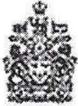

Immigration and Refugee Board of Canada
Refugee Protection Division

Commission de l'immigration et du statut de réfugié du Canada
Section de la protection des réfugiés

RPD File: TB7-09157
TB7-09188

NOTICE OF DECISION

[*Immigration and Refugee Protection Act*, subsection 107(1)]
[*Refugee Protection Division Rules*, rule 67]

Dorothy E. Fox
Member

In the claims for refugee protection of:	Date of birth:	UCI:
Roxanne Melissa STEWART (a.k.a. Roxanne Melissa STEWART JOHNSON)	August 8, 1981	42358610
Benjamin Romain JOHNSON	January 14, 2015	1104638691

The claims were heard on April 4, 2018, July 19, 2018, and December 3, 2018.

The Refugee Protection Division determines that **the claimants are Convention refugees and therefore accepts the claims**.

The reasons for the decision are attached.

May 7, 2019

Karissa Singh, Case Management Officer
For the Registrar
Tel: 1-866-790-0581

Immigration and
Refugee Board of Canada
Refugee Protection Division

Commission de l'immigration et
du statut de réfugié du Canada
Section de la protection des réfugiés

RPD File No. / N° de dossier de la SPR : TB7-09157
TB7-09188

Private Proceeding / Huis clos

Reasons and Decision – Motifs et Décision

Claimant(s)	Roxanne Melissa STEWART (a.k.a. Roxanne Melissa STEWART JOHNSON) Benjamin Romain JOHNSON	**Demandeur(e)(s) d'asile**
Date(s) of Hearing	April 4, 2018 July 19, 2018 December 3, 2018	**Date(s) de l'audience**
Place of Hearing	Toronto, Ontario	**Lieu de l'audience**
Date of Decision and reasons	April 15, 2019	**Date de la décision et des motifs**
Panel	D. Fox	**Tribunal**
Counsel for the Claimant(s)	Jeffrey L. Goldman	**Conseil(s) du (de la/des) demandeur(e)(s) d'asile**
Designated Representative(s)	Susan Woolner for principal claimant Martin Ginsherman for minor claimant	**Représentant(e)(s) désigné(e)(s)**
Counsel for the Minister	Pat Retsinas	**Conseil du (de la) ministre**

Canada

RPD File No. / N° de dossier de la SPR : TB7-09157
TB7-09188

REASONS FOR DECISION

INTRODUCTION

[1] The claimants, Roxanne Melissa Stewart (the principal claimant), and her son Benjamin Romain Johnson (the minor claimant), claim to be citizens of Jamaica and are claiming refugee protection pursuant to sections 96 and 97(1) of the *Immigration Refugee Protection Act* (IRPA).[1]

[2] Since this claim also involves allegations of gender related violence, the panel considered the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.*[2] The *Chairperson's Guideline* assists in assessing the key evidentiary elements in determining to what extent women making a gender-related claim of fear of persecution may successfully rely on any Convention ground and under what circumstances gender violence constitutes persecution.

[3] In assessing this case, the panel considered the *Chairperson's Guideline 8: Procedures with Respect to Vulnerable Persons Appearing Before the Immigration Refugee Board*[3] to ensure that appropriate accommodations were made in questioning the claimant, in the overall hearing process, and in substantively assessing the claims. At the outset of the hearing, the panel noted that the principal claimant was diagnosed with Bipolar Disorder, Type I in 2005.[4] Consequently, the panel appointed Ms. Susan Woolner as a designated representative pursuant to Section 167 (2) of IRPA and Rule 20 of the Refugee Protection Division Rules. Further, the panel made procedural accommodations for the principal claimant by modifying questions, rephrasing questions when necessary, and allowing her an extended period of time to respond to questions so that she was not disadvantaged in presenting her case.

[4] The panel also considered *Chairperson's Guideline 3: Child Refugee claimants: Procedural and Evidentiary Issues.*[5] In making its decision the panel considered all circumstances both procedural and substantial that are unique to the minor claimant.

[5] Mr. Martin Ginsherman was appointed as the designated representative for the minor claimant.

[6] These claims were joined in accordance with Rule 55 of the Refugee Protection Division Rules.[6]

[7] The Minister Representative, Pat Retsinas, participated in the hearing of this claim in order to present evidence, question the claimants, and make representations. The issues of concern to the Minister are credibility and exclusion under 1F (b).

ALLEGATIONS

[8] The specifics of the claim are stated in the claimants' Basis of Claim forms (BOC) and several amendments. [7] The principal claimant alleges in that she has a well-founded fear of persecution by family members and Jamaican society based upon her membership in a particular social group as an individual with a mental disability. She also alleges that she fears being harmed upon return based on her gender as a female as she is at risk of domestic violence, both emotional and physical abuse at the hands of her estranged husband, Mr. Romain Johnston, and her father, Arthro Stewart.

[9] It is alleged that the minor claimant has a well-founded fear of persecution of physical and emotional harm as a child who was subjected to and witnessed domestic violence, by his father. Further, it is alleged that the minor child is a member of a particular social group as a child of a mentally ill person, as such he will be stigmatized by Jamaica society causing emotional harm.

[10] The principal claimant was born in Kingston, Jamaica, August 8, 1981, and was raised by her mother, an educator, and her father, a prominent lawyer. She has one brother who resides in Germany. She alleges that between the ages of four and seven she was sexually molested by two neighbours, and claims that her father was sexually inappropriate towards her. She alleges that as a result of the abuse she became introverted, and socially distant.

[11] She alleges that in 2005 while pursuing her Master's degree at the Rhode Island School of Design in the United States of America (USA) she experienced her first episode of psychosis. She was diagnosed with bipolar affective disorder, Type I and was hospitalized for two weeks and spent one week as an outpatient before returning to Jamaica. In Jamaica she was placed in the care of Dr. E. Anthony Allen who increased her dosage of Risperdol and Depokte, the drugs that she was prescribed in the USA. She suffered side effects from these drugs including vivid hallucinations and severe depression and was not offered any counselling or psychotherapy. In 2011 she started seeing Dr. Janet La Grande, who prescribed 600 mg of Seroquel (Quetiapine)

which caused her to have vivid hallucinations and nightmares as well as uncontrollable movement of her limbs.

[12] In 2013 the principal claimant had a second psychotic episode that required hospitalization. The principal claimant self-presented at the Medical Associates Hospital in Kingston and was cared for by Dr. Charles Thesiger and upon her discharge she briefly saw Dr. Winston De La Haye.

[13] At the behest of her mother the principal claimant sought the help at the Worjen Medical Center from Mrs. Jennifer Wilson, a behavioural therapist. The therapist persuaded the principal claimant not to take any medications and attempted to "exorcise her demons". The therapist's aggressive therapy led to the principal claimant's hospitalization. The principal claimant then sought treatment with Dr. Thesiger with whom she was previously acquainted while hospitalized at the Medical Associates Hospital.

[14] The principal claimant met her husband in October 2012 and they began dating 2013; however, their relationship started deteriorating in April 2014 when she became pregnant with Benjamin. Despite not being married she decided to keep the baby. She found Dr. Thesiger to be respectful of her wishes to continue the pregnancy without medication so as to not harm the baby. The doctor monitored the principal claimant twice a month during the pregnancy. The doctor died shortly before Benjamin's birth in January 2015. The principal claimant's mother suggested she be placed in the psychiatric care of Dr. Earl Wright, who was impersonal and overmedicated her.

[15] During Benjamin's birth the principal claimant alleged that she was mistreated by hospital staff. Three months after she was discharged from the hospital she suffered from another psychotic episode. She self-presented at the Medical Associates Hospital where she was mistreated by Dr. Frank Knight who overmedicated her with an injection of Modecate (Fluphenazine) and doses of Lithium and Haloperidol. The principal claimant alleges that she suffered severe side effects from his treatment and despite her attempts to complain to authorities nothing was done. The situation was exacerbated by Dr. Wright increasing her medication and placing her on Lithium, Cogentin and additional Quetiapine.

[16] The principal claimant and her husband were married on December 18, 2016, started living together and discovered around the same time that they were having another baby. The

principal claimant, her parents and her husband consulted Dr. Wright regarding the side effects on the unborn baby. The doctor informed them that she could come off all medications and then he went on leave. One week later the claimant started experiencing anxiety and paranoia so her husband, who is a pharmacist, and her father made the decision to medicate her with 200mg of Seroquel doubling the dose a few days later.

[17] Further, the principal claimant alleges that after the marriage she experienced severe verbal and emotional abuse by her husband. She alleges that he was physically abusive towards her son by pushing him to the floor and forcing medication down his throat. Her husband became angry and aggressive and would not allow the principal claimant to speak with her male friends. He threatened to burn her with a hot iron. On January 10, 2017, he left after the principal claimant informed his friends and family that he was in an inappropriate relationship. Despite their separation he continued to intimidate her by threatening to inject her with Modecate, pressuring her to have an abortion and threatening as her next of kin to have her hospitalized.

[18] After Dr. Wright returned and learned that the principal claimant was stressed from the problems with her husband and pregnancy he suggested that she increase her dosage of Seroquel from 200 to 800mg without consideration of the side effects on her or the unborn child. This prompted the principal claimant to seek the help of another psychiatrist, Dr. Jacqueline Martin (Dr. Martin), who insisted that she attend with her father on January 27, 2017. During this meeting Dr. Martin urged her to terminate the pregnancy and be hospitalized in Ward 21, which is a psychiatric ward at the University Hospital of the West Indies. On February 9, 2017, they met with Dr. Martin, who mainly addressed and discussed her treatment with her father. During this meeting Dr. Martin continued to threaten the principal claimant with hospitalization, insisted that she increase her medication, and suggested the claimant sign a liability waiver if she decided to be treated at her parents' home.

[19] The principal claimant alleges that she feared Dr. Martin's threat of hospitalization. She sought the advice of two lawyers, who dismissed her concerns. She sought the help of two more psychiatrists and a psychologist, who refused to go against Dr. Martin's decision. The principal claimant alleges that her mother suggested that she have an abortion and take the advice of Dr. Martin. The claimant alleges that Dr. Martin clearly stated that the husband as next of kin would have the power to have the claimant hospitalized. Due to the threats of involuntary

hospitalization and forced treatment, and the fear that her husband would collude with the process the principal concluded that it was not safe for her, the minor claimant and unborn child to remain in Jamaica.

[20] The principal claimant forged her husband's signature on the minor claimant's travel consent for his Canadian visa application and they traveled to Canada on March 10, 2017, and claimed refugee protection. Her second child was born in Canada on August 29, 2017.

MINISTER'S ALLEGATIONS

[21] The Minister filed a Notice of Intervention dated June 22, 2017, [8] on the basis of credibility and exclusion. The Minister also expressed concern that the minor child may be in danger given the many psychotic episodes that the principal claimant has experienced as described in her BOC narrative.

[22] The Minister argues that the principal claimant had abducted the minor claimant from the co-custodial parent, and committed the criminal act of perjury by forging her husband's signature on the travel consent for the minor claimant's visa application, and therefore, she should be excluded pursuant to article 1F(b) of the Refugee Convention.

[23] The Minister has cited Article 3 of the Hague Convention regarding child abduction and sections 131, 132, 282, 283, and 285 of the *Canadian Criminal Code* to support the argument made.

DETERMINATION

[24] The panel finds that the principal claimant is a Convention refugee because she has established a serious possibility of persecution based upon her membership in a particular social group as an individual with a mental disability. She has also established a well-founded fear of being harmed upon return based upon her gender as a female at risk of domestic violence.

[25] The panel finds that the minor child has a well-founded fear of persecution based upon his membership in a particular social group, namely as a child of a mentally ill person; the minor claimant has witnessed physical and emotional harm against his mother, has experienced physical

and emotional harm himself, and will be stigmatized by Jamaica society causing even further harm.

[26] The panel further finds that the principal claimant is not excluded from refugee protection.

ISSUES

[27] The determinative issues in this claim are exclusion, credibility, and state protection.

ANALYSIS

Identity

[28] The claimants have established their identities as a nationals of Jamaica by the principal claimant's testimony and the supporting documentation filed, namely a copies of their Jamaican passports.[9] The original document has been seized by Immigration Refugee Canada officials (IRCC).[10]

Exclusion

[29] Given that the Minister was intervening on the issue of exclusion under 1F (b), the Minister's counsel commenced the questioning of the principal claimant. It was not disputed by the parties that the principal claimant knowingly forged the signature of her estranged husband, the biological father of the minor child, on the travel consent for child's Canadian Visa Application. The principal claimant then removed the child from Jamaica, and arrived in Canada on March 10, 2017.

[30] Article 1F(b) is found in the Schedule to the IRPA[11] and indicates that refugee protection shall not apply to an individual, if there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to his/her admission to that country as a refugee.

[31] The Minister argues that the claimant is excluded from refugee protection in Canada, as she has committed the crimes of child abduction in Jamaica, and perjury prior to coming to

Canada. Had the claimant committed a similar act in Canada, it would be contrary to sections 131, and 283of the *Criminal Code of Canada.*[12]

[32] Section 98 of IRPA states: "98 A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection."[13]

[33] The panel refers to the following relevant parts of Section F of Article 1 of the *United Nations Convention Relating to the Status of Refugees* (*Refugee Convention*) as set out in Schedule 1 of the *Immigration and Refugee Protection Act*: The standard of proof is "serious reasons for considering that [the person] has committed a serious non-political crime outside the country of refuge prior to his [or her] admission to that country as a refugee."[14]

[34] The Federal Court of Appeal stated in *Sing* that:

> …it was established that an 'exclusion' hearing under Article 1F(*b*) is not in the nature of a criminal trial where guilt or innocence must be proven by the Minister beyond a reasonable doubt. Rather, the onus upon the Minister is to establish, based on the evidence presented to the Board, that there are "serious reasons for considering"…
>
> […]
>
> The standard of evidence to be applied to this threshold test is higher than a mere suspicion but lower than proof on the civil balance of probabilities standard (see Zrig at paragraph 174; and Ramirez v. Canada (Minister of Employment and Immigration), [1992] 2 F.C. 306 at 312-14 (C.A.).[15]

[35] The applicability of the exclusion clause does not depend on whether the claimant has been charged or convicted of the criminal acts in question. The burden of proof is merely to demonstrate "serious reasons for considering" that the claimant committed such acts.[16]

[36] In the present case, it is not disputed that when the principal claimant removed the minor child from Jamaica he was under the age of 14. Further, she did so with the specific intent of removing the child from the care and control of her husband and remaining in Canada without his consent.

[37] The minister submitted that the principal claimant by knowingly forging her husband's signature on an official document and swearing that it is true and correct on behalf of the minor

claimant to Canadian authorities at the visa office in Jamaica amounts to perjury pursuant to the following provision:

> **Perjury**
>
> **131(1)** subject to subsection (3) everyone commits perjury who, with intent to mislead, makes before person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or orally, knowing that the statement is false.
>
> **Punishment**
>
> **132** everyone who commits perjury is guilty of an indictable a fence and liable to imprisonment for a term not exceeding 14 years.[17]

[38] The crime of parental child abduction under Section 283 of the criminal code is defined as follows:

> 283 (1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of 14 years, takes, entices away, conceals, detains, receives or harbours that person, whether or not there is a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person, is guilty of (a) an indictable offence that is liable to imprisonment for a term not exceeding 10 years; or (b) an offence punishable on summary conviction.[18]

[39] The Minister pointed out that the Hague Convention of the Civil aspects of International Child abduction provides:

> **Article 3**
>
> The removal or the retention of a child is to be considered wrongful where –
>
> a) it is in breach of rights of custody attributed to a person, and institution or any other body, either jointly or alone, under the law of the state in which the child was habitually resident immediately before the removal or retention; and
>
> b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.[19]
>
> The rights of custody mentioned in sub paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

[40] The Minister submitted that the principal claimant's actions amount to what is described as perjury and abduction under the criminal code of Canada, and this criminality upon entry constitutes a "serious non-political crime" because the equivalent offence in Canada is punishable by a maximum term of 14 years imprisonment for the former and 10 years for the latter offence. Further, the Minister has submitted that the very fact that international child abduction is the object of an international convention and international law is indicative of the seriousness of the matter from the point of view of criminal, civil and administrative law.

[41] The panel notes that Section 285 of the Criminal Code of Canada provides:

> No one shall be found guilty of an offence under sections 282 to 283 if the court is satisfied that the taking, enticing away, considering, detaining, receiving or harbouring of any young person was necessary to protect the **young person** from danger of imminent harm or if the **person** charged with the offence was **escaping from danger of imminent harm.** [emphasis added]

In essence, there is a specific available defence of **imminent harm.**

[42] In addition to the Criminal Code defence provisions, the panel has carefully considered that the Hague Convention contains a similar defence and exception provision, in particular Article 13 B which states notwithstanding the provisions of the preceding articles parental removal or retention of a child is not wrongful if "there is a **grave risk** that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." [emphasis added][20]

[43] The panel's jurisdiction does not extend to making a finding of wrongfulness under this Convention nor does it have jurisdiction to convict or acquit the claimant of any criminal wrong doing. However, it is within the panel's jurisdiction to decide whether the principal claimant should be excluded from Canada's protection as a Convention refugee or a person in need of protection.

[44] Given that the claimant does not have consent she must satisfy the rebuttable presumption in Section 285 of the Criminal code of Canada by providing credible and trustworthy evidence that there was imminent harm that was faced by her or by the minor child so as to warrant his removal. The issue of exclusion hinges on the credibility of the principal claimant. The panel has determined that the principal claimant had no choice, but to remove the minor child to protect

their safety and her own physical and psychological health, following the factors set out in *Jayasekara* in Canada under the mitigating factor criteria.[21] In the panel's view, there is ample evidence of an uncontradicted nature that the principal claimant has suffered abuse and she and the minor child were facing imminent harm according to the documentary and oral evidence which is discussed below.

[45] Therefore, the principal claimant is not excluded from refugee protection by operation of section 98 of the *Immigration and Refugee Protection Act*, section F(b) of Article 1 of the *United Nations Convention Relating to the Status of Refugees* ("Article 1F(b)").

Credibility

[46] The onus rests on the claimants to establish their allegations on a balance of probabilities. The panel acknowledges that a refugee claimant's sworn testimony carries a presumption of truthfulness. Moreover, a claimant's allegations must be proven on a balance of probabilities only.

[47] The principal claimant's testimony was straightforward, prompt, and direct without embellishment. There were no major inconsistencies that went to the core of the claim. Her oral testimony was consistent with her BOC,[22] and the supporting documentation, which was no easy task given the length and detail of her BOC narrative and the plethora of supporting documents. The minor claimant relied on the narrative of the principal claimant. The panel, therefore, finds the claimants to be credible, based on the balance of probabilities for the following reasons.

[48] The documentary evidence clearly establishes that the principal claimant lives with Bipolar Affect Disorder, Type 1, which was diagnosed in the USA in 2005.[23] Her diagnosis was also confirmed by her treating psychiatrist in Canada, Dr. Christopher R. Kitamura.[24] Bipolar Disorder is a mental illness marked by extreme mood swings from high to low and from low to high. Highs are periods of mania, while the lows are periods of depression. In bipolar I, manic episodes are clear and include moods or behaviours that are unlike an individual's usual behaviour. Dr. Kitamura noted that with proper treatment individuals suffering from this mental illness would spend most of their lives in a euthymic (level) state.[25]

[49] The principal claimant presents as an intelligent, well-spoken individual, who was able to clearly articulate key aspects of her claim, and has an in-depth understanding of her mental illness. However, considering the possible limitations of her mental capacity that could arise when the claimant is in a state of anxiety the panel simplified questions and allowed the claimant longer time to formulate her responses so as not to cause her any undue stress. The panel considered the principal claimant's personal circumstances and how her mental illness may have impeded her perception of events; thus, in reaching its decision, the panel put emphasis on the objective circumstances and documentation, rather than solely on her statements and judgments.[26]

[50] With respect to claimants exhibiting signs of mental disturbances, recent jurisprudence instructs that it is necessary to lighten the burden of proof normally incumbent upon claimants, and gather information that cannot be easily obtained from them from other sources; for example, relatives, friends, documents on similarly situated persons, and documentary evidence on country conditions.[27] Accordingly, the panel examined whether the objective documentary evidence made the applicant's story plausible, carefully considered the corroborating evidence of the audio recordings of the meetings the claimant had with the psychiatrists and the telephone conversation her with mother. The panel also considered text messages between family members and health care professionals, Dr. Kitamura's clinical Assessments, support letters, and the country condition documents.

Allegations of Domestic Abuse by Husband is Credible, on a Balance of Probabilities

[51] The claimant's testimony with respect to her husband's abuse was not only consistent with her BOC, but also with the independent documentation. The principal claimant started dating her husband in October 2012. During their courtship he was studying to become a pharmacist and she and her parents paid for his education. They also helped his family financially because they were people of limited means. The principal claimant maintained that they had a good relationship, but it started deteriorating after she became pregnant with the minor claimant, as he became jealous and accused her of infidelity.

[52] In December 2016, the couple learned that they were having a second child. They married and moved in together on December 18, 2016. Her husband became more controlling and did not allow her to have contact with her male friends, and monitored her postings on Facebook. He

grew verbally and emotionally abusive toward her, and during an argument with her, he pushed the minor claimant to the floor. He was also inappropriately rough with the minor claimant, and forced a syringe of medication down his throat causing him to vomit. He threatened to burn the principal claimant with a hot iron. As a pharmacist he had access to medication, and without the oversight of Dr. Wright he acquired **Quetiapine and administered it to the principal claimant**. He also threatened to inject her with Modecate. After they separated in January 2017 he continued to antagonize her insisting that she have an abortion, telling her she was not mentally competent for pregnancy, and refusing counselling for his aggressive behavior towards her and the minor claimant. She was concerned that he would have her involuntarily hospitalized and treated.

[53] The panel considered the affidavit of the principal claimant's parents dated June 29, 2017;[28] the transcript of the recorded meeting with psychiatrist Dr. Martin dated January 23, 2017;[29] the transcript of the recorded meeting with Dr. Nyamakeye Richards dated February 9, 2017;[30] and the various Clinical Assessments of the Canadian psychiatrist, Dr. Christopher Kitamura,[31] and found that the instances and fear of domestic abuse referred to in these documents was for the most part consistent, and supported the principal claimant's account of events.

[54] The panel also considered the WhatsApp messages between the principal claimant and her husband,[32] wherein he purposely limited his responses to her requests to address his abusive behavior, and he did not outright deny his behavior. Having considered all the evidence, the panel finds that the principal claimant has established, on a balance of probabilities, that her husband had been abusive towards her and the minor child.

Allegations of Sexual Harassment and Abuse by the Principle Claimant's Father is Credible on a Balance of Probabilities

[55] The principal claimant did not make any allegations of sexual impropriety by her father or allegations of domestic abuse against him in her original BOC dated April 20, 2017.[33] The Minister expressed concern that the claimant had made these additional allegations of sexual abuse prior to her second sitting to bolster her claim for refugee protection. The panel reviewed the documentary evidence and found that the claimant intended to address this issue from the outset of her claim.

[56] In a letter dated November 16, 2017, the principal claimant provided amendments to her original BOC[34] alleging sexual abuse by her father as well as other instances of sexual abuse. The principal claimant stated in this letter that she arrived in Canada on March 10, 2017, and obtained a Legal Aid certificate to retain counsel on March 31st, 2017. She stated further that she sent her previous counsel her draft BOC narrative by email on April 15th. Her previous counsel edited it omitting pertinent information, and the principal claimant submitted it at her eligibility interview on May 12, 2017. On June 15th she removed her previous counsel as solicitor of record, and was unrepresented at her first hearing on **July 7, 2017.** The matter was put over so that she could retain and instruct counsel. The letter states further, that when she reviewed the narrative with her present counsel on November 2, 2017, she discovered that pertinent information was missing and amended the BOC accordingly. On March 18, 2018, a consolidated BOC amendment was tendered by the principal claimant's designated representative.[35]

[57] The documentary evidence supports the principal claimant's position that this was **not** an issue she conjured up prior to her second hearing in November 2017 to bolster her claim. In Dr. Kitamura's report dated **June 26, 2017**,[36] the father's sexual impropriety was reported as well as sexual abuse by two neighbours. Further, the principal claimant's WhatsApp Conversation with her mother dated September 30, 2017,[37] and the WhatsApp conversation with her father dated October 5, 2017[38] contain discussions about the father's sexual impropriety. The timing of these discussions are approximately one month before the BOC amendment was made. Having considered this evidence, the panel finds on a balance of probabilities that the claimant intended to raise these issues from the outset of her claim, and therefore, does not draw a negative credibility inference from the late amendment to the BOC in November 2017 to include allegations of her father's sexual impropriety.

[58] The principal claimant claims that when she was a child her father barged into her bedroom and shower when she was naked and stared at her. She also claims that he made sexually inappropriate comments about her body beginning from when she was a child into adulthood. In the above-noted text message exchanges neither parent denies that sexual comments were made and the father confirms that the claimant's privacy was invaded at sensitive moments albeit only when she was a child. The father responded that since he never "considered the principal claimant an object of sexual desire," he never "imagined or conceived that his behaviour was either inappropriate or offensive."[39] The mother responded that she spoke to her father when he made

comments about her breasts, but was not aware of her father invading her privacy at inappropriate moments.

[59] There is no evidence before the panel of the father's exact comments nor the frequency with which he made them, but he does not deny that comments were made. The panel is of the view that sexually inappropriate comments coming from a father could be emotionally disturbing to any daughter, let alone a daughter who was sexually molested as a child and is suffering from Bipolar I Disorder. The father was aware of the principal claimant's circumstances yet lacked understanding of how a person with her vulnerabilities would be effected by these comments. After carefully considering and weighing the totality of the evidence, the panel finds that the claimant was sexually harassed and emotionally abused by her father.

[60] Further, the evidence indicates that the father was unable to cope with the principal claimant's illness and colluded to overmedicate her when she exhibited signs of anxiety. The panel acknowledges that her mental illness is characterized by extreme moods swings, and caring for her can be stressful and exhausting on her family members especially so if they did not develop the skills needed to cope with the mental illness. The principal claimant is vulnerable when she was in her extreme states, and in the past she depended on her father for emotional and financial support during moments of crisis, notwithstanding, his abuse.

[61] The principal claimant testified that she experienced extreme anxiety and stress with having to deal with the second pregnancy and her husband's abuse. Despite this her father supported her husband's choice to significantly increase her medication without consulting Dr. Wright. He also supported Dr. Martin's suggestion to increase the principal claimant's medication despite her objection. The panel finds that her father's actions in this regard put the principal claimant in a situation where she was at a high risk of harm the particulars of which are discussed below.

Threats of Hospitalization and Overmedication by Health Care Professionals Credible on a Balance of Probabilities

[62] The principal claimant testified that due to her circumstances she sought a level of psychiatric medication that would control the symptoms of her illness without harming the fetus

and sought counselling to deal with the abusive marriage. She testified that she had a meeting with Dr. Wright after he returned during which he suggested she increase her Quetiapine to 800ml, and he showed no concern for the effects the increase in medication might have on the fetus. The principal claimant dismissed his services and sought protection and help from Dr. Martin, who without an assessment, suggested hospitalization, increasing her Quetiapine to 600ml in combination with mood stabilizers and terminating the pregnancy, all of which the principal claimant refused.

[63] In sharp contrast, the treating Canadian psychiatrist, Dr. Kitamura conducted a full psychiatric assessment and questioned the claimant on her personal past, during which he duly noted the allegations of the father's sexual impropriety.[40] He lowered her dosage of Quetiapine from 400ml to 200ml, and directed her to appropriate psychological counselling. He did not suggest she have an abortion nor did he deem that her mental state required her to be hospitalized.

[64] The evidence indicates that Dr. Martin insisted the father attend the two meetings the principal claimant had with her. During the second meeting on February 9, 2017, Dr. Martin ignored the claimant and spoke mainly with the father except when he briefly left the room. The father agreed with Dr. Martin to increase the principal claimant's medications, but wanted her to remain at home. Dr. Martin pushed to have her hospitalized and was more concerned about the principal claimant signing a waiver absolving her of liability if the fetus was harmed as a result of the medication increase. The principal claimant maintained that she opted to obtain advice from lawyers and other psychiatrists before making a decision.

[65] The principal claimant testified that she was over medicated by psychiatrists and mistreated while hospitalized in the past. She stated that when she complained about her treatment she was not believed because of her mental illness. Consequently, she recorded her second appointment with Dr. Martin and her appointment with Dr. Namayake Richards.

[66] The following exchanges from the recorded appointment at Dr. Martin's office supports the principal claimant's allegations:

> **Roxanne:** Oh he's saying that I might experience more psychosis… At the house? Is that what you're saying?

Dr. Martin: [Ignoring the claimant's comment and speaking to her father] Well the bottom line is, she's going to be more medicated. So some of what…is affecting her now is not going to happen.

Mr. Stewart: The thing is this though that at home, right? She has the…the privilege of having Benjamin sleeping beside her…

Dr. Martin: Alright, so you prefer if we do it at home. (*sic*)

Mr. Stewart: Yes! Yes.

Dr. Martin: Than in the hospital. (*sic*) Okay, then ANY hospital?

Mr. Stewart: I wouldn't want to subject…

Dr. Martin: Than ANY hospital? Pre-prefer home to ANY hospital?

Mr. Stewart: Yes, I wouldn't want to subject her to ward 21. And I understand where she is, as far as that is concerned.

Dr. Martin: Mmhmm…

Mr. Stewart: We went pretty close to that once. …

Dr. Martin: So you would put her at Medical (Associates)?

Mr. Stewart: Fortunately there was no space.

Dr. Martin: Or would you prefer your house? As a first trial?

Mr. Stewart: As a first trial I prefer my house.

Dr. Martin: Ok. So will do that. …[41]

[67] With respect to the medication, Dr. Martin told the claimant that **no drug** was safe for pregnancy. She suggested a medication regimen of 600mg of Seroquel (Quetiapine) and mood stabilizers, despite the principal claimant's insistence that her mental health was stable at the time on 400mg on Seroquel (Quetiapine), albeit she was under stress over the breakdown of her marriage and the pregnancy. The panel notes the following exchange with respect to medication:

Roxanne: So you won't give me any more doses? You won't give me any more Quetiapine?

Dr. Martin: I will write-I will write the prescription that you came here on.

Roxanne: Oh, okay. Alright.

> **Dr. Martin:** Because I didn't initiate that. So I have no… I have no problem re-writing that. **[Speaking to Mr. Stewart]** But I think she needs… **600 ml** of Seroquel (Quetiapine). I think she needs 300 in the morning and 300 at night. And plus a **mood stabilizer** added to the mix… And I can't-**I don't have a drug that is baby safe**. [emphasis added]
>
> **Dr. Martin: Not a one.** [emphasis added]
>
> **Mr. Stewart:** Another question is, if, if she reduces the level of activity that she has at the moment… And this is just… In other words she's busy doing this research to…
>
> **Dr. Martin:** No! Roxanne is having this level of activity because she's bipolar.
>
> **Mr. Stewart:** Ok.
>
> **Dr. Martin:** That's why she's… That's why she's *having* this level of activity. That's why she has made her little I.D. thing. Because she's hypo-manic. That's why she's so religious now. Not that she's Christian, and Seventh Day, but that's why… it's… magnified. It's, it's the word we use: "Religiosity". She's religious. It's more than you expect normally.
>
> **Mr. Stewart:** Well Roxanne how do you feel about…
>
> **Roxanne:** Well… I would like her to write the prescription, though for Seroquel so I don't run out.
>
> **Dr. Martin:** So I'm prepared to write the prescription for the 400 ml. I uh… But I know that's not enough. That's what you're on now and you also need **admission.**[42]

[68] When the father leaves the room briefly, Dr. Martin attempts to persuade the principal claimant to sign a waiver absolving the psychiatrist of any liability. The following exchange occurred:

> **Dr. Martin:** That's fine. You're going to sign to say… that Dr. Martin has suggested hospitalization. I do not want that, but I am willing to undergo ahmm, these conditions at home. That's one, that's all. And two: that I am willing to take the medication with the full knowledge of whatever…ahm… issues may arise with the baby. Meaning you're fully informed. I've told you that as you get – Well what you're taking now could be a problem, just at this dose much less I increase it. That uhm… I can cause harm to the baby. That you are fully aware of that, and you are still willing to take the increased dose of medication.
>
> **Roxanne:** Well my question is I'm hesitant to sign something. What if I do not sign? What are the consequences?

Dr. Martin: You mean either thing? You're willing to take the medication.

Roxanne: But I don't like the idea of signing my signature.

Dr. Martin: We, we have to part company, because I will have to protect myself at some point. Because if something happens, then I'm gonna hear why didn't you **forcibly put her in hospital**? Maybe that was never given to her as an option. I don't have anybody to say "But you know we did have that discussion." If the baby is born and something is wrong. And then somebody says "But did she know? That ahm… this could happen? That these were possibilities? Were you sure she knew? Did you offer her that, you know, **she could terminate**?" And then it would be an issue, so all those things are very real questions that will come back. If, IF everything goes well nobody has (unintelligible).[43] [emphasis added]

[69] When the principal claimant's father re-entered the room the following conversation transpired:

Mr. Stewart: What – what I'd like to ask you Roxanne, there are a couple of questions I'd like to ask you.

Dr. Martin: Let me just tell you what transpired when… (unintelligible) Ahm… I told Roxanne that she would have two signed two things for me. **One that hospitalization was offered to her, at ward 21**. And that she refused that, but she was willing she is willing to undergo hospitalization conditions and medication at home. That was one. And that two: That she'd be signing to say that she's aware that we'd be increasing medication. Granted, the dose that she's on now **can do harm.** But she's aware that with any **further increase**, that there is the possibility that **something may happen to the baby**. And that she was fully informed of that. As I said to her, you're very clear where I'm going?

Roxanne is willing to do the admission at home and she's willing to take more medication. But she's not willing to sign. So her question to me is, if she doesn't sign than what will happen? And I said to her well if you don't sign we part company because I'm not going to write a prescription without it documented that she had full information and you are aware of what you're signing. And it goes a step further. Even if Roxanne came in here by herself I would still tell her to bring somebody else. Because then the argument may come up that Roxanne was not in her right mind when I gave her this document to sign. So I have committed an injustice. Right? So that's the document that both of you would have to sign. Roxanne says she needs to talk to ahm…Suzanne right? Rizden-Foster (lawyer) before she signs anything. I don't have a problem with that. [emphasis added]

Under the law if Roxanne is a threat to herself or anybody else, she **can be involuntarily admitted**. Clearly that can't come from me because somebody else would have to sign. The suggestion can come from me. But the consent would have two come from you or her mother. And in fact to be… [emphasis added]

Mr. Stewart: But we are **not** next of kin. [emphasis added]

Dr. Martin: You see, you hear where I'm going? And in fact, to be totally frank it would actually have to come from **her husband**. I mean the law would allow for a lot of things. He's not physically here and if it had to be done right now… In fact it **could be done at the hospital under the "section." Under section 6 of the Mental Health Act.** But Roxanne cannot remain in this state. Right? This isn't going to get better. This is going to get worse. A part (sic) of what is happening is what we expect because she has bi-polar disorder and she's pregnant. And pregnancy flares bi-polar disorder.[44]

[70] With this exchange the principal claimant maintained that she feared the psychiatrist could have her involuntarily hospitalized or worse, her fate could legally be left in the hands of her abusive husband as next of kin. The documentary evidence supports the allegation that the husband is next of kin, and that the father is next in line to make decisions on her involuntary hospitalization.[45] Considering that the claimant has suffered abuse from her husband and her father, the panel finds that she had reason to fear that they would collude with the psychiatrist to overmedicate and/or hospitalize her.

[71] The panel further finds that Dr. Martin being on the board of directors of the Medical Associates hospital[46] is a person of significant influence in the field of psychiatry in Jamaica, and as such would be in a position of power to implement any medical opinions she may have. The principal claimant feared Dr. Martin's threat and sought the advice of lawyers who dismissed her concerns. Further, the evidence indicates that Dr. Nyamakeye Richards and other psychiatrists clearly did not want to go against Dr. Martin's suggestions as evinced by the recorded meeting with Dr. Nyamakeye Richards,[47] the WhatsApp Conversation with Dr. Mark Ricketts,[48] and the text messages from the psychologist Dr. Karen Richards.[49]

[72] The panel considered the following excerpt from the recorded meeting with Dr. Nyamakeye Richards, which support the principal claimant's allegations:

Roxanne: Right, around that time (Christmas). And ahm… it helped a little bit, but I was still on edge and I was still frightened in the day. So he [**her husband**] said try 400.

Dr. Richards: Right

Roxanne: And then I went to 400.

Dr. Richards: That's where you are. Okay. Alright, okay, so ahm… I just want to understand that generally speaking, **I'm very conservative with medication**. [emphasis added]

Roxanne: Oh great. That's a good thing.

Dr. Richards: However, when it comes to certain diagnoses, you have to be **very, very careful** about dosing. Right, and your diagnosis is definitely one of the ones that you have to be very careful, because the risk of relapse is very high and the disruption that comes with relapse is quite **extensive and severe**. [emphasis added]

Roxanne: Right,

Dr. Richards: So when one is pregnant there is a special approach. Okay and it involves closer monitoring, matching the right medication, right to control symptoms at the right dose. Using medication that have been shown to be **safest.** [emphasis added]

Roxanne: Right

Dr. Richards: In pregnancy. It's not absolute. But we've seen where there are **safest** in pregnancy and **fortunately**, Quetiapine is one of them. [emphasis added]

Roxanne: Quetiapine is unsafe during pregn-

Dr. Richards: Safest. [emphasis added]

Roxanne: Safest, good thank God.

Dr. Richards: So you, with your **husband's support** made a very good decision so far. Okay? There are others that are just as safe. Okay, and so we will be looking at that. And the **400 mL** is **not** safe dose in terms of control of symptoms. [emphasis added]

Roxanne: Right.

Dr. Richards: So I can appreciate my colleague **Dr. Martin**. Would have wanted to **increase** that medication. [emphasis added]

Roxanne: Not a problem you know but sending me to **ward 21**, she did not just want me on an increase of… She wanted me on Olanzapine, she wanted me on diazepam, she wanted me on Lamictal [lamotrigine], and then she wanted to increase this (Quetiapine) dose to **600 mL**, so that to me was not taking, my pregnancy into consideration.[50] [emphasis added]

[73] The panel reviewed Dr. Kitamura's clinical assessment wherein he addressed the combinations of medications that were suggested by Dr. Martin. He states that,

> The risks of some of this proposed combination of medications includes: extrapyramidal side effects including potentially life threatening acute dystonic reactions and neuroleptic malignant syndrome (increased with more than one anti-psychotic medication i.e. olanzapine and quetiapine), withdrawal seizures and cumulative sedation with diazepam, and rare but potentially life-threatening Steven's Johnson syndrome with lamotrigine.[51]

Kitamura's Assessment supports the principal claimant's position that the drug regimen proposed by Dr. Martin was unsafe. The panel also considered the drug interaction report,[52] wherein it confirms the severe side effects the various drugs would have interacting with each other and with Seroquel (Quetiapine).

[74] The principal claimant was distrustful of psychiatrists as she was overmedicated and mistreated by them in the past. She provided several documents in support of this allegation. The panel considered the nursing notes[53] with respect to her medication, while she was under the care of Dr. Knight at the Medical Associates Hospital in April 2015. The panel also considered Dr. Kitamura's clinical assessment dated October 31, 2017,[54] wherein he commented on Dr. Knight's administering an injection of Modecate in combination with haloperidol and lithium, and concluded that the principal claimant experienced an acute dystonic reaction, which can be life threatening. The panel also reviewed the articles on the side effects Modecate and other psychotic drugs,[55] which support Dr. Kitamura's conclusions.

[75] The panel notes that after the principal claimant's arrival in Canada she sought treatment for her mental illness and was taking 400mg Quetiapine, nightly. On June 13, 2017, Dr. Kitamura examined her personal circumstances, her past psychiatric history, and conducted a mental status examination and made the following conclusions:

> …She has taken her Quetiapine 400 mg nightly since being in Canada.
>
> On mental status examination, Ms. Stewart was a well kempt, casually dressed woman who appeared her stated age. She was polite and cooperative. There were no abnormalities in her body movements or mannerisms. Her eye contact was good. Her speech was normal. Her affect was **euthymic (level)** and with full range and appropriate. Her **thought process was organized.** Her thoughts were not racing or disorganized. She denied suicidal thinking. She denied delusions or perceptual abnormalities. Her insight and judgement were good. Her impulse control was intact.[56] [emphasis added]

[76] On August 22, 2017, one week before the birth of the principal claimant's second child Dr. Kitamura met with the principal claimant again and made the following observations in her report dated August 27, 2017:

> Her current medications include **Quetiapine 200mg nightly**, spirulina (herbal anti-inflammatory) vitamins and omega-3…
>
> As a result of her excellent coping skills, resiliency, and a good insight, she has quickly re-established good routines, support and ultimately positive emotional health in Canada. This is exemplified by her euthymic mood state throughout her pregnancy, which is a higher risk time for relapse in mood disorders.[57]

[77] The principal claimant experienced mood swings after giving birth. As a result Dr. Kitamura increased her Quetiapine to 300 mg nightly under his supervision. In his report dated October 31, 2017, he noted that she was generally in a euthymic mood; however, her mental state was particularly vulnerable given her underlying bipolar disorder and because **first year postpartum is higher risk** of time for lapse of mood disorders.[58] The principal claimant self-presented at the CAMH (Center for Addiction and Mental Health) in Toronto, on November 21, 2017, when she ran out of medication. She returned to CAMH on December 14, 2017, and was hospitalized for ten days[59]. The documentary evidence indicated that **she asked** the **Children's Aid Society** to take care of her children when her contingency safety plan for them fell through with her aunt.[60]

[78] Dr. Kitamura had been continuously treating the claimant since June 2017, and in his professional opinion the claimant has good insight of her mental illness; as such, she takes her prescribed medication, takes care of her children, and has set up contingency plans for them when she is slipping into a psychotic episode. The Affidavit of Cheryl Hoosen of the Children's Aid Society dated April 16, 2018, supports Dr. Kitamura's conclusions.[61] The evidence before the panel suggests that although the principal claimant is not always able to control her unusual behavior, she is very well aware of her moods and knows when she is in a manic or depressed state or at risk of slipping into a psychotic episode. The panel notes that she voluntarily presented herself for hospitalization in Jamaica and in Canada when she felt she was slipping into a psychotic episode.

[79] The evidence indicates that the principal claimant was anxious during the time she was dealing with her husband's abuse, the deterioration of the marriage and the pregnancy. The panel

finds that her unusual behavior reasonable to expect given these stressors, and the nature of the mental illness. There is no evidence before the panel to suggest that she was in or slipping into a psychotic state that required involuntary hospitalization, or additional medication at that time. The panel is of the view, that if she were in such a state, then it is unlikely that the she could organize her thoughts to make arrangements to come to Canada. Further, it is more likely than not Dr. Kitamura would have noticed that she was exhibiting signs of psychotic behavior during his first assessment with her, and hospitalized her accordingly.

[80] The principal claimant maintains that, when she approached Dr. Martin, and Dr. Richards she was simply seeking a drug regimen that would be least harmful for her and her unborn child. She also wanted protection from her husband and advice to help her cope with the effects of his abuse. Instead of receiving treatment, counselling and protection, the claimant was threatened with forced hospitalization and overmedication. The panel notes that the recordings of the meetings with the psychiatrists supports the claimant's allegations. The panel also considered the evidence that the psychiatrists sought to include the husband and father in the claimant's mental health care, despite the husband's abusive behaviour towards her and their son, and the father's abusive behavior towards the principal claimant.

[81] Having regard for the totality of the evidence, the panel finds on a balance of probabilities that the principal claimant was mistreated and over medicated by heath care professionals in the past, and thus, her fear was well founded when Dr. Martin and Dr. Richards suggested increasing her medication and forced hospitalization. Further, the panel accepts that the principal claimant and the minor claimant were abused by her husband, and that she was abused by her father.

Future Risk

[82] The panel finds that the claimant has established, on a balance of probabilities that she lives with Bipolar Affect Disorder Type I, which is characterized by violent mood swings. The evidence indicates that most individuals that suffer from this mental illness remain ordinarily in a euthymic state, however, when under stress they can experience various levels of mania, depression or psychosis, which may result in hospitalization. Bipolar individuals during these times become particularly vulnerable as they often rely on family members emotional and financial support, and healthcare professionals for treatment.

[83] If the principal claimant were to return to Jamaica she would still require treatment and more likely than not, would at some point require hospitalization. As such, her mental illness would continue to make her vulnerable to abuse by her father and her estranged husband and would put her at further risk of being overmedicated or involuntarily hospitalized by Mental Health care professionals, all of which gives rise to a serious possibility of persecution.

[84] Having regard for the totality of the evidence, the panel finds that the minor claimant has established that he was physically abused by his father and witnessed the abuse of his mother. The minor claimant's father still lives in Jamaica, and therefore, poses a threat if he was to return. Further, the panel accepts that in Jamaica he would be stigmatized as a child of a mentally ill person causing emotional harm.

Objective Basis of Claim & State Protection

[85] The panel has reviewed the objective documentary evidence in this claim in its entirety. The objective documentary evidence clearly establishes that domestic violence is a serious problem in Jamaica and that adequate state protection is not available to women and children who seek that protection. Further, the documentary evidence shows that the principal claimant, as a mentally ill person, and the minor claimant face a possibility of persecution as members of a particular social group.

[86] There is a presumption that a state is capable of protecting its citizens except in situations where the state is in a state of complete breakdown.[62] State protection need not be perfect as no state can guarantee perfect protection.[63] Rather, the test is whether the protection is adequate rather than effective.

[87] To rebut this presumption, the claimant must provide "clear and convincing" evidence of the state's inability to protect its citizens, absent an admission by the national's state of its inability to protect that individual.[64] Therefore, the burden rests with the claimant to rebut the presumption of state protection.

Domestic Violence

[88] The documentary evidence suggests that there are major challenges facing women in Jamaica, which include domestic violence and gender inequality. Also children are particularly vulnerable to emotional and physical abuse if they live in a household where there is spousal abuse.

[89] The United Nations (UN) Human Rights Council's Universal Periodic Review of Jamaica in 2010 stated that there is an unacceptably high level of violence against women and girls in Jamaica. Further, "[i]n June 2013, the UN Economic, Social and Cultural Rights Committee expressed 'its profound concern at high rates of domestic and sexual violence, and the lack of a comprehensive strategy to address the phenomenon' in Jamaica."[65]

[90] An October 2014 article on WeJamaicans.com reported:

> 'Unfortunately, domestic violence against women in Jamaica continues to be a perennial problem. …The common thought is that once a woman experiences domestic violence, she should expunge herself from the situation, meaning the relationship. However, in fairness to some of those who stay in the abusive relationships, they really do not have much of a choice. The first reason is that women earn less than men, generally speaking. Hence, with a lack of earning power, they stay in the relationship because they are dependent on the abuser, financially and maybe otherwise.'[66]

[91] The UN Human Rights Council, in a February 2015 summary of evidence, noted that:

> 'JS2 [Joint Submissions 2] indicated that the major problems facing women included domestic violence, gender inequality, stereotyped roles for men and women, slow pace of legal reform relating to anti-discrimination legislation and the lack of sexual harassment legislation, and economic reliance of women on men because of female poverty.'[67]

[92] The UN Human Rights Committee also expressed its concern in November 2016:

> that 'legislation provides women and girls with only limited protection against violence, including domestic violence. It notes with concern that the Sexual Offences Act (2009) reflects a narrow understanding of rape and protects against marital rape only in certain circumstances, the Domestic Violence Act (2004) does not cover sexual abuse and the draft Sexual Harassment Bill does not include sexual harassment in public spaces.'[68]

[93] The documentary evidence indicates that domestic violence is not always viewed as a crime, in part due to the perceived lower social status of females in Jamaica. Additionally, women's organizations claim that the way violence is presented in the media promotes it as "normal" and/or "justified" and shows violence as appealing to youth. Police officers are averse to enforcing laws related to domestic violence, which results in the victims' mistrust of the law enforcement system.[69]

[94] The 2017 United States Department of State Country Report on Human Rights Practices for Jamaica indicates that child abuse, including sexual abuse, was substantial and widespread. NGOs reported that gang leaders, sometimes including fathers, initiated sex with young girls as a "right," and missing children often were fleeing violent situations and sexual abuse.[70] The documentary evidence indicates that children are abused in state care as well as in society.[71]

[95] A Situation of Human Rights in Jamaica Report noted that

> [t]he profound social and economic marginalization of large sectors of the Jamaican population results in the poorest and most excluded sectors of the population being disproportionately victimized by the overall situation of insecurity. In the same way, the deep inequalities pervading Jamaican society are exacerbated by the State's **inadequate** measures to protect and guarantee the human rights of **women**, **children** and other **vulnerable groups**.[72] [emphasis added]

The documentary evidence indicates that the children in Jamaica are physically abused in the state care system and the society as a whole.[73]

[96] Documentary evidence clearly indicates that there is an unacceptable high level of violence against women and children in Jamaica and that this violence is perpetuated by social and cultural norms. Further, the documentary evidence shows that there are very few resources available for women and children in situations like the claimants, to find proper protection and counselling.

Treatment of the Mentally Ill and their children

[97] Decision makers have accepted that a social group may be constituted by a range of physical and mental illnesses. Mental illness has been understood as an "…innate and unchangeable characteristic" notwithstanding that "…its severity may fluctuate with

treatment…."[74] Bipolar Affect Disorder, Type I is a fundamental underlying feature of the principal claimant's psychological condition. Further, the courts have previously determined that a minor claimant can be considered a member of a particular social group, as a child of a mentally ill person.[75]

[98] The documentary evidence establishes that Jamaican's tend to believe that the mentally ill are demon possessed due to a religious predisposition.[76] As the topic of mental illness is considered taboo, often mental illness goes undetected until a person becomes violent and these actions are looked upon as evil instead of symptoms of an illness.[77] On a social level the stigma is attached to mental illness often deems that person as "mad." Mentally ill individuals often relocate to other communities when the pressure gets too much. Children are teased at school, resulting in the child becoming aggressive and deviant and another cycle starts.[78] There is a pervasive negative attitude towards persons with mental illness in the Jamaican society, and people with mental illness experience the most discrimination from health professionals.[79]

[99] The 2014 World Health Organization (WHO) Mental Health Atlas for Jamaica indicates that **the government** is the main source of funding for the delivery of care for "…several mental disorders."[80]

[100] Recent documentary evidence indicates that Jamaica is at risk of breaching human rights treaties for its treatment of the mentally ill. The head of psychiatry at the University of West Indies, Prof. Wendel Abel, stated that Jamaica is running the risk of breaching international human rights treaties, based on its treatment of mentally ill patients in facilities. He was particularly concerned that many patients continued institutionalization after being discharged, which is a violation of their rights. He noted that Jamaica is a signatory to the United Nation's Convention on the Rights of persons with disability, and therefore, Jamaicans with mental illness have a right to be treated in the **least restricted manner**. Further he notes that a lot of these people are admitted involuntarily and are taken away for years.[81]

[101] The documentary evidence further indicates that Jamaica is in serious breach of the right of the mentally ill to appropriate health and appropriate service based on their disability. Reports indicate that facilities in Jamaica are not in keeping with human rights standards pursuant to

Article 12 of the International covenant on Economic, Social and Cultural rights and Article 25 of the Universal Declaration of Human Rights.[82]

[102] With respect to Ward 21, of the University Hospital of the West Indies, the documentary evidence indicates that according to the Auditor General's report the hospital offers inpatient care, but "comprehensive psychiatric services are predominantly offered at the Bellevue Hospital."[83] The report indicated that the mechanism established under the mental health act to allow for independent monitoring of patients in mental health care facilities and the investigations of complaints from patients and their relatives was not functioning as intended. Further, there were no periodic reviews of patients undergoing treatment in the mental health facilities. The Auditors Report found no documented evidence that the review boards were carrying out their functions to ensure the protection of patient's rights.[84]

[103] The Department of Community Health and Psychiatry at the University Hospital of the West Indies, in Jamaica reported that most patients do not launch complaints against doctors as they worry that they may discriminate against them or persecute them in the future.[85] It notes further that the complaints and disciplinary mechanisms are insufficient as the mechanism depends on written complaints against doctors from the general public before the Council proceeds to investigate with this approach, it was noted that the likelihood is that a large portion of the breaches of professional conduct would not be brought to the attention of the medical Council.[86]

[104] Counsel in his submissions noted that the 2012 WHO's Assessment of the pharmaceutical situation in Jamaica reported that the country did not have an officially adopted national pharmaceutical policy. The Assessment noted that although the prescribing of medication is done mostly by doctors, few of them have recently trained in the rational use of medicines.[87]

[105] The principal claimant was overmedication by psychiatrists in the past, which caused adverse side effects. She feared that she would be overmedicated and involuntarily hospitalized pursuant to sections 6 and 11(1) of the Mental Health Act of Jamaica[88] if she was forced into Dr. Martin's care. The documentary evidence indicates that human rights violations regularly occur in the mental health care facilities in Jamaica. The documentary evidence confirms that there is no viable complaint mechanism against medical practitioners.

[106] The principal claimant had complained about her mistreatment and overmedication when hospitalized in the past, but her complaints were dismissed as being a product of her mental illness. Given that the other psychiatrists did not want to go against Dr. Martin, the panel is of the view that the principal claimant was denied proper medical care and adequate protection that the state was entrusted to provide to individuals who are mentally ill.

[107] Based on the objective documentary evidence provided, the panel finds that violations of human rights regularly occur within the mental health care system in Jamaica. Including illegal and forced hospitalization, failure to assess effectiveness of hospitalization, refusal to discharge patients from mental health facilities, and unlawful separation and duress. This calls into question the ability of the state to protect the mentally ill.

[108] The panel noted that that there have been efforts made to train civil servants within the police force to uphold the rights of persons with disabilities. However, there are still worrisome occurrences that indicate that persons with mental disabilities in state custody receive inadequate care and attention.[89] The panel, therefore finds, that the State's efforts are not sufficiently well-established to provide adequate protection to principal claimant.

[109] Thus, the documentary evidence confirms the principal claimant would be at risk of receiving improper treatment. Moreover, it is likely that left to her own survival devices without the essential support she requires, she would face a serious possibility of persecution either by state authorities who would involuntarily hospitalize her an/or overmedicate her, by private citizens who have limited understanding of mental illness and for whom mental illness is seen as being the result of demonic supernatural forces, or by her father and estranged husband. The principal claimant's inalienable right to security of person would be at great risk. The subjective fears of principal claimant are, therefore, well founded.

[110] Any extended period of involuntary hospitalization or incapacity resulting from over medication experienced by the principal claimant would leave the minor child vulnerable to cruel treatment by his father. The minor child would likely be put in the care of the state in the context of which he would face more than a mere possibility that his basic human rights would be violated, given the recent abuse documented while children are in the care of the state. Finally, the panel finds

on a balance of probabilities that Jamaican society would negatively associate the minor child with his mother's mental condition leading to emotional abuse.

[111] Taken together with the principal claimant's testimony, her personal documentary evidence, and country condition evidence, the panel finds there is clear and convincing evidence, that the Jamaican state would be unable and unwilling to provide the claimants with adequate protection. Further, given that the principal claimant faces a serious possibility of persecution from the state mental health authorities entrusted to protect her, the panel finds it would be objectively unreasonable for her to ask the state for protection in light of her particular circumstances and the effect it would have on the minor child.

Internal Flight Alternative

[112] The panel must consider whether a viable internal flight alternative exists for the claimants. The panels find that there is a serious possibility of persecution throughout Jamaica in this particular case. Given the principal claimant's mental condition she will always be required to cooperate with mental health professionals to properly manage her illness, she will inevitably need to rely on the Mental Health Care services in Jamaica. The island is small in geographical size and population and has very limited choices in psychiatric hospitals or psychiatrists. Further, the claimants could be easily located by the husband and the father in such a small country.

[113] Based on the documentary evidence, the panel finds that the claimants face more than a mere possibility of persecution throughout Jamaica, especially as they fear the state itself. The mental health care authorities not only threatened the principal claimant with involuntary hospitalization and overmedication, but sought the opinions of her abusers. The panel finds that there is no viable internal flight alternative in his particular circumstances.

CONCLUSION

[114] Having considered the totality of the evidence, the panel finds that the claimant are Convention refugee pursuant to section 96 of the *IRPA*. There claims are accepted.

(signed) **"D. Fox"**

D. Fox

April 15, 2019

Date

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[1] *Immigration and Refugee Protection Act,* S.C. 2001, c. 27, as amended.
[2] *Chairperson Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution.* Guidelines issued by the Chairperson pursuant to section 65(3) of the *Immigration Act*, IRB, Ottawa March 9, 1993 update: November 1996.
[3] *Chairperson's Guideline 8: Procedures With Respect to Vulnerable Persons Appearing Before the Immigration and Refugee Board issued* by the Chairperson pursuant to section 65(3) of the *Immigration Act,* Immigration and Refugee Board, Ottawa, September 30, 1996; as continued in effect by the Chairperson on December 15, 2006, pursuant to section 159(1) (h) of the *Immigration and Refugee Protection Act.*
[4] Exhibit 2, Basis of Claim (BOC) narrative.
[5] *Chairperson Guideline 3: Child Refugee claimants: Procedural and Evidentiary Issues*. Guidelines Issued by the Chairperson pursuant to section 65(3) on the Immigration Act, September 30, 1996.
[6] Refugee Protection Division Rules (SOR/2012-256), Rule 55.
[7] Exhibits 2, 3, 16, 17, & 18.
[8] Exhibit 6.
[9] Exhibit 1.
[10] Ibid., Notice of Seizure.
[11] IRPA (S.C. 2001, c. 27), Schedule (Subsection 2(1)).
[12] Criminal Code, R.S.C., 1985, c. C-46.
[13] Ibid., p. 85.
[14] Ibid., Schedule (Subsection 2(1)), F(b).
[15] *Lai, Cheong Sing* v. *M.C.I.* (F.C.A., no. A-191-04), Malone, Richard, Sharlow, April 11, 2005, 2005 FCA 125, ss. 23-25.
[16] *Moreno* v. *Canada (Minister of Employment and Immigration,* [1994] 1 F.C. 298 (C.A.); (1993), 21 Imm. L.R. (2d) 221 (F.C.A.).
[17] Criminal Code, R.S.C., 1985, c. C-46, ss. 131-132.
[18] Ibid., s. 285.
[19] Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Article 3.
[20] Ibid., Article 13 B.
[21] *Jayasekara* v. *Canada (Minister of Citizenship and Immigration)*, [2009] 4 F.C.R. 164 (F.C.A.).
[22] Exhibit 2.
[23] Exhibit 10, Tab 18 Butler Hospital Discharge Summary.
[24] Exhibits 15, Clinical Assessment of Roxanne Stewart by Dr. Christopher Kitamura dated June 26, 2017, pp. 25-27.
[25] Ibid.

[26] *Handbook and Guidelines on Procedures and Criteria for determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, UNHCR 1979.
[27] *Abbar v. Canada (MCI)* 2017 FC 1101.
[28] Exhibit 13, Affidavit of Samuel Arthro and Dr. Marcia Ann Stewart dated June 29, 2017.
[29] Exhibit 8, Transcript of Recorded appointment with Dr. Jacqueline Martin.
[30] Exhibit 8, Transcript of Recorded appointment with Dr. Nyamakeye Richards dated February 23, 2017.
[31] Exhibit 15, Clinical Assessments of Dr. Christopher Kitamura dated October 31, August 27, and June 26, 2017.
[32] Exhibit 8, Text Messages between Claimant and estranged husband Romain Johnston.
[33] Exhibit 2.
[34] Exhibit 18.
[35] Ibid.
[36] Exhibit 11, p 1 Dr. Kitamura's Clinical Assessment, dated June 26, 2017.
[37] Exhibit 34.
[38] Ibid.
[39] Ibid.
[40] Exhibit 15, Dr. Kitamura's Clinical Assessment dated October 31, 2017.
[41] Exhibit 8, Recorded Appointment with Dr. Jacqueline Martin, at p.2.
[42] Ibid., p.6.
[43] Ibid., p.3.
[44] Exhibit 8, p.4.
[45] Exhibit 24, The Gleaner, Managing the Affairs of the Mentally Ill person, at p.16.
[46] Exhibit 10, Tab10, List of Board of Directors of Medical Associates Hospital, at p.2.
[47] Exhibit 8.
[48] Ibid.
[49] Ibid.
[50] Exhibit 15, Recording of Meeting with Dr. Richards February 23, 2017, at pp.5-6.
[51] Exhibit 15, Dr. Kitamura's Clinical Assessment dated October 31, 2017, at p.21.
[52] Exhibit 28, Drug Interaction Report, at pp. 1-2.
[53] Exhibit 10, Tab 18.
[54] Exhibit 15, Dr. Kitamura's Clinical Assessment dated October 31, 2017, at p.21
[55] Exhibit 8 at Tabs 10 & 11.
[56] Exhibit 15, Clinical assessment of Roxanne Stewart by Dr. Christopher R. Kutamura dated June 26, 2017, at pp. 26-27.
[57] Exhibit 15, Clinical assessment of Roxanne Stewart by Dr. Christopher R. Kutamura dated August 27, 2017, at pp. 24.
[58] Exhibit 15, Clinical assessment of Roxanne Stewart by Dr. Christopher R. Kutamura dated October 31st 2017, at pp. 20-21.
[59] Exhibit 31, CAMH Progress Notes, at p. 1.
[60] Exhibit 31, Affidavit of Child Protection Worker of the Children's Aid Society dated April 16, 2018, p.10, at para. 6.
[61] Ibid., pp. 12-14.
[62] *Canada (Attorney General)* v. *Ward*, [1993] 2 S.C.R. 689.
[63] *Zalzali* v. *Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 605 (F.C.A.).
[64] *Canada (Attorney General)* v. *Ward*, [1993] 2 S.C.R. 689.
[65] Exhibit 4, National Documentation Package (NDP) for Jamaica (30 April 2018), item 1.7, p.8, s. 4.1.1, CPI Note: Jamaica Women facing Domestic Violence.
[66] Exhibit 4, NDP for Jamaica (30 April 2018) item 1.7, p. 8, s.4.1.2, CPI Jamaica women facing domestic violence.
[67] Ibid., item 1.7 p.8, s. 4.1.3.
[68] Ibid., item 1.7 p.11, s. 5.1.5.
[69] Ibid., item 1.7, p.15, (IACHR) Jamaica Report dated August 2012.
[70] Ibid., item 2.2, p. 11, US DOS Report for Jamaica.
[71] Exhibit 30, p.5, Jamaican Gleaner, "Nowhere Safe for Kids.
[72] Exhibit 4, NDP for Jamaica (30 April 2018), item 2.5, p.2, s.6, Report on Situation of Human Rights in Jamaica.
[73] Exhibit 30, p.5, Jamaican Gleaner.com, Nowhere Safe For Ja's Kids.
[74] *Liaqat v. Canada (Minister of Citizenship and Immigration),* [2005] FC 893, para 13.
[75] MCI v. Mi Sook OH, 2009, FC 506, Para 10.
[76] Exhibit 25, p. 9 The Gleaner, Jamaicans mistaking Mental Illness for Demon possession, September 4, 2015.

[77] Exhibit 23, p. 2 The Gleaner: Mental illness and the Family July 16, 2016.
[78] Ibid., p. 3.
[79] Exhibit 24, p. 14 Attitudes Towards mental illness of nursing students in the baccalaureate program in Jamaica: Survey.
[80] Exhibit 27, p. 2 RIR JAM 106078.E Jamaica: services available to individuals with Mental Illness.
[81] Exhibit 24, pp. 1-2, RJR News, Jamaica at risk of breaching human rights treaties for treatment of mentally ill May 21, 2016.
[82] Exhibit 8, Tab 6 Jamaica Observer, "Mental Health a Shame" February 6, 2011p.1-2.
[83] Exhibit 25, Auditor's generals department performance audit report Ministry of health [MOH].
[84] Ibid., pp.27-28.
[85] Exhibit 24, p. 8 West Indian medical Journal, ethics, liabilities and licensing to practice.
[86] Ibid., p. 8.
[87] Exhibit 10, Tab 6: pharmaceutical situation in Jamaica WHO assessment of level II.
[88] Exhibit 30, Mental Health Act of Jamaica sections 6 and 11 (1).
[89] Exhibit 4, item 2.7, Annual Report IACHR.