**Date: 20050719**

**Docket: IMM-3443-05**

**Citation: 2005 FC 1000**

**PRESENT: MADAM JUSTICE DANIÈLE TREMBLAY-LAMER**

**BETWEEN:**

**MINISTER OF PUBLIC SAFETY AND**

**EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**PARGAT SINGH KAHLON**

**Respondent**

## REASONS FOR ORDER AND ORDER

[1] This is an application for judicial review under section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the "Act") of a decision of the Refugee Protection Division of the Immigration and Refugee Board (the "RPD"), dated June 3, 2005, in which the RPD denied the applicant's motion to quash a summons.

## FACTUAL BACKGROUND

[2] The respondent, Pargat Singh Kahlon, successfully obtained protected person status as a Convention refugee. Essentially, he claimed that his daughter, Pawen Kaur Kahlon, was suspected of being acquainted with a Sikh militant, Manjit Singh.

[3] The claim of the respondent's daughter, even though she was the very subject of the suspicion, was not equally successful. The RPD found that she had failed to present credible evidence of her relationship with Manjit Singh. This Court denied her application for judicial review.

[4] Subsequently, Mrs. Kahlon filed various applications to reside permanently in Canada: a post-determination refugee claimants in Canada ("PDRCC") application (now a pre-removal risk assessment); a first application for a visa exemption (which was denied in April 2001); an application for landing sponsored by her sister; a second application for a visa exemption sponsored by her second husband (which was granted); and, an application for landing after the visa

exemption had been granted. Mrs. Kahlon did not attempt to be sponsored by her former husband, whom she divorced in 2000.

[5] The officer who granted the exemption had concerns about the credibility of the allegations of risk that Mrs. Kahlon made. When confronted with these concerns in an interview on March 28, 2003, Mrs. Kahlon admitted that she did not come to Canada by crossing the border, that she did not know Manjit Singh and that the allegations she presented were invented by her former husband with whom she came to Canada with in 1997 to support her refugee claim.

[6] These admissions were communicated to the Department of Citizenship and Immigration's office in Montreal. Eventually, an application to vacate based on Mrs. Kahlon's admissions was brought against the respondent. Four exhibits were filed in support of the application, including the March 28, 2003 interview notes and the decision granting the visa exemption application.

[7] In the course of preliminary proceedings, the RPD issued a summons ordering Mr. Éric Caron to appear and bring with him the immigration file concerning Mrs. Kahlon. The applicant objected to the summons and brought a motion to cancel it pursuant to rule 40 of the *Refugee Protection Division Rules*, SOR/2002-228 (the "Rules"). The RPD denied this motion and ordered that "counsel [for the respondent] is entitled to consult the documents pertaining to witness Pawen Kaur in order to be able to prepare and present a full response to the testimony she can be expected to give".

[8] The applicant submits that the RPD exceeded its power to compel evidence by ordering the summons at issue and, in turn, denying its motion to quash it. Instead, the RPD must strike a balance between the respondent's need to defend himself and the confidentiality of the Minister's file. The summons ordering the production of documents concerning his witness should be as detailed as possible. The documents, if their relevance is contested, should be inspected by the RPD first, unless they are clearly irrelevant.

[9] The respondent maintains that the decision of the RPD should not be interfered with. The criterion of "necessity" was not improperly applied in light of the particular facts of the case, the public interest in confidentiality will not be prejudiced, and the respondent's right to a "full and proper hearing" must be accorded a preceding importance.

## ANALYSIS

### *1. Whether the application is premature*

[10] Interlocutory rulings are not ordinarily open to judicial review. The Federal Court of Appeal as well as this Court has clearly explained this principle and its supporting rationale time and again. In *Zündel v. Canada(Human Rights Commission)*, [2000] 4 F.C. 255 at para. 10 (C.A.), Sexton J.A. stated:

> [...] As a general rule, absent jurisdictional issues, rulings made during the course of a tribunal's proceeding should not be challenged until the tribunal's

> proceedings have been completed. The rationale for this rule is that such applications for judicial review may ultimately be totally unnecessary: a complaining party may be successful in the end result, making the applications for judicial review of no value. Also, the unnecessary delays and expenses associated with such appeals can bring the administration of justice into disrepute. [...] [emphasis added]

[11] In *Szczecka v. Canada(Minister of Employment and Immigration)* (1993), 116 D.L.R. (4th) 333 at 335 (F.C.A.), which Sexton J.A. quoted with approval in *Zündel, supra*, Létourneau J.A. expressed the general rule in these terms:

> ... unless there are special circumstances there should not be any appeal or immediate judicial review of an interlocutory judgment. Similarly, there will not be any basis for judicial review, especially immediate review, when at the end of the proceedings some other appropriate remedy exists. These rules have been applied in several court decisions specifically in order to avoid breaking up cases and the resulting delays and expenses which interfere with the sound administration of justice and ultimately bring it into disrepute. [emphasis added] [references omitted]

[12] Special circumstances where, for example, the tribunal's very jurisdiction is at issue or where the impugned decision is "finally dispositive" of a substantive right of a party[1] are necessary to justify judicial review of an interlocutory decision. Otherwise, an application to quash or vary an interlocutory decision will be considered premature.

[13] Focusing more on the specific circumstances of the present application, evidentiary rulings made in the course of a tribunal's proceedings do not typically fall into this limited exception to the general rule against judicial review of interlocutory decisions. Indeed, the Federal Court of Appeal has expressly held that "... [r]ulings made by a Tribunal panel on the admissibility or compellability of evidence should not be the subject of such applications until the panel's proceedings are completed. [...]": *Bell Canadav. Canadian Telephone Employees Assn.* (2001), 270 N.R. 399 at para. 5 (F.C.A.). And this Court has also ruled that applications contesting interlocutory tribunal decisions regarding a summons and the production of documents were premature (see *Cannon v. Canada(Assistant Commissioner, RCMP)*, [1998] 2 F.C. 104 (T.D.); *Temahagali v. Canada(Minister of Citizenship and Immigration)* (2000), 198 F.T.R. 127 (F.C.T.D.)).

[14] In my opinion, the determinative factor is not, as the applicant suggests, that the summons requires "immediate compliance", but rather that once the summons is performed, any damage that is done cannot be "corrected", as the Federal Court of Appeal underscored in *Canadian Pacific Air Lines Ltd. v. C.A.L.P.A.*, [1988] 2 F.C. 493 (C.A.). That is precisely why, in my view, the present circumstances are distinguishable from the decisions noted in the preceding paragraph.

[15] It is plain that the respondent's daughter, the witness whose immigration file is at issue, has a privacy interest in the personal information contained therein. The applicant, moreover, pursuant to the *Privacy Act*, R.S.C. 1985, c. P-21, section 8, has an obligation to ensure that confidential personal information is not disclosed

unless in accordance with the legislation.[2] Thus, if disclosure is allowed to occur, the privacy interest sought to be protected by the *Privacy Act* will be completely lost, which no subsequent remedy can undo.

[16] The issuance of the summons and the RPD's decision denying the applicant's motion to quash it will, in other words, be "finally dispositive" of the witness's privacy right. For this reason, I am satisfied that the present application is not premature.

***2. The standard of review***

[17] To determine the applicable standard of review, four contextual, potentially overlapping factors, which generally comprise the "pragmatic and functional approach" merit attention: (1) the presence or absence of a privative clause or statutory right of appeal; (2) the expertise of the tribunal relative to that of the reviewing court on the issue in question; (3) the purposes of the legislation and the provision in particular; and (4) the nature of the question -- law, fact, or mixed law and fact (*Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226).

[18] The applicant, though careful to consider all the factors envisioned by the pragmatic and functional approach, relies on the Supreme Court of Canada's judgment in *Syndicat des employés de production du Québec v. CLRB*, [1984] 2 S.C.R. 412 at p. 438, to support his contention that correctness applies, where the Court stated that it is "generally true, ... for errors relating to the executory, if not declaratory, powers which the Board exercises during a hearing, like that of questioning witnesses, requiring the production of documents" are jurisdictional in nature.

[19] However, it is important to note that this decision preceded the majority of the jurisprudence developing the pragmatic and functional approach. As such, the Court had to classify an error as jurisdictional as opposed to a "mere error of law" in order for judicial review to be granted. Thus, while the power to compel evidence may be fundamental to the RPD's functioning, the nature of the question must still be characterized and considered together with the other factors of the pragmatic and functional approach to arrive at the applicable standard of review.

[20] Turning to the application of those factors then, decisions rendered by the RPD are not protected by a strong privative clause. While it has "sole and exclusive jurisdiction to hear and determine all questions of law and fact, including questions of jurisdiction" (subsection 162(1) of the Act), judicial review is allowed provided leave is obtained (subsection 72(1) of the Act). Thus, the first factor of the pragmatic and functional approach does not command great deference.

[21] To assess relative expertise, the legislative scheme and the nature of the question - the remaining factors - it is helpful to set out the statutory provisions that define the RPD's power to compel evidence. Section 165 of the Act, section 4 of the *Inquiries Act*, R.S.C. 1985, c. I-11, as well as subsection 39(2) of the Rules, are all relevant in this regard; together, they read:

**165.** The Refugee Protection**165.** La Section de la protection

Division and the Immigrationdes réfugiés et la Section de
Division and each member ofl'immigration et chacun de ses
those Divisions have the powerscommissaires sont investis des
and authority of a commissionerpouvoirs d'un commissaire
appointed under Part I of thenommé aux termes de la partie I
*Inquiries Act* and may do anyde la *Loi sur les enquêtes* et
other thing they considerpeuvent prendre les mesures que
necessary to provide a full andceux-ci jugent utiles à la
proper hearing. procédure.

**4.** The commissioners have the **4.** Les commissaires ont le
power of summoning before thempouvoir d'assigner devant eux
any witnesses, and of requiringdes témoins et de leur enjoindre
them to de :

[...] [...]

(b) produce such documents and *b*) produire les documents et
things as the commissionersautres pièces qu'ils jugent
deem requisite to the fullnécessaires en vue de procéder
investigation of the matters intod'une manière approfondie à
which they are appointed tol'enquête dont ils sont chargés.
examine.

**39.** [...]

**39.** [...]

(2) Pour décider si elle délivre
(2) In deciding whether to issue aune citation à comparaître, la
summons, the Division mustSection prend en considération
consider any relevant factors,tout élément pertinent. Elle
including: examine notamment :

(a) the necessity of the testimony *a*) la nécessité du témoignage
to a full and proper hearing; pour l'instruction approfondie de
l'affaire;

[...]

[...]

[22] Furthermore, it is important to keep in mind the nature of the hearing for which the summons was issued by the RPD, namely, an application to vacate, which section 109 of the Act pertains to:

**109.** (1) The Refugee Protection **109.** (1) La Section de la
Division may, on application byprotection des réfugiés peut, sur
the Minister, vacate a decision todemande du ministre, annuler la
allow a claim for refugeedécision ayant accueilli la
protection, if it finds that thedemande d'asile résultant,
decision was obtained as a resultdirectement ou indirectement, de
of directly or indirectlyprésentations erronées sur un fait
misrepresenting or withholdingimportant quant à un objet
material facts relating to apertinent, ou de réticence sur ce

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| relevant matter. | fait. |
| (2) The Refugee Protection Division may reject the application if it is satisfied that other sufficient evidence was considered at the time of the first determination to justify refugee protection. | (2) Elle peut rejeter la demande si elle estime qu'il reste suffisamment d'éléments de preuve, parmi ceux pris en compte lors de la décision initiale, pour justifier l'asile. |
| (3) If the application is allowed, the claim of the person is deemed to be rejected and the decision that led to the conferral of refugee protection is nullified. | (3) La décision portant annulation est assimilée au rejet de la demande d'asile, la décision initiale étant dès lors nulle. |

[23] On the one hand, the above statutory provisions favour considerable curial deference. An application to vacate is essentially fact-driven and therefore engages the RPD's relative expertise. The RPD must ask and decide whether the protected person made a material misrepresentation or not based on the evidence.

[24] Equally, the above legislative scheme grants to the RPD a substantial amount of discretion to do what it deems to be required in order to enable a "full and proper hearing". In addition to the power to compel evidence by summoning witnesses or ordering the production of documents, the RPD "may do any other thing they consider necessary". The RPD is, in short, "master of its own procedure" (see for *e.g., Sutton v. Canada(Employment and Immigration Commission)* (1994), 74 F.T.R. 284 (F.C.T.D.)).

[25] On the other hand, being master of its own procedure does not exempt the RPD from limitations imposed by law. The power to compel evidence is limited to what is necessary for a full and proper hearing. Though predicated on the factual circumstances of each case, this requirement clearly touches upon a hallmark legal concept - the concept of relevance - which the RPD has no special expertise to determine. There exists, as explained below, other potential constraints such as the *Privacy Act* upon what evidence may be disclosed, which must be balanced against the need for a full and proper hearing. Therefore, in my view, the nature of the question of whether to issue a summons, and the scope thereof, is a question of mixed law and fact.

[26] Taking these considerations as a whole, I think reasonableness *simpliciter* is the most appropriate standard of review. For judicial review to follow, the impugned decision must not be able to withstand a "somewhat probing" examination as the Supreme Court of Canada recently explained in *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247:

> 55 A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they

> can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere. This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling. [references omitted]

***3. The reasonableness of the decision***

[27] I find that the RPD's decision to issue the summons in the fashion that it did, and its explanation for doing so, to be unreasonable for three interrelated reasons.

[28] First, the scope of the RPD's power to compel evidence must be understood in a contextual manner (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27). The RPD is not licensed to engage in an unrestricted search for truth. Rather, its power to compel evidence is limited by rule 39(2) of the Rules and subsection 4(b) of the *Inquiries Act*, under which the RPD can only compel evidence that it judges "necessary" or "requisite" to ensure a full and proper hearing. By virtue of wording of the *Inquiries Act*, moreover, the necessity of the evidence is tied directly to the scope of the hearing in question.[3] And in the context of an application to vacate, the RPD is concerned with determining whether the protected person, indirectly or directly, made a material misrepresentation (see section 109 of the Act).

[29] The reasons provided by the RPD for issuing the summons in question are, in their entirety, as follows:

> In accordance with the principles of natural justice, the tribunal considers that counsel is entitled to consult the documents pertaining to witness Pawen Kaur in order to be able to prepare and present a full response to the testimony she can be expected to give.
>
> The tribunal comes to this conclusion because of the very particular circumstances of this case, where the Minister's only witness is the daughter of the respondent. Her immigration status is linked to the central elements of her testimony. The immigration file could be critically relevant evidence for the respondent.
>
> The tribunal considers that counsel's reasons for requesting the summons establish the necessity of the evidence for a full and proper hearing.

[30] In a letter dated June 2, 2005, the respondent's counsel sought "to have access to the file, and this in a complete a fashion as possible, in order to question Mrs. Kaur on the events that she has mentioned." Counsel, in essence, reasoned that, "[s]ince her credibility is at the heart of the immigration case, all of her previous declarations and statements to Immigration or other authorities should be examined carefully."

[31] Despite wording its reasons to this effect, it is apparent that the RPD did not meaningfully attempt to assess the potential relevance (or necessity) of the various documents vis-à-vis its inquiry, *i.e.* whether the respondent made a material misrepresentation. The applicant provided a list of all the material contained in the

witness's file in support of its motion to quash the summons, some of which contains personal information about the respondent's daughter such as her address, employment, statements of earning, and medical certificates that appears plainly irrelevant to the inquiry. Yet the RPD ordered production of the file as a whole.

[32] The application to vacate stems from certain declarations made by the respondent's daughter to immigration officials about her (nonexistent) relationship with a Sikh militant. Therefore, only those documents in her immigration file that contain information or past declarations that relate to the same subject matter (or any related factual circumstance with respect to which the respondent may have made an inconsistent statement in the course of obtaining refugee protection) are clearly necessary to determine whether the respondent made a material misrepresentation.

[33] The second reason why the RPD's decision to deny the applicant's motion to quash was unreasonable concerns its failure to consider the privacy interests put in jeopardy by the summons it issued.

[34] The interest in ensuring a "full and proper hearing" - procedural fairness or natural justice - does not stand alone; it must rather be weighed against competing interests (*Ruby v. Canada(Solicitor General)*, [2002] 4 S.C.R. 3). The right of the respondent to respond fully to the case against him in the context of his application to vacate, in other words, must be weighed against competing interests, most notably, the witness's privacy.

[35] The respondent's daughter's file clearly contains a great deal of personal information as defined by the *Privacy Act*. This legislation, as a rule, requires non-disclosure of personal information:

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| **8.** (1) Personal information under the control of a government institution shall not, without the consent of the individual whom it relates, be disclosed by the institution except in accordance with this section. | **8.** (1) Les renseignements personnels qui relèvent d'une institution fédérale ne peuvent être communiqués, à défaut du consentement de l'individu qu'ils concernent, que conformément au présent article. |

[36] The Supreme Court of Canada has held that the *Privacy Act* has quasi-constitutional status, emphasizing the obligation of government institutions to protect personal information (*Lavigne v. Canada(Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773). Thus, although the *Privacy Act* allows for disclosure of personal information pursuant to an order issued by a Court or other body such as the RPD (see paragraph 8(2)(c)), this exemption should not be liberally construed. Rather, personal information, which has no apparent relevance to the issues underlying the application to vacate, ought not to be readily disclosed.

[37] The RPD should consider alternatives to full disclosure in order to strike a balance between the need for disclosure and the right to privacy. Where competing interests are at play, an "all-or-nothing approach" is simply not appropriate. In this vein, I find the Supreme Court of Canada's comments in *A.M. v. Ryan*, [1997] 1 S.C.R. 157 at paras. 33-34 instructive:

> It follows that if the court considering a claim for privilege determines that a particular document or class of documents must be produced to get at the truth and prevent an unjust verdict, it must permit production to the extent required to avoid that result. On the other hand, the need to get at the truth and avoid injustice does not automatically negate the possibility of protection from full disclosure. In some cases, the court may well decide that the truth permits of nothing less than full production. This said, I would venture to say that an order for partial privilege will more often be appropriate in civil cases where, as here, the privacy interest is compelling. Disclosure of a limited number of documents, editing by the court to remove non-essential material, and the imposition of conditions on who may see and copy the documents are techniques which may be used to ensure the highest degree of confidentiality and the least damage to the protected relationship, while guarding against the injustice of cloaking the truth.
>
> In taking this approach, I respectfully decline to follow the all-or-nothing approach adopted by the majority of the Supreme Court of the United States of endorsing an absolute privilege for all psychotherapeutic records in *Jaffee v. Redmond*, *supra*. The Court of Appeals in the judgment there appealed from, 51 F.3d 1346 (1995), had held that the privilege could be denied if "in the interests of justice, the evidentiary need for the disclosure of the contents of a patient's counseling sessions outweighs that patient's privacy interests" (p. 1357). The majority in the Supreme Court, *per* Stevens J., rejected that approach, stating that to make confidentiality depend upon a trial judge's later evaluation of the relative importance of the patient's interest in privacy and the evidentiary need for disclosure would be "little better than no privilege at all" (p. 1932).

[38] Yet the RPD effectively adopted an "all-or-nothing approach" here. The reasons presented in support of its decision are devoid of any privacy considerations, thus divesting, in my view, the applicant of its obligations pursuant to subsection 8(1) of the *Privacy Act*.

[39] Thirdly, the way in which the summons was framed is problematic in my opinion.

[40] To reiterate, a summons or "subpoena must only be as broad as necessary for the purpose of the inquiry in progress": *Thomson Newspapers Ltd. v. Canada(Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425 at 532. The RPD contravened this basic proposition by ordering production of the file as a whole.

[41] Instead, a summons must be "sufficiently specific" such that the witness is able to know what is needed before appearing to testify - a summons cannot amount to a fishing expedition or a "demand to make a discovery of documents" (see *Dalgleish v. Basu*, [1974] S.J. No. 245 (Q.B.)(QL); *Wal-Mart Canada Corp. v. Saskatchewan (Labour Relations Board)* (2004), 257 Sask. R. 12 (C.A.)).

[42] Yet that is precisely what the RPD ordered in this instance. The RPD has no power to compel evidence prior to or outside a formal hearing.[4] However, by

ordering that the respondent's counsel "is entitled to consult the documents...in order to be able prepare and present a full response", the RPD ordered that the evidence be filed and served prior to the hearing, a discovery in effect.

[43] In my view, in the case of compelled evidence where "necessity" is in dispute, the RPD should inspect the documents itself first and then allow the respondent to examine only those documents that are found to be relevant to the application to vacate. As the Saskatchewan Court of Appeal stressed in *Wal-Mart, ibid.*:

> 49 [...] the proper procedure when there is a requirement to produce documents, whether by subpoena or otherwise, and there is a genuine dispute as to their relevance or as to whether they are privileged, is to have the documents produced, so that the tribunal charged with determining their relevance will have them available for examination. This is the procedure the Board intended to follow. If any of the documents then turned out to be irrelevant, the privacy interest of the owner would be protected as the documents would not then be provided to the party making the demand, that is, there is no disclosure of the document to the Union. [emphasis added]

[44] That was not done here, thus the RPD improperly exercised its powers to compel evidence.

[45] Finally, I note that the RPD did not follow its own procedural Rules in this case: the respondent's response was filed (but not served) within the seven-day period required by rule 45, and the RPD issued its decision the next day without providing the applicant with an opportunity to reply, which pursuant to rule 46, it is entitled to do. The relevant portions of rules 45 and 46 read:

| | |
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| **45.** (3) A party who responds to a written application must provide | **45.** (3) La partie transmet : |
| (*a*) to the other party, a copy of the response and any affidavit or statutory declaration; and | *a*) à l'autre partie, une copie de la réponse et, selon le cas, de l'affidavit ou de la déclaration solennelle; |
| (*b*) to the Division, the original response and any affidavit or statutory declaration, together with a written statement of how and when the party provided the copy to the other party. | *b*) à la Section, l'original de la réponse et, selon le cas, de l'affidavit ou de la déclaration solennelle, ainsi qu'une déclaration écrite indiquant à quel moment et de quelle façon une copie de ces documents a été transmise à l'autre partie. |
| (4) Documents provided under this rule must be received by their recipients no later than seven days after the party received the copy of the | (4) Les documents transmis selon la présente règle doivent être reçus par leurs destinataires au plus tard sept jours suivant la réception de la copie de la |

application.

demande par la partie.

**46.** (1) A reply to a written response must be in writing.

**46.** (1) La réplique à une réponse écrite se fait par écrit.

(2) Any evidence that the party wants the Division to consider with the written reply must be given in an affidavit or statutory declaration together with the reply. Unless the Division requires it, an affidavit or statutory declaration is not required if the party was not required to give evidence in an affidavit or statutory declaration with the application.

(2) La partie énonce dans un affidavit ou une déclaration solennelle qu'elle joint à sa réplique écrite tout élément de preuve qu'elle veut soumettre à l'examen de la Section. À moins que la Section l'exige, il n'est pas nécessaire d'y joindre d'affidavit ou de déclaration solennelle dans le cas où la partie n'était pas tenue d'y joindre un tel document.

(3) A party who replies to a written response must provide

(*a*) to the other party, a copy of the reply and any affidavit or statutory declaration; and

(*b*) to the Division, the original reply and any affidavit or statutory declaration, together with a written statement of how and when the party provided the copy to the other party.

(4) Documents provided under this rule must be received by their recipients no later than five days after the party received the copy of the response.

(3) La partie transmet :

*a*) à l'autre partie, une copie de la réplique et, selon le cas, de l'affidavit ou de la déclaration solennelle;

*b*) à la Section, l'original de la réplique et, selon le cas, de l'affidavit ou de la déclaration solennelle, ainsi qu'une déclaration écrite indiquant à quel moment et de quelle façon une copie de ces documents a été transmise à l'autre partie.

(4) Les documents transmis selon la présente règle doivent être reçus par leurs destinataires au plus tard cinq jours suivant la réception de la copie de la réponse par la partie.

[46] In my opinion, this amounts to a denial of procedural fairness. The procedure provided by the Rules must be adhered to when this matter will be redetermined by a new panel.

**CONCLUSION**

[47] For these reasons, this application for judicial review is allowed. The RPD's decision is quashed and the matter is referred back for re-determination by a differently constituted panel in a manner consistent with these reasons. More

particularly, the RPD shall review the list of documents contained in the witness's immigration file and order production of only those documents that appear to contain information relating to the material misrepresentation which the respondent is alleged to have made. If the RPD is unable to assess whether a particular document may contain relevant information, it shall inspect the document first and then decide whether to order production.

**ORDER**

**THIS COURT ORDERS that**

[1] The application for judicial review is allowed.

[2] The RPD's decision is quashed.

[3] The matter is referred back for re-determination by a differently constituted panel in a manner consistent with these reasons. More particularly, the RPD shall review the list of documents contained in the witness's immigration file and order production of only those documents that appear to contain information relating to the material misrepresentation which the respondent is alleged to have made. If the RPD is unable to assess whether a particular document may contain relevant information, it shall inspect the document first and then decide whether to order production.

"Danièle Tremblay-Lamer"

JUDGE

[1] See *Bell Canada v. Canadian Telephone Employees Assn.*, (2000) 188 F.T.R. 85 (F.C.T.D.); and also *Canada(Canadian Human Rights Commission) v. Canada 3000 Airlines Ltd. (re Nijjar)*, [1999] F.C.J. No. 725 at para. 15 (F.C.T.D.), per Sharlow J. (as she then was) citing *Canada v. Schnurer Estate*, [1997] 2 F.C. 545 (C.A.).

[2] While it is true that provision contemplates disclosure "for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information" (*Privacy Act*, paragraph 8(2)(c)), I will put aside this exception for the time being for the purpose of resolving this preliminary issue.

[3] The term "necessary" has not been defined in the immigration context, however, I am satisfied that its meaning is equivalent to the notion of relevance, at least insofar as rule 39(2) is concerned.

[4] Ordinarily, the only obligation the Minister is subjected to is to serve and file his exhibits no later than 20 days prior to the hearing (see rule 29), provided they are relevant.

**FEDERAL COURT**

**NAME OF COUNSEL AND SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-3443-05 |
| **STYLE OF CAUSE:** | MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| | and |
| | PARGAT SINGH KAHLON |
| **PLACE OF HEARING:** | Montreal, Quebec |
| **DATE OF HEARING:** | July 12, 2005 |
| REASONS FOR ORDER | |
| **AND ORDER:** | TREMBLAY-LAMER J. |
| **DATED:** | July 18, 2005 |

**APPEARANCES:**

| | |
|---|---|
| Mr. Ian Demers | FOR APPLICANT |
| Mr. Stewart Istvanffy | FOR RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
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