani*, above, at paragraphs 18-22.

[42] The Applicant has a "heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status" because Israel is a democratic country. See *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, at paragraphs 56-57.

[43] Finally, the Respondent argues that the RPD's credibility findings, as enumerated in the Decision above, were open to the Board on the evidence. Such findings "are at the heart of the specialised jurisdiction of the Board as the trier of fact." See *Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.).

[44] The Applicant's failure to avail himself of the above-mentioned options supports the RPD's finding that he did not have a well-founded fear of persecution. It is impossible to speculate, as the Applicant has done, whether or not the Israeli military would have granted him conscientious objector status, given that the Applicant made no claim and simply left the country. See *Popov*, above, at paragraph 8.

ANALYSIS

[45] In oral argument, the Respondent conceded that the RPD made a reviewable error of fact in concluding that the Applicant had served in the military in Russia. The Respondent says, however, that the Decision is still defensible on the basis of the RPD's finding that the Applicant made no attempt to seek protection in Israel, which is a democratic state and where there were alternative approaches available to him that did not involve service in the Israeli army.

[46] It seems to me, however, that this aspect of the Decision contains two substantial reviewable errors.

[47] The first error is the RPD's citing and relying upon document ISR36779 for a list of options available to the Applicant in Israel. The extent of the RPD's reliance upon this document is not clear from the reasons, but it was not part of the evidence before the RPD and has never been made available to the Applicant. Hence, the Applicant was given no opportunity to address at least one of the sources for the RPD's finding on options available to him in Israel, which has now become the central focus of this application. It is unclear what was in this document, but its date of 2001 means that whatever it has to say on point may well have been superseded by other evidence before the RPD which is dated 2003 and later.

[48] Hence, I have to agree with the Applicant that this breach of procedural fairness is highly material to the issue now before me and that the Decision would have to be returned for

reconsideration on this basis alone. This is not a situation where the Court can say that if the Applicant had been given the opportunity to respond to the extrinsic evidence in question it would not have impacted the final decision. Nor is it a situation where it can be said that the RPD used a country condition document from public sources that was available to the Applicant. See *Mark v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 364 at paragraphs 11-18.

[49] The second reviewable error results from the RPD's failure to mention and deal with the documentation on the record which says that conscientious objector status is not available to males in Israel. There is a Conscientious Objector Committee in Israel, but there is no public knowledge of how it proceeds, or how to access it. There are no recognized standards of due process applicable to what the Committee does, there is no right of appeal from any of its decisions, and there is evidence that men who express an interest in conscientious objector status are not even referred to the Committee.

[50] This is very different from the situation in the U.S. that was described by the Federal Court of Appeal in *Hinzman*, above, where it was possible to analyse the protections and safeguards available to those who wished to claim conscientious objector status. It appears from the evidence that there is no law allowing for conscientious objector status in Israel and the so-called Conscientious Objector Committee is haphazard, secretive and difficult to access. I do not think that this kind of vague and arbitrary scheme can really be called an "option" for anyone, including the Applicant. The Applicant testified that he told an Israeli official that he did not want to serve in the army and that the official just laughed at him. No one referred him to any kind of alternative

scheme. This account would seem to accord with the evidence that was before the RPD to the effect that males in Israel are not afforded a right to conscientious objector status. All of this is ignored by the RPD, which makes vague reference to options without saying what could possibly be available to someone in the Applicant's position. Reduced service, even if it were available to the Applicant, is still service in the military, and the RPD had specifically rejected any kind of medical exemption available to him.

[51] In other words, the whole notion of there being a way out for the Applicant through some available option that he failed to apply for was, on this evidence, entirely illusory.

[52] In considering whether the Applicant should have sought state protection in Israel before coming to Canada, the RPD both relied upon documentation that was not in evidence and not revealed to the Applicant and totally ignored the evidence before it concerning the realities of the so-called Conscientious Objector Committee and the lack of options for someone in the Applicant's position. In my view, these are reviewable errors that cannot be overlooked and the Decision must be returned for reconsideration.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that

1. The application is allowed. The Decision is quashed and the matter is referred back for reconsideration by a differently constituted RPD.
2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	IMM-688-10
STYLE OF CAUSE:	**ANDREI KIRICHENKO**
	Applicant
	- and -
	MINISTER OF CITIZENSHIP AND IMMIGRATION
	Respondent
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 28, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	HON. MR. JUSTICE RUSSELL
DATED:	January 6, 2011

APPEARANCES:

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