**RAD File No. / No de dossier de la SAR : MC0‑05266**

***Private Proceeding / Huis clos***

## Reasons and Decision – Motifs et décision

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| **Person who is the subject of the appeal** | XXXX XXXX XXXX XXXX | **Personne en cause** |
|  |  |  |
| **Appeal considered / heard at** | Montréal, Quebec | **Appel instruit / entendu à** |
|  |  |  |
| **Date of decision** | February 23, 2022 | **Date de la décision** |
|  |  |  |
| **Panel** | Roxane Vachon | **Tribunal** |
|  |  |  |
| **Counsel for the person who is the subject of the appeal** | Stewart Istvanffy | **Conseil de la personne en cause** |
|  |  |  |
| **Designated representative** | N/A | **Représentant(e) désigné(e)** |
|  |  |  |
| **Counsel for the Minister** | N/A | **Conseil du ministre** |
|  |  |  |

REASONS FOR DECISION

OVERVIEW

1. This is the appeal filed by **XXXX XXXX XXXX XXXX**, a Cameroonian citizen who fears living in his country because of his political opinion. He is claiming refugee protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act* (IRPA).
2. The Refugee Protection Division (RPD) found that he was not credible.
3. On appeal before the Refugee Appeal Division (RAD), the appellant argues that his counsel before the RPD was disbarred from the Barreau du Québec [Quebec bar] and that he represented the appellant illegally and incompetently before the RPD. This illegal representation allegedly resulted in a breach of the principles of natural justice.
4. The Minister did not intervene in this appeal.

PROCEDURAL BACKGROUND

1. The RPD rejected Mr. XXXX XXXX refugee protection claim on November 26, 2019. The appellant instructed his counsel before the RPD to file an appeal before the RAD. Counsel did not file the appeal and did not notify the appellant of this. On XXXX XXXX, 2020, the appellant was summoned by the Canada Border Services Agency (CBSA). During that interview, he found out that the appeal had not been filed and that he would be removed from Canada. The appellant was detained until XXXX XXXX, 2020. On February 28, he consulted a new counsel, who submitted an urgent application for an extension of time to file an appeal, along with an appeal, to the RAD Registry. Due to the tight time frame, the RAD did not receive this urgent application until March 3, two business days later. The appellant was deported to Cameroon on XXXX XXXX, 2020. Owing to administrative errors and difficulties relating to the COVID‑19 pandemic, it was not until May 11, 2021, that the RAD ruled on and allowed the appellant’s application for an extension of time filed on February 28, 2020, on the grounds that the appellant had reasonably explained the delay in filing his appeal, had acted diligently, and had established an arguable appeal alleging the incompetence of his counsel. The appeal was perfected on May 11, 2021.
2. The appellant’s counsel argues in his additional submissions dated July 15, 2021, that although the appellant was deported to Cameroon, the RAD should review his case as if he were in Canada. The RAD asked the Minister to provide submissions on the issue of jurisdiction, but the Minister did not intervene in this matter; therefore, there is no representation from the Minister. I also note that the Minister received notice of the appellant’s application for an extension of time to file the appeal, as well as a notice stating that an oral hearing was to be held and outlining the credibility issues that gave rise to this hearing.
3. The notice required by the Federal Court’s decision in *Alazar*[[1]](#endnote-2) was not sent to the Minister’s counsel in this case because, in my view, the issue is not new. In fact, the issue of the RAD’s jurisdiction to decide Mr. XXXX XXXX appeal after he was removed to Cameroon was raised in his memoranda that were filed with the RAD. I note that the Minister was notified of the jurisdictional issue in Mr. XXXX XXXX case on November 6, 2020, and did not intervene.

I. THE REFUGEE APPEAL DIVISION HAS JURISDICTION TO HEAR THE APPEAL

ANALYSIS OF JURISDICTION

1. To begin, I will point out that one of the IRPA’s objectives is to save lives.[[2]](#endnote-3) It should also be noted that the IRPA is silent on the issue of the RAD’s jurisdiction to decide an appeal after the appellant has been deported and is no longer in Canada. The case law is not clear on this issue either. The appellant was removed from Canada and therefore left Canada involuntarily because his counsel failed to file a notice of appeal that would have statutorily stayed the enforcement of the removal order.[[3]](#endnote-4) Prior to his removal, the appellant filed an application for an extension of time to file an appeal, along with a notice of appeal. In the absence of legislative provisions or case law speaking to the issue, I examined, by analogy, the Federal Court’s jurisprudence regarding the mootness of an application for judicial review when a claimant is no longer in Canada.

Case law on the mootness of a proceeding

1. Most of the case law pertaining to mootness in immigration matters deals with pre‑removal risk assessments (PRRAs). The case law can be distinguished from the appellant’s case, in particular because a PRRA is intended to assess the risk of a *removal* itself, and a new PRRA following a removal will rarely have any tangible impact on the issue in dispute, unlike in the case of a refugee protection claimant who was unable to pursue his appeal rights.
2. In fact, the Federal Court’s case law makes a distinction between a person who is outside Canada and is claiming refugee protection, and a person who has already had their status determined but has been deported. In *Freitas*,[[4]](#endnote-5) the claimant had been deported and was outside Canada. The Federal Court concluded that the appeal was not moot in those circumstances. The Court’s conclusion was partly based on Canada’s international obligations, the IRPA’s objectives, and the fact that the claimant had been deported to Venezuela, his country of nationality, following an incorrect decision rendered by the RPD (the CRDD at that time) regarding the claimant’s exclusion under Article 1F of the Convention. In that case, the failed refugee protection claimant had been deported from Canada, but the Court concluded that deportation did not deprive him of his right to pursue both the judicial review and his claim for refugee protection once the Court set aside the RPD’s determination*.* Like Mr. XXXX XXXX, the appellant in *Freitas* had been involuntarily deported despite his intention to pursue his appeal.
3. In *Molnar*,[[5]](#endnote-6) in 2015, the Federal Court confirmed the Court’s approach in *Freitas* (decided under the old Act) and *Rosa*,[[6]](#endnote-7) while reiterating the importance of the IRPA’s underlying objectives, including granting fair consideration to those fleeing persecution, offering a safe haven to persons who are able to demonstrate that they are Convention refugees, and establishing fair and efficient procedures that maintain the integrity of the Canadian refugee protection system, while upholding Canada’s respect for the human rights and fundamental freedoms of all human beings. I note, however, the Federal Court of Appeal’s comments in *Kreishan*[[7]](#endnote-8) regarding the exceptional nature of *Freitas*. These cases were referenced again in *Mrda*[[8]](#endnote-9)(2016), which involved failed refugee protection claimants who had been deported to either Serbia or Croatia. In that case, the judge noted the appellants’ continued interest in their judicial review following their deportation, contrary to the applicant in *Harvan*,[[9]](#endnote-10) in which the judge concluded that the issue had disappeared and that the case had become moot given the lack of any communication or participation on the part of the applicant following his removal, which, in itself, distinguishes *Harvan* from this appeal. Along the same lines, the Court also dismissed applications for judicial review filed by applicants who returned to their country voluntarily.[[10]](#endnote-11)
4. Therefore, I draw the following conclusions from my review of the Federal Court’s jurisprudence. The determination of refugee protection does not necessarily become moot once the appellants have been deported from Canada, whether or not they have been deported to their country of citizenship, when certain factors are in place. The following factors are determinative in the Federal Court’s jurisprudence:
5. A refugee protection claim was made in Canada.
6. The departure was involuntary.
7. The case is arguable.
8. The person has taken steps to exercise their rights.
9. The person’s behaviour is consistent with the existence of an ongoing issue, even though they are no longer in Canada.

Mr. XXXX XXXX appeal is not moot and the Refugee Appeal Division has jurisdiction to decide the appeal

1. In the case at hand, the appellant’s representative did not file an appeal with the RAD and did not inform the appellant of this. Therefore, the appellant found himself in a situation in which his time frame to file an appeal had expired and he did not benefit from the stay set out in theIRPA regarding the enforcement of a removal order that had become enforceable. Mr. XXXX XXXX was involuntarily deported from Canada and his appeal is arguable. As soon as Mr. XXXX XXXX realized that he had been represented illegally by someone who had presented himself as a lawyer and who had not filed a notice of appeal, he retained new counsel, sent an urgent letter to the RAD Registry prior to his removal, and diligently pursued his appeal before the RAD, despite the fact that he was now in Cameroon.
2. I will therefore render a decision in this appeal as though the appellant were in Canada, as recommended in *Freitas*.
3. I conclude that (I) the RAD has jurisdiction to hear the appeal despite the fact that the appellant is in Cameroon; (II) some of the evidence presented on appeal is admissible; (III) there are grounds to hold an oral hearing; (IV) there was a breach of the principles of natural justice and a breach of procedural fairness in light of the representation by an unauthorized representative who tainted the proceedings and the RPD’s determination; and (V) based on the evidence and testimony provided during the hearing before the RAD, as well as the recent documentary evidence on Cameroon, the appellant has established that he is a refugee within the meaning of section 96 of the IRPA.
4. In the following paragraphs, I will explain why I have reached these conclusions. The appeal is allowed.

II. NEW EVIDENCE PRESENTED **ON APPEAL**

Evidence presented by the appellant

1. The RAD may allow new evidence (i) that arose after the rejection of the claim, (ii) that was not reasonably available before the RPD rendered its decision, or (iii) that the appellants could not reasonably have been expected in the circumstances to have presented at the time of the rejection.[[11]](#endnote-12) New evidence that meets at least one of these criteria must then comply with the three jurisprudential criteria of relevance, credibility and newness.[[12]](#endnote-13)
2. The appellant filed new evidence and requested an oral hearing. He initially submitted new evidence with his memorandum (items 1 to 4), then submitted additional documents under rule 29 (items 5 to 22).
3. The following new evidence was presented on appeal:
4. Appellant’s affidavit signed on March 2, 2020
5. Statement concerning the facts underlying his refugee protection claim, signed by the appellant on March 2, 2020
6. Appellant’s complaint to the Barreau du Québec against XXXX XXXX dated March 2, 2020
7. Amnesty International article dated February 21, 2019, and Human Rights Watch article dated March 7, 2019
8. With respect to these items, the memorandum fails to comply with subparagraph 3(3)(g)(iii), because it does not explain how the documentary evidence in question meets the requirements of subsection 110(4) of the IRPA. Nonetheless, I have sufficient information in the record to address the admissibility of the new evidence without submissions, and I relieve the appellant of this procedural defect.
9. The following new evidence was contained in the application filed under rule 29:
10. An email from the appellant’s counsel to Mr. XXXX dated October 13, 2021, informing him of the complaint filed with the Barreau
11. An acknowledgment of receipt of the complaint from the Barreau du Québec, dated March 17, 2020
12. Subpoena from the Barreau du Québec concerning XXXX XXXX, dated March 30, 2021
13. Superior Court of Québec decision dated June 4, 2019 in *XXXXv. Barreau de Montréal*
14. Court of Québec decision in *R v. XXXX*[[13]](#endnote-14)
15. Blog article (SOQUIJ) dated March 25, 2021, *La pratique illégale du droit, un sujet qui demeure d’actualité* [the illegal practice of law, a topic that remains relevant]
16. Letter from the appellant dated October 5, 2021, regarding his living conditions in Cameroon
17. Letter from XXXX XXXX XXXX dated October 8, 2021, regarding the appellant’s living conditions in Cameroon and the police search for the appellant
18. Letter from XXXX XXXX XXXX dated October 6, 2021, regarding the appellant’s detention upon returning to Cameroon and the police search for the appellant
19. Letter from XXXX XXXX XXXX XXXX dated October 4, 2021, regarding the police search for the appellant
20. Letter from XXXX XXXX XXXX dated October 5, 2021, regarding the police search for the appellant and his living conditions in Cameroon
21. Medical report and prescriptions, October 15, 2021
22. Letter from Reverend XXXX XXXX XXXX dated October 13, 2021, regarding the appellant’s life in Cameroon
23. Letter from Reverend XXXX XXXX dated October 21, 2021
24. United Nations Report – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, dated December 18, 2017, on Cameroon
25. International Covenant on Civil and Political Rights, November 30, 2017
26. Article from a website, Amnesty International, Cameroon 2020 (not dated)
27. Article from a website, Human Rights Watch, September 22, 2021
28. After considering the new evidence presented on appeal (items 1 to 4), I am of the opinion that documents 1 and 3 arose after the RPD rendered its decision. They concern events that arose after the appellant found out that he was being represented by an individual who was practising law illegally and who had failed to file a notice of appeal against the RPD’s decision. Clearly, this evidence was not available at the time of the decision, as it was unknown to the appellant prior to February 25, 2020. As a result, it could not have been presented prior to the RPD’s decision. The evidence is new, credible and relevant to the central issue of this appeal, that is, the breach of natural justice that resulted from the appellant’s representation before the RPD.
29. Items 2 and 4 do not meet the legislative requirements of subsection 110(4) of the IRPA and will not be admitted as new evidence. The content of the appellant’s statement (item 2) concerns information that arose prior to the rejection of the refugee protection claim. It is a rewording of the appellant’s Basis of Claim Form. The internet articles in item 4 are two news articles on the situation in Cameroon that predate the dismissal of the appeal and that were written and available before the rejection of the claim. These articles could reasonably have been filed prior to the RPD’s decision. I am therefore of the opinion that items 2 and 4 are not new.
30. The new evidence in items 5 to 22 was submitted by the appellant after the perfection of his appeal. I therefore considered the factors set out in subrule 29(4) of the *Refugee Appeal Division Rules* (RAD Rules). Here again, the appellant did not file any motion or written submissions regarding the admissibility of the new evidence, as required by the RAD Rules.[[14]](#endnote-15) On the basis of the record, I am able to rule on the admissibility of the evidence without additional submissions and I therefore relieve the appellant of the prescribed procedure. With respect to the relevance and probative value of these items, documents 5, 6, 7 and 9 are relevant to the appellant’s allegation that there was a breach of natural justice that resulted in a breach of procedural fairness because his representative was not practising law legally. Item 8 is a Superior Court decision in the case between Mr. XXXX and the Barreau de Montréal [Montréal bar] that did not involve the appellant. The Court’s decision in another case involving Mr. XXXX is not relevant or probative in Mr. XXXX XXXX appeal. Item 10 is a blog article on the illegal practice of law. The existence of this practice is not in dispute in this appeal, and I consider the article to be irrelevant to the central issues of the appeal. Items 19 to 22 are part of the RPD record and are included in the National Documentation Package (NDP) on Cameroon. They are therefore already part of the appeal record and do not constitute new evidence. They are not admitted as new evidence in the appeal.
31. The requests concerning items 8, 10 and 19 to 22 are not allowed and these items are therefore not admitted.
32. Items 11 to 15 consist of relevant and probative written testimony regarding the appellant’s fear, his life as a fugitive, and the efforts of the Cameroonian police and government agents to find him. These issues are central to this appeal. The appellant’s living conditions in Cameroon were obviously not known when he filed his appeal, prior to his removal to Cameroon. These documents could not have been presented with the appellant’s record. Items 16 and 17 provide new information regarding the psychological and medical condition of the appellant, who is living in hiding. This information is relevant, although its weight remains to be established. Item 18 is a reference and support letter from the appellant’s pastor in Montréal confirming the appellant’s good reputation within his religious community. It is not relevant to the issues to be determined in the appeal. Therefore, the request concerning item 18 is rejected, and this item is not admissible. With respect to whether the appellant could reasonably have been expected to have presented these documents with the appeal record, I am of the opinion that, since documents 5 to 17 concern events that arose after the appeal was perfected, the appellant could not have submitted them with the original version of the appeal record.
33. After assessing the factors set out in rule 29, I am of the opinion that all of the evidence submitted after the appeal was perfected, with the exception of items 8, 10 and 18, meets the requirements of rule 29. Therefore, the application to use these documents is allowed. After considering the requirements set out in subsection 110(4) of the IRPA, I am of the opinion that, for the reasons I have described, all of the above documents, with the exception of items 8 and 10, arose after the rejection of the appellant’s refugee protection claim. With respect to the factors set out in *Singh*, I am of the opinion that the evidence is relevant because, in general, it is central to the appellant’s allegation regarding his fear of persecution by extremists. I also find that the appearance of the documents does not raise any credibility concerns: item 1 is a sworn affidavit, items 3, 5, 6, 7 and 9 are formal or official documents concerning the disciplinary complaint against Mr. XXXX XXXX and items 11 to 16 and 18 are signed and dated statements from members of the appellant’s family and community. These affiants provided identification documents with their statements. All of the items are relevant either to the issue of the actions of the appellant’s counsel or to the risk to the appellant’s life since his return to Cameroon. These issues are new and did not exist at the time of the RPD’s decision. I will therefore admit items 1, 3, 5, 6, 7, 9 and 11 to 17.

III. ORAL HEARING BEFORE THE REFUGEE APPEAL DIVISION

1. The appellant requested an oral hearing before the RAD. The onus rests with the RAD to determine whether or not the criteria under subsection 110(6) of the IRPA have been met.[[15]](#endnote-16) In my opinion, the evidence that I have found to be admissible, in particular the appellant’s statement dated October 5, 2021, and that of his brother, XXXX XXXX XXXX, raises issues that are central to the decision in this appeal. The credibility of the affidavits is an important issue in terms of making a finding regarding the appellant’s overall credibility, and the credibility of his allegations concerning the risk he faces since returning to Cameroon. If the evidence in these affidavits is credible, it will be central to deciding the risk the appellant faces in Cameroon and would justify allowing or rejecting the refugee protection claim. The affidavits justify holding an oral hearing before the RAD.[[16]](#endnote-17) An oral hearing was held on December 3, 2021. The Minister was notified of the oral hearing but did not participate.

ANALYSIS OF THE APPEAL

1. The role of the RAD is not to conduct a *de novo* consideration of a claim for refugee protection, but rather to determine whether the RPD erred as alleged.[[17]](#endnote-18) I conducted my own analysis of the record applying the correctness standard.[[18]](#endnote-19) In his memorandum,[[19]](#endnote-20) the appellant states that he was represented incompetently and illegally by Mr. XXXX because (a) the latter accepted fees before the Immigration and Refugee Board of Canada (IRB) when he had been disbarred, (b) he failed to file a notice of appeal when the appellant instructed him to do so, and (c) he failed to adequately represent the appellant’s case before the RPD. The appellant also states that (d) his removal violated the *Canadian Charter of Rights and Freedoms*. I will not address the constitutionality of the appellant’s removal, as the RAD does not have jurisdiction to rule on the removal order. I conclude that Mr. XXXX was remunerated in this case. He was not authorized to act as a paid representative before the RPD. He identified himself to the appellant as Me XXXX (that is, as a lawyer), and his representation was inadequate. For these reasons, I conclude that the proceeding and hearing before the RPD were tainted, resulting in a breach of the principles of natural justice. Furthermore, while I consider that a breach of natural justice warranting the RAD’s intervention vitiates both the proceeding before the RPD and its decision, I wish to add that Mr. XXXX’s failures in the RAD record caused significant harm to the appellant.

IV. There was a breach of the principles of natural justice before the Refugee Protection Division

The Practice Notice – Allegations Against Former Counsel does not apply

1. The IRB has a practice notice that allows counsel to respond to allegations of incompetence. The purpose of the practice notice is to support the administration of justice and procedural justice. The practice notice states that a party must give notice to their former counsel of the allegations of incompetence so as to give them an opportunity to respond.[[20]](#endnote-21)
2. The practice notice does not apply to Mr. XXXX XXXX It applies in cases where the person’s former counsel is a lawyer, immigration consultant, or other person who is entitled to represent a person for a fee or other consideration at an IRB proceeding.[[21]](#endnote-22) However, Mr. XXXX was an unauthorized paid representative.
3. However, in the spirit of the practice notice and to promote procedural fairness, the RAD followed the procedure in the practice notice. Therefore, in the decision dated May 11, 2021, concerning the extension of time to file the appeal, the appellant was instructed to notify Mr. XXXX of the allegations. The appellant followed the instructions he was given and sent the allegations and his memorandum to Mr. XXXX on October 13, 2021.[[22]](#endnote-23) Mr. XXXX has not responded. I also note that the allegations were the subject of a complaint to the Barreau and that a trial was held on August 31 and September 1, 2 and 3 in Montréal (decision dated XXXX XXXX, 2021). Mr. XXXX was undoubtedly aware of the allegations against him, but he did not respond until the RAD gave him another opportunity to comment on the Court of Québec decision via a letter dated December 8, 2021 (reply dated December 20, 2021).

Mr. XXXX was not authorized to represent the appellant before the Refugee Protection Division

1. Under the IRPA,[[23]](#endnote-24) the persons who may represent or advise others before the IRB include lawyers who are members in good standing of a law society of a province, notaries who are members in good standing of the Chambre des notaires du Québec [order of notaries of Quebec], students‑at‑law acting under the supervision of a lawyer or notary; any other members in good standing of a law society of a province or the Chambre des notaires du Québec, including paralegals; and members in good standing of the College, as defined in section 2 of the [*College of Immigration and Citizenship Consultants Act*](https://www.laws-lois.justice.gc.ca/eng/acts/c-33.6/).
2. The persons listed in the paragraph above may represent individuals before the IRB for a fee. A limited category of people may also represent others on a *pro bono* basis without a fee, for example, family members, a community group or a member of a religious establishment. Although the legislation does not define unpaid representatives, I conclude that the list in subsection 91(2) of the IRPA of persons who may represent individuals is exhaustive. A representative who is not included in that list cannot charge a fee. This interpretation is consistent with the *Policy for Handling Immigration and Refugee Board of Canada Complaints Regarding Unauthorized, Paid Representatives*,[[24]](#endnote-25) which states that an unpaid representative is anyone who does not charge a fee or is not receiving other consideration for representing, advising or consulting with a person who is the subject of a proceeding before the IRB, also known as a *pro bono* representative. A representative who receives any payment for these services at any time is considered to be a paid representative under subsection 91(2) of the IRPA.
3. The appellant argues that Mr. XXXX was paid and states in his sworn affidavit[[25]](#endnote-26) that Mr. XXXX was paid $1,000.00 to represent him in his refugee protection claim before the RPD.
4. In the Court of Québec judgment dated XXXX XXXX, 2021,[[26]](#endnote-27) the Court found Mr. XXXX guilty of unauthorized professional practice of law in his representation of Mr. XXXX XXXX refugee protection claim before the RPD, but did not comment on the issue of the appellant’s payment of fees to Mr. XXXX. I note, however, that the prosecution’s charges involving other individuals who appeared before the IRB[[27]](#endnote-28) confirmed a payment of fees by those individuals.

Mr. XXXX’s response

1. I do not accept Mr. XXXXs submissions for the reasons that follow.
2. Mr. XXXX was notified of the appellant’s allegations against him in May 2021 and, in December 2021, he was asked to comment on the Court’s judgment regarding Mr. XXXX XXXX case. In his response, he states that he did not identify himself as a lawyer to Mr. XXXX XXXX or his family; he does not address the issue of a fee. In his comments, Mr. XXXX states that he is concerned about fraud in the immigration system and wants to expose the fraud committed by the appellant and his brother (his former clients).
3. The panel finds it remarkable that Mr. XXXX would respond to an allegation of illegal conduct with more illegal conduct, namely, reporting his client’s fraud without regard for the confidentiality of the discussions between himself and his former clients. He also explains that the appellant’s sister is aware of her brothers’ fraud, and he bases his accusations on the fact that many documents from Cameroon are fraudulent. Mr. XXXX concerns regarding the integrity of the immigration system are not credible. It was only after the Court of Québec rendered a judgment and a guilty verdict that he reported the fraud allegedly committed by Mr. XXXX XXXX and his brother, and after the family testified against Mr. XXXX before the Court of Québec in that case. I also note that, if there was indeed fraud, Mr. XXXX apparently represented Mr. XXXX XXXX in full knowledge of this.
4. Mr. XXXX states that the appellant’s family knew that he had not presented himself as a lawyer and that he had acted on a *pro bono* basis. He refers the panel to the representation form filed with the RPD. Upon verification, I note that the appellant and Mr. XXXX did indeed sign a statement on the day of the RPD hearing (November 9, 2019) to the effect that the representative was not being paid. The appellant also signed an affidavit on March 2, 2020, in which he contradicts this and states that he paid Mr. XXXX $1,000. I have listened to the RPD hearing and I note that the RPD member reviewed the *Policy for Handling Immigration and Refugee Board of Canada Complaints Regarding Unauthorized, Paid Representatives* and verified certain points with Mr. XXXX XXXX and Mr. XXXX. At the start of the hearing, the RPD member asked the appellant whether he was being represented by Mr. XXXX, whose name did not appear on the record. Mr. XXXX XXXX replied spontaneously and at once that his sister, who knows Mr. XXXX, had recommended him as a representative. He confirmed that Mr. XXXX was his counsel and worked on a *pro bono* basis. The claimant sometimes referred to Mr. XXXX as Mr. XXXX and, at other times, as Maître XXXX, which led the member to ask Mr. XXXX if he was a lawyer. Mr. XXXX replied that he **had been** a lawyer but no longer was. The member then asked Mr. XXXX on what authority he was representing the claimant, to which Mr. XXXX replied that he had been inspired by the generosity of his parents and a desire to volunteer. I give little weight to these questions and responses.
5. To begin with, neither Mr. XXXX XXXX nor Mr. XXXX were under oath at the time of this discussion. Moreover, the member’s questions were superficial formalities and not very thorough. They did not confront Mr. XXXX in any way and were asked in such a way that they did not seriously test the truthfulness of the responses and would not compel an individual to tell the truth in any way. It would have been preferable for Mr. XXXX XXXX and his representative to have been under oath and questioned in such a way as to truly shed light on the issue of a fee while testing the truthfulness of their responses. That said, in my opinion, Mr. XXXX XXXX response was memorized. I find it surprising and not very credible that Mr. XXXX XXXX spontaneously answered that Mr. XXXX was his representative and, in the same breath, that he represented him on a *pro bono* basis when the member had not asked about a fee.
6. In my opinion, the unsolicited details about the *pro bono* nature of the representation are not details that arise naturally from the question but instead reflect a learned and memorized response. For these reasons, I find, on a balance of probabilities, that the representation form signed on the day of the hearing and the answers provided by Mr. XXXX and the appellant at the hearing are not credible, were memorized and are likely untrue. I therefore give greater weight to the appellant’s affidavit, in which he states under oath that he paid Mr. XXXX the sum of $1,000.
7. Lastly, Mr. XXXX states that the appellant’s sister knew that he was not a lawyer. I consider it unlikely that the appellant’s sister, who worked with Mr. XXXX at XXXX XXXX XXXX for many years, would be mistaken regarding the fact that he was being referred to as “Maître” and was therefore presenting himself as a lawyer. The Court of Québec did not accept Mr. XXXX’s testimony on this subject, and I do not accept it either. I do not believe Mr. XXXX.

Conclusions, breach of *natural* justice

1. Mr. XXXX, who presented himself as Maître XXXX, was paid by the appellant’s family to represent the appellant before the RPD, despite having been disbarred since 1998.[[28]](#endnote-29) He is not an immigration consultant and held no professional status that would allow him to accept fees. He had no authority to represent the appellant before the RPD. In fact, by representing the appellant, Mr. XXXX contravened the IRPA:[[29]](#endnote-30)

**91(1**) Subject to this section, no person shall knowingly, directly or indirectly, represent or advise a person for consideration — or offer to do so — in connection with the submission of an expression of interest under subsection 10.1(3) or a proceeding or application under this Act.

…

**Penalties**

**(9)** Every person who contravenes subsection (1) commits an offence and is liable

(a) on conviction on indictment, to a fine of not more than $200,000 or to imprisonment for a term of not more than two years, or to both; or

(b) on summary conviction, to a fine of not more than $40,000 or to imprisonment for a term of not more than six months, or to both.

1. By representing the appellant in this manner, Mr. XXXX was an impostor in the appellant’s case before the RPD and acted illegally. This inadequate and illegal representation vitiates the entire proceeding, as well as the hearing before the RPD, and results in a breach of natural justice and procedural fairness, which constitutes an error that justifies the RAD’s intervention.
2. Despite my foregoing conclusion that the RAD’s intervention is warranted, I find it important to note the harm suffered by the appellant as a result of Mr. XXXX’s failure to act before the RAD. The record indicates that the RPD rejected Mr. XXXX XXXX refugee protection claim on November 26, 2019. The appellant instructed his counsel before the RPD to file an appeal before the RAD. The notice of appeal can be filed by sending a form that requires basic information, such as the appellant’s name, date of birth, file number and address, along with counsel’s names and addresses. This step is initially sufficient to preserve the right of appeal of a failed refugee protection claimant before the RPD. Mr. XXXX did not complete or submit this notice, nor did he notify Mr. XXXX XXXX that he did not intend to do so. It should also be noted that, if no notice of appeal has been filed with the RAD, there is no stay of removal; therefore, failed refugee protection claimants before the RPD may be summoned by the CBSA to prepare for departure from Canada. This is precisely what happened to the appellant; on XXXX XXXX, 2020, the appellant was summoned by the CBSA and detained until XXXX XXXX, 2020. The appellant was deported to Cameroon on XXXX XXXX, 2020. The Court of Québec sentenced Mr. XXXX to pay a $10,000 fine for the charge[[30]](#endnote-31) involving Mr. XXXX XXXX.
3. In my view, Mr. XXXX’s failure to act caused significant harm to the appellant, namely, the loss of his stay of removal, as well as the removal itself, and compromised his right to appeal the RPD’s decision. The result is a risk to the appellant and a denial of his fundamental human rights.

V. RISK ANALYSIS

1. The appellant’s record is similar to that of a person claiming refugee protection following events that occurred in their home country since their departure,[[31]](#endnote-32) or as a result of a significant increase in pre-existing factors since their departure.[[32]](#endnote-33)
2. The appellant alleges that he fears the state by reason of his political opposition to the Cameroonian government. He testified that he founded a youth combat troupe named “Troupe XXXX XXXX.” On the day the 13‑person troupe was founded (XXXX XXXX, 2018), he was appointed commander, and two days later, he was arrested, detained, beaten and threatened with death because of his opposition to the government.
3. The appellant was eventually released after his uncle paid a bribe. The appellant claims that he remained in hiding from the day of his release until he left for Canada on XXXX XXXX, 2018 (he had already obtained a visa on XXXX XXXX, 2018). He remained in Canada until XXXX XXXX, 2020, when he was deported. During his oral hearing before the RAD on December 3, 2021, the appellant testified in particular about his arrest and detention upon arriving in Cameroon on XXXX XXXX XXXX 2020, about the abuse he suffered in detention, and the fact that he was beaten for tarnishing the image of Cameroon according to the police. He also testified about the bribe that was demanded for his release, his living conditions since returning to Cameroon, and the need to keep relocating to avoid being tracked down by the police. The appellant’s brother, Mr. XXXX, also testified about the bribe, the exchange of money and the details of the appellant’s release, as well as the appellant’s relocations throughout Cameroon and how the police were attempting to track him down through his friends and family.

Since his return to Cameroon

1. Upon arriving at the airport in Douala, he was taken to the police station at the airport where he was asked to remove his shoes and belt. He stated that he was held in the airport cell for two days and beaten: he was struck in the abdomen and back and slapped in the face. He was threatened and was reportedly told that he would suffer and be tortured for tarnishing the image of Cameroon’s government. The police officers demanded the sum of XXXX XXXX XXXX XXXX XXXX CFA (approximately $XXXX XXXX XXXX CDN) for his release. The appellant’s brother eventually collected the money and paid the officers.
2. The appellant’s brother was instructed to take the appellant out of the capital, and on XXXX XXXX, 2020, the appellant was therefore taken to his village to live with his older brother, where he stayed for four months. However, he had to leave the village because his older brother XXXX XXXX and could not provide sufficient security for him.
3. The appellant relocated to the village of XXXX, then to another village approximately an eight-hour drive from XXXX, to the home of his aunt and her husband. That is where the appellant is currently hiding. He is cut off from everything, including his child, and states that his physical and psychological health is deteriorating, which his doctor confirms in a medical note filed in evidence.[[33]](#endnote-34) I note that, while it is not an official medical report, the doctor’s notes are sufficiently credible for me to give the document some weight.
4. The appellant receives occasional visits from family members. His sister, who visits him to bring him groceries, informed the appellant that she is still receiving threats from police officers who are looking for him. The appellant also testified that the police have approached his friends looking for him. The appellant’s sister and his friend submitted letters confirming this.[[34]](#endnote-35)
5. The appellant states that he has not heard from his wife, as she also left the country as a result of the appellant’s actions.
6. The appellant’s brother testified. XXXX XXXX XXXX XXXX XXXX XXXX confirmed that he found the money required for the appellant to be released when he was incarcerated upon his return. He explained that he had met the police officers in a shady neighbourhood and that was when the appellant was handed over to him. He saw that his brother was traumatized and had been beaten. He confirmed that the appellant is living in hiding and that the family is living in [translation] “a state of panic.” According to the witness, the appellant is wanted and cannot possibly live in the capital. The police have allegedly visited Mr. XXXX four times looking for the appellant since his return. The police have also visited (at night) the appellant’s sister (XXXX). According to Mr. XXXX, the last police visit was in October 2021, when they questioned the appellant’s aunt in XXXX.
7. The appellant fears that if the police find him, he will be incarcerated in a prison for dissidents where the conditions are inhumane and that he would suffer severe abuse. The objective documentary evidence corroborates this treatment of dissidents.[[35]](#endnote-36)

Determination

1. The appellant has established his personal identity by means of his passport issued by the Cameroonian authorities.
2. He testified candidly during the RAD’s virtual hearing. His testimony was detailed and precise. He clearly explained the abuse he suffered upon his arrival and the reasons given by the police officers who beat him. He provided details of the life he lives as a fugitive to avoid being found by the authorities. His statements were corroborated by his brother’s testimony. Their testimony was compatible and consistent with the affidavits they filed on the record. There are also numerous letters from family and friends confirming that the police are looking for the appellant and these are consistent with and support the testimony given by the appellant and his brother. There are also letters from his doctor and his pastor. Moreover, the appellant’s testimony and documentary evidence are consistent with the NDP. In its entirety, the evidence is coherent, credible and internally consistent. The appellant is credible.
3. The appellant has established that he was arrested and beaten by police officers in Cameroon after founding a dissident youth troupe in XXXX 2018. He left Cameroon with a visa in XXXX 2018 and claimed refugee protection in Canada. Since his removal to Cameroon, the appellant has been living in hiding. He was released after the police officers were paid a bribe; however, the authorities are actively looking for him. The evidence indicates that he is wanted by the police. While the appellant’s fear initially involved a risk to his life owing to his involvement in the creation of the XXXX XXXX troupe, the situation has changed, and his fear now encompasses not only a risk to his life based on his being a dissident, but also the fact that he filed a refugee protection claim in Canada and made allegations tarnishing the reputation of the Cameroonian government. The appellant’s refugee protection claim reinforces his position as a dissident and undermines Cameroon in the eyes of its government. In my opinion, in light of the police officers’ comments that they had beaten the appellant for tarnishing Cameroon’s image abroad, it is now primarily by reason of the appellant’s refugee protection claim that he is wanted by the police in Cameroon.
4. The documentary evidence includes reports stating that Cameroonian authorities blame the diaspora for the outbreaks of violence that have plagued the country and do not hesitate to target Cameroonians who oppose the regime abroad.[[36]](#endnote-37)
5. The same documentary evidence indicates that civilian authorities do not maintain effective control over the security forces and that the socio-political crisis that began in the northwest and southwest regions of the country in 2016 resulted in serious human rights violations and abuses committed by government forces. It confirms that Cameroonian authorities have intensified the crackdown against opponents. The documentary evidence refers to a massive government crackdown on demonstrations and political activities.
6. The current president’s regime is clearly intolerant and does not respect the fundamental rights of its citizens. Crackdowns have increased in recent years, limiting the ability of political opponents to operate freely and banning private meetings based on restrictions associated with COVID‑19. Individuals are not free to express or mount dissent against the current regime. Police officers arrest opponents, who are often arrested and incarcerated in unsanitary and overcrowded institutions.[[37]](#endnote-38)
7. Mr. XXXX XXXX has established the existence of a reasonable chance or serious possibility of future persecution by reason of his political opinion, in addition to the fact that he tarnished the regime’s image by speaking out against it in his refugee protection claim in Canada.

There is no adequate state protection or internal flight alternative

1. The passages from the NDP cited above confirm that the security forces and the police are closely linked to the government. They participate in cracking down on opponents and act with complete impunity throughout the country. Freedom of expression is restricted, and journalists and demonstrators are arrested. The creation of opposition parties is greatly restricted and their members are arrested by the police.[[38]](#endnote-39) The authorities have continued to crack down on peaceful dissent, banning demonstrations and arbitrarily arresting those who exercise their rights to freedom of expression and peaceful assembly. Amnesty International reports that four members of the Stand Up For Cameroon movement, a coalition of political parties, NGOs and others, were arrested by the gendarmerie in Douala after attending a meeting at the Cameroon People’s Party headquarters. They were brought before a military court on false charges of attempted conspiracy, revolution and insurrection. The judge ordered their pre-trial detention in New Bell prison, where they remained at the end of the year.[[39]](#endnote-40) The police and the judicial system are instruments of repression.
2. The police force and the gendarmerie, which are struggling with various political crises in the country, do not have the resources to protect citizens at risk, and police presence is non-existent in many areas of the country.[[40]](#endnote-41) In addition, there are reports of widespread corruption and bribery among security forces. Police officers continue to abuse their position with complete impunity.[[41]](#endnote-42)
3. The testimony and letters submitted by the appellant’s family and friends[[42]](#endnote-43) support the claim that the police are continuing to actively search for the appellant in different areas of the country. I am not satisfied that Mr. XXXX XXXX does not face a serious risk of persecution in Cameroon. There is no internal flight alternative (IFA) in Cameroon for a political opponent or an individual who is perceived to have tarnished the government’s image, and the state, as an agent of persecution, will not protect the appellant. I also note that the appellant is living in hiding and has relocated frequently. His physical and mental health is deteriorating. In my opinion, an IFA would not be reasonable in the appellant’s particular circumstances.

CONCLUSION

1. For the foregoing reasons and in light of the most recent documentary evidence, I set aside the RPD’s determination and substitute the determination that, in my opinion, should have been made, namely, that the appellant is a Convention refugee within the meaning of section 96 of the IRPA.
2. The appeal is allowed.

|  |  |
| --- | --- |
| *(signed)* | *Roxane Vachon* |
|  | **Roxane Vachon** |
|  | **February 23, 2022** |
|  | **Date** |

IRB translation  
Original language: French

1. *Canada (Citizenship and Immigration) v. Alazar*, 2021 FC 637. [↑](#endnote-ref-2)
2. Paragraph 3(2)(a) of the *Immigration and Refugee Protection Act* (IRPA), S.C. 2001, c. 27. [↑](#endnote-ref-3)
3. Section 49 of the IRPA, S.C. 2001, c. 27. [↑](#endnote-ref-4)
4. Freitas v. *Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 20463 (FC) [1999], 2 FC 432; para. 24 of *Molnar v. Canada (Citizenship and Immigration)*, 2015 FC 345, [2015] 4 FCR 679; the Court cites *Magusic v. Canada (Minister of Citizenship and Immigration)*, No. IMM‑7124‑13, para. 10, July 22, 2014 (unreported). [↑](#endnote-ref-5)
5. *Molnar v. Canada (Citizenship and Immigration)*, 2015 FC 345, [2015] 4 FCR 679; see also *Magyar v. Canada (Citizenship and Immigration)*, 2015 FC 750. [↑](#endnote-ref-6)
6. ## Rosa v. Canada (Citizenship and Immigration), 2014 FC 1234 (CanLII), [2015] 4 FCR 199.

   [↑](#endnote-ref-7)
7. *Kreishan v. Canada (Citizenship and Immigration)*, 2019 FCA 223, 2019-08-19. [↑](#endnote-ref-8)
8. *Mrda v. Canada (Citizenship and Immigration)*,2016 FC 49. [↑](#endnote-ref-9)
9. *Harvan v. Canada (Citizenship and Immigration)*,2015 FC 1026. [↑](#endnote-ref-10)
10. *Mirzaee v. Canada (Citizenship and Immigration)*, 2020 FC 972, and *Ruiz Lopez v. Canada (Citizenship and Immigration)*, 2021 FC 390. [↑](#endnote-ref-11)
11. IRPA, S.C. 2001, c. 27, subsection 110(4). [↑](#endnote-ref-12)
12. *Canada (Minister of Citizenship and Immigration) v. Singh*,2016 FCA 96. [↑](#endnote-ref-13)
13. XXXX-XXXX-XXXX-XXXX; XXXX-XXXX-XXXX-XXXX; XXXX-XXXX-XXXX-XXXX;

    XXXX-XXXX-XXXX-XXXX; XXXX-XXXX-XXXX-XXXX; XXXX-XXXX-XXXX-XXXX. [↑](#endnote-ref-14)
14. Rule 37 and subrule 29(2), *Refugee Appeal Division Rules*, SOR/2012‑257. [↑](#endnote-ref-15)
15. *Horvath v.* *Canada (Minister of Citizenship and Immigration)*, No. IMM‑3425‑17, Mosley, February 8, 2018; 2018 FC 147, para. 18. [↑](#endnote-ref-16)
16. *Canada (Citizenship and Immigration) v.* *Singh*, No. A‑512‑14, de Montigny, Gauthier, Nadon, March 29, 2016; 2016 FCA 96, paras. 44 and 71. [↑](#endnote-ref-17)
17. *Dahal v. Canada (Minister of Citizenship and Immigration)*, No. IMM‑330‑17, Crampton, December 4, 2017; 2017 FC 1102, paras. 30 and 31.

    *Kanawati v. Canada* *(Minister of Citizenship and Immigration)*, No. IMM‑6486‑18, Norris, January 3, 2020; 2020 FC 12, paras. 23 and 24. [↑](#endnote-ref-18)
18. *Canada (Citizenship and Immigration) v. Huruglica*, No. A‑470‑14, Gauthier, Webb, Near, March 29, 2016; 2016 FCA 93. [↑](#endnote-ref-19)
19. P‑2, Appellant’s record, appellant’s memorandum dated March 20, 2020. [↑](#endnote-ref-20)
20. *Satkunanathan v. Canada (Citizenship and Immigration)*, 2020 FC 470. [↑](#endnote-ref-21)
21. Practice Notice – Allegations Against Former Counsel, effective September 10, 2018, section 4. [↑](#endnote-ref-22)
22. P‑3, Appellant’s additional submissions, documentary evidence, item 1, email to Mr. XXXX [↑](#endnote-ref-23)
23. Subsection 91(2) of theIRPA, S.C. 2001, c. 27; [↑](#endnote-ref-24)
24. *Policy for Handling Immigration and Refugee Board of Canada Complaints Regarding Unauthorized, Paid Representatives*, September 29, 2011. [↑](#endnote-ref-25)
25. P‑2, Appellant’s record, affidavit of XXXX XXXX XXXX XXXX dated March 2, 2020. [↑](#endnote-ref-26)
26. XXXX-XXXX-XXXX-XXXX, paras. 32 to 47 of the Court of Québec judgment. [↑](#endnote-ref-27)
27. *Barreau de Montréal v.* XXXX, XXXX-XXXX-XXXX-XXXX.  
    This is a RAD file in which Mr. XXXX was found guilty of identifying himself as a lawyer and receiving a fee. [↑](#endnote-ref-28)
28. See paragraph 4, *Barreau de Montréal v.* XXXX, XXXX XXXX, 2021. [↑](#endnote-ref-29)
29. Section 91 of the IRPA, S.C. 2001, c. 27. [↑](#endnote-ref-30)
30. *Barreau de Montréal v.* XXXX 2022 XXXX. [↑](#endnote-ref-31)
31. *Chaudri v. Canada (Minister of Employment and Immigration)*, No. A‑1278‑84, Thurlow, Hugessen, McQuaid, June 5, 1986; 69 N.R. 114 (FCA). [↑](#endnote-ref-32)
32. *Ghazizadeh v. Canada (Minister of Employment and Immigration)*, No. A‑393‑90, Hugessen, MacGuigan, Décarie, May 17, 1993; 154 N.R. 236 (FCA). [↑](#endnote-ref-33)
33. P‑3, Appellant’s additional submissions, documentary evidence, item 16. [↑](#endnote-ref-34)
34. P‑3, Appellant’s additional submissions, documentary evidence, items 12 and 14. [↑](#endnote-ref-35)
35. SAR‑1, National Documentation Package (NDP) on Cameroon, November 30, 2021, Tab 2.1: *Cameroon. Country Reports on Human Rights Practices for 2020*. United States. Department of State. March 30, 2021, p. 16.

    SAR‑1, NDP on Cameroon, November 30, 2021, Tab 2.5: *Cameroon. World Report 2021: Events of 2020*. Human Rights Watch. January 2021. [↑](#endnote-ref-36)
36. SAR‑1, NDP on Cameroon, November 30, 2021, Tab 2.1: *Cameroon. Country Reports on Human Rights Practices for 2020*. United States. Department of State. March 30, 2021, p. 16. [↑](#endnote-ref-37)
37. SAR‑1, NDP on Cameroon, November 30, 2021, Tab 2.5: *Cameroon. World Report 2021: Events of 2020*. Human Rights Watch. January 2021. [↑](#endnote-ref-38)
38. SAR‑1, NDP on Cameroon, November 30, 2021, Tab 2.3: *Cameroon. Freedom in the World 2021*. Freedom House. 2021, p. 5.  [↑](#endnote-ref-39)
39. SAR‑1, NDP on Cameroon, November 30, 2021, Tab 2.2: *Cameroon. Amnesty International Report 2020/21: The State of the World’s Human Rights*. Amnesty International. April 7, 2021. POL 10/3202/2021. [↑](#endnote-ref-40)
40. SAR‑1, NDP on Cameroon, November 30, 2021, Tab 7.2: *Cameroon Country Security Report.* United States. Overseas Security Advisory Council. August 20, 2021. [↑](#endnote-ref-41)
41. SAR‑1, NDP on Cameroon, November 30, 2021, Tab 7.4: *Cameroon Corruption Report*. GAN Integrity. Risk and Compliance Portal. May 2021. [↑](#endnote-ref-42)
42. P‑3, Appellant’s additional submissions, documentary evidence, items 12, 13, 14, 15 and 17. [↑](#endnote-ref-43)