Decision-Making at the Immigration and Refugee Board of Canada

2/2

Vancouver: The Golden Age of Gaia, 2018

Table of Contents

Introduction	3
Refugee Decision-Making	7
Standard of Proof	7
Consistency in Credibility Findings	7
Credibility and Country Conditions	8
Benefit of the Doubt	8
Allowing of Testimony and Witnesses/Examination of Documents	9
Lack of Credibility	11
Clear Findings on Credibility	12
Proper Evidentiary Basis for Findings on Credibility	13
Assessing a Witness's Testimony	14
Considering the Evidence in its Entirety	14
Contradictions, Inconsistencies and Omissions (80)	18
Implausibilities	21
Incoherent Testimony and Lack of Knowledge or Detail	27
Demeanour	28
Adequacy of Reasons	30
Trustworthy Evidence on Which to Base Findings	32
Presumption of Truthfulness	33
Corroborative Evidence	34
Assessing Documents	35

Introduction

The Reval has occurred. You've vacationed and hired staff for your foundation or fund.

Now you're determining how you'll decide which requests for funding you'll go with and which you won't.

I'm not referring to the fact that you've decided to fund health projects and someone is requesting money for building a bridge. What follows is not about decisions around specialties or interests.

It's actually about how to make impartial and equitable decisions, generally. It has the potential to give birth to a template, a manual for rendering a fair decision.

It looks at some of the rules of human-rights adjudication like standard of proof (on a balance of probability, more likely than not), presumption of innocence, and benefit of the doubt.

It tells the decision-maker how to separate out the genuine from the fraudulent, by testing for credibility - watching for contradictions, inconsistencies, improbabilities, implausibilities, and impossibilities.

These are things well known in the hearing room, but not as well known to foundation grant-givers. Nor would I expect them to be.

I used the materials that follow (and other materials like them) at the Immigration and Refugee Board between 1998 and 2006, to guide me in making decisions on refugee claims.

Your decisions won't be as complicated, but it's the process described here that I'm really trying to draw attention to.

These principles are the distillate of decades of jurisprudential interpretation of human-rights decision-making, where "you had to get it right."

In my work there from 1998 to 2006, I found the IRB's documentation, trainers, legal staff, and Canadian refugee law in general to be among the clearest and most helpful professional guidance I'd ever been exposed to, in private or government practice.

If some among us - not all - were willing to study the principles enunciated here (and elsewhere) and apply them to financial decision-making or refugee decision-making, or just plain decision-making in general, we'd have an excellent template, a manual.

Are fairness and equitableness not lacking in our world? Is it not a rare commodity in some parts of the globe to find an uncorrupted hearing room? In real life, I mean. Not on TV.

Are we not needing some good suggestions on "how to get it right" for a change? Not whose palm we'll grease or who owes who for what service.

***

It isn't for everyone to do the work of making the decision of who to fund and who not to. It's detailed. It's disciplined. It's organized. Who likes to say "no"?

For eight years, I loved the work of a decision-maker.

Even though the pace of work was difficult, I feel forever blessed to have been allowed the discipline of listening to probably 2,000 human-rights cases and writing around 1,500 decisions. I've been so benefitted by that experience that words cannot express it.

My organization is going to be big enough so that I'll need to hire a team of financial decision-makers and then train them in how to make a decision.

When I do, I plan to hire two retired IRB legal services trainers and ask them to train my staff. And these materials are part of what they'll use. (Yes, I realize they're from 2004 but they're still so darned good.)

If these matters don't interest you, please read no further. I won't be offended. It's a specialized matter, for sure.

Otherwise, struggle through the distinctions made here and try to "get" (realize) a picture of the degree of fairness that's being mandated here - and the degree of protection of the rights of the claimant vis-a-vis the state.

***

Now we're here in 2018 and ready for the green flag. And the next minute we've gone on our vacation and hired our staff.

If we're a foundation of size, we're wondering now how to get through all the grant applications being sent to us. How do we make our decisions? And then we remember this book.

The human-rights principles laid out here give us the greatest chance at expressing our love for humanity through our enterprises and decisions.

I invite all financial wayshowers after the Reval to consider living up to them. In my view, your organization will be incredibly benefitted and buoyed up if you do.

Steve Beckow
Vancouver, Canada

All quotations are from:

Assessment of Credibility in Claims for Refugee Protection, at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.

Refugee Decision-Making

Deciding upon refugee claims is a very complex and difficult task. According to Peter Showler, Chair of the Canadian Immigration and Refugee Board (2000), it is the single most complex adjudication function in contemporary Western societies.

This complexity stems from the need for the decision-maker to have a sufficient knowledge of the cultural, social and political environment of the country of origin, a capacity to bear the psychological weight of hearings where victims recount horror stories, and of consequent decisions which may prove fatal, and an ability to deal with legal issues such as the subtle international definition of the refugee or the procedures of quasi-judicial hearings involving various pieces of evidence. (CECILE ROUSSEAU, Department of Psychiatry, McGill University; FRANCOIS CREPEAU, Faculty of Law, University of Montreal; PATRICIA FOXEN, Department of Anthropology, McGill University; and FRANCE HOULE, Faculty of Law, University of Montreal;"The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board, Journal of Refugee Studies Vol. 15, No. 1 2002, at http://oppenheimer.mcgill.ca/IMG/pdf/Rousseau_et_al-.pdf.)

Standard of Proof

As for the standard of proof, the Federal Court of Appeal pointed out in Orelien (9) that one cannot be satisfied that the evidence is credible or trustworthy, unless satisfied that it is probably so, not just possibly so. (Legal Services, Immigration and Refugee Board of Canada, "Chapter 1. GENERAL PRINCIPLES AND OBSERVATIONS. 1.1. Credible or Trustworthy Evidence," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(9) Orelien v. Canada (Minister of Employment and Immigration) , [1992] 1 F.C. 592 (C.A.), at 605, per Mahoney J.A.

Consistency in Credibility Findings

The Federal Court has cautioned, however, that, as between different cases, "[t]here can be no consistency on findings of credibility." Credibility cannot be prejudged and is an issue to be determined by the Board members in each case based on the circumstances of the individual claimant and the evidence. (12) (Legal Services, Immigration and Refugee Board of Canada, "1.2. Consistency on Findings of Credibility," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(12) Oduro, Ebenezer v. M.E.I. (F.C.T.D., no. IMM-903-93), McKeown, December 24, 1993. See also Santizo, Carlos Ulin v. M.E.I. (F.C.T.D., no. IMM-1093-93), Gibson, April 22, 1994.

Credibility findings have to be explained and must be supported by the evidence.

Credibility and Country Conditions

The credibility and probative value of the evidence has to be evaluated in the light of what is generally known about conditions and the laws in the claimant's country of origin, (10) as well as the experiences of similarly situated persons in that country. (11) (Legal Services, Immigration and Refugee Board of Canada, "1.2. Consistency on Findings of Credibility," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(10) Sathanandan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 310 (F.C.A.); Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.); Chan v. Canada (Minister of Employment and Immigration), [1995] 3 S.C.R. 593.

(11) Chaudri v. Canada (Minister of Employment and Immigration) (1986), 69 N.R. 114 (F.C.A.) ; M.E.I.v. Jawhari, Sari (F.C.T.D., no. T-1477-92), Denault, December 16, 1992; Handal, Sandra Iris Rencinos v. M.E.I. (F.C.T.D., no. 92-A-6875), Nol, June 10, 1993.

Benefit of the Doubt

The Handbook on Procedures and Criteria for Determining Refugee Status (13) provides the following guidance:

> 196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. … Even such independent research may not, however, always be successful and there may be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

This principle was discussed in the Supreme Court of Canada decision of Chan. (14) The majority found that, where the claimant's allegations run contrary to the available evidence and generally known facts, it is not appropriate to apply the benefit of the doubt in order to establish the claim. In reaching this conclusion, the majority stated:

> My colleague, La Forest J. argues that no conclusions can be drawn from individual items of evidence and that on each item the [claimant] should be given the benefit of the doubt, often by considering hypotheticals which could support the…claim. This approach handicaps a refugee determination Board from performing its task of drawing reasonable conclusions on the basis of the evidence which is presented. This approach is also fundamentally incompatible with the concept of "benefit of the doubt" as it is expounded in the UNHCR Handbook:
>
> > 204. The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to

> the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts. [emphasis in the original]

The Supreme Court went on to discuss the evidence, contrasting the appellant's testimony with the documentary evidence:

> Since the… claim that he would be physically coerced into sterilization runs contrary to the available evidence and generally known facts it is not an appropriate instance in which to apply the benefit of the doubt in order to establish the [claimant's] case. (15)

The benefit of the doubt does not apply to situations where the Board finds a story implausible. (16) (Legal Services, Immigration and Refugee Board of Canada, "1.3. Benefit of the Doubt," Assessment of Credibility in Claims for Refugee Protection, at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(13) Issued by the United Nations Office of the High Commissioner for Refugees, Geneva, January 1988.

(14) Chan v. Canada (Minister of Employment and Immigration), [1995] 3 S.C.R. 593.

(15) Ibid., at 669-71. The dissenting analysis, to which the aforementioned majority reasons refer, is set out, in part, below. The dissenting justices, at 627, found that the claimant's account did not run contrary to the available evidence and generally known facts; consequently, it was appropriate in their view to apply the benefit of the doubt:

The [claimant's] account of events so closely mirrors the known facts concerning the implementation of China's population policy that, given the absence of any negative finding as to the credibility of the [claimant] or of his evidence, I think it clear that his quite plausible account is entitled to the benefit of any doubt that may exist. With respect, I see no merit in the approach taken by some members of the court and by my colleague Major J. to seize upon sections of the [claimant's] testimony in isolation. Indeed, I find such a technique antithetical to the guidelines of the UNHCR Handbook (see paragraph 201).

(16) Sedigheh, Ghahramaninejad v. M.C.I. (F.C.T.D., no. IMM-1213-02), Snider, February 11, 2003; 2003 FCT 147.

Allowing of Testimony and Witnesses/Examination of Documents

A claimant must be provided a reasonable opportunity to present evidence. (22) When the Board rejects a claim because it doubts that certain pivotal events occurred or that they were connected to the activities on which the claim is based, some Federal Court—Trial Division cases suggest that the claimant should be given an opportunity to testify about those events. (23)

The Board errs when it does not allow the claimant to adduce the testimony of a witness who could corroborate the very issue on which the claimant was found not to be credible. (24) There is no duty on the RPD, however, to call a witness who could have supported the claim. (25)

The right to call further evidence is not absolute. Although it may be preferable to hear the evidence in some cases, the Board does not err when it refuses to hear a witness who could not have clarified concerns about critical aspects of the claimant's story (for example, the failure to provide certain information in the PIF or the claimant's identity) or would have testified about matters not in issue. (26)

The RPD should accommodate reasonable requests by the claimant to examine documents whose authenticity is impugned by Canadian officials. (27) (Legal Services, Immigration and Refugee Board of Canada, "1.5. Allowing Testimony, Witnesses and Examination of Documents," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(22) See s. 170(e) of the Immigration and Refugee Protection Act.

(23) Joseph, Chandani v. M.E.I. (F.C.T.D., no. IMM-2623-93), Cullen, March 9, 1994; Mayeke, Yai Florence Futila v. M.C.I. (F.C.T.D., no. IMM-2496-98), Tremblay-Lamer, May 5, 1999. In Arandarajah, Murugathas v. M.C.I. (F.C.T.D., no. IMM-3861-96), Rouleau, July 3, 1997, although the CRDD indicated that identity was a serious issue, the Court found no obligation on the part of the panel to ask for evidence regarding that matter.

(24) Kaur, Diljeet v. M.E.I. (F.C.T.D., no. 93-A-377), Nol, June 2, 1993, Reported: Kaur v. Canada (Minister of Employment and Immigration) (1993), 21 Imm. L.R. (2d) 301 (F.C.T.D.); Parnian, Saeid v. M.C.I. (F.C.T.D., no. IMM-2351-94), Wetston, May 19, 1995; Papsouev, Vitali v. M.C.I. (F.C.T.D., no. IMM-4619-97), Rouleau, May 19, 1999, Reported: Papsouev v. Canada (Minister of Citizenship and Immigration) (1999), 49 Imm. L.R. (2d) 48 (F.C.T.D.).

(25) Villalobos, Andrea Elizabeth Nunez v. M.C.I. (F.C.T.D., no. IMM-2890-96), Teitelbaum, September 2, 1997, Reported: Villalobos v. Canada (Minister of Citizenship and Immigration) (1997), 40 Imm. L.R. (2d) 153 (F.C.T.D.). In Ndombele, Joao Kembo v. M.C.I. (F.C.T.D., no. IMM-6514-00), Gibson, November 9, 2001, 2001 FCT 1211, the claimant offered to make his brother available for cross-examination but the CRDD declined the offer. The Court found no breach of fairness. The burden of proof was on the claimant and it was up to him to call the brother as a witness, but he and his counsel chose not to do so.

(26) Singh, Kewal v. M.E.I. (F.C.T.D., no. IMM-5177-93), MacKay, September 19, 1994; Wang, Tian Rong v. M.C.I. (F.C.T.D., no. IMM-534-98), Wetston, December 17, 1998; Katambala, Adric v. M.C.I. (F.C.T.D., no. IMM-5827-98), Reed, July 19, 1999.

(27) Mayela, Dave Nzongo v. M.C.I. (F.C.T.D., no. IMM-3776-98), Lutfy, June 18, 1999.

Lack of Credibility

Refugee determinations often turn on a single question: Is the refugee claimant telling the truth? While there are other factors that refugee adjudicators must consider, determining whether the claimant's story is credible remains central to virtually all refugee hearings. (Sean Rehaag, "I SIMPLY DO NOT BELIEVE...": A CASE STUDY OF CREDIBILITY DETERMINATIONS IN CANADIAN REFUGEE ADJUDICATION," Windsor Review of Legal and Social Issues (2017), at http://digitalcommons.osgoode.yorku.ca/scholarly_works/2625.)

Where the Board finds a lack of credibility based on inferences, there must be a basis in the evidence to support the inferences. It is not open to Board members to base their decision on assumptions and speculations for which there is no real evidentiary basis. (Legal Services, Immigration and Refugee Board of Canada, "Chapter 1. GENERAL PRINCIPLES AND OBSERVATIONS. 1.1. Credible or Trustworthy Evidence," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

It is possible to make a finding that overall a claimant's testimony is not credible. The Court of Appeal stated in Sheikh: (49)

> even without disbelieving every word [a claimant] has uttered, a … panel may reasonably find him so lacking in credibility that it concludes there is no credible evidence relevant to his claim… In other words, a general finding of a lack of credibility on the part of the [claimant] may conceivably extend to all relevant evidence emanating from his testimony.

In some cases, the claimant's contradictory testimony can cast doubt upon the totality of his oral evidence. (50) But this is not always so, especially when the panel's findings of lack of credibility and implausibility are not clearly tied with the ultimate issues to be determined in the claim. (51)

Where a finding of a total lack of credibility cannot be made, the remaining credible or trustworthy evidence must be considered to determine whether it supports a finding of a well-founded fear of persecution. (Legal Services, Immigration and Refugee Board of Canada, "2.1.3. General Finding of Lack of Credibility," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(49) Sheikh v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 238 (C.A.), at 244, per MacGuigan J.A.

(50) In Dan-Ash v. Canada (Minister of Employment and Immigration) (1988), 93 N.R. 33 (F.C.A.), at 35, Justice Hugessen stated: "unless one is prepared to postulate (and accept) unlimited credulity on the part of the Board, there must come a point at which a witness's contradictions will move even the most generous trier of fact to reject his evidence."

(51) See, for example, Ferdosi, Jahan v. M.C.I. (F.C.T.D., no. IMM-2626-00), MacKay, November 5, 2001, 2001 FCT 1203.

Clear Findings on Credibility

The Federal Court has commented frequently that if the Board rejects a claim essentially because of a lack of credibility, clear reasons must be given. Those aspects of the testimony which appear not to be credible must be clearly identified and the reasons for such conclusions must be clearly articulated. (66)

The Court of Appeal stated in Addo that, where there is no clear adverse finding of credibility, a recitation in the reasons of the claimant's testimony will be deemed to be the Board's findings of the relevant facts. (67) (Legal Services, Immigration and Refugee Board of Canada, "2.2.1. Clear Findings on Credibility," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(66) In Armson v. Canada (Minister of Employment and Immigration) (1989), 9 Imm. L.R. (2d) 150 (F.C.A.), Justice Heald stated at 157-158: "the Board owed a duty to give the reasons for rejecting therefugee claim on the ground of credibility, in clear and unmistakable terms." In Mehterian, Pierre Antoine v. M.E.I. (F.C.A., no. A-717-90), Hugessen, MacGuigan, Desjardins, June 17, 1992, the Court stated: "the reasons must be sufficiently clear, precise and intelligible that the claimant may know why his claim has failed and decide whether to seek leave to appeal, where necessary." See also Ababio, Richard v. M.E.I. (F.C.A., no. A-390-87), Marceau, Teitelbaum, Walsh, March 9, 1988, Reported: Ababio v. Canada (Minister of Employment and Immigration) (1988), 5 Imm. L.R. (2d) 174 (F.C.A.); Sebaratnam, Amuthakumar v. M.E.I. (F.C.A., no. A-555-89), MacGuigan, Dcary, Hugessen (dissenting), April 15, 1991, Reported: Sebaratnam v. Canada (Minister of Employment and Immigration) (1991), 13 Imm. L.R. (2d) 264 (F.C.A.); Tung v. Canada (Minister of Employment and Immigration) (1991), 124 N.R. 388 (F.C.A.); Ponniah v. Canada (Minister of Employment and Immigration) (1991), 13 Imm. L.R. (2d) 241 (F.C.A.); Rahman v. Canada (Minister of Employment and Immigration) (1988), 8 Imm. L.R. (2d) 170 (F.C.A.); Hilo v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); Rajaratnam v. Canada (Minister of Employment and Immigration) (1991), 135 N.R. 300 (F.C.A.); Pour, Akbar Behzadi v. M.E.I. (F.C.A., no. A-655-90), Marceau, Desjardins, Dcary, December 5, 1991; Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.).

(67) Addo, Samuel v. M.E.I. (F.C.A., no. A-614-89), Mahoney, Hugessen, Gray, May 7, 1992. With respect to PIFs, in Efremov, Serguei Volodimirovich v. M.C.I. (F.C.T.D., no. IMM-834-94), Reed, February 2, 1995, the Court stated that "[t]he fact that the Board accepted the claimant's PIF into evidence, as though the written material therein had been given orally before the Board, does not mean that the Board accepted that evidence as truthful or credible. No such conclusion should be drawn from the acceptance of evidence as part of the record. The weight and credibility to be given to that evidence are still matters to be assessed by the Board."

Proper Evidentiary Basis for Findings on Credibility

An adverse finding of credibility must have a proper foundation in the evidence. The RPD [Refugee Protection Division of the IRB] can err in this regard by ignoring evidence, by misapprehending or misconstruing evidence, or by basing its conclusions on speculation.

If a finding of fact which was material to a finding of lack of credibility was made without regard to the evidence, the RPD's decision will generally be overturned. (30) Consequently, a finding of lack of credibility based on a misunderstanding or ignoring of the evidence, or for which there is no basis in the evidence to support an inference arrived at by the tribunal, will not be allowed to stand.

The Federal Court will not, however, interfere with a decision if the Board had before it evidence that, taken as a whole, would support its negative assessment of credibility, if its findings were reasonable in light of the evidence, and if reasonable inferences were drawn from that evidence. (31)

(30) Among many Federal Court decisions, see especially Owusu-Ansah v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 106 (F.C.A.); Giron v. Canada (Minister of Employment and Immigration) (1992), 143 N.R. 238 (F.C.A.); Abubakar, Suadh v. M.C.I. (F.C.T.D., no. IMM-422-98), Campbell, July 31, 1998, Reported: Abubakar v. Canada (Minister of Citizenship and Immigration) (1998), 45 Imm. L.R. (2d) 186 (F.C.T.D.). In Maruthapillai, Navaneethan v. M.C.I. (F.C.T.D., no. IMM-1371-99), Pelletier, May 30, 2000, the Court pointed out that in assessing the evidence, the CRDD is required to respect the claimant's testimony, and it cannot distort that testimony and then find it lacking in credibility. (Legal Services, Immigration and Refugee Board of Canada, "1.7. Proper Evidentiary Basis for Findings on Credibility" *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

Among many Federal Court decisions, see especially Owusu-Ansah v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 106 (F.C.A.); Giron v. Canada (Minister of Employment and Immigration) (1992), 143 N.R. 238 (F.C.A.); Abubakar, Suadh v. M.C.I. (F.C.T.D., no. IMM-422-98), Campbell, July 31, 1998, Reported: Abubakar v. Canada (Minister of Citizenship and Immigration) (1998), 45 Imm. L.R. (2d) 186 (F.C.T.D.). In Maruthapillai, Navaneethan v. M.C.I. (F.C.T.D., no. IMM-1371-99), Pelletier, May 30, 2000, the Court pointed out that in assessing the evidence, the CRDD is required to respect the claimant's testimony, and it cannot distort that testimony and then find it lacking in credibility.

(31) Larue, Jacqueline Anne v. M.E.I. (F.C.T.D., no. 92-A-6666), Nol, May 13, 1993. In more recent decisions, the Federal Court has adopted "patently unreasonable" as the correct standard of review for findings of credibility. See, for example, Horvath, Ferenc v. M.C.I. (F.C.T.D., no. IMM-2203-00), Blanchard, June 4, 2001, 2001 FCT 583.

Assessing a Witness's Testimony

A decision-maker customarily takes into account the integrity and intelligence of a witness and the overall accuracy of the statements being made. The witness's powers of observation and capacity for remembering are important factors. An assessment is customarily made of whether the witness is honestly endeavouring to tell the truth, that is, whether the witness appears frank and sincere or biased, reticent and evasive.

Factors considered by the courts (34) in assessing credibility include the witness's

(a) desire to be truthful
(b) their motives
(c) general integrity
(d) general intelligence
(e) relationship or friendship to other parties
(f) opportunity for exact observation
(g) capacity to observe accurately
(h) firmness of memory to carry in the mind the facts as observed
(i) ability to resist the influence, frequently unconscious, to modify recollection
(j) capacity to express what is clearly in the mind
(k) ability to reproduce in the witness-box the facts observed
(l) demeanour while testifying (Legal Services, Immigration and Refugee Board of Canada, "1.9. Assessing a Witness's Testimony," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(34) Courts have developed a hierarchy of preferences concerning various types of witnesses. As between involved witnesses or "actors" and mere bystanders, the former are preferred. There is however, no authority requiring preference to be given to the testimony of "actors" over that of expert witnesses. While the testimony of involved, but disinterested, witnesses is preferred (at least in the absence of extenuating circumstances), over that of interested witnesses, whether involved or not, a court will not disbelieve testimony solely because a witness is interested and without reference to the facts and other relevant factors. See J.P. Porter Co.Ltd.v. Bell et al., [1955] 1 D.L.R. 62 (N.S.S.C.); Lefeunteum v. Beaudoin (1898), 28 S.C.R. 89; Bateman v. County of Middlesex (1912), 6 D.L.R. 533 (Ont. C.A.); Re Direct Exeter (1850), 3 DeG&Sm 214.

Considering the Evidence in its Entirety

The Federal Court has made it clear in a number of cases that when assessing the credibility of a claimant, it is important to remember that all of the evidence, both oral and documentary, must be considered and assessed, not just selected portions of the evidence. (35) Thus the RPD should not selectively refer to evidence that supports its conclusions without also referring to evidence to the contrary. (36) Furthermore, when assessing all of the evidence, it must be assessed

together, not parts of it in isolation from the rest of the evidence. Evidence should, therefore, be treated in a consistent manner. (37)

The Federal Court has also emphasized that it is important not just to concentrate on exaggerations,(38) but neither should a decision-maker disregard aspects of the evidence that are not favourable to the claimant. (39) Thus the panel must do more than simply search through the evidence looking for inconsistencies or for evidence that lacks credibility, thereby "building a case" against the claimant, and ignore the other aspects of the claim.

The Board is presumed to have taken all of the evidence into consideration whether or not it indicates having done so in its reasons, unless the contrary is shown. (40) Therefore, the mere fact that the tribunal fails to refer to all of the evidence when rendering its decision does not necessarily signify that it ignored evidence, if a review of the reasons suggests that the tribunal did consider the totality of the evidence. (41)

Thus not every piece of evidence needs to be referred to and discussed in the reasons. However, as explained in Cepeda-Gutierrez, (42) the more relevant the evidence, the more likely the Federal Court will find an error if it is omitted from the analysis.

Generally speaking, it is only necessary to refer explicitly to evidence that is directly relevant to the issue being addressed, and that which otherwise may appear to be in conflict with the conclusion reached. (43)

Where the claimant provides personal documentary evidence or medical reports, specific to and corroborative of his claim, it is not sufficient to simply make a blanket statement, without explanation, that no probative value was assigned to this evidence because of a general lack of credibility on the part of the claimant. (44)

Frimpong and other cases (45) illustrate the related point that reasons must be given for disregarding uncontradicted statements, either expressly or implicitly. If this is not done, it will leave the decision open to attack. (Legal Services, Immigration and Refugee Board of Canada, "2.1.1. Considering the Evidence in its Entirety" *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(35) *Owusu, Kweku v. M.E.I.* (F.C.A., no. A-1146-87), Heald, Hugessen, Desjardins, January 31, 1989; *Mensah, George Akohene v. M.E.I.* (F.C.A., no. A-1173-88), Pratte, Hugessen, Desjardins, November 23, 1989; *Hilo v. Canada (Minister of Employment and Immigration)* (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); *Tung v. Canada (Minister of Employment and Immigration)* (1991), 124 N.R. 388 (F.C.A.). This would include a consideration of the conditions in the claimant's country or origin, as well as the experiences of similarly situated persons. See, respectively, *Bains v. Canada (Minister of Employment and Immigration)* (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.); and *Chaudri v. Canada (Minister of Employment and Immigration)* (1986), 69 N.R. 114 (F.C.A.).

(36) In Polgari, Imre v. M.C.I. (F.C.T.D., no. IMM-502-00), Hansen, June 8, 2001, 2001 FCT 626, the Court faulted the CRDD for "the absence of any analysis of the extensive documentationcoupled with the failure to adequately address the contradictory documents and explain its preference for the evidence on which it relied." In Orgona, Eva v. M.C.I. (F.C.T.D.,

no. IMM-4517-99), MacKay, April 18, 2001, 2001 FCT 346, the Court faulted the CRDD because "it made no reference to the significant documentary evidence which was supportive of the claims. when evidence which supports the [claimants'] position is not referred to, and when other documentary evidence is selectively relied upon, the tribunal, in my opinion, errs in law by ignoring relevant evidence.

(37) In Bosiakali, Mbokolo v. M.C.I. (F.C.T.D., no. IMM-4948-00), Nadon, December 14, 2001, 2001 FCT 1381, the Court found that the CRDD had not reconciled the testimony of the daughter, which it found credible and which supported her mother's testimony concerning her arrest, and indirectly corroborated the fact that her father had also been arrested, with the testimony of the parents regarding these events, which was rejected for lack of credibility.

(38) Yaliniz, Tacir v. M.E.I. (F.C.A., no. A-648-87), Marceau, Teitelbaum, Walsh, March 8, 1988, Reported: Yaliniz v. Canada (Minister of Employment and Immigration) (1989), 7 Imm. L.R. (2d) 163 (F.C.A.); Mahathmasseelan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 29 (F.C.A.). In Djama, Idris Mohamed v. M.E.I. (F.C.A., no. A-738-90), Marceau, MacGuigan, Dcary, June 5, 1992, the Court held that a panel will have erred if it allows itself to become so fixated on the details of the claimant's testimony that it forgets the substance of the facts on which the claim is based.

(39) M.C.I. v. Roitman, Isabella (F.C.T.D., no. IMM-1446-00), Nadon, May 10, 2001, 2001 FCT 462.

(40) Florea, Constantin v. M.E.I. (F.C.A., no. A-1307-91), Hugessen, Desjardins, Dcary, June 11, 1993; Kisungu, Guyguy Tshika v. M.C.I. (F.C.T.D., no. IMM-3807-00), Nadon, May 8, 2001, 2001 FCT 446. The inclusion of the "boilerplate" assertion that the Board considered all the evidence before it may not be sufficient to prevent this inference from being drawn. In Sathanandan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 310 (F.C.A.), the CRDD rejected the claim stating there was no indication in the documentary evidence of forcible recruitment of females, when in fact there was some evidence on point, albeit feeble, which it neglected to consider. See, however, Piber, Attila v. M.C.I. (F.C.T.D., no. IMM-3282-00), Gibson, July 6, 2001, 2001 FCT 769, where the Court found no error on the part of the CRDD in failing to refer to relevant documents in the claimant's very extensive package of documentary evidence where the claimant's counsel did not direct the CRDD's attention to the most relevant passages in that package. On the other hand, in Nadarajan, Janapalarajan v. M.C.I. (F.C.T.D., no. IMM-6298-00), Gibson, November 9, 2001, 2001 FCT 1222, the Court noted that this was not a case where the claimant had filed voluminous documentary evidence that no CRDD panel could be expected to have taken cognizance of in all its detail. In fact, the document in question was put into the record, at least by reference, by the CRDD itself.

(41) Hassan, Jamila Mahdi v. M.E.I. (F.C.A., no. A-831-90), Isaac, Heald, Mahoney, October 22, 1992, Reported: Hassan v. Canada (Minister of Employment and Immigration) (1992), 147 N.R. 317 (F.C.A.); Gourenko, Rouslan v. S.G.C. (F.C.T.D., no. IMM-7260-93), Simpson, May 4, 1995.

(42) Cepeda-Gutierrez, Carlos Arturo v. M.C.I. (F.C.T.D., no. IMM-596-98), Evans, October 16, 1998. As for the question, "when is a document so important that it must be specifically

mentioned in the [reasons for] decision," see Gourenko, Rouslan v. S.G.C. (F.C.T.D., no. IMM-7260-93), Simpson, May 4, 1995:

> In my view, a document need only be mentioned in a decision if, first of all, the document is timely, in the sense that it bears on the relevant time period. Secondly, it must be prepared by a reputable, independent author who is in a position to be the most reliable source of information. Thirdly, it seems to me that the topic addressed in the document must be directly relevant to [a claimant's] claim. For example, documents sent to or received by [a claimant], or prepared for [a claimant], or about [a claimant], which bear on relevant issues would, in the ordinary course be mentioned in reasons. In addition, if a document is directly relevant to the facts alleged by [a claimant], one would expect to see that document addressed in the Board's reasons. On the other hand, numerous other documents may be only marginally relevant. In my view, it is not a reviewable error for the Board to fail to deal with such documents in its reasons.

(43) Failure to refer to a relevant document which is specific to the claim and corroborates, or goes contrary to, the claimant's evidence may lead to the inference that the Board made its decision without regard to the evidence before it. See Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.); Iordanov, Deian Iordanov v. M.C.I. (F.C.T.D., no. IMM-1429-97), Muldoon, March 18, 1998; Atwal, Pargat Singh v. S.S.C. (F.C.T.D., no. IMM-4470-93), Gibson, July 20, 1994, Reported: Atwal v. Canada (Secretary of State) (1994), 25 Imm. L.R. (2d) 80 (F.C.T.D.); Khan, Mohammed Azad v. M.C.I. (F.C.T.D., no. IMM-2831-98), Teitelbaum, March 11, 1999.

(44) In Lahpai, Aung Gam v. M.C.I. (F.C.T.D., no. IMM-1620-00), Dub, February 16, 2001, 2001 FCT 88, the Court held that the failure to deal with three documents that flagrantly contradicted the CRDD's conclusions on the central issue of the claimant's involvement in the student unrest constituted an error of law. See also Sinko, Jozsef v. M.C.I. (F.C.T.D., no. IMM-569-01), Blanchard, August 23, 2002, 2002 FCT 903; Ahmed, Bashar v. M.C.I. (F.C.T.D., no. IMM-2745-02), Tremblay-Lamer, April 17, 2003, 2003 FCT 456; Voytik, Lyudmyla Vasylivna v. M.C.I. (F.C., no. IMM-5023-02), O'Keefe, January 16, 2004, 2004 FC 66. However, other Federal Court decisions have held that where the panel concludes that a claimant's claim, including the specific facts to which some personal documents refer to, are clearly not credible, it is not an error on its part not to explain why it did not give probative value to documents which purport to substantiate allegations found not to be credible. See Ahmad, Nawaz v. M.C.I. (F.C.T.D., no. IMM-944-02), Rouleau, April 23, 2003, 2003 FCT 471, which cites Songue, Andr Marie v. M.C.I. (F.C.T.D., no. IMM-3391-95), Rouleau, July 26, 1996, and Hamid, Iqbal v. M.E.I. (F.C.T.D., no. IMM-2829-94), Nadon, September 20, 1995. In Husein, Anab Ali v. M.C.I. (F.C.T.D., no. IMM-2044-97), Joyal, May 27, 1998, the Court held that once the Board had concluded that identity had not been established, it was not necessary to analyze the evidence any further.

(45) Frimpong v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 183 (F.C.A.); Sathanandan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 310 (F.C.A.); Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.).

Contradictions, Inconsistencies and Omissions (80)

The existence of contradictions or inconsistencies in the evidence of a claimant or witness is a well-accepted basis for a finding of lack of credibility. (81) As discussed later (see 2.3.4. Materiality), the discrepancies must be sufficiently serious and must concern matters that are relevant to the issues being adjudicated to warrant the adverse finding.

These considerations apply as well to omissions in the claimant's previous statements, whether made to Canadian immigration officials (at the port of entry or inland); (82) in a previous examination (such as an examination under oath); (83) or hearing (84) on the claim; in the claimant's Personal Information Form (PIF) (85) or the PIFs of family members; (86) or during an interview at the Board. (87) It appears, however, that little can be made of the claimant's failure to advise Canadian officials abroad of his or her fear of persecution when applying for a visa to come to Canada, (88) or perhaps with respect to omission of information in the eligibility interview notes. (89)

The Federal Court has identified the following general factors as relevant to the assessment of inconsistencies or discrepancies: (90)

> [23] The discrepancies relied on by the Refugee Division [CRDD] must be real [Rajaratnam v. Canada (Minister of Employment and Immigration) (1991), 135 N.R. 300 (F.C.A.)]. The Refugee Division must not display a zeal "to find instances of contradiction in the [claimant's] testimony … it should not be over-vigilant in its microscopic examination of the evidence" [Attakora v. Canada (Minister of Employment and Immigration) (1989), 99 N.R. 168 (F.C.A.)]. The alleged discrepancy or inconsistency must be rationally related to the [claimant's] credibility [Owusu-Ansah v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 106 (F.C.A.)]. Explanations which are not obviously implausible must be taken into account [Owusu-Ansah, supra].
>
> [24] Moreover, another line of cases establishes the proposition that the inconsistencies found by the Refugee Division must be significant and be central to the claim [Mahathmasseelan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 29 (F.C.A.)] and must not be exaggerated [Djama, Idris Mohamed v. M.E.I. (F.C.A., no. A-738-90), Marceau, MacGuigan, Décary, June 5, 1992]. (Legal Services, Immigration and Refugee Board of Canada, "2.3.2. Contradictions, Inconsistencies and Omissions " *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(80) The definitions that follow are from *The Concise Oxford Dictionary* and are "working" definitions. Other broader or narrower interpretations are possible, but these are given here as a guide.

- *Contradictory* is used to refer to “facts," propositions or ideas that are mutually opposed or inconsistent so that one and only one of them must be true.

- *Inconsistent* means not in keeping, discordant or incompatible.
- *Implausible* is the opposite of plausible which means seeming reasonable or probable.

(81) Dan-Ash v. Canada (Minister of Employment and Immigration) (1988), 93 N.R. 33 (F.C.A.); Rajaratnam v. Canada (Minister of Employment and Immigration) (1991), 135 N.R. 300 (F.C.A.). In Epane, Florent v. M.C.I. (F.C.T.D., no. IMM-974-98), Rouleau, June 17, 1999, the CRDD erred by not taking into account the fact that the claimant, who was nerovous during the hearing, corrected her error (as to the date of the elections) on her own initiative.

(82) In Dehghani v. Canada (Minister of Employment and Immigration), [1990] 3 F.C. 587 (C.A.), the Federal Court held, in relation to the now defunct first level ("credible basis") hearing, the tribunal could refer to inconsistencies (for example, omissions) between prior statements made by the claimant, without counsel, at a port of entry examination, and on the claimant's later affidavit evidence and testimony at the hearing, to make an adverse finding of credibility. This decision was upheld by the Supreme Court of Canada, reported in [1993] 1 S.C.R. 1053, where it ruled that routine inquiries at secondary examination on the issues of identity, admissibility and a refugee claim do not amount to detention and thus the right to counsel is not invoked. See also Dalawi, Abala Mohamed Al v. M.C.I. (F.C.T.D., no. IMM-6394-98), Denault, August 5, 1999. But see, however, Sow, Mamadou Yaya v. M.C.I. (F.C.T.D., no. IMM-1662-98), Tremblay-Lamer, March 8, 1999, where the claimant was detained after reporting to claim refugee status and questioned by immigration officers without being advised of his right to counsel. Although the CRDD accepted the notes into evidence, it gave no weight to them. The Court held that the panel exercised due diligence in refusing to take the notes into account, given the questionable way in which they had been obtained. Moreover, the panel was not obliged to recuse itself because it had read the notes. See also Zhu, Rui Rong v. M.C.I. (F.C.T.D., no. IMM-5964-00), Campbell, November 21, 2001, 2001 FCT 1275. In Huang, Wen Zhen v. M.C.I. (F.C.T.D., no. IMM-5816-00), MacKay, February 8, 2002, 2002 FCT 149, the claimant was detained for three days on arrival in Canada and interviewed by immigration authorities before being given access to counsel. Normally such evidence obtained in violation of s. 10(b) of the Charter of Rights and Freedoms would be excluded, however, in this case the CRDD did not base it finding on those notes so the Court did not overturn the negative decision on the claim.

(83) Owusu-Ansah v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 106 (F.C.A.); Kassa v. Canada (Minister of Employment and Immigration) (1989), 9 Imm. L.R. (2d) 1 (F.C.A.); Boakye, Comfort Duodo v. M.E.I. (F.C.A., no. A-562-91), Mahoney, Robertson, Gray, January 26, 1993; Guevara, Melida de Jesus Valle v. M.E.I. (F.C.T.D., no. A-58-93), Nadon, December 17, 1993.

(84) Transcripts of previous hearings are generally admissible: Rahnema, Massoud v. S.G.C. (F.C.T.D., no. IMM-1740-93), Gibson, October 15, 1993, Reported: Rahnema v. Canada (Solicitor General) (1993), 22 Imm. L.R. (2d) 127 (F.C.T.D.) (transcript of previously aborted CRDD hearing); Addai, Akua v. M.E.I. (F.C.T.D., no. IMM-761-93), McGillis, February 16, 1994 (transcript of credible basis hearing); Sitsabeshan, Ashadevi Balasingham v. S.S.C. (F.C.T.D., no. IMM-1014-93), Gibson, June 22, 1994, Reported: Sitsabeshan v. Canada (Secretary of State) (1994), 27 Imm. L.R. (2d) 294 (F.C.T.D.) (transcript of overturned CRDD

hearing at subsequent de novo hearing ordered by Federal Court); Diamanama, Nsimba v. M.C.I. (F.C.T.D., no. IMM-1808-95), Reed, January 30, 1996 (transcript of overturned CRDD hearing); Agranovski, Vladislav v. M.C.I. (F.C.T.D., no. IMM-243-97), Pinard, November 25, 1997 (transcript of overturned CRDD hearing filed with claimant's express consent; the panel questioned the claimant about each implausibility noted in its second decision); Quazi, Enamul Huque v. M.C.I. (F.C.T.D., no. IMM-6518-00), Pinard, October 10, 2001, 2001 FCT 1098.

A panel may also admit in evidence and read the written reasons of a previous panel dealing with the same claimant, though it would clearly be inappropriate for the second panel simply to adopt the reasons of the first. See Lahai, Morie B. v. M.C.I. (F.C.A., no. A-532-00), Rothstein, Sexton, Evans, March 25, 2002, 2002 FCA 119. It must be clear that the Board considered the matter afresh. See Marques, Francisco Carlos v. M.C.I. (F.C.T.D., no. IMM-3137-95), Rouleau, August 23, 1996, Reported: Marques v. Canada (Minister of Citizenship and Immigration) (1996), 35 Imm. L.R. (2d) 81 (F.C.T.D.). In Badal, Benyamin v. M.C.I. (F.C.T.D., no. IMM-1105-02), O'Reilly, March 14, 2003, 2003 FCT 311, the claimant did not testify at the rehearing, however, the Court held that that did not relieve the panel of the obligation to assess all of the evidence. It was open to the panel to consider the transcript of a previous hearing and make a finding of a lack of credibility based on it, provided its reasons make the basis for those findings clear. The Board relied on the analysis carried out by the previous panel. While a panel can rely on the fact-finding of another panel, to a certain extent, it would appear that the second panel simply relied on the first panel's assessment of the claimant's testimony instead of conducting its own assessment, and this constituted a breach of fairness. A mere reference to the observations of a previous panel does not satisfy the obligation to explain a negative credibility finding.

(85) Bakare, Abeni v. M.E.I. (F.C.T.D., no. IMM-1603-93), Reed, January 19, 1994; He, Feng Kui v. M.E.I. (F.C.A., no. A-1194-91), Heald, Desjardins, Linden, July 20, 1994.

(86) Gandour, Fatema Hoteit v. M.E.I. (F.C.T.D., no. A-1426-92), Dub, October 18, 1993; Kaur, Jaswinder v. M.C.I. (F.C.T.D., no. IMM-1944-96), Jerome, July 24, 1997. Some of the pitfalls of using PIFs of related claimants have been highlighted in the following cases: In Wimalachandran, Nadarajah v. M.C.I. (F.C.T.D., no. IMM-2321-95), Reed, April 1, 1996, the Court faulted the Refugee Division for drawing adverse findings from omissions in the claimant's PIF without taking up counsel's offer to produce the original Tamil version of the PIF which, it was contended, had gone through an editing process. In Chellaiyah, Arulthas v. M.C.I. (IMM-3308-98), Lutfy, July 19, 1999, the Court held that the CRDD could not assume that the information in the claimant's sister's PIF was correct, nor did the claimant bear the burden of explaining the alleged discrepancies; that could only be properly done upon an assessment of the sister's credibility and the circumstances surrounding the disclosure of information at the time her PIF was prepared. In Bayrami, Javad Jamali v. M.C.I. (F.C.T.D., no. IMM-3904-98), McKeown, July 22, 1999, the Court faulted the CRDD for not ruling on the appropriatness of entering the PIF of one daughter where the second daughter's PIF was unavailable. In Bebondas, Frankline Hohn v. M.C.I. (F.C.T.D., no. IMM-428-99), Campbell, October 20, 1999, the Court faulted the CRDD for concluding that the claimant fabricated his answer to question 37 of his PIF, primarily because portions of his PIF were the same as the PIFs of three other claimants, in view of the claimant's explanation that it was his counsel who drew up his PIF (thus the claimant could not properly be made to account for it).

(87) Arunachalam, Sivashanker v. M.C.I. (F.C.T.D., no. IMM-2982-99), MacKay, September 6, 2001, 2001 FCT 997. After an interview in the "expedited process," the Refugee Protection Officer prepares a report; the interview is also recorded and the recording may be placed in evidence at the hearing if the accuracy of the report is contested.

(88) In Fajardo, Mercedes v. M.E.I. (F.C.A., no. A-1238-91), Mahoney, Robertson, McDonald, September 15, 1993, Reported: Fajardo v. Canada (Minister of Employment and Immigration) (1994), 21 Imm. L.R. (2d) 113 (F.C.A.), the Court commented that only the most naive applicant for a visitor's visa would indicate to the visa officer that her purpose for going to Canada was not to visit but to seek asylum. See also Leitch, Roger Rodney v. M.C.I. (F.C.T.D., no. IMM-2910-94), Gibson, February 6, 1995; Quinteros, Carolina Elizabeth Lovato v. M.C.I. (F.C.T.D., no. IMM-4030-97), Campbell, September 22, 1998; Bhatia, Varinder Pal Singh v. M.C.I. (F.C.T.D., no. IMM-4959-01), Layden-Stevenson, November 25, 2002, 2002 FCT 2010. In Dhillon, Lakhwinder Singh v. M.C.I. (F.C.T.D., no. IMM-120-01), McKeown, November 2, 2001, 2001 FCT 1194, the Court stated that it is questionable whether the claimant has any onus to refer to a previous immigration application under question 37 (narrative) of the PIF.

(89) In Asfaw, Sebsibe Haile v. M.C.I. (F.C.T.D., no. IMM-2786-98), Sharlow, March 25, 1999, the Court noted the limited function of the eligibility interview and that, in any event, the claimant was not told that the information provided would be considered by the CRDD. The Court held that the CRDD erred in not giving notice to the claimant that his explanation for not mentioning important information during the interview was not satisfactory.

(90) As summarized in Sheikh, Asad Javed v. M.C.I. (F.C.T.D., no. IMM-315-99), Lemieux, April 25, 2000.

Implausibilities

The RPD does not necessarily have to accept a witness's testimony simply because it was not contradicted at the hearing. The RPD is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole. (114)

In this respect, the British Columbia Court of Appeal stated in Faryna v. Chorny: (115)

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried the conviction of truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

It is not sufficient simply to indicate that the claimant's story is "implausible" without explaining further the reasoning behind that finding. (116) Adverse findings of credibility must be based on

reasonably drawn inferences and not conjecture or mere speculation. (117) Where the RPD finds a lack of credibility based on inferences concerning the plausibility of the evidence, there must be a basis in the evidence to support the inferences. (118)

The panel should therefore articulate why the testimony that is being rejected is clearly out of line with what could be reasonably expected in the circumstances,(119) and should ensure that any such conclusion is supported by the evidence, including references to the relevant documentary evidence. (120)

A claimant's testimony ought not to be lightly or readily dismissed. It is not sufficient for the decision-maker merely to indicate that he or she prefers to accept what is considered to be a more reasonable explanation of the events, nor is it appropriate to go on to construct one's own hypothesis as to how events actually unfolded. (121)

The Federal Court has indicated that considerable caution is required when assessing the norms and patterns of different cultures and the practices and procedures of different police, political, and social systems.Note 122 Actions which might appear implausible if judged by Canadian standards might be plausible when considered within the context of the claimant's social and cultural background. (123)

Similar concerns arise when the Board applies Canadian standards of conduct to persons fleeing persecution, (124) or draws inferences about the likelihood of the claimant being perceived as a political activist based on his or her "minor" role or on his or her ability to obtain a passport, without regard to relevant country conditions. (125)

The Federal Court has cautioned about the perils of drawing inferences from cultural generalizations (126) and relying on stereotypical profiles, (127) as well as assessing ethnicity based on the panel's perception of the claimant's physical appearance (unless this is plainly apparent or acknowledged by the claimant), without regard to how the claimant would be perceived in his or her home country. The panel's "common sense" is not sufficient to ground a conclusion about ethnicity based on appearance; rather, it must be able to offer other evidence to support its conclusion. (128) Gender considerations are also relevant to assessing the plausibility of a claimnat's account (see the discussion in 2.6.2. Special Circumstances of the Claimant).

The Federal Court has stressed the importance of clearly articulated reasons in cases where the non-credibility finding is based on perceived implausibilities. (129) When making an assessment involving implausibility, reference must also be made to relevant evidence and explanations offered by the claimant which could potentially refute the conclusion of an adverse finding on implausibility. (130)

While the panel is entitled to weigh the evidence and assess its credibility, it cannot reach a conclusion that is so inconsistent with the preponderance of the relevant evidence so as to be unreasonable. (131)

Decisions based on findings of implausibility are vulnerable on a review by a superior court or tribunal. The Federal Court has indicated that it will not extend undue deference to the Board's assessment of plausibility, as such assessments are based on the drawing of inferences and are

subject to challenge, especially when they are based on extrinsic criteria such as "rationality" or "common sense." (132)

On the other hand, when the inferences drawn that lead to a finding of lack of credibility are not so unreasonable as to warrant the intervention of the Court, the findings will be allowed to stand. Put another way, the Federal Court will not substitute its discretion for that of the panel if it was open to the panel to find as they did, even if the Court might have drawn different inferences or found the evidence to be plausible. (133) (Legal Services, Immigration and Refugee Board of Canada, "2.3.5. Implausibilities," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(114) Alizadeh, Satar v. M.E.I. (F.C.A., no. A-26-90), Stone, Desjardins, Dcary, January 11, 1993; Aguebor, Clement v. M.E.I. (F.C.A., no. A-1116-11), Marceau, Desjardins, Dcary, July 16, 1993, Reported: Aguebor v. Canada (Minister of Employment and Immigration) (1993), 160 N.R. 315 (F.C.A.); and Shahamati, Hasan v. M.E.I. (F.C.A., no. A-388-92), Pratte, Hugessen, McDonald, March 24, 1994, where the Court stated that "the Board is entitled, in assessing credibility, to rely on criteria such as rationality and common sense." See also Oduro, Prince v. M.E.I. (F.C.T.D., no. 92-A-7171), Nol, June 2, 1993 (claimant escaped from prison with the assistance of a guard and did not encounter any checkpoints when leaving the country); Chand, Saroop v. M.E.I. (F.C.T.D., no. 92-T-2035), Gibson, January 26, 1994.

(115) Faryna v. Chorny, [1952] 2 D.L.R. 354 (B.C. C.A.), at 357, per O'Halloran J.A.

(116) Arumugam, Kandasamy v. M.E.I. (F.C.T.D., no. IMM-1406-93), Reed, January 20, 1994.

(117) Kong, Win Kee v. M.E.I. (F.C.T.D., no. IMM-471-93), Reed, January 27, 1994, Reported: Kong v. Canada (Minister of Employment and Immigration) (1994), 23 Imm. L.R. (2d) 179 (F.C.T.D.)

(118) Miral, Stefnie Dinisha v. M.C.I. (F.C.T.D., no. IMM-3392-97), Muldoon, February 12, 1999.

(119) The formulation found in Faryna v. Chorny —that "a practical and informed person would readily recognize as reasonable in that place and in those conditions"—seems to suggest that, in order to find something to be implausible, it must be clearly out of line with known facts or norms of behaviour. In Valtchev, Rousko v. M.C.I. (F.C.T.D., no. IMM-4497-99), Muldoon, July 6, 2001, 2001 FCT 776, the Court held that plausibility findings should be made only in the clearest of cases, i.e., if the facts as presented are outside the realm of what could reasonably be expected, or where the documentary evidence demonstrates that the events could not have happened in the maner asserted by the claimant. In Ye, Xue Bi v. M.C.I. (F.C.T.D., no. IMM-5860-00), Blanchard, November 2, 2001, 2001 FCT 1196, the Court upheld the CRDD's conclusion that while certain events are possible (though they occur rarely), they are not probable and therefore implausible. In Valre, Nixon v. M.C.I. (F.C.T.D., no. IMM-3747-00), Hansen, November 2, 2001, 2001 FCT 1200, the Court held:

Although harm stems from opportunity and motive, it does not necessarily follow that an absence of harm in circumstances where opportunity exists equates to an absence of motive.

While a lack of motive in these circumstances may be plausible, the fact the [claimant] remained unharmed for a period of three weeks is insufficient by itself to take the finding beyond mere conjecture.

(120) Badri, Soudabeh Varasteh v. M.C.I. (F.C.T.D., no. IMM-4971-99), Gibson, November 30, 2000.

(121) Dumitru, Nicolae v. M.E.I. (F.C.T.D., no. IMM-911-93), Nol, February 25, 1994, Reported: Dumitru v. Canada (Minister of Employment and Immigration) (1994), 27 Imm. L.R. (2d) 62 (F.C.T.D.).

(122) Giron v. Canada (Minister of Employment and Immigration) (1992), 143 N.R. 238 (F.C.A.); Ye, Zhi Bing v. M.E.I. (F.C.A., no. A-711-90), Stone, MacGuigan, Henry, June 24, 1992; Xu, Zhe Ru v. M.E.I. (F.C.A., no. A-666-90), Mahoney, Stone, Robertson, September 8, 1992; Ankrah, Bismark v. M.E.I. (F.C.T.D., no. T-1986-92), Nol, March 16, 1993; Ibrahim, Mohamed Abdisalam Hagi v. M.E.I. (F.C.A., no. A-382-91), Heald, MacGuigan, Linden, March 17, 1993; Aden, Ibrahim Ali v. M.E.I. (F.C.A., no. A-813-91), Hugessen, MacGuigan, Dcary, April 28, 1993; Pathmanathan, Ambika v. M.E.I. (F.C.T.D., no. 93-A-67), McKeown, June 24, 1993; Karikari, Kwame v. M.E.I. (F.C.A., no. A-275-92), Heald, Stone, McDonald, April 25, 1994, Reported: Karikari v. Canada (Minister of Employment and Immigration) (1994), 169 N.R. 131 (F.C.A.); Gyimah, Joycelyn v. M.C.I. (F.C.T.D., no. IMM-1011-93), Gibson, November 10, 1995. In Singh, Narinder v. M.C.I. (F.C.T.D., no. IMM-3882-00), Blanchard, May 14, 2001, the Court found that the CRDD did not base its decision on the behaviour of the agent of persecution in finding that the claimant's testimony was not plausible, but rather on the credibility of the testimony and the facts relied on to support the claimant's story.v

(123) In a number of cases, the Court has alerted the CRDD not to impose "Western concepts", "Canadian paradigms" or "North American logic and experience", without regard to the socio-political and cultural context before it and the particular circumstances of the claimant. See, respectively: Ye, Zhi Bing v. M.E.I. (F.C.A., no. A-711-90), Stone, MacGuigan, Henry, June 24, 1992; Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.); and Rahnema, Massoud v. S.G.C. (F.C.T.D., no. IMM-1740-93), Gibson, October 15, 1993, Reported: Rahnema v. Canada (Solicitor General) (1993), 22 Imm. L.R. (2d) 127 (F.C.T.D.). In Rahnema, the Iranian claimant had explained that on the advice of a smuggling agent, he destroyed a false Iranian passport after passing through Philippine emigration controls on his way to Japan for his trip to Canada. The Court found that the panel's conclusion that the claimant's explanation was implausible amounted to an error of law because the panel had applied its own standard of analysis and judgment "rather than a reasonable standard of one similarly situated" to the claimant. See also Sun, Yun Yau v. M.E.I. (F.C.T.D., no. IMM-604-93), Gibson, August 5, 1993, Reported: Sun v. Canada (Minister of Employment and Immigration) (1993), 24 Imm. L.R. (2d) 226 (F.C.T.D.).

(124) Giron v. Canada (Minister of Employment and Immigration) (1992), 143 N.R. 238 (F.C.A.); Callejas v. Canada (Minister of Employment and Immigration) (1994), 23 Imm. L.R. (2d) 253 (F.C.T.D.). In Samani, Hassan v. M.C.I. (F.C.T.D., no. IMM-4271-97), Hugessen, August 19, 1998, the Court commented that a finding of implausibility is rarely convincing when it is based on behaviour the CRDD finds dangerous: politically committed persons often take

risks. See also Bukaka-Mabiala, Aime v. M.C.I. (F.C.T.D., no. IMM-4296-98), Rouleau, June 18, 1999, to that effect.

(125) Ponce-Yon, Carlos Roberto v. M.E.I. (F.C.T.D., no. A-770-92), Jerome, February 17, 1994.

(126) In Najeebdeen, Mohamed Saly v. M.C.I. (F.C.T.D., no. IMM-5438-98), Lutfy, July 30, 1999, the Court held that it was wrong to extrapolate that a specific incident alleged by a claimant is implausible because it runs counter to the general political relationship between groups (the Tamil Muslim community and the Sri Lankan government). See also Ponniah, Ganeshalingam v. M.C.I. (F.C., no. IMM-4620-02), Russell, September 2, 2003, 2003 FC 1016; Ali, Ahmed v. M.C.I. (F.C.T.D., no. IMM-3981-02), Russell, September 2, 2003, 2003 FC 982.

(127) Tubacos, Zoltan v. M.C.I. (F.C.T.D., no. IMM-1373-01), Kelen, February 28, 2002, 2002 FCT 225; Cazak, Liliana v. M.C.I. (F.C.T.D., no. IMM-1110-01), Blanchard, April 9, 2002, 2002 FCT 390; Trembliuk, Yuriy v. M.C.I. (F.C., no. IMM-5873-02), Gibson, October 30, 2003, 2003 FC 1264.

(128) In Pluhar, Lubomir v. M.C.I. (F.C.T.D., no. IMM-5334-98), Evans, August 27, 1999, and in Mitac, Josef v. M.C.I. (F.C.T.D., no. IMM-5988-98), Lutfy, September 13, 1999, the Court stated that reliance on a tribunal member's observations concerning a claimant's "physical appearance" is, in the absence of expert evidence, "inherently dangerous." But see Bartonik, Daniel v. M.C.I. (F.C.T.D., no. IMM-304-00), Muldoon, July 26, 2000, where the Court upheld the CRDD's finding that the claimant was not a Roma and would not be perceived as one after considering factors such as appearance, language, cultural practices and friends. See also, to the same effect, Tugambayev, Azamat v. M.C.I. (F.C.T.D., no. IMM-3806-99), Reed, June 30, 2000. In Mikhailov, Alexandr v. M.C.I. (F.C.T.D., no. IMM-4265-99), Denault, August 24, 2000, the CRDD disbelieved the attacks suffered by the claimant were of an anti-Semitic nature because, as confirmed by the claimant himself, he "does not have a Jewish name, is not a practising Jew, and his physical appearance does not lead you to believe he is Jewish." On the other hand, in Szostak, Pawel v. M.C.I. (F.C.T.D., no. IMM-3161-00), Lemieux, August 23, 2001, 2001 FCT 938, the CRDD's finding, based on the claimant's appearance, education and friends and a language test, was held to constitute stereotyping for which there was no evidentiary foundation.

(129) See Leung, Shuk-Shuen v. M.E.I. (F.C.T.D., no. A-1162-92), Jerome, May 20, 1994, where the Court pointed out that findings of implausibility are inherently subjective assessments which are largely dependant on the individual Board member's perceptions of what constitutes rational behaviour. The appropriateness of a particular finding can therefore only be assessed if the Board's decision clearly identifies all of the facts which form the basis for its conclusions. In Alza, Julian Ulises v. M.C.I. (F.C.T.D., no. IMM-3657-94), MacKay, March 26, 1996, the Court noted that while findings based on implausibilities may not be readily documented by specific reasons, the general factors in the claimant's evidence or the surrounding circumstances which make the allegations implausible should be referred to in the CRDD's decision. In Shoka, Sabri v. M.C.I. (F.C.T.D., no. IMM-5055-01), Campbell, June 26, 2002, 2002 FCT 720, the Court suggests that the knowledge that is required to make plausibility findings must be known to the claimant and must be on the record to determine if the plausibility conclusions can be justified. See, however, Zakaria, Mirza v. M.C.I. (F.C.T.D., no. IMM-3363-98), Pinard, August 13, 1999, which suggests that the duty to state in clear and unmistakable terms why the panel disbelieves

the claimant does not apply when the claimant's evidence is implausible ("inherently suspect or improbable").

(130) Xu, Zhe Ru v. M.E.I. (F.C.A., no. A-666-90), Mahoney, Stone, Robertson, September 8, 1992; Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.).

(131) Leung, Shuk-Shuen v. M.E.I. (F.C.T.D., no. A-1162-92), Jerome, May 20, 1994; Rodriguez, Maria Angelica Magan v. M.C.I. (F.C.T.D., no. IMM-4790-94), MacKay, March 1, 1996.

(132)In Giron v. Canada (Minister of Employment and Immigration) (1992), 143 N.R. 238 (F.C.A.), the Court stated at 239:

> The Convention Refugee Determination Division of the Immigration and Refugee Board "the Board") chose to base its finding of lack of credibility here for the most part, not on internal contradictions, inconsistencies, and evasions, which is the heartland of the discretion of triers of fact, but rather on the implausibility of the claimant's account in light of extrinsic criteria such as rationality, common sense, and judicial knowledge, all of which involve the drawing of inferences, which triers of fact are in little, if any, better position than others to draw.

See also Attakora v. Canada (Minister of Employment and Immigration) (1989), 99 N.R. 168 (F.C.A.); Ansong v. Canada (Minister of Employment and Immigration) (1989), 9 Imm. L.R. (2d) 94 (F.C.A.); Salamat v. Canada (Immigration Appeal Board) (1989), 8 Imm. L.R. (2d) 58 (F.C.A.); Ye, Zhi Bing v. M.E.I. (F.C.A., no. A-711-90), Stone, MacGuigan, Henry, June 24, 1992; Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.); Ayimadu-Antwi, Yaw v. M.E.I. (F.C.T.D., no. A-1086-92), McKeown, October 29, 1993.

(133) The Court clarified the case law on this point in Aguebor, Clement v. M.E.I. (F.C.A., no. A-1116-11), Marceau, Desjardins, Dcary, July 16, 1993, Reported: Aguebor v. Canada (Minister of Employment and Immigration) (1993), 160 N.R. 315 (F.C.A.), at 316-17:

> It is correct, as the court said in Giron, that it may be easier to have a finding of implausibility review[ed] where it results from inferences than to have a finding of non-credibility review[ed] where it results from the conduct of the witness and from inconsistencies in the testimony. The court did not, in saying this, exclude the issue of the plausibility of an account from the Board's field of expertise, nor did it lay down a different test for intervention depending on whether the issue is "plausibility" or “credibility."
>
> There is no longer any doubt that the Refugee Division, which is a specialized tribunal, has complete jurisdiction to determine the plausibility of testimony As long as the inferences drawn by the tribunal are not so unreasonable as to warrant our intervention, its findings are not open to judicial review.

Subsequent decisions have held this to mean that the same standard of judicialence that applies to findings of credibility also applies to findings of implausibility. See Babchine, Igor v. M.C.I. (F.C.T.D., no. IMM-768-95), Cullen, February 15, 1996; and Ayodele, Abiodun v. M.C.I. (F.C.T.D., no. IMM-4812-96), Gibson, December 30, 1997, which reaffirmed Aguebor as the central authority on the review of implausibility findings.

Incoherent Testimony and Lack of Knowledge or Detail

A claim may be rejected as lacking in credibility if the claimant's testimony is found to be incoherent or vague, (134) or lacking in sufficient knowledge or detail reasonably expected of a person in the claimant's position and from that social and cultural background. (135) However, the RPD should be cautious about imposing too high a standard on the claimant's knowledge about matters such as politics, religion and the like. (136) (Legal Services, Immigration and Refugee Board of Canada, "2.3.6. Incoherent Testimony and Lack of Knowledge or Detail," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(134) In Chen, Xing Kang v. M.C.I. (F.C.T.D., no. IMM-808-00), Gibson, November 29, 2000, the claimant was unable to describe coherently the sterilization process he allegedly underwent. In Akindele, James Olanusi v. M.C.I. (F.C.T.D., no. IMM-6617-00), Pinard, January 18, 2002, 2002 FCT 37, the Court upheld the CRDD's finding that the claimant's oral testimony was vague and confusing and that his written testimony lacked coherence.

(135) Rokni, Mohammad Mehdi v. M.C.I. (F.C.T.D., no. IMM-6068-93), Muldoon, January 27, 1995. In Rahmaty, Parviz v. M.C.I. (F.C.T.D., no. IMM-1221-95), Jerome, May 13, 1996, in upholding the CRDD's decision the Court noted: "The essence of the Board's decision was that it was implausible for a person in [the claimant's] position to be able to supply only the vague and general responses which he provided at the hearing." In Hidri, Ylber v. M.C.I. (F.C.T.D., no. IMM-554-00), MacKay, August 24, 2001, 2001 FCT 949, the Court uheld the CRDD's finding of lack of credibility based, in part, on the claimant's lack of knowledge regarding basic information on which the claim was based. See also He, Lian Sai v. M.C.I. (F.C.T.D., no. IMM-5957-00), Blanchard, November 15, 2001, 2001 FCT 1256. In Baines, Manjit Kaur v. M.C.I. (F.C.T.D., no. IMM-1146-01), Nadon, May 28, 2002, 2002 FCT 60, the Court held that knowing little about a very close friend of the family or any other piece of information that should be in a claimant's knowledge has nothing to do with cultural differences, and that proof of alleged cultural differences should be presented.

(136) Ullah, Khan Asad v. M.C.I. (F.C.T.D., no. IMM-5639-99), Heneghan, November 22, 2000, where the Court had the impression that the CRDD member erroneously expected the claimant's answers about his religion to be equivalent to the member's own knowledge of that religion. In Yilmaz, Metin v. M.C.I. (F.C., no. IMM-3952-02), Pinard, July 11, 2003, 2003 FC 2004, the Court found that the RPD required a level of political knowledge usually demanded of an active member rather than a party supporter and inappropriately compared the claimant to a well-informed person in the free world. See also Mushtaq, Tasaddaq v. M.C.I. (F.C., no. IMM-4324-02), Pinard, September 23, 2003, 2003 FC 1066. One line of cases holds that it is incumbent on the Board to state the expectation of knowledge and evidentiary basis against

which the claimant and his or her evidence is compared. See Yu, Xiao Ling v. M.C.I. (F.C.T.D., no. IMM-5531-01), Campbell, October 23, 2002, 2002 FCT 1107; Shah, Syed Fayyaz Ahmed v. M.C.I. (F.C.T.D., no. IMM-2015-02), Campbell, February 7, 2003, 2003 FCT 137.

Demeanour

In assessing the credibility of the evidence, the RPD can evaluate the general demeanour of a witness as he or she is testifying. This involves assessing the manner in which the witness replies to questions, his or her facial expresssions, tone of voice, physical movements, general integrity and intelligence, and powers of recollection. (137) However, relying on demeanour to find a claimant not credible must be approached with a great deal of caution.

The Federal Court has recognized that every judge's assessment of credibility is influenced by a witness's demeanour. The Court cautioned that, although the reasons for reaching a conclusion on this issue may be partly subjective, they must also be founded on objective considerations. (138)

In assessing demeanour, the decision-maker ought not to form impressions based on the physical appearance or political profile of a witness, (139) but on objective considerations that flow from the witness's testimony, such as the witness's frankness and spontaneity, whether the witness is hesitant or reticent in providing information, and the witness's attitude and comportment (behaviour) before the tribunal. (140)

Moreover, there must be a rational connection between the claimant's demeanour and the conclusions drawn from it. Individual personality traits and cultural background should be taken into account as these could cause the witness to leave a misleading impression. (141)

A claimant's psychological condition arising out of traumatic past experiences may have an impact on his or her ability to testify. (142) Accordingly, failure to address this factor in its reasons could be a reviewable error where the RPD has found the claimant not to be credible.

The demeanour of a witness is not an infallible guide as to whether the truth is being told, nor is it determinative of credibility. It would be a rare case where demeanour alone would be sufficiently material to the claim to undermine the entire testimony in support of a claim. Generally, demeanour is one of several indicators of a lack of credibility. In general, the courts have attempted to diminish the role of demeanour in the final assessment of credibility. (143)

Assessments of credibility based on demeanour are open to scrutiny on judicial review. Accordingly, clear and cogent reasons must be given for such findings. (144) (Legal Services, Immigration and Refugee Board of Canada, "2.3.7. Demeanour," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(137) Leung, Tak On v. M.E.I. (F.C.A., no. A-756-91), Stone, Linden, McDonald, July 8, 1993; Wen, Li Xia v. M.E.I. (F.C.A., no. A-397-91), Stone, Linden, McDonald, June 10, 1994;

Mostajelin, Mohammad v. M.E.I. (F.C.A., no. A-122-90), Stone, Desjardins, Dcary, January 15, 1993.

(138) King-Adjei, Augustine v. M.E.I. (F.C.T.D., no. T-1584-91), Jerome, March 16, 1992.

(139) In Liu, Zhi Gan v. M.C.I. (F.C.T.D., no. IMM-3143-96), Gibson, August 29, 1997, Reported: Liu v. Canada (Minister of Citizenship and Immigration) (1997), 40 Imm. L.R. (2d) 168 (F.C.T.D.), the Court questioned how, without further explanation, the claimant's occupation (as a fisherman) could be determined from his demeanour. In Chowdhury, Wahid v. M.C.I. (F.C.T.D., no. IMM-2896-02), Blanchard, April 9, 2003, 2003 FCT 416, the Court pointed out that there is no universal standard for the demeanour of a political activist.

(140) See Par v. Goulet, [1959] Que. S.C. 348, at 354, per Marquis J. In Sun, Yuerong v. M.E.I. (F.C.T.D., no. 92-A-7176), Nol, June 23, 1993, the claimant's testimony "went from being crystal clear to nebulous when confronted with questions by the members." In Arumugam, Kandasamy v. M.E.I. (F.C.T.D., no. IMM-1406-93), Reed, January 20, 1994, the claimant's demeanour when reciting answers concerning facts set out in the PIF differed from that when giving evidence about matters outside his narrative. In Sandhu, Jasbir Singh v. M.E.I. (F.C.T.D., no. 93-T-46), MacKay, March 3, 1994, the claimant was found not to be spontaneous, answered with hesitation and evasiveness, and did not answer in some areas in a direct and precise manner. In Gao, Zhen v. M.C.I. (F.C.T.D., no. IMM-5989-00), Nadon, August 31, 2001, 2001 FCT 978, the claimant's testimony "sounded wooden and rehearsed."

(141) Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.), at 298-299. In Ankrah, Bismark v. M.E.I. (F.C.T.D., no. T-1986-92), Nol, March 16, 1993, the claimant's testimony was found to be "totally devoid of any emotion or personal involvement" to be believed. However, the appropriateness of drawing adverse conclusions from the claimant's lack of emotion when recalling traumatic events, without further elaboration, has been questioned. In Shaker, Tahereh v. M.C.I. (F.C.T.D., no. IMM-3449-98), Reed, June 30, 1999, the Court commented that, in the circumstances, it was not apparent why one should have expected the claimant to become emotional when describing a beating, so long after the event. See also London, Luz Dary Aguedo v. M.C.I. (F.C.T.D., no. IMM-1830-02), Blanchard, March 31, 2003, 2003 FCT 376; Kathirkamu, Saththiyathasan v. M.C.I. (F.C.T.D., no. IMM-3430-02), Russell, April 8, 2003, 2003 FCT 409; Ahmad, Nawaz v. M.C.I. (F.C.T.D., no. IMM-944-02), Rouleau, April 23, 2003, 2003 FCT 471. In Mitac, Josef v. M.C.I. (F.C.T.D., no. IMM-5988-98), Lutfy, September 13, 1999, the Court held that there was no rational connection, in this case, between the claimants' comportment ("smiling and laughing" and "facial expressions") and the panel's conclusion that they were not Roma.

(142) Khawaja, Mohammad Rehan v. M.C.I. (F.C.T.D., no. IMM-5385-98), Denault, July 28, 1999. See also 2.4.10. Medical Reports.

(143) In Plumb v. W.C. MacDonald Regd.; Latimer v. Foster Tobacco Co., [1926] 1 D.L.R. 899 (Ont. C.A.) (reversed on other grounds sub nom. W.C. MacDonald Regd. v. Latimer; Jasperson v. Plumb, [1928] 3 D.L.R. 870 (P.C.)), Smith J. stated at 918-19:

There are fortunately few cases in which the credibility of witnesses has to be determined by a trial Judge on conclusions drawn alone from the appearance and demeanour of these witnesses in the box. This may be an element of more or less weight according to circumstances, but at best it is a very uncertain guide Conduct and demeanour are at all events of minor importance where the whole evidence and surrounding circumstances furnish guides of a more reliable nature.

(144) In Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.), the Court stated at 299:

The respondent suggested that the [claimant] wasevasive in answering questions. However, the only suggested evasiveness occurred when the [claimant] clearly did not understand the question and when that was straightened out he answered the question. In my view, it is not evasion to misunderstand a question and grope for answers.

In Aden, Ibrahim Ali v. M.E.I. (F.C.A., no. A-813-91), Hugessen, MacGuigan, Dcary, April 28, 1993, the Court noted:

> The Refugee Division gave three reasons why they said they did not believe the [claimant]. The second reason given was that the [claimant] had been "vague" because he could not specify whether the attacking forces had used bombs or artillery in the raid on Hargeisa in May 1988: that, in our view, was both unfair and unreasonable. The victims of military attacks on civilian populations cannot be expected to appreciate the niceties of the various systems employed to deliver explosive charges against them.

In Shakir, Hani Thabit v. M.C.I. (F.C.T.D., no. IMM-2671-95), Reed, April 3, 1996, the Court recognized that a transcript "does not show pauses between questions and answers, or within an answer. It does not show[a claimant's] 'body language'."=

Adequacy of Reasons

The Board is required to make clear findings as to what evidence is believed or disbelieved,Note 68 and should go on to assess any evidence found to be credible.Note 69 Ambiguous statements that do not amount to an outright rejection of the claimant's evidence, but only "cast a nebulous cloud over its reliability," are not sufficient to discount the evidence. (70)

Absent a conclusion impeaching the credibility of the claimant as a whole, the Board cannot, by reference to a finding expressly limited to one incident or one aspect of the claimant's story, ignore other incidents or aspects of the claim. (71)

As noted by the Court of Appeal in Hilo, the Board should be consistent in the treatment of various aspects of the claimant's testimony. For example, the panel should not use evidence which was disbelieved as a premise (factual basis) to undermine other aspects of the claimant's testimony. (72)

The Federal Court has called some panel's reasons regarding credibility "regrettably sparse" or even "vague" and stated that the Board owes a duty to the claimant to give its reasons for

rejecting the claim on the basis of credibility in "clear and unmistakable terms." (73) If the RPD believes only some of the claimant's story, it is obliged to say what parts it rejected and why. (74) It is not enough to say that the evidence is not believed, (75) since this creates an appearance of arbitrariness.

The grounds for rejecting or disbelieving evidence must be stated clearly with specific and clear reference to the evidence. This generally includes an obligation to provide examples of the basis for not accepting the claimant's testimony (such as inconsistencies, implausibilities), and to explain how and why they impacted on the claimant's credibility. (76) (Legal Services, Immigration and Refugee Board of Canada, "2.2.2. Adequacy of Reasons," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(70) Hilo v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 199 (F.C.A.), at 200, per Heald J.A. In Shahiraj, Narender Singh v. M.C.I. (F.C.T.D., no. IMM-3427-00), McKeown, May 9, 2001, 2001 FCT 453, the Court held that the CRDD's statements to the effect that the discrepancies between the claimant's statements at the port of entry and in his PIF narrative "compromise the credibility of his claim," and that his attempts to explain these discrepancies "rob of credibility his story of persecution", did not go far enough to dispose of the claim on credibility: The CRDD did not specifically state that it disbelieved the claimant's version of events. In Muniandy, Shasikala v. M.C.I. (F.C.T.D., no. IMM-3584-01), Tremblay-Lamer, May 15, 2002, 2002 FCT 557, the Court found that "the Board did not say whether its finding that the claimant was not credible led it to reject completely the claimant's assertions as to the genuineness of his fear, let alone, it would appear, how it led to this overall rejection of his testimony."

(71) Ariff, Mohamed Faiz Mohamed v. M.C.I. (F.C.T.D., no. IMM-1142-96), No l, January 15, 1997.

(72) Hilo v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 199 (F.C.A.). See also Munyakayanza, Devote v. M.C.I. (F.C.T.D., no. IMM-4359-99) Blais, August 16, 2000, where the CRDD relied on letters which it dismissed as a basis for attacking the claimant's credibility.

(73) Armson v. Canada (Minister of Employment and Immigration) (1989), 9 Imm. L.R. (2d) 150 (F.C.A.), at 157-58, per Heald J.A. In Stadtmuller, Otto Istvan v. M.C.I. (F.C., no. IMM-618-03), Shore, January 23, 2004, 2004 FC 102, the Court stated : "The salient or key points of the evidence must be discussed in the reasons, in a more revelatory fashion."

(74) Ramirez, Ana Gabriela Espriella v. M.C.I. (F.C.T.D., no. IMM-2540-98), McKeown, April 20, 1999.

(75) Guzman, Luis Martinez v. M.C.I. (F.C.T.D., no. IMM-472-97), Nadon, December 22, 1997.

(76) Tung v. Canada (Minister of Employment and Immigration) (1991), 124 N.R. 388 (F.C.A.); Hilo v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 199 (F.C.A.); Gonzalez, Everth Francisco Fletes v. M.E.I. (F.C.T.D., no. 92-T-1229), Simpson,

November 18, 1993; Yukselir, Bektas v. M.C.I. (F.C.T.D., no. IMM-1306-97), Gibson, February 11, 1998. In Castro, Alejandro Enrique v. M.E.I. (F.C.T.D., no. T-2349-92), McKeown, August 5, 1993, however, the Court pointed out that the panel is not required to list each and every inconsistency provided specific examples are given. In Isse, Kadija Ahmed v. M.C.I. (F.C.T.D., no. IMM-2991-97), MacKay, July 7, 1998, where the CRDD's reasons were found to be deficient, the only specific examples of inconsistencies set out were in comparing the evidence of the claimant with that of her children, to which latter evidence the panel stated it gave no weight. In Diaz, Juan Rodrigo Penailillo v. M.C.I. (F.C.T.D., no. IMM-4586-98), Pinard, August 12, 1999, the Court held that a conclusion of implausibility must be supported by reference to specific and relevant elements of the evidence, and cannot merely be a summary of the testimony of the claimant.

Trustworthy Evidence on Which to Base Findings

The Federal Court has emphasized that an adverse finding of credibility must be supported by trustworthy evidence. (181) When part of the testimony raises questions, the decision-maker must have trustworthy evidence to the contrary, (182) or must find this part of the testimony inconsistent or inherently suspect or improbable, (183) if it is to be rejected.

In determining whether the evidence that contradicts the claimant's testimony is trustworthy, factors such as the source of the information, the objective of the person in providing it and the methods used to gather the information should be considered. In addition, the decision-maker must also determine the weight or probative value to be assigned to such contradictory evidence. (184) In this regard, the decision-maker must be satisfied that the evidence relied on is probably so, not just possibly so. (185) (Legal Services, Immigration and Refugee Board of Canada, "2.4.1. Trustworthy Evidence on Which to Base Findings," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(181) Salamat v. Canada (Immigration Appeal Board) (1989), 8 Imm. L.R. (2d) 58 (F.C.A.); Siddique, Ashadur Rahman v. M.E.I. (F.C.A., no. A-1137-88), Pratte, Hugessen, Desjardins, November 23, 1989; Boucher v. Canada (Minister of Employment and Immigration) (1989), 105 N.R. 66 (F.C.A.); Frimpong v. Canada (Minister of Employment and Immigration) (1989), 8 Imm. L.R. (2d) 183 (F.C.A.); Sathanandan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 310 (F.C.A.).

(182) Ansong v. Canada (Minister of Employment and Immigration) (1989), 9 Imm. L.R. (2d) 94 (F.C.A.).

(183) Armson v. Canada (Minister of Employment and Immigration) (1989), 9 Imm. L.R. (2d) 150 (F.C.A.); Leung v. Canada (Minister of Employment and Immigration) (1990), 12 Imm. L.R. (2d) 43 (F.C.A.).

(184) Okyere-Akosah, Kwame v. M.E.I. (F.C.A., no. A-92-91), Marceau, Desjardins, Dcary, May 6, 1992.

(185) Orelien v. Canada (Minister of Employment and Immigration), [1992] 1 F.C. 592 (C.A.), at 605.

Presumption of Truthfulness

The Court of Appeal, in Maldonado (186) and on several other occasions, (187) set out the important principle that when a claimant swears that certain facts are true, this creates a presumption that they are true, unless there is valid reason to doubt their truthfulness. Hence, as a corollary, there is no legal requirement for a claimant to corroborate sworn testimony that in uncontradicted and otherwise credible. (See 2.4.2. Corroborative Evidence.)

In Hernandez, (188) the Federal Court pointed that this presumption does not extend to the inferences that the claimant draws from the facts he or she testifies to:

the presumption of truth that applies to the facts recounted by the [claimant] does not apply to the deductions made from those facts.

This proposition was elaborated in Derbas, (189) where the Federal Court stated:

By accepting the [claimant's] version of the events as fact, the Board was certainly not bound to accept the interpretation he puts on those events. The Board still had to look at whether the events, viewed objectively, provided sufficient basis for a well-founded fear of persecution.

Thus, the Board is entitled to reject some or all of the inferences drawn by the claimant, especially if they are speculative in nature, even in the absence of an adverse finding of credibility. (190)

If a panel puts questions to the claimant which he or she could not reasonably be expected to know (for example, why the authorities acted in a particular way), the claimant should not be penalized for speculating or providing hearsay information by way of explanation. (191) (Legal Services, Immigration and Refugee Board of Canada, "22.4.2. Presumption of Truthfulness," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(186) Maldonado v. Canada (Minister of Employment and Immigration), [1980] 2 F.C. 302 (C.A.), at 305, where the Court said: "When [a claimant] swears to the truth of certain allegations, this creates a presumption that those allegations are true unless there be reason to doubt their truthfulness."

(187) Thind, Ranjit Singh v. M.E.I. (F.C.A., no. A-538-83), Heald, Mahoney, Lalande, October 27, 1983; Villarroel v. Canada (Minister of Employment and Immigration) (1979), 31 N.R. 50 (F.C.A.), also reported as Re Salvatierra and Canada (Minister of Employment and Immigration) (1979), 99 D.L.R. (3d) 525 (F.C.A.); Permaul v. Canada (Minister of Employment and Immigration) (1983), 53 N.R. 323 (F.C.A.); Attakora v. Canada (Minister of Employment and Immigration) (1989), 99 N.R. 168 (F.C.A.); Sathanandan v. Canada (Minister of Employment and Immigration) (1991), 15 Imm. L.R. (2d) 310 (F.C.A.); Okyere-Akosah, Kwame v. M.E.I.

(F.C.A., no. A-92-91), Marceau, Desjardins, Dcary, May 6, 1992; Lachowski v. Canada (Minister of Employment and Immigration) (1992), 18 Imm. L.R. (2d) 134 (F.C.T.D.); Bains v. Canada (Minister of Employment and Immigration) (1993), 20 Imm. L.R. (2d) 296 (F.C.T.D.); Owusu, Anthony v. M.C.I. (F.C.T.D., no. IMM-2422-94), Wetston, May 4, 1995. This principle appears to apply also to statutory declarations by the claimant. See Liang, Xiao Dong v. M.C.I. (F.C.T.D., no. IMM-3668-00), Pinard, April 19, 2001, 2001 FCT 341.

(188) Hernandez, Ileana Araceli v. M.E.I. (F.C.T.D., no. IMM-1511-93), Denault, May 9, 1994.

(189) Derbas, Ahmad Issa v. S.G.C. (F.C.T.D., no. A-1128-92), Pinard, August 18, 1993.

(190) Prasad, Mahendra v. S.S.C. (F.C.T.D., no. A-1109-92), Jerome, October 13, 1994. In Hercules, Pedro Monge v. M.C.I. (F.C.T.D., no. IMM-1196-93), Gibson, August 25, 1993, the Court stated: "I find that there did not exist an obligation on the part of the CRDD in this case to accept sworn allegations as true, even though credibility is not in question, where those allegations are in the nature of a speculative conclusion, and whether or not that speculation is well-founded."

(191) Kong, Win Kee v. M.E.I. (F.C.T.D., no. IMM-471-93), Reed, January 27, 1994, Reported: Kong v. Canada (Minister of Employment and Immigration) (1994), 23 Imm. L.R. (2d) 179 (F.C.T.D.); Matharu, Maninder Singh v. M.C.I. (F.C.T.D., no. IMM-868-00), Pelletier, January 9, 2002, 2002 FCT 19.

Corroborative Evidence

Unless there are valid reasons to question a claimant's credibility, it is an error for the RPD to require documentary evidence corroborating the claimant's allegations. In other words, the RPD cannot disbelieve a claimant merely because the claimant presents no documentary or other evidence to confirm his or her testimony. (192) Thus, generally, a failure to offer documentation cannot be linked to the claimant's credibility where there is no evidence to contradict the claimant's allegations. (193)

In Kaur, the Federal Court held that if a panel dispenses with the need to call a witness to corroborate the claimant's testimony, it cannot then make an adverse finding of credibility because of a lack of corroboration of that testimony. (194) (Legal Services, Immigration and Refugee Board of Canada, "2.4.3. Corroborative Evidence," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(192) Ovakimoglu v. Canada (Minister of Employment and Immigration) (1983), 52 N.R. 67 (F.C.A.); Attakora v. Canada (Minister of Employment and Immigration) (1989), 99 N.R. 168 (F.C.A.) (claimant did not provide a medical report to substantiate his claim of injury); Lachowski v. Canada (Minister of Employment and Immigration) (1992), 18 Imm. L.R. (2d) 134 (F.C.T.D.); Ahortor v. Canada (Minister of Employment and Immigration) (1993), 21 Imm. L.R. (2d) 39 (F.C.T.D.) (claimant failed to offer documentation of his arrest).

The rationale for this general principle appears to be found in the UNHCRHandbook on Procedures and Criteria for Determining Refugee Status, which states:

> 196. It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.
>
> 197. The requirement of evidence should not thus be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself.

However, paragraph 197 of the Handbook adds that:

> 'Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant.

(193) Selvarajah, Rajkumar v. M.E.I. (F.C.A., no. A-342-91), Heald, Stone, McDonald, April 14, 1994; Oblitas, Jorge v. M.C.I. (F.C.T.D., no. IMM-2489-94), Muldoon, February 2, 1995. In Miral, Stefnie Dinisha v. M.C.I. (F.C.T.D., no. IMM-3392-97), Muldoon, February 12, 1999, the Court commented that it is unrealistic to require a refugee claimant to have with her paperwork and documents detailing her arrest history in the country from which she just fled. However, in Syed, Naqeeb-Ur-Rehman v. M.C.I. (F.C.T.D., no. IMM-1613-97), MacKay, March 13, 1998, the Court held that, given that the CRDD found the claimant's story to be implausible, the lack of corroboration in the form of newspaper stories or even a letter from his wife (the claimant alleged he had received some) was a valid consideration. In Herrera, Endigo Guiller Caceres v. M.C.I. (F.C.T.D., no. IMM-27-37-97), Muldoon, September 28, 1998, the Court found, in the circumstances of that case, that since it was not presented, the CRDD was entitled to conclude the arrest warrant did not exist. In Sinnathamby, Nageswararajah v. M.C.I. (F.C.T.D., no. IMM-4086-00), Blanchard, May 14, 2001, 2001 FCT 473, the Court held that given the credibility concerns explicitly put to the claimants, the CRDD did not err in drawing a negative inference by reason of the claimants' failure to adduce corroborating evidence.

(194) Kaur, Diljeet v. M.E.I. (F.C.T.D., no. 93-A-377), Nol, June 2, 1993, Reported: Kaur v. Canada (Minister of Employment and Immigration) (1993), 21 Imm. L.R. (2d) 301 (F.C.T.D.).

Assessing Documents

The matter of foreign documents is not an area where the Board can claim particular knowledge. (239) There is no general requirement for the RPD, however, to submit an identity or other document for forensic testing. (240)

Where there is sufficient evidence to cast doubt on its authenticity, whether because of an irregularity on its face or the questionable circumstances in which it was obtained or provided, a document may be assigned little (or no) weight, without expert verification or where such verification is inconclusive.Note 241 When discounting documents in such circumstances, the Board should take into account the explanation, if any, given by the claimant. (242)

Where there is insufficient evidence to call into question the authenticity of a document it is not open to the Board to conclude it is not genuine. (243) The Federal Court has held that documents issued by a foreign government are presumed to be authentic, (244) unless evidence (external to the document) is produced to prove otherwise or the Board is able to make a determination based on the contradictory evidence that calls the authenticity of the document into question. (245)

Evidence of widespread availability of fraudulent documents in a country is not, by itself, sufficient to reject foreign documents as forgeries, (246) but may be relevant if there are other reasons to question the documents or a claimant's credibility. (247)

Where there is conflicting evidence, the RPD is entitled to choose the documentary evidence that it prefers, provided that it addresses the contradictory documents and explains its preference for the evidence on which it relies. (248)

A claimant's overall lack of credibility may affect the weight given to documentary evidence (including medical evidence), and in appropriate circumstances may allow the Board to discount that evidence. (249) Conversely, submitting a false or irregular document may have an impact on the weight assigned to other documents provided by the claimant (especially when they are interrelated), (250) and on the overall credibility of a claimant. (251) Not every discrepancy in a document, however, will necessarily be material to the success of a claim. (252)

If the Board wants to premise an adverse credibility finding on the fact that a claimant is lying about her age (or other condition), the relevant medical evidence must be disclosed to the claimant. (253) (Legal Services, Immigration and Refugee Board of Canada, "2.4.8. Assessing Documents," *Assessment of Credibility in Claims for Refugee Protection,* at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/Credib.aspx.)

(239) Ramalingam, Govindasamy Sellathurai v. M.C.I. (F.C.T.D., no. IMM-1298-97), Dub, January 8, 1998.

(240) In Owusu, Kweku v. M.E.I. (F.C.A., no. A-1146-87), Heald, Hugessen, Desjardins, January 31, 1989, the Court held that the CRDD did not err in failing to require expert evidence to support its finding in respect of handwriting. In Culinescu, Rodica-Luciana v. M.C.I. (F.C.T.D., no. IMM-3395-96), Joyal, September 17, 1997, the Court held that there was no duty on the Board to have impugned documents (an order to stand trial) authenticated. In Yogeswaran, Kulamanidevi v. M.C.I. (F.C.T.D., no. IMM-1291-99), MacKay, February 9, 2001, 2001 FCT 48, the Court agreed that sending out the documents for authentication would not have explained the discrepancies in dates and names. In Allouche, Sofiane v. M.C.I. (F.C.T.D., no. IMM-973-99), Pinard, March 17, 2000, the Court held that the CRDD's refusal to have certain documents assessed by an expert was not unreasonable, especially since the panel had no legal obligation to

do so. Note, however, Pachkov, Stanislav v. M.C.I. (F.C.T.D., no. IMM-5449-99), Denault, June 28, 2000, where the panel undertook to have the RCO send an information request to the Latvian embassy concerning the status of stateless persons holding a passport of the former USSR, but did not follow through (the request was sent to the IRB Documentation Centre instead) and did not inform the claimant. According to the doctrine of legitimate expectation, an administrative authority must abide by the procedural undertakings it has freely made, provided that this authority is not acting contrary to its legal obligations.

(241) See, for example: Grozdev, Kostadin Nikolov v. M.C.I. (F.C.T.D., no. A-1332-91), Richard, July 16, 1996 (letter and summons); Parvez, Mohammed v. M.C.I. (F.C.T.D., no. A-1341-92), Gibson, October 18, 1996 (arrest warrant); Adar, Mohamoud Omar v. M.C.I. (F.C.T.D., no. IMM-3623-96), Cullen, May 26, 1997 (passports and other identity documents); Culinescu, Rodica-Luciana v. M.C.I. (F.C.T.D., no. IMM-3395-96), Joyal, September 17, 1997 (order to stand trial); Hossain, Md Iqbal v. M.C.I. (F.C.T.D., no. IMM-1600-99), Tremblay-Lamer, February 4, 2000 (letter); Islam, Arif v. M.C.I. (F.C.T.D., no. IMM-5745-99), Tremblay-Lamer, February 2, 2001, 2001 FCT 10 (CRDD compared the content and form of two medical certificates); Riveros, Maximo Andres Febres v. M.C.I. (F.C.T.D., no. IMM-6517-00), Blais, September 11, 2001, 2001 FCT 1009 (the photograph in the military service book seemed to be recent, and not one dating from 1972); Uddin, Nizam v. M.C.I. (F.C.T.D., no. IMM-895-01), Gibson, April 26, 2002, 2002 FCT 451 (CRDD noted discrepancies between the claimant's documents and the general evidence regarding the form and content of such documentation). In Ahmed, Shakeel v. M.C.I. (F.C.T.D., no. IMM-1006-97), Nadon, April 9, 1998, the Court upheld the CRDD's finding that the arrest warrant was invalid because it contained handwritten words in English and because the claimant failed to produce the First Information Report listing the actual charges, despite being given time to do so; also the lawyer's letter from Pakistan had the word "legal" misspelled in the letterhead. In Yakub, Omar Imhammed v. M.C.I. (F.C.T.D., no. IMM-5361-00), McKeown, October 2, 2001, 2001 FCT 1082, the Court held that the CRDD did not err in refusing the documentation from Executive Committee members of the Libyan League for Human Rights after the Board's Special Information Research Unit (SIRU) wrote to the league to verify the authenticity of the statement and received no response. In Umba, Laetitia Masial v. M.C.I. (F.C., no. IMM-6318-02), Martineau, January 9, 2004, 2004 FC 25, the Court stated that it did not believe that the Board must be rigorous to the point that the acceptance of evidence produced by a claimant must depend on North American logic and reasoning. In Dzey, Oksana Olesy v. M.C.I. (F.C., no. IMM-1-03), Mactavish, January 30, 2004, 2004 FC 167, the Court upheld the RPD's finding that it was implausible for the claimant to have obtained a police report detailing events, after the fact, given her testimony that the police had refused to record her complaint when she attempted to report the assault and their alleged protection of the assailant in the past. In Mohanarajan, Sriahilandtharanathan v. M.C.I. (F.C.T.D., no. IMM-5482-00), Simpson, November 6, 2000, the Court held that given all the problems which were identified in connection with the documents, the CRDD was entitled, given its expertise, to reach conclusions about the reliability of an identity document even though the RCMP could not determine whether it was or was not authentic. See also Aboubacar, Habib Rashad v. M.C.I. (F.C.T.D., no. IMM-5925), Dawson, February 13, 2002, 2002 FCT 162, where the claimant's explanation as to how he obtained his birth certificate to be highly dubious. Moreover, while the RCMP forensic report on the Niger identity card was inconclusive regarding authenticity and alteration, it stated that it had the characteristics of a counterfeit document.

(242) In Mandar, Kashmeer Singh v. M.C.I. (F.C.T.D., no. IMM-4605-96), Reed, October 3, 1997, the Court cautioned the CRDD to seek and take into account explanations offered by the claimant regarding impugned documents.

(243) Gyimah, Joycelyn v. M.C.I. (F.C.T.D., no. IMM-1011-93), Gibson, November 10, 1995; Kashif, Zakria Mohammed v. M.C.I. (F.C.T.D., no. IMM-760-02), Pinard, February 18, 2003, 2003 FCT 179. In Hadjalaran, Zyulhan Ismail v. M.C.I. (F.C.T.D., no. IMM-6134-99), Campbell, July 18, 2000, the Court held that the CRDD should first rule on the authenticity of a summons before deciding on the weight to be given it. In Ourazmetov, Damir v. M.C.I. (F.C.T.D., no. IMM-3247-99), Denault, May 16, 2000, the CRDD found that the claimant failed to prove his Jewish origin despite his birth certificate establishing that his father and mother were Jewish. The Court held it was unreasonable not to assign any probative value to this document on the basis that his father had declared in his own internal passport that he was also of Tartar nationality. There being no doubt expressed as to the validity of the birth certificate, this document was proof of its contents and it established, at the very least, that his parents were Jewish. In Taire, Queen v. M.C.I. (F.C.T.D., no. IMM-3883-00), Hansen, October 11, 2001, 2001 FCT 1109, the Court held that it was erroneous for the panel to conclude that it was implausible for the claimant's father to sign her application for a birth certificate without questioning the authenticity of the document; however, it was contradictory that the claimant's passport had been issued before her birth certificate.

(244) In Warsame, Mohamed Dirie v. M.E.I. (F.C.T.D., no. A-758-92), Nadon, November 15, 1993, the Court stated: "The certificate is either genuine or false, and therefore it is not possible to attach 'little probative value'. It is all or nothing. At the very least, the Board should have stated why it believed that the document in question was not genuine as, on its face, it does appear to be genuine." See also Olojo, Omolara Abimbola v. M.C.I. (F.C.T.D., no. IMM-3918-96), Lutfy, November 6, 1997. In Kabashi, Sokol v. M.C.I. (F.C.T.D., no. IMM-3489-97), Gibson, April 20, 1998, the Court held that the CRDD could not conclude that a military call-up notice and a school letter were not genuine in the absence of expert examination. In Ramalingam, Govindasamy Sellathurai v. M.C.I. (F.C.T.D., no. IMM-1298-97), Dub, January 8, 1998, the Court held that an identity document issued by a foreign government is presumed valid unless evidence is produced to prove otherwise. In Deci, Edmond v. M.C.I. (F.C.T.D., no. IMM-664-00), Gibson, February 5, 2001, 2001 FCT 21, the Court held that if the claimant's birth certificate, family certificate and certificate from the European Union were originals, it is difficult to understand how the CRDD could justify not giving "much weight" to these documents, despite the fact that they were issued after the claimant left Albania, without impugning the reputation of state authorities in Albania who issued the duplicate originals. In Nika, Mimoza v. M.C.I. (F.C.T.D., no. IMM-5209-00), Hansen, June 14, 2001, 2001 FCT 656, the Court held that the CRDD erred in its finding with respect to a family certificate from Albania in the absence of any evidence with respect to this type of document.

(245) Mpoli, Noellie Ngoya v. M.C.I. (F.C.T.D., no. IMM-2098-02), Nol, April 3, 2003, 2003 FCT 398. The Court also held that in failing to inform the claimants of its concerns regarding the birth certificates, it did not give them an opportunity to respond to them.

(246) Ismaylov, Anar Ibrahim v. M.C.I. (F.C.T.D., no. IMM-1232-01), Gibson, January 11, 2002, 2002 FCT 30; Papaskiri, George v. M.C.I. (F.C., no. IMM-6179-02), O'Keefe, January 16, 2004, 2004 FC 69 (RPD made no reference to any particular problem with the documents tendered by the claimant); Cheema, Munawar Ahmad v. M.C.I. (F.C.T.D., no. IMM-615-03), von Finckenstein, February 11, 2004, 2004 FC 224 (RPD did not otherwise support its findings of forgery).

(247) Uddin, Nizam v. M.C.I. (F.C.T.D., no. IMM-895-01), Gibson, April 26, 2002, 2002 FCT 451. In Nasim, Babar v. M.C.I. (F.C.T.D., no. IMM-6455-00), Tremblay-Lamer, November 2, 2001, 2001 FCT 1199, the Court upheld the CRDD's decision where the claimant's lack of credibility combined with the CRDD's knowledge that it is easy to produce forged Pakistani documents led it to give no probative value to the claimant's documents. See also, to the same effect, Petrova, Olga v. M.C.I. (F.C.T.D., no. IMM-4743-00), Dawson, March 14, 2002, 2002 FCT 286. In Gasparyan, Sos v. M.C.I. (F.C., no. IMM-3496-02), Kelen, July 10, 2003, 2003 FC 863, the CRDD found difficulties with the authenticity of identity documents issued in the former republics of the Soviet Union around 2001, and drew a negative inference from the claimant's failure to produce his original 1972 birth certificate. The Court held that a panel is entitled to rely upon its knowledge regarding the availability of forged documents in a particular region to question their probative value.

(248) Ganiyu-Giwa, Abdulfatai v. M.C.I. (F.C.T.D., no. IMM-3526-94), Wetston, March 28, 1995; Gnanapragasam, Daniel v. M.C.I. (F.C.T.D., no. IMM-573-99), Heneghan, May 31, 2000; Polgari, Imre v. M.C.I. (F.C.T.D., no. IMM-502-00), Hansen, June 8, 2001, 2001 FCT 626.

(249) Songue, Andr Marie v. M.C.I. (F.C.T.D., no. IMM-3391-95), Rouleau, July 26, 1996. In Hamid, Iqbal v. M.E.I. (F.C.T.D., no. IMM-2829-94), Nadon, September 20, 1995, the Court agreed that, while it is correct that, even if the Board finds the claimant to be bereft of credibility, it must analyze the documentation to determine whether it can give support to the claim, nonetheless, the documents will not be assigned much probative value unless they are proven to be genuine: "where the Board is of the view that the [claimant] is not credible, it will not be sufficient for the [claimant] to file a document and affirm it is genuine and that the information contained therein is true. Some form of corroboration or independent proof will be required to 'offset' the Board's negative conclusion on credibility." See also Kanyai, Mugwagwa Brian v. M.C.I. (F.C.T.D., no. IMM-315-02), Martineau, August 9, 2002, 2002 FCT 850; Garcha, Jaswant Singh v. M.C.I. (F.C.T.D., no. IMM-5526-01), Blais, September 27, 2002, 2002 FCT 1012 (CRDD gave no probative value to an affidavit and medical certificate); Taire, Queen v. M.C.I. (F.C., no. IMM-2948-02), Blanchard, July 15, 2003, 2003 FC 877. In Shergill, Gurpeet Singh v. M.C.I. (F.C.T.D., no. IMM-5942-00), Nadon, October 19, 2001, 2001 FCT 1138, the Court held that the CRDD had not erred in faulting the claimant, who had testified in an evasive manner, for having introduced an incomplete newspaper article and in not attaching probative value to the affidavit of the village sarpanch. In Ahmad, Jameel v. M.C.I. (F.C.T.D., no. IMM-5537-01), Blais, August 15, 2002, 2002 FCT 873, the Court held that it was an error to reject all the documentary evidence presented by the claimant given that the finding of a lack of credibility was based on one event.

(250) Uddin, Nizam v. M.C.I. (F.C.T.D., no. IMM-895-01), Gibson, April 26, 2002, 2002 FCT 451. In Bhuiyan, Abdul Bashar v. M.C.I. (F.C.T.D., no. IMM-53-02), Nol, March 10, 2003, 2003 FCT 290, the Court held that once the CRDD concluded that identity had not been established (after discounting the claimant's birth certificate), it was not necessary for it to analyze the other documentary evidence (medical report and two letters). However, in Geng, Xin v. M.C.I. (F.C.T.D., no. IMM-300-00), Blanchard, April 2, 2001, 2001 FCT 257, the Court held the CRDD erred in dismissing all of the documentary evidence simply because it provided good reasons to believe that some of the documents had been fabricated. In Al-Shammari, Mossed v. M.C.I. (F.C.T.D., no. IMM-33-01), Blanchard, April 2, 2002, 2002 FCT 364, the Court held that the panel erred in attaching no probative value to the document from Kuwait because the documents from Iraq were forgeries.

(251) Husein, Anab Ali v. M.C.I. (F.C.T.D., no. IMM-2044-97), Joyal, May 27, 1998; Yogeswaran, Kulamanidevi v. M.C.I. (F.C.T.D., no. IMM-1291-99), MacKay, February 9, 2001, 2001 FCT 48; Osayande, Maxwell v. M.C.I. (F.C.T.D., no. IMM-3780-01), Kelen, April 3, 2002, 2002 FCT 368. In Umba, Laetitia Masial v. M.C.I. (F.C., no. IMM-6318-02), Martineau, January 9, 2004, 2004 FC 25, the Court stated that, if on their face it is apparent that documents contain various irregularities, the RPD can, in the absence of a satisfactory explanation, make a negative finding as to the credibility of a claimant. See also Neethinesan, Parameswary v. M.C.I. (F.C.T.D., no. IMM-724-03), Kelen, January 29, 2004, 2004 FC 138; Ibnmogdad, Moustapha Ould Ould v. M.C.I. (F.C., no. IMM-332-03), Tremblay-Lamer, February 25, 2004, 2004 FC 321.

(252) Gochez, Julio Cesar v. M.C.I. (F.C.T.D., no. IMM-3545-99), Dub, September 7, 2000 (claimant's job description differed from that in his employer's letter; there was an error in the date of an assault mentioned in a medical certificate). In Ngoyi, Badibanga v. M.C.I. (F.C.T.D., no. IMM-1827-99), Tremblay-Lamer, February 15, 2000, the Court held that the CRDD gave exaggerated weight to an error of syntax found in a newspaper article submitted by the claimant.

(253) Khan, Kanak v. M.C.I. (F.C.T.D., no. IMM-2483-01), Beaudry, April 15, 2002, 2002 FCT 431.

(254) Danailov (Danailoff), Vasco (Vassil) Vladimirov v. M.E.I. (F.C.T.D., no. T-273-93), Reed, October 6, 1993; Al-Kahtani, Naser Shafi Mohammad v. M.C.I. (F.C.T.D., no. IMM-2879-94), MacKay, March 13, 1996.