

Federal Court



Cour fédérale

**Date: 20181018**

**Docket: IMM-718-18**

**Citation: 2018 FC 1032**

**Ottawa, Ontario, October 18, 2018**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**KIRIJA LINTON AND  
LINTON ASIRVATHAM**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND  
IMMIGRATION CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicants sought judicial review of the decision of the Acting Migration Program Manager at the Canadian High Commission in Colombo, Sri Lanka [CHC-Colombo], refusing to reopen the overseas application for permanent residence of Kirija Linton as a dependent of an in-Canada protected person, her husband, Linton Asirvatham.

[2] It is accepted by the parties that this application is moot because the application for permanent residence was recently reopened, Ms. Linton was granted a permanent resident visa, and she now resides in Canada with her husband.

[3] The applicants ask the Court to exercise its discretion and hear the application for judicial review notwithstanding that it is moot. For the reasons that follow, the Court shall not do so.

[4] The applicants are Tamils from Sri Lanka. Ms. Linton's husband left Sri Lanka in 2010; became a Convention Refugee in Canada in 2014; and then a permanent resident in 2016. In 2016, Ms. Linton sought permanent residency as a family member of a protected person. The officers in the visa post at CHC-Colombo requested several documents from her, including her husband's Basis of Claim [BOC] form from his refugee claim. Ms. Linton provided all of the documents except for the BOC.

[5] From March 2016 until March 2017, Ms. Linton and CHC-Colombo wrote back and forth about the need for the BOC. Ms. Linton, by way of an affidavit, ultimately provided a version of the BOC with no narrative section. This did not satisfy CHC-Colombo.

[6] CHC-Colombo told Ms. Linton that they required the BOC with the narrative for admissibility reasons. She took the position that she was not required to submit it, noting that:

- BOCs are not required to be submitted;
- Her husband's claim raised no issues of admissibility; and

- BOCs are confidential in Canada, and to send the BOC to Sri Lanka might expose her and her husband to risk as it could be viewed by Sri Lankan nationals who work for CHC-Colombo.

[7] It is suggested that the reason CHC-Colombo wanted the BOC was to “fish” for inconsistencies between husband and wife, either to make a negative credibility finding against her, or to justify a collateral attack on her husband’s claim.

[8] In March 2017, Ms. Linton’s application for a permanent resident visa was rejected under subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for failure to produce all relevant evidence and documents that are reasonably required, and under subsection 11(1) as the officer was not satisfied that she was not inadmissible and met the requirements of the *Act*. Leave to review this decision was refused by this Court on August 23, 2017.

[9] In January 2018, Ms. Linton asked CHC-Colombo to re-open her permanent residency application, saying that the scrutiny which led to the BOC being required was based on stereotyping. The Manager responded that the file was closed and the initial decision stood. It is this decision that gives rise to this judicial review application.

[10] In the course of this litigation, CHC-Colombo became aware that it need not obtain the husband’s BOC from Ms. Linton. It could obtain it electronically directly from the Immigration and Refugee Board pursuant to the *Memorandum of Understanding between The Department of Citizenship and Immigration (CIC), The Canada Border Services Agency (CBSA) and The*

*Immigration and Refugee Board of Canada (IRB)* [the MOU], and its annex, *Information Sharing Annex Between Citizenship and Immigration Canada (CIC), The Canada Border Services Agency (CBSA) and the Immigration and Refugee Board of Canada* [the Annex]. At the hearing, Ms. Jackman advised the Court that while she had been able to locate the Memorandum of Understanding on the internet, she had been unable to locate the annexed document sharing agreement.<sup>1</sup> Both documents in both official languages are attached to these Reasons as Appendix A.

[11] Upon becoming aware of the terms of the MOU and Annex, CHC-Colombo reopened Ms. Linton's application for a permanent residence visa. After a review of her application and all documents it deemed to be relevant, including her husband's BOC, the decision-maker had no admissibility concerns and the requested visa was issued.

[12] The leading case on mootness is *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*]. The Supreme Court of Canada at paragraphs 31, 34 and 40 outlined the relevant factors a court is to consider when determining whether to exercise its discretion and hear a matter even though there is no longer any live controversy. These factors are: (1) the existence of an adversarial relationship between the parties, (2) concern for judicial economy, and (3) awareness of the Court's proper law-making function.

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<sup>1</sup> The English language version of the memorandum may be found at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/memorandum-understanding-border-services-agency-refugee-board.html> and the French language version at <https://www.canada.ca/fr/immigration-refugies-citoyennete/organisation/mandat/politiques-directives-operationnelles-ententes-accords/ententes/protocole-entente-agence-services-frontaliers-commission-refugie.html>

[13] At paragraph 40 of *Borowski*, the Supreme Court of Canada instructed judges that the application of these factors is not a mechanical process and that not all factors needed to weigh towards the same result:

In exercising its discretion in an appeal which is moot, the Court should consider the extent to which each of the three basic rationalia [*sic*] for enforcement of the mootness doctrine is present. This is not to suggest that it is a mechanical process. The principles identified above may not all support the same conclusion. The presence of one or two of the factors may be overborne by the absence of the third, and vice versa.

[14] The applicants submit that there remains an adversarial relationship between the parties because neither applicant ever agreed to have the BOC examined. In fact, Ms. Linton refused the request to produce the BOC even though doing so prolonged her separation from her spouse. They submit that the adversarial relationship continues because both have been wronged by the respondent.

[15] I agree with the respondent's submission that there is no longer an adversarial context between the parties because Ms. Linton's permanent residence visa application was re-opened, reconsidered and approved. *Borowski* tells us that the adversarial context may continue despite the cessation of the live controversy in the litigation where there "may be collateral consequences of the outcome that will provide the necessary adversarial context." The examples provided by the Supreme Court are where there are additional outstanding charges brought by the respondent (*Vic Restaurant Inc v City of Montreal*, [1959] SCR 58 [*Vic Restaurant*]), or the presence of intervenors (*Law Society of Upper Canada v Skapinker*, [1984] 1 SCR 357). Here there are no other matters between the applicants and the respondents that would constitute collateral consequences.

[16] The applicants submit that they have been wronged by the respondent by the non-consensual accessing of their information. That may be; however, their remedy appears to the Court to be a complaint under section 29 of the *Privacy Act*, RSC 1985, c P-21. This alleged wrong does not appear to be anything relating to any provision of the *Immigration and Refugee Protection Act*, or a matter that must attract the attention of this Court at this time.

[17] The second factor to consider is judicial economy. *Borowski* teaches that scarce judicial resources may be used to hear moot matters where the decision will have some practical effect on the rights of the parties (as in *Vic Restaurant*), where an important question may otherwise evade review, and in cases which raise an issue of public importance the resolution of which is in the public interest.

[18] There will be no practical effect on the applicants if this application is heard and determined on its merits. The applicants submit that this question may evade review as it was only as a result of this litigation that they learned of the MOU and Annex permitting the respondent to access the BOC without consent. It is submitted that other applicants are unlikely to ever know of this practice. The applicants also suggest there is a public interest because this practice is discriminatory to Tamils and because the accessing of BOCs is done automatically in all cases from CHC-Colombo where there is a large proportion of Tamil applicants.

[19] As noted above, the question of whether the non-consensual access to the BOC is a breach of privacy is a question best left to the Privacy Commissioner. These Reasons are a matter of public record. If the sharing of information was not previously known, it now is, and

the MOU and Annex in Appendix A are accessible to all. I am unable to accept that this will not become known to other applicants, Tamil or not. The issue of requesting that applicants for permanent residence visas provide a copy of the BOC of their spouse is unlikely to arise again, as the decision-makers will now be aware that they have unilateral access to such documents. The unilateral access of protected persons' IRB documents is not an issue squarely before the Court in this application, as it happened subsequent to the decision under review. That question can be litigated in a matter that is not moot. At best, there is only marginal value in using the scarce resources of the Court to hear the matter now.

[20] Lastly, the applicants submit that there is a need to clarify the lawfulness of sharing private information between the parties to the agreements in Appendix A. They say that the Court would not be creating law but interpreting legislation that is constantly being used. Again, the lawfulness of the arrangement is a matter that may be determined by the Privacy Commissioner, if a complaint is made. There is no need at this time for the Court to engage with this issue.

[21] For these reasons, I shall not exercise my discretion to hear this moot application. Although this judgment dismisses the application because it is moot, the parties were asked if they had any question they wished to the Court to consider certifying. No question was posed and there is none given the nature of the case.

**JUDGMENT in IMM-718-18**

**THIS COURT'S JUDGMENT is that** the application is moot and is dismissed

"Russel W. Zinn"

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Judge



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**ANNEX A**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION (CIC)**  
represented by the Deputy Minister of the Department of Citizenship and Immigration **AND**

**THE CANADA BORDER SERVICES AGENCY (CBSA)**  
represented by the President of the Canada Border Services Agency

**AND**

**THE IMMIGRATION AND REFUGEE BOARD OF CANADA (IRB)**  
represented by the Chairperson of the Immigration and Refugee Board of Canada

Collectively referred to as the "Parties."

**Introduction**

**WHEREAS** the Parties are Government of Canada institutions with a common commitment to realizing the goals of Canada's *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA);

**WHEREAS** the Parties are key organizations within the immigration and refugee portfolio and share responsibilities in managing the envelope of resources dedicated to that portfolio;

**WHEREAS** under the IRPA, CIC is responsible for facilitating the arrival of people and their integration into Canada in a way that maximizes their contribution to the country while protecting the health, safety and security of Canadians. CIC also maintains Canada's humanitarian tradition by protecting refugees and people in need of protection. These objectives are achieved through the administration of the IRPA, the *Department of Citizenship and Immigration Act* and the *Immigration and Refugee Protection Regulations*;

**WHEREAS** the CBSA is responsible for providing integrated border services that support national security priorities and facilitate the free flow of people and goods, including food, plants and animals, across the border. Under the IRPA, the CBSA is responsible for managing the flow of travelers at Canadian ports of entry, intelligence, interdiction of irregular migration, immigration enforcement and criminal investigations of IRPA offences. This includes responsibility for arrests, detentions, removals and representing Ministers at immigration proceedings. Along with the IRPA, the CBSA's mandate is fulfilled through the administration of over 90 acts, including the *Customs Act* and the *Canada Border Services Agency Act*;

**WHEREAS** the IRB is an independent quasi-judicial tribunal, established by the Parliament of Canada to resolve immigration and refugee matters efficiently, fairly and in accordance with the law;

**WHEREAS** CIC and the CBSA signed a Memorandum of Understanding (MOU) on May 4<sup>th</sup>, 2011, to define, in general terms, the basis for cooperation between CIC and the CBSA regarding the effective administration and delivery of the immigration and refugee programs, information sharing and the provision of various services, lines of business and shared IT services;

**WHEREAS** CIC and the CBSA are responsible for the employment of best practices in administering their responsibilities under the IRPA and its Regulations in a manner that reflects the domestic and international interests of the Government of Canada and recognizes the objectives set out in section 3 of the IRPA; and

**WHEREAS** the IRB reports to Parliament through the Minister of Citizenship and Immigration Canada and the CBSA reports to the Minister of Public Safety and Emergency Preparedness.

**Therefore the Parties agree as follows:**

**Purpose**

1. This MOU establishes the basis of cooperation regarding the delivery of the immigration and refugee programs with respect to matters within the mandate of the IRB, including cooperation on administrative measures and the sharing of information.

**Principles**

2. While undertaking to share information and cooperate on administrative measures, the Parties recognize the institutional independence of the IRB. Nothing in this MOU or any of its annexes will be interpreted in a manner that infringes, or could be reasonably seen to infringe, on that independence. Moreover, the IRB is a tribunal before which the CBSA and CIC appear as parties. The Parties will take no actions that impinge, or could be reasonably seen to impinge, on the independence of the IRB's decision-makers in individual cases.

3. The Parties agree to, where appropriate, share information and cooperate on administrative, safety and security measures with respect to matters within the mandate of the IRB regarding:

- the enhancement of administrative efficiency, while respecting the principles of fairness and natural justice;
- the identification and clarification of roles and responsibilities in administering the IRPA;
- the sharing and integration of best practices developed within each organization;
- the provision of improved and cost-effective services to the public;
- the establishment of effective lines of communication; and
- the enhancement of national security.

**Sharing of information**

4. The Parties agree to share, where appropriate, such information as is required to carry out their respective mandates as derived from the IRPA.

5. The administrative framework governing the exchange of personal and case related information between the Parties throughout the immigration and refugee processes is outlined in the Information Sharing Annex.

6. The Parties recognize that any sharing of information under this MOU must be carried out in accordance with any applicable legislation or policy requirements.

#### **Communication and consultation**

7. The Parties recognize that regular and timely communication and consultation are key elements in achieving the purposes of this MOU.

8. Key areas for communication and consultation may include:

- emerging trends, actual and projected workloads, workload priorities and productivity issues insofar as these have an impact on the Parties;
- notification when there are changes in identified resource requirements with respect to issues of mutual interest or where a Party is unable to meet workload demand;
- major initiatives, including legislative and regulatory proposals or proposed rule changes, policy proposals or new administrative procedures, that may have a meaningful impact on the administrative functioning or operations of the other Parties; and
- issues arising from any cost or service-sharing component of this MOU.

9. The Parties will endeavour to communicate and consult as appropriate, especially in relation to new initiatives or program changes with potential impacts for the other Parties.

#### **Governance**

10. The Parties agree to establish a Steering Committee to oversee the elements of this MOU and resolve significant issues of interpretation or application arising from this MOU.

#### **Mandate of the Steering Committee**

11. The Steering Committee is responsible for the administration of this MOU. It will meet to provide oversight and direction on the elements pertaining to the MOU, set the priorities for the Annexes, solve significant issues of interpretation or application arising from the MOU and advise the persons occupying the positions of the signatories of the MOU regarding changes and termination of the MOU.

#### **Steering Committee Members**

12. The following designated officials are signatories to the Annexes for the Parties and have overall administrative responsibility for this MOU and its Annexes

CIC - DG, Refugee Affairs Branch  
CIC - DG, Operational Management and Coordination Branch.

CBSA - DG, Enforcement and Intelligence Programs Directorate  
CBSA - DG, Enforcement and Intelligence Operations Directorate.

IRB - DG, Policy, Planning and Research Branch  
IRB - DG, Registry and Regional Support Services Branch.

**Substitutes**

13. All Committee members who cannot attend a meeting should arrange for a delegate to attend in their place. The replacement will have full authority to make decisions on behalf of the absent member.

**Secretariat**

14. The secretariat functions are shared and will rotate each fiscal year between the three Parties. The Party who assumes the secretariat function will also chair meetings during the course of the fiscal year and circulate a record of decision to the Parties.

**Frequency of Meetings**

15. The Steering Committee will meet at least once a year or as required to address issues pertaining to the MOU and its Annexes.

**Sub-committees**

16. To assist it in fulfilling its oversight responsibilities pertaining to the MOU and its Annexes, the Steering Committee will establish the following sub-committees:

- The Management sub-committee consists of Director/Manager level representatives from each Party and will meet regularly to provide direction and guidance to the Working Group (WG) as well as monitor its work, make recommendations and report activities to the Steering Committee.
- The WG consists of subject matter experts from each Party and is responsible for discussing, drafting and consulting on the MOU and any Annexes stemming from the MOU, as well as for making recommendations and reporting activities to the Management sub-committee.

**Annexes**

17. The Parties agree to negotiate annexes under this MOU, which will be negotiated and interpreted in accordance with the principles of this MOU.

18. The Annexes comprise an integral part of this MOU and are to be interpreted in a manner consistent with this MOU.

19. Annexes under this MOU may be developed or amended as required at any time with the approval of the Steering Committee.

20. The Parties to these annexes will be either the IRB and one of the other Parties to this MOU, or, where appropriate, all three Parties to this MOU.

#### **Dispute resolution**

21. Any disagreement arising from the interpretation or operation of this MOU and its Annexes that cannot be resolved through consultation between the Parties will be referred to the Steering Committee for resolution. If such negotiation fails, the Parties will refer the matter to the persons occupying the positions of the signatories for resolution.

22. Where an Annex does not specify a dispute resolution process, the dispute resolution process set out in this MOU will apply.

#### **Financial arrangements**

23. This MOU will not impose financial responsibilities on any Party. Each Party is responsible for its own costs associated with activities under this MOU, unless otherwise stated in a specific Annex.

#### **Administrative details**

##### **Review**

24. The Parties agree to review this MOU and Annexes no later than five years from the date on which the MOU takes effect and no later than every five years thereafter to monitor its performance and effectiveness.

##### **Date in effect**

25. This MOU will come into effect on the date on which it is signed by the last of the Parties and will remain in effect until it is terminated in accordance with the procedure set out in this MOU.

26. The Parties agree that, on the date on which this MOU comes into effect, the 2008 MOU between CIC, the CBSA and the IRB is terminated.

27. The Parties agree that the existing Annexes and sub-agreements referred to in the 2008 MOU will remain in effect under this MOU until they have been terminated or replaced.

#### **Amendment**

28. This MOU may be amended at any time, by mutual written consent of the persons occupying the positions of the signatories to this MOU.

29. Where an Annex under this MOU does not specify an amending process, it may be amended at any time by mutual written consent of the persons occupying the positions of the signatories to the Annex.

#### **Audit, evaluation and quality assurance**

30. Without restricting each Party's ability to conduct audits and evaluations for their respective policy and service delivery responsibilities, the heads of Internal Audit and Evaluation bodies for CIC, the IRB and the CBSA will work collaboratively in conducting horizontal audits and evaluations. This collaboration will include:

- Sharing audit and evaluation plans;
- Consulting at each step of horizontal audits and evaluations, from planning to final report, where the audit or evaluation relates to shared delivery or impacts on a business process of the partner organizations; this consultation includes sharing draft reports, providing opportunities for feedback on findings and recommendations and facilitating management responses.

31. Quality assurance activities related to specific business processes are the responsibility of the program area. The Parties will be responsible for implementing and administering quality assurance activities within their respective organizations and for sharing the results with the appropriate program or policy area of the Parties where it will promote organizational learning across the immigration and refugee programs.

#### **Security of information**

32. Each Party is responsible for ensuring that the standards and requirements of the *Policy on Government Security* for the safeguarding of sensitive information and assets under their control and the *Operational Standard for the Security of Information Act*, as amended or replaced from time to time, are met.

#### **Termination**

33. This MOU may be terminated by mutual written consent of the persons occupying the positions of the signatories to this MOU.

34. The IRB may terminate this MOU with either or both Parties by providing 90 days written notice to the other Parties of its intention to terminate the MOU. If the IRB terminates this MOU with only one of the Parties under this provision, this MOU will remain in effect as between the IRB and the remaining Party.

35. CIC or the CBSA may terminate its part in this MOU by providing 90 days written notice to the other Parties of its intention to terminate from the MOU. Upon the termination of either CIC or the CBSA under this provision, the MOU will remain in effect as between the IRB and the remaining Party.

36. Where an Annex does not specify a termination process, it may be terminated between the persons occupying the positions of the signatories to the Annex, i.e. Steering Committee, at any time by providing 90 days written notice to the other Parties of its intention to terminate from the Annex.

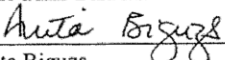
37. If any Party terminates their participation in this MOU, their participation in any Annex under this MOU is also terminated.

**Counterpart signature**

38. This MOU may be signed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

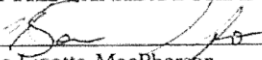
**IN WITNESS THEREOF**, this Memorandum of Understanding, in both official languages, was signed in triplicate, each copy being equally authentic.

**FOR THE DEPARTMENT OF CITIZENSHIP AND IMMIGRATION**

  
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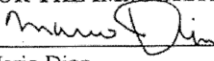
Anita Biguzs  
Deputy Minister of the Department of Citizenship and Immigration

**FOR THE CANADA BORDER SERVICES AGENCY**

  
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Linda Lizotte-MacPhepson  
President of the Canada Border Services Agency

**FOR THE IMMIGRATION AND REFUGEE BOARD OF CANADA**

  
\_\_\_\_\_

Mario Dion  
Chairperson of the Immigration and Refugee Board of Canada

**INFORMATION SHARING ANNEX BETWEEN CITIZENSHIP AND  
IMMIGRATION CANADA (CIC), THE CANADA BORDER SERVICES  
AGENCY (CBSA) AND THE IMMIGRATION AND REFUGEE BOARD OF  
CANADA (IRB)**

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**BETWEEN**

Citizenship and Immigration Canada (CIC), the Canada Border Services Agency (CBSA) and the Immigration and Refugee Board of Canada (IRB), hereinafter jointly referred to as "The Parties".

**WHEREAS:**

The Parties, have a common commitment to realizing the objectives related to immigration and refugees— as set out in section 3 of the *Immigration and Refugee Protection Act* (IRPA) and acknowledge that a coordinated and structured information sharing regime between the organizations, each acting within its own mandate, is essential to support these objectives.

The Parties concluded and signed a Memorandum of Understanding, hereinafter jointly referred to as the "MOU" in April 2008, specifying that the Parties agree to negotiate Annexes under the MOU. This Annex will be interpreted in accordance with the principles contained in the MOU.

The Parties have separate responsibilities in matters relating to the immigration and refugee protection lines of business as defined in the MOU.

The Parties regard information sharing as a key element in the efficient and effective management of the refugee and immigration programs. This Annex focuses on the lawful authorities and policies by which the three organizations share information to further their respective mandates.

The Parties share personal and case-related information limited to advancing their respective immigration and refugee determination lines of business within the scope of their responsibilities as defined in the *IRPA*.

The Parties recognize that any sharing of information must be carried out in accordance with section 7 of the MOU and the authorities identified in section 5.1 of this Annex.



**THE PARTIES AGREE:**

**1. Purpose and Objective**

- 1.1 The purpose of this Annex is to outline the administrative framework governing the exchange of personal and case related information between the Parties throughout the immigration and refugee protection processes.
- 1.2 The objectives of this Annex are to govern the exchange of personal and case related information and to facilitate the flow of shared information between the Parties, for the purposes of immigration and refugee case processing, management of caseloads, tracking of cases, evaluation purposes and statistical reporting between the Parties.
- 1.3 This Annex is not intended to override the Immigration Refugee Protection Regulations and Divisional Rules that govern disclosure between the Parties in proceedings before the IRB.

**2 Commitment**

- 2.1 The Parties commit to lawfully sharing case specific information, including personal and case related information systematically or on a case by case basis based on arrangements made between the three organizations;
- 2.2 The Parties commit to lawfully exchanging personal and case related information for purposes related to their respective roles in immigration and refugee case processing.

**3 Information to be provided**

- 3.1 The Parties adopt the definition of "*personal Information*" as it is described in section 3 of the *Privacy Act* and agree to share information pursuant to section 8 of the *Privacy Act*.
- 3.2 The Parties agree to share personal information relating to an applicant/ refugee claimant for the purpose of the respective roles and responsibilities of each Party within the context of the administration of the *IRPA* and its regulations, and the *Citizenship Act*.
- 3.3 A non-exhaustive list of elements of personal information being shared is described in Schedule I.

3.4 Schedule 1 may be amended in writing by mutual consent of the designated representatives from CIC, the CBSA and the IRB who form the Steering Committee, as identified in Appendix A of the MOU.

3.5 The Parties will share personal and case related information, including country condition information, internal guidelines, and case specific processes between the three Parties.

3.6 The Parties will also share statistical information and other reports, for the purposes of the management, monitoring and evaluation of their respective immigration and refugee programs.

#### **4 Method of Sharing Information**

4.1 The Parties commit to continuing to exchange case information electronically via a secure interface. The Parties favour the use of technology to streamline the sharing of information. The parties may establish a secure electronic interface for an automatic upload of shared data and appropriate access to operational systems and databases.

4.2 Information shared under this Annex may be shared proactively or in response to a request. Further, the sharing of information, for the purposes described in Section 1 of this Annex, may be systematic or on a case by case basis.

4.3 When information is not routinely exchanged, the Parties will send a request and provide a response in written format unless it is not practicable to do so.

#### **5 Confidentiality and Limitations :**

5.1 The Parties commit to taking all reasonable measures to preserve the level of confidentiality and integrity of the information received from the Parties and safeguard the information against accidental or unauthorized access, use or disclosure, in accordance with the *Access to Information Act* and the *Privacy Act*.

#### **6 Monitoring and Evaluation**

6.1 Each Party will incorporate practices to ensure monitoring of this Annex and evaluate whether the information being shared responds to the objectives of this Annex as established in section 1. For example, the Parties will report at portfolio working group meetings on their respective efforts. The portfolio working group includes representatives from the IRB, CIC and the CBSA as it relates to the immigration and refugee program.

6.2 The Portfolio working group meetings will be held at regular intervals, as deemed appropriate. If necessary, ad hoc meetings may be scheduled.

6.3 A record of discussion will be drafted and provided to the Steering Committee.

## **7 Information Management**

7.1 The Parties will exercise reasonable efforts to ensure that all personal information disclosed between the Parties will be transmitted, accessed, maintained and destroyed or disposed of in accordance with the *Privacy Act*, the *Library and Archive of Canada Act* as well as their respective regulations.

7.2 In the event of any accidental or unauthorized access, use, disclosure, modification or deletion of personal information provided, the Parties will investigate and promptly notify the other Party (ies) with full details and results of any investigation.

7.3 The Party that committed the privacy breach will take corrective measures to address the situation and to prevent future occurrences and inform the supplying Party accordingly.

## **8 Subsequent Disclosure**

8.1 Personal information that is received from a Party will not be disclosed to any other person or Party that is not a signatory to this Annex without the prior written consent of the supplying Party, unless permitted by law or covered by international agreements. Where disclosure of personal information is permitted by law, the supplying Party will be notified in writing of the disclosure.

8.2 Information, other than personal information, that is received by a Party will not be disclosed to any other person or Party that is not a signatory to this Annex without the prior written consent of the supplying Party, unless such disclosure is permitted by law.

## **9 Dispute Resolution**

9.1 Any disagreement arising with respect to this Annex is to be resolved pursuant to sections 21 and 22 of the MOU.

**10 Administration**

10.1 This Annex will come into effect on the date it is signed by the last of the Parties, and will remain in effect until it is suspended or terminated by any Party. The suspension or termination takes effect 90 days after a Party provides written notification to the other Parties.

10.2 On the date which this Annex comes into effect, the Information Sharing Agreement between CIC and the IRB, signed on 18 November 1997, under the former December 13, 1996 Administrative Framework Agreement is terminated.

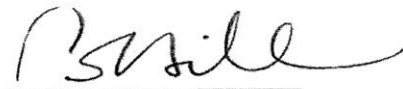
Signed on January 21, 2013 in Ottawa, Canada.



Caitlin Imrie  
A/Director General,  
Refugee Affairs Branch, CIC



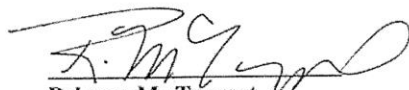
Caroline Melis  
Director General,  
Operational Management and  
Coordination, CIC



Peter D. Hill  
Director General,  
Enforcement and Intelligence Programs  
CBSA



Geoff Leckey,  
Director General,  
Enforcement and Intelligence Operations  
CBSA



Rebecca Mc Taggart  
A/Director General,  
Operations Branch,  
IRB



Kevin White  
Director General,  
Strategic Communications and  
Partnerships Branch, IRB

**Schedule 1 to the Information Sharing Annex between Citizenship and Immigration Canada (CIC), the Canada Border Services Agency (CBSA) and the Immigration and Refugee Board of Canada (IRB).**

Pursuant to Section 5 of the Annex, personal information being shared may include, but is not limited to:

- Name
- Alias(es)
- Gender
- Physical description
- Date of birth
- Country of birth
- Country of last Permanent Residence
- Citizenship(s) or nationality(ies)
- Biometrics including photographs and fingerprints
- Work history
- Military service history
- Adverse information such as links with terrorists, criminal activities, war crimes and/or organized crime groups
- Citizenship or immigration enforcement history
- Travel carrier information
- Passport and travel document information
- Personal identification documents
- Travel routing, itinerary and history
- Telephone numbers
- Addresses
- Marital status and family composition
- Current and previous immigration status/ violations
- Outstanding immigration and criminal warrants for arrest
- Occupational information
- Education
- Grounds of inadmissibility
- Grounds of removal
- Documents submitted in support of an application to the IRB, CBSA and/ or CIC
- Other documents/ intelligence relevant to the role/ responsibility of the Parties to this Annex.

**French Text Follows / Le texte français suit:**

**ANNEXE SUR L'ÉCHANGE DE RENSEIGNEMENTS ENTRE  
CITOYENNETÉ ET IMMIGRATION CANADA (CIC), L'AGENCE DES  
SERVICES  
FRONTALIERS DU CANADA (ASFC) ET LA COMMISSION DE  
L'IMMIGRATION ET DU STATUT DE RÉFUGIÉ DU CANADA (CISR)**

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**ENTRE**

Citoyenneté et Immigration Canada (CIC), l'Agence des services frontaliers du Canada (ASFC) et la Commission de l'immigration et du statut de réfugié du Canada (CISR), ci-après appelés « les parties ».

**ATTENDU QUE :**

Les parties ont pris l'engagement commun de se conformer à l'objet en matière d'immigration et de protection des réfugiés, énoncé à l'article 3 de la *Loi sur l'immigration et la protection des réfugiés* (LIPR), et reconnaissent qu'un régime coordonné et structuré de mise en commun des renseignements entre les organisations, chacune agissant dans le cadre de son propre mandat, est essentiel à l'appui de cet objet.

Les parties ont conclu et signé, en avril 2008, un protocole d'entente, ci-après appelé le « PE », précisant que les parties conviennent de négocier les annexes au PE. La présente annexe doit être interprétée conformément aux principes énoncés dans le PE.

Les parties ont des responsabilités distinctes pour ce qui est des secteurs d'activité liés à l'immigration et à la protection des réfugiés, tel qu'il est précisé dans le PE.

Les parties considèrent l'échange de renseignements comme un élément clé de la gestion efficiente et efficace des programmes d'immigration et de protection des réfugiés. La présente annexe porte principalement sur les politiques et les pouvoirs que confère la loi aux trois organisations et grâce auxquels elles échangent des renseignements afin de réaliser leur mandat respectif.

Les parties échangent des renseignements personnels et des renseignements liés aux cas en vue de faire progresser leurs secteurs d'activité respectifs en matière d'immigration et d'octroi de l'asile, selon leurs responsabilités, telles qu'elles sont définies dans la LIPR

Les parties reconnaissent que tout échange de renseignements doit se faire conformément à l'article 7 du PE et aux pouvoirs décrits à l'article 5.1 de la présente annexe.

**LES PARTIES CONVIENNENT DE CE QUI SUIT :**

**1. But et objet**

- 1.1 La présente annexe vise à énoncer le cadre administratif régissant l'échange entre les parties de renseignements personnels et de renseignements dans le cadre des processus d'immigration et de protection des réfugiés.
- 1.2 L'objet de la présente annexe est de régir l'échange entre les parties de renseignements personnels et de renseignements liés aux cas et de faciliter la transmission entre les parties de renseignements en vue du traitement des cas liés à l'immigration et à la protection des réfugiés, de la gestion de la charge de travail, du suivi des cas, d'évaluation et de production de rapports statistiques.
- 1.3 La présente annexe ne vise pas à outrepasser le *Règlement sur l'immigration et la protection des réfugiés* et les règles des sections en ce qui concerne la communication entre les parties dans le cadre de procédures devant la CISR.

**2 Engagement**

- 2.1 Les parties s'engagent à échanger, conformément à la loi, systématiquement ou au cas par cas, des renseignements précis sur les cas, y compris des renseignements personnels et des renseignements liés aux cas, en fonction d'ententes conclues entre les trois organisations.
- 2.2 Les parties s'engagent à échanger, conformément à la loi, des renseignements personnels et des renseignements liés aux cas en fonction de leurs rôles respectifs dans le cadre du traitement des cas liés à l'immigration et à la protection des réfugiés.

**3 Renseignements à communiquer**

- 3.1 Les parties adoptent la définition de *renseignements personnels* qui figure à l'article 3 de la *Loi sur la protection des renseignements personnels* et conviennent d'échanger des renseignements conformément à l'article 8 de la *Loi sur la protection des renseignements personnels*.
- 3.2 Les parties conviennent d'échanger des renseignements personnels concernant un demandeur ou un demandeur d'asile en fonction de leurs rôles et responsabilités respectifs dans le contexte de l'application de la LIPR et de son règlement d'application, ainsi que de la *Loi sur la citoyenneté*.

3.3 Une liste non exhaustive d'éléments de renseignements personnels qui sont échangés figure à la liste 1.

3.4 La liste 1 peut être modifiée par écrit sur consentement mutuel des représentants désignés de CIC, de l'ASFC et de la CISR qui composent le Comité directeur, comme le précise l'appendice A du PE.

3.5 Les parties échangeront des renseignements personnels et des renseignements liés aux cas, y compris des renseignements sur les conditions dans les pays, les lignes directrices internes et les processus liés aux cas.

3.6 Les parties échangeront également des renseignements statistiques et d'autres rapports qui seront utiles à la gestion, au suivi et à l'évaluation de leurs programmes respectifs en matière d'immigration et de protection des réfugiés.

#### **4 Méthode d'échange de renseignements**

4.1 Les parties s'engagent à continuer d'échanger des renseignements sur les cas par voie électronique au moyen d'une interface sécurisée. Les parties préfèrent utiliser la technologie pour simplifier l'échange de renseignements. Les parties peuvent mettre en place une interface électronique sécurisée permettant le téléversement automatique des données communiquées et l'accès approprié aux systèmes opérationnels et aux bases de données.

4.2 L'échange de renseignements, conformément à la présente annexe, peut se faire de manière proactive ou en réponse à une demande. En outre, les renseignements peuvent être échangés, pour les raisons prévues à l'article premier de la présente annexe, systématiquement ou au cas par cas.

4.3 Si des renseignements ne sont pas échangés régulièrement, les parties enverront une demande et fourniront, si cela est possible, une réponse par écrit.

#### **5 Confidentialité et limites**

5.1 Les parties s'engagent à prendre toutes les mesures raisonnables pour préserver la confidentialité et l'intégrité des renseignements reçus de l'autre partie ainsi que pour les protéger contre tout accès ou toute utilisation ou communication accidentels ou non autorisés, conformément à la *Loi sur l'accès à l'information* et à la *Loi sur la protection des renseignements personnels*.

#### **6 Suivi et évaluation**

6.1 Chaque partie intégrera des pratiques visant à assurer le suivi relativement à la présente annexe et déterminera si les renseignements qui sont échangés



remplissent les objectifs de la présente annexe, tels qu'ils sont établis à l'article premier. Par exemple, les parties feront rapport aux réunions du groupe de travail du portefeuille au sujet de leurs efforts respectifs. Le groupe de travail du portefeuille est constitué de représentants de la CISR, de CIC et de l'ASFC en lien avec le programme d'immigration et de protection des réfugiés.

6.2 Les réunions du groupe de travail du portefeuille seront tenues régulièrement, selon ce qui est jugé approprié. Au besoin, des réunions spéciales seront tenues.

6.3 Un compte rendu des discussions sera rédigé et fourni au Comité directeur.

## **7 Gestion de l'information**

7.1 Les parties prendront des mesures raisonnables pour veiller à ce que tous les renseignements personnels communiqués entre elles soient transmis, consultés, conservés et détruits ou éliminés conformément à la *Loi sur la protection des renseignements personnels*, à la *Loi sur la Bibliothèque et les Archives du Canada* ainsi qu'à leurs règlements d'application respectifs.

7.2 Les parties doivent enquêter, puis informer rapidement et en détail les autres parties des résultats de toute enquête, dans les cas d'accès, d'utilisation, de communication, de modification ou de destruction non autorisés ou accidentels de renseignements personnels fournis.

7.3 La partie qui a porté atteinte à la vie privée d'une personne prendra les mesures correctives nécessaires pour remédier à la situation et pour éviter que se produisent d'autres incidents, et informera en conséquence la partie qui a fourni les renseignements.

## **8 Communication ultérieure**

8.1 Les renseignements personnels reçus d'une partie ne seront communiqués à aucune autre personne ou partie qui n'est pas signataire de la présente annexe sans le consentement écrit préalable de la partie qui les fournit, à moins que la communication ne soit autorisée par la loi ou visée par des ententes internationales. Dans les cas où la loi autorise la communication de renseignements personnels, la partie qui les fournit sera avisée par écrit de cette communication.

8.2 Les renseignements, autres que les renseignements personnels, qui sont reçus par une partie ne seront communiqués à aucune autre personne ou partie qui n'est pas signataire de la présente annexe sans le consentement écrit préalable de la partie qui les fournit, à moins que la communication ne soit autorisée par la loi.

**9 Règlement des litiges**

9.1 Tout désaccord relatif à la présente annexe doit être réglé conformément aux articles 21 et 22 du PE.

**10 Administration**

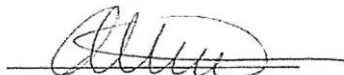
10.1 La présente annexe entre en vigueur à la date de sa signature par la dernière partie et demeurera en vigueur jusqu'à ce qu'une partie la suspende ou y mette fin. La suspension ou la cessation prendra effet 90 jours après la transmission d'un avis écrit par une partie aux autres parties.

10.2 À la date d'entrée en vigueur de la présente annexe, l'Entente sur l'échange de renseignements conclue entre CIC et la CISR, signée le 18 novembre 1997, et qui est liée à l'ancienne entente cadre administrative datée du 13 décembre 1996, sera résiliée.

Signé le 21 janvier 2013 à Ottawa (Canada).



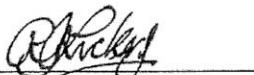
Caitlin Imrie  
Directrice générale intérimaire  
Direction générale des affaires des  
réfugiés, CIC



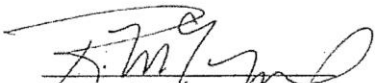
Caroline Melis  
Directrice générale  
Gestion opérationnelle et coordination,  
CIC



Peter D. Hill  
Directeur général  
Direction des programmes d'exécution  
de la loi et du renseignement,  
ASFC



Geoff Leckey,  
Directeur général  
Direction des opérations de l'exécution  
de la loi et du renseignement,  
ASFC



Rebecca Mc Taggart,  
Directrice générale intérimaire  
Direction générale des opérations,  
CISR



Kevin White  
Directeur général  
Direction générale des communications  
stratégiques et des partenariats, CISR

**Liste 1 de l'annexe à l'entente sur l'échange de renseignements entre Citoyenneté et Immigration Canada (CIC), l'Agence des services frontaliers du Canada (ASFC) et la Commission de l'immigration et du statut de réfugié du Canada (CISR)**

Conformément à l'article 5 de l'annexe, les renseignements personnels échangés peuvent comprendre, sans s'y limiter, les éléments suivants :

- Nom
- Pseudonymes
- Sexe ou genre
- Description physique
- Date de naissance
- Pays de naissance
- Dernier pays de résidence permanente
- Citoyenneté(s) ou nationalité(s)
- Renseignements biométriques, y compris les photographies et les empreintes digitales
- Antécédents professionnels
- Antécédents de service militaire
- Renseignements défavorables, comme les liens avec des groupes terroristes, des activités criminelles, des crimes de guerre et/ou des groupes criminels organisés
- Antécédents judiciaires en matière de citoyenneté et d'immigration
- Information sur les transporteurs
- Renseignements sur les passeports et les titres de voyage
- Pièces d'identité
- Antécédents et itinéraires de voyage
- Numéros de téléphone
- Adresses
- État matrimonial et composition de la famille
- Statut ou infractions actuels et antérieurs en matière d'immigration
- Mandats d'arrestation en matière d'immigration et en matière criminelle non exécutés
- Information sur la profession
- Études
- Motifs d'interdiction de territoire
- Motifs de renvoi
- Documents présentés à l'appui d'une demande transmise à la CISR, à l'ASFC ou à CIC
- Autres documents ou renseignements pertinents quant au rôle et aux responsabilités des parties visés à la présente annexe

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-718-18

**STYLE OF CAUSE:** KIRIJA LINTON ET AL v MINISTER OF CITIZENSHIP  
AND IMMIGRATION CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** OCTOBER 1, 2018

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** OCTOBER 18, 2018

**APPEARANCES:**

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Ian Hicks FOR THE RESPONDENT

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Toronto, Ontario

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Department of Justice Canada  
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Toronto, Ontario