

Publisher's Note

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Christopher

The Law of Domestic Conflict in Canada

This resource covers the complex intersection of family law, civil law and criminal law in cases of domestic violence, balancing substantive law and the practice of law. The work covers topics such as evidentiary issues in criminal proceedings, sentencing principles, common offences such as assault, uttering threats, and stalking and defences advanced such as self-defence and provocation.

This release features updates to the Caselaw and Commentary in the topic area of Evidentiary Considerations and Evidence belonging to Chapter 11 (Immigration and Domestic Conflict).

Highlights:

Failure to consider the missing evidence, thereby tainting the reasons, will result in judicial review and an order for a new hearing. The Applicant, Gereltuya Togtokh, is a 48-year-old citizen of Mongolia who arrived in Canada in June 2010 and shortly after her arrival, claimed refugee protection on the basis of persecution by her abusive ex-husband. The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada rejected her claim in a decision dated October 4, 2012, with credibility and state protection being the determinative issues. This Court dismissed the Applicant's application for judicial review of the RPD's decision on February 5, 2014 in Court file IMM-11521-12. *Togtokh v. Canada (Citizenship and*

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Immigration), 2018 FC 581, 2018 CarswellNat 3118, 2018 CarswellNat 3423 (F.C.).

Credibility continues to be foundational to the court's consideration on an application for judicial review. If the applicant is found at any stage of the proceedings to lack credibility, the application is invariably refused. This was the result in *Zazaj v. The Minister of Citizenship and Immigration*, *Doualeh v. Canada (Citoyenneté et Immigration)*, and *Guthrie v. Canada (Citizenship and Immigration)*, *Mora c. Canada (Citoyenneté et Immigration)* and *Ibrahim v. Canada (Citizenship and Immigration)*. Even a sound argument regarding the adequacy of state protection or an internal flight alternative does not outweigh the significance of a negative credibility finding.