Federal Court  Cour fédérale

Date: 20181029

Docket: IMM-4223-17

Citation: 2018 FC 1080

Ottawa, Ontario, October 29, 2018

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

MD MASUD RANA

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, MD Masud Rana, is a citizen of Bangladesh. He was an active member of the Bangladesh Nationalist Party [BNP], one of the two major political parties in Bangladesh (the other is the Awami League [AL]). In 2013, the applicant along with his wife and two children fled Bangladesh following threats and attacks from members of the AL and Islamic

extremists. After a brief stay in the United States, they arrived in Canada in September 2014 and claimed refugee protection.

[2] In March 2015, a report was prepared under section 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. This report stated a Canada Border Services Agency officer's opinion that the applicant is inadmissible to Canada under section 34(1)(f) of the *IRPA* because he was a member of an organization (the BNP) which there are reasonable grounds to believe engages, has engaged or will engage in terrorism and in the subversion by force of the Government of Bangladesh. "Engaging in terrorism" (*IRPA*, s 34(1)(c)) and "engaging in or instigating the subversion by force of any government" (*IRPA*, s 34(1)(b)) or of a democratic government (*IRPA*, s 34(1)(b.1)) are free-standing grounds of inadmissibility which are also incorporated into section 34(1)(f). The report did not allege that the applicant himself had engaged in terrorism or subversion. The applicant's refugee claim was suspended pending a decision on his admissibility.

[3] An admissibility hearing under section 44(2) of the *IRPA* was held before a member of the Immigration Division of the Immigration and Refugee Board of Canada on July 21, 2017. The applicant acknowledged that he had been an active member of the BNP from 2006 until he left Bangladesh in 2013. As a result, the only issue to be determined was whether there were reasonable grounds to believe that the BNP engages, has engaged or will engage in terrorism or subversion. (For the sake of brevity, from this point on I will generally express this issue simply as whether there are reasonable grounds to believe the BNP engages in terrorism or subversion. The relevant statutory provisions are set out in full in the Annex to these reasons.)

[4] For oral reasons delivered on September 19, 2017, the member found that the applicant is inadmissible under section 34(1)(f) of the *IRPA*. Crucially for present purposes, the member found that the actions of the BNP fit the definition of "terrorist activity" in section 83.01(1) of the *Criminal Code*, RSC 1985, c C-46, and on this basis found that the BNP is an organization that engages in terrorism within the meaning of section 34(1)(c) of the *IRPA*. The member also found that the actions of the BNP constituted the subversion by force of a government within the meaning of section 34(1)(b) of the *IRPA*. Given his admitted membership in the BNP, the applicant was therefore found to be inadmissible under section 34(1)(f) of the *IRPA* and was ordered deported from Canada.

[5] The applicant now applies for judicial review of this decision under section 72(1) of the *IRPA*. He contends that the member should not have relied on the *Criminal Code* definition of "terrorist activity" and, in any event, her conclusion that the BNP is an organization that engages in terrorism and subversion is unreasonable.

[6] I have concluded that the application must be allowed. Briefly, an immigration decision-maker may rely on concepts codified in the criminal law but care is required. The decision-maker must be alive to the distinct purposes of criminal and immigration law, must explain the rationale for importing concepts from the former domain into the latter, and must apply those concepts properly in the specific circumstances of a case. I find that the member's decision in the case at bar is unreasonable because her understanding and application of the definition of "terrorist activity" fail the tests of justification, transparency and intelligibility. Although the member also found that there are reasonable grounds to believe the BNP is an organization that

is engaged in the subversion by force of the Government of Bangladesh, I am unable to extricate this finding from the finding concerning the BNP's engagement in terrorism. As a result, the decision must be set aside and the matter remitted for reconsideration.

[7] I recognize that other members of this Court have upheld as reasonable decisions finding the BNP to be an organization that engages in terrorism: see *Gazi v Canada (Citizenship and Immigration)*, 2017 FC 94; *SA v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 494; *Kamal v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 480 [*Kamal*]; and *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 [*Alam*]. These decisions, like the present one, were based on the particular records before the Court and on the reasons offered by the decision-maker (*Kamal* at para 77; *Alam* at para 45). While perhaps regrettable, it is inherent in the nature of judicial review under the reasonableness standard that perfect consistency across cases on questions of mixed fact and law will not always be achieved.

II. BACKGROUND

[8] When British India was partitioned in 1947, two countries were created: India and Pakistan. The region that would later become Bangladesh was made part of the Pakistani federation. Following a war of independence, Bangladesh achieved independence from Pakistan in December 1971. A parliamentary republic was established and the AL formed the first government.

[9] After a coup in 1975, there were a series of military-backed governments until 1990, when civilian rule was restored.

[10] The AL was originally formed in 1949. The BNP was founded in 1978. According to a 2014 report by Human Rights Watch, the "rivalry between the two main parties is longstanding, bitter, personal, and often turns violent."

[11] Between 1991 and 2013, the BNP and the AL alternated in power with the exception of a period in 2007 and 2008, when the military took control after a state of emergency was declared.

[12] The BNP formed the government after elections in 1991. Some consider this the first free and fair election in Bangladesh. The BNP supported a constitutional amendment to revive parliamentary democracy. The AL boycotted the next election, set to take place in February 1996, and held demonstrations that paralyzed Dhaka, the capital. Under opposition pressure, the BNP agreed to amend the constitution to provide that a caretaker government rather than the incumbent government would oversee the election. The goal was to put in place a scheme that would help to ensure the integrity of the election. Parliament was dissolved and an election held under the supervision of the caretaker scheme in June 1996 returned the AL to power for the first time since 1975. A second election under the caretaker scheme, in October 2001, returned the BNP to office. This election was marred by frequent violent clashes between members and supporters of opposing political parties.

[13] As a result of political unrest and violence from late October 2006 to early January 2007 in the run-up to the next scheduled general election, a state of emergency was declared until December 2008, when parliamentary elections were finally held. Both the AL and the BNP contested the election. The AL won a majority of the seats and formed the government.

[14] Although both the BNP and the AL had supported the caretaker scheme, and the measure appears to have enjoyed wide popular support, a successful legal challenge eventually led to its abolition by the AL-led government in June 2011. This resulted in sharp disagreements between the AL and the BNP over the appropriate mechanism for ensuring that elections scheduled for January 2014 would be free and fair. The BNP sought the return of the caretaker model for overseeing the election but the AL would not agree. Beginning in October 2013, the BNP and other opposition parties organized *hartals* or general strikes, protests and traffic blockades. The strikes and blockades had a significant impact on the economy. Transport links to Dhaka were blocked and almost all travel outside the major cities was prevented. *Hartals* and traffic blockades frequently turned violent, with clashes between supporters of the AL on the one hand and supporters of the BNP and other opposition parties on the other. Numerous instances of opposition party members and activists throwing petrol bombs at trucks, buses, and other vehicles that defied traffic blockades were documented. As well, attackers in several locations reportedly vandalized homes and shops owned by members of Bangladesh's Hindu community before and after the election. Opposition leaders denied their parties were involved in the violence, blaming government agents instead. In response to these events, Bangladesh's security forces launched what Human Rights Watch has described as "a brutal crackdown on the opposition." The BNP boycotted the 2014 election and the AL won by an overwhelming majority of seats, although voter turnout was low.

[15] While violence on all sides has been endemic to Bangladesh's political culture, the 2014 election and its aftermath is considered to have been especially violent, leading to reports on it from a number of human rights monitoring agencies. Bitter conflicts between the ruling AL

and the opposition BNP continued into 2015, with the leader of the BNP calling for an indefinite countrywide transport blockade. Hundreds of people were reportedly killed in political clashes in 2014 and 2015.

[16] The applicant was born in July 1980. After graduating from college in 1999, he began working in the garment industry, first in Dhaka and then in Chittagong. A narrative of the family's experiences in Bangladesh describes the applicant as a prominent member of his community who participated in many social welfare initiatives. The applicant joined the BNP in June 2006. In 2012, he became the joint Organizing Secretary of the BNP in his local ward. The narrative describes there being strikes, rallies and blockades all over Bangladesh and states that the applicant "took the leadership in all the anti-government movement on behalf of the BNP." The applicant testified that, following directives from the party, he was responsible for organizing meetings, rallies, processions and blockades in his area. He states that all of the events he participated in were peaceful. The applicant denied organizing any boycotts or general strikes and participating in any such events.

[17] According to information provided in support of the refugee claim, beginning in early February 2013 the applicant's wife's ex-husband (who was an ardent supporter of the AL) demanded money from the applicant. The applicant refused to pay. Later that month, the applicant and his wife were attacked and beaten by five or six individuals who they claim were cadres of the AL. Subsequently, the applicant's wife was threatened by Islamic fundamentalists and the applicant was attacked again by his wife's ex-husband. After a number of other incidents that caused the applicant and his wife to further fear for their safety and the safety of

their family (including the kidnapping of one of their daughters by the local leader of an Islamic party), they fled Chittagong for Dhaka with their children. Upon learning that local AL cadres were looking for them in Dhaka, they decided to flee Bangladesh for the United States, hoping eventually to make their way to Canada and claim refugee protection here. They departed Bangladesh in early October 2013.

III. ISSUES

[18] This application raises the following issues:

a) What standard of review applies to the member's decision?

b) Did the member commit a reviewable error in relying on the *Criminal Code* definition of "terrorist activity"?

c) Is the member's determination that there are reasonable grounds to believe the BNP is an organization that engages in terrorism and subversion reasonable?

IV. ANALYSIS

A. *What standard of review applies to the member's decision?*

[19] It is well-established in the jurisprudence that generally the standard of review for a finding of inadmissibility under section 34(1) of the *IRPA* is reasonableness (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at para 56 [*Najafi*]; *AK v Canada (Citizenship and Immigration)*, 2018 FC 236 at para 12 [*AK*]; *Alam* at para 11).

[20] The facts giving rise to inadmissibility must be established on a standard of "reasonable grounds to believe" (*IRPA*, s 33). As the Supreme Court of Canada has explained, this standard "requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities [references omitted]. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information [reference omitted]" (*Mugesera v Canada (Citizenship and Immigration)*, 2005 SCC 40 at para 114).

[21] The question before the Court on this application for judicial review is not whether there were reasonable grounds to believe that the BNP engages in terrorism or subversion. This was for the member to determine. What I must determine is whether the member's conclusion that there were reasonable grounds to believe the BNP is an organization that engages in terrorism and subversion is itself reasonable (*Gutierrez v Canada (Citizenship and Immigration)*, 2013 FC 623 at para 22).

[22] Reasonableness review "is concerned with the reasonableness of the substantive outcome of the decision, and with the process of articulating that outcome" (*Canada (Attorney General) v Igloo Vikski Inc*, 2016 SCC 38 at para 18). Such review "reinforces in the context of adjudicative tribunals the importance of reasons, which constitute the primary form of accountability of the decision-maker to the applicant, to the public and to a reviewing court" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 63 [*Khosa*]). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls

within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Khosa* at paras 59 and 61).

[23] The reasonableness standard of review presupposes that the decision-maker has applied the correct legal test. A decision will not be rational or defensible if the decision-maker has failed to carry out the proper analysis (*Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 41; *Németh v Canada (Justice)*, 2010 SCC 56 at para 10).

[24] An administrative body benefits from a presumption of deference when interpreting "its own statute or statutes closely connected to its function, with which it will have particular familiarity" (*Dunsmuir* at para 54; *Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40 at para 55). However, the rationale for deference is absent when the decision-maker ventures into domains with respect to which expertise and familiarity cannot be presumed (*Barreau du Québec v Quebec (Attorney General)*, 2017 SCC 56 at paras 59-61 [*Barreau du Québec*]).

B. *Did the member commit a reviewable error in relying on the Criminal Code definition of "terrorist activity"?*

(1) Introduction

[25] As set out above, the member found the applicant inadmissible to Canada under section 34(1)(f) of the *IRPA* for having been a member of the BNP because there were reasonable grounds to believe this organization engages in terrorism and subversion. In reaching this conclusion, the member applied the *Criminal Code* definition of "terrorist activity" to the evidence before her concerning the activities of the BNP.

[26] This Court has held on a number of occasions that, in cases involving the interpretation of the phrase "engaging in terrorism" in section 34(1)(c) of the *IRPA*, it is appropriate to take into account how the *Criminal Code* has addressed terrorism: see, for example, *Soe v Canada (Citizenship and Immigration)*, 2007 FC 671 [*Soe*]; *Almrei (Re)*, 2009 FC 1263 at para 71; *Toronto Coalition to Stop the War v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 957 at para 102; and *Harkat (Re)*, 2010 FC 1241 at para 79.

[27] In view of this jurisprudence, I cannot agree with the applicant that it was simply wrong for the member to consider the *Criminal Code* definition of "terrorist activity" when determining whether there were reasonable grounds to believe the BNP engages in terrorism. That being said, in my view how the member used this definition in this case gave rise to reviewable errors. To explain why I have reached this conclusion, it is necessary to consider first why the interpretation of the phrase "engaging in terrorism" in the *IRPA* is even an issue.

(2) The Meaning of "Terrorism" in the *IRPA*

[28] Section 34(1) of the *IRPA* largely reproduces (in a simplified form) the grounds of inadmissibility relating to security previously found in paragraphs 19(e) and (f) of the *Immigration Act* (RSC 1985, c I-2, as amended). Past, present or future engagement in terrorism and membership in an organization that there are reasonable grounds to believe has engaged in terrorism, is engaged in terrorism, or will engage in terrorism, first became grounds for a finding of inadmissibility in February 1993, when amendments to the 1976 *Immigration Act* enacted by Bill C-86 came into force. Among many other changes, several parts of section 19 of the *Immigration Act* were repealed and replaced with new provisions which included these grounds (*Immigration Act*, SC 1992, c 49, s 11). While the amendments introduced the new term "terrorism" into the *Immigration Act*, this term was not defined.

[29] I pause here to note that when Bill C-86 received First Reading in the House of Commons on June 16, 1992, it included a definition of "terrorism" as "activities directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective" (s 1(7)). This language tracked part of the definition at that time of "threats to the security of Canada" found in section 2 of the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23. Mildred Morton, a representative of the Department of Employment and Immigration, explained in Legislative Committee hearings on Bill C-86 that the rationale for this was that "if CSIS can carry out surveillance [on an individual], then we can exclude. This is what we came up with, and what we felt we needed was the essential thing, a definition of terrorism" (House of Commons, Legislative Committee on Bill C-86, *Evidence*, 34-

3, No 3 (28 July 1992) at 13:45 (Mildred Morton)). However, the government eventually deleted the definition from Bill C-86, agreeing that it was "overly broad" (House of Commons, Legislative Committee on Bill C-86, *Evidence*, 34-3, No 15 (3 November 1992) at 14:55 (Daniel Therrien)). It was not replaced. The hope was that "the courts, given appropriate cases, will find the appropriate definition of terrorism and we can rely on the courts to use their judgment in these cases, and as these cases come before the courts the term can be defined with an appropriate meaning" (*ibid.*).

[30] The absence of a definition of "terrorism" in the *Immigration Act*, together with the fact that no single definition of the term was accepted internationally and its often politicized and polemical usage, gave rise to the question of whether the term was "so lacking in precision as not to give sufficient guidance for legal debate" and, as such, was unconstitutionally vague (cf. *R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 at 643). This question eventually reached the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*].

[31] While acknowledging that there were serious debates over its meaning and application, the Court was "not persuaded [. . .] that the term 'terrorism' is so unsettled that it cannot set the proper boundaries of legal adjudication" (*Suresh* at para 96). The Court did not attempt to define terrorism exhaustively – "a notoriously difficult endeavour" (*Suresh* at para 93). Instead, it was content to resolve the constitutional issue by "finding that the term provides a sufficient basis for adjudication and hence is not unconstitutionally vague" (*ibid.*).

[32] Relying on certain international instruments, the Court concluded that the term "terrorism" as used in section 19 of the *Immigration Act* "includes any 'act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act'" (*Suresh* at para 98). The Court was satisfied that this conception "catches the essence of what the world understands by 'terrorism'" (*ibid.*). In the Court's view, this common understanding made the term "terrorism" in the *Immigration Act* "sufficiently certain to be workable, fair and constitutional" (*ibid.*). The Court did acknowledge that "[p]articular cases on the fringes of terrorist activity will inevitably provoke disagreement" (*ibid.*). The Court then added: "Parliament is not prevented from adopting more detailed or different definitions of terrorism" (*ibid.*).

[33] Several months after *Suresh* was decided, the *Immigration Act* was repealed and replaced by the *IRPA*. This reform of immigration law had been underway long before *Suresh* was decided. Bill C-11, which enacted the *IRPA*, was first introduced in the House of Commons on February 21, 2001. It received Royal Assent on November 1, 2001, but did not come into force until June 28, 2002. As noted above, section 34(1) of the *IRPA* essentially reproduces the security grounds for inadmissibility found in the post-1992 *Immigration Act*, including the various modes of involvement in terrorism. Like the *Immigration Act* before it, the *IRPA* does not include a definition of "terrorism."

(3) The Meaning of "Terrorist Activity" in the *Criminal Code*

[34] Parliament did, however, address the meaning of "terrorism" in other legislation enacted at roughly the same time as the *IRPA*. The *Anti-terrorism Act*, SC 2001, c 41, was enacted in the immediate aftermath of the events in the United States on September 11, 2001. Bill C-36 received First Reading in the House of Commons on October 15, 2001. It came into force just over two months later, on December 24, 2001. The Act was crafted as omnibus legislation which amended 16 statutes and implemented two United Nations Conventions concerning the financing of terrorism and the suppression of terrorist bombings, respectively (*Application under s. 83.28 of the Criminal Code (Re)*, 2004 SCC 42 at para 37 [*Application under s. 83.28*]). Part of this Act became Part II.1 of the *Criminal Code*, a comprehensive scheme establishing, among other things, new criminal offences relating to terrorism, new investigative powers and procedures, and new methods for addressing terrorist financing.

[35] A key element of the Part II.1 scheme is the term "terrorist activity." It is defined in two ways in section 83.01(1) of the *Criminal Code*. First, a functional definition states that terrorist activity means the commission of one of a list of *Criminal Code* offences that had been enacted in the course of domestic ratification of certain international conventions and treaties concerning terrorism. Second, a stipulative definition sets out the necessary elements for an activity to constitute "terrorist activity." It is this second part of the definition that is of concern in the present application.

[36] The stipulative definition involves a number of interconnected parts that may be summarized as follows.

[37] First, “terrorist activity” means an act or omission, a conspiracy, an attempt or threat to commit any act or omission, counselling an act or omission and being an accessory after the fact to an act or omission that causes one of five possible consequences. These consequences are: (A) causing death or serious bodily harm to a person by the use of violence; (B) endangering a person’s life; (C) causing a serious risk to the health or safety of the public or any segment thereof; (D) causing substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct of the harm referred to in clauses (A), (B) or (C); or (E) causing serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in clauses (A), (B) or (C). However, no conduct otherwise captured by clauses (A) to (E) constitutes “terrorist activity” if it occurs during an armed conflict in accordance with international law.

[38] Second, the act or omission that causes one of the consequences enumerated in clauses (A) to (E) constitutes “terrorist activity” only if it was done with the intention of causing one of these consequences.

[39] Third, the act or omission must also be done with the ulterior intention of intimidating the public or a segment of the public as regards its security, or to compel a person, a government or an organization – whether inside or outside Canada – to do or refrain from doing any act.

[40] Finally, the act or omission must be committed in whole or in part for a political, religious or ideological purpose, objective or cause.

[41] In short, under this definition, to engage in terrorist activity is to act (or refrain from acting) with the intention of bringing about one of the specified harmful consequences, for the ulterior purpose of intimidation or compulsion, and with the requisite religious, political or ideological motive.

[42] The term "terrorist group" is also defined in two ways. First, it means "an entity that has as one of its purposes or activities facilitating or carrying out any terrorist activity." Second, it means an entity that has been listed under section 83.05 of the *Criminal Code*. An entity may be placed on this list when the Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, is satisfied that there are reasonable grounds to believe that "(a) the entity has knowingly carried out, attempted to carry out, participated in or facilitated terrorist activity" or "(b) the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph (a)." "Terrorist group" also includes an association of such entities. (For the sake of completeness, "entity" is defined in section 83.01(1) of the *Criminal Code* as "a person, group, trust, partnership or fund or an unincorporated association or organization.")

(4) From "Terrorist Activity" in the *Criminal Code* to "Terrorism" in the *IRPA*

[43] Parliament's decision to leave the term "terrorism" undefined in immigration legislation – first made in 1992, repeated in 2001, and not revisited since then – places a

significant burden on immigration decision-makers. Defining terrorism is "a notoriously difficult endeavour" yet Parliament offers decision-makers no direct assistance. At the same time, Parliament has given those decision-makers the important responsibility of determining whether someone is inadmissible because he or she has engaged in terrorism or is a member of an organization that engages in terrorism. It is understandable that a decision-maker faced with this difficult task would look for help wherever it might be found. Since 2001, the *Criminal Code* is one such place. However, it should be apparent that while the *Criminal Code* definition of "terrorist activity" captures what the Supreme Court of Canada later judged in *Suresh* to be the "essence of what the world understands by 'terrorism,'" it also extends the reach of this concept well beyond the essential elements identified there. This brings me to the reasons why care is required when considering the criminal law concept of "terrorist activity" in an immigration context.

[44] First, criminal law and immigration law pursue different objectives by different means. While broadly speaking each is concerned with terrorism, their interests in this subject are quite distinct. The purpose of the Terrorism section of the *Criminal Code* is "to provide means by which terrorism may be prosecuted and prevented" (*Application under s. 83.28* at para 39; *R v Khawaja*, 2012 SCC 69 at para 44 [*Khawaja*]). Under Part II.1 of the *Criminal Code*, the specific objectives of prosecuting and preventing terrorism are pursued through means grounded in the criminal law: the investigation, prosecution, and punishment of criminal offences.

[45] On the other hand, the relevant objectives of the *IRPA* with respect to immigration are "to protect public health and safety and to maintain the security of Canadian society" and "to

promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks" (*IRPA*, paras 3(1)(h) and (i)). The relevant objectives of the *IRPA* with respect to refugees are "to protect the health and safety of Canadians and to maintain the security of Canadian society" and "to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals" (*IRPA*, paras 3(2)(g) and (h)). The tools the *IRPA* provides to pursue these objectives all relate, directly or indirectly, to decisions about who may enter or remain in Canada.

[46] Second, while the Supreme Court of Canada acknowledged in *Suresh* that Parliament was "not prevented from adopting more detailed or different definitions" of "terrorism" than the one the Court settled on, the *Criminal Code* definition of "terrorist activity" should not be understood as Parliament doing exactly that, at least not with respect to immigration law. The specific issue before the Court in *Suresh* was the meaning of "terrorism" in the *Immigration Act*, not in the law generally. It is interesting to note that when *Suresh* was decided, Parliament had just adopted a different definition of a closely related term – "terrorist activity" – for criminal law purposes but this is not mentioned anywhere in the judgment. In my view, the Court's comment in *Suresh* should not be read as a *carte blanche* to apply definitions relating to "terrorism" which Parliament has adopted for other purposes to the immigration domain.

[47] More generally, although broadly speaking both the *Criminal Code* and the *IRPA* share a concern with public safety and security, they do not "operate in tandem" or function together as parts of a single regulatory scheme, not even with respect to the specific matter of terrorism

(cf. *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 46 [*Bell ExpressVu*]). They do not deal with the same subject matter in the way that is necessary to engage the principle that statutes *in pari materia* should be construed together and can be explanatory of one another (cf. Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at 416-21). As a result, in my view this principle does not justify applying the meaning of "terrorist activity" in the *Criminal Code* to the term "terrorism" in section 34(1) of the *IRPA*. I must, therefore, respectfully disagree with my colleague Justice Brown, who relied on this principle in *Ali v Canada (Citizenship and Immigration)*, 2017 FC 182 [*Ali*], to import the meaning given to "terrorist activity" in the *Criminal Code* into the *IRPA* for the purposes of a finding under section 34(1)(f) of the latter (see *Ali* at paras 42-44; see also *Alam* at paras 26-28).

[48] Third, the operative concepts and offences in Part II.1 of the *Criminal Code* have broad application. This is justified by the preventive purpose of the law and the great harm that can result from acts of terrorism (*Khawaja* at para 62). However, while broad in scope, terrorism offences are subject to critical limiting conditions. For example, mere membership in a terrorist group is not a criminal offence. Instead, what is criminalized is knowingly participating in or contributing to any activity of a terrorist group (*Criminal Code*, s 83.18). As the Supreme Court of Canada explains in *Khawaja*, this offence potentially captures a wide range of conduct but its actual reach is limited by the requirement of a subjective purpose on the part of the actor to enhance the ability of a terrorist group to facilitate or carry out a terrorist activity. To fall within the scope of the offence, an individual must not only participate in or contribute to a terrorist activity "knowingly," he or she must do so specifically intending to enhance the ability of the terrorist group to facilitate or carry out a terrorist activity. A mere negligent failure to avoid

assisting terrorists will not suffice. All of this ensures that those who assist terrorists unwittingly or for a valid reason are beyond the reach of the offence. The reach of the offence is also reduced by the exclusion of conduct that a reasonable person would not view as capable of materially enhancing the abilities of a terrorist group to facilitate or carry out a terrorist activity. Finally, all of these elements must be proven by the Crown beyond a reasonable doubt before someone can be found guilty of this offence. Pointing to all these limitations on its scope, the Court held in *Khawaja* that the offence of knowingly participating in or contributing to any activity of a terrorist group is not unconstitutionally overbroad (see paras 41-64).

[49] Limiting conditions like these restrict the reach of the concept of "terrorist activity" because it is operationalized through terrorism offences like that of knowingly participating in or contributing to any activity of a terrorist group. But such conditions are not easily transposed from the criminal law to immigration law. Some are not applicable at all. Importing criminal law concepts like "terrorist activity" into the immigration context absent such limiting conditions risks expanding the reach of section 34(1)(f) of the *IRPA* beyond what Parliament intended. It also risks unconstitutional overbreadth when section 7 of the *Charter* is engaged, as can happen when determinations of inadmissibility on terrorism grounds are being made (*Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at paras 12-18).

[50] The concept of membership in an organization for purposes of determining admissibility under section 34(1) of the *IRPA* is already understood very broadly (*Poshteh v Canada (Citizenship and Immigration)*, 2005 FCA 85 at para 27; *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 at paras 38-39). I acknowledge that Parliament has provided ways

for individuals caught by broadly interpreted grounds of inadmissibility to seek Ministerial exemptions (*Suresh* at paras 109-110; *Najafi* at paras 80-81). Nevertheless, in the absence of express language stating as much, it should not be presumed that Parliament intended the reach of "engaging in terrorism" in section 34(1)(c) of the *IRPA* to be broadened significantly through the incorporation of *Criminal Code* definitions which were adopted for different purposes in an entirely different legal framework.

(5) The Member's Reasons

[51] The member began her discussion of the issue of whether the BNP is an organization for which there are reasonable grounds to believe it engages in terrorism by citing and quoting from the Supreme Court of Canada's discussion of the meaning of "terrorism" in *Suresh*. She then observed that the *Criminal Code* "provides additional guidance with respect to definitions of terrorist activity and terrorist group in subsection 83.01(1)." The member did not explain why she considered this "additional guidance" was required. She then recited the stipulative definition of "terrorist activity" and the first part of the definition of "terrorist group." The member does not mention either the functional definition of "terrorist activity" or the second part of the definition of "terrorist group" (i.e. being a listed entity). The member then stated:

> With respect to the Bangladesh National Party, as I review these provisions that are both in the Criminal Code of Canada as well as the Immigration and Refugee Protection Act, it is clear from Federal Court decisions that the key element within the definition of terrorism focuses on the protection of civilians and that in deciding that whether or not the Bangladesh National Party is a terrorist group I must identify specific acts that are attributed to this group and I am satisfied that the actions of the Bangladesh National Party meet the tests that have been set out in the legislation and the case law.

[52] The focus on the rest of the member's reasons was the role of the BNP in calling for *hartals* and blockades. I will consider the member's application of her understanding of the meaning of "engaging in terrorism" to the actions of the BNP below. At this stage I am concerned only with the member's understanding of the concept of terrorism. For the following reasons, I find that the member's reliance on the *Criminal Code* definition resulted in a decision that does not meet the requirements of justification, transparency and intelligibility.

[53] The member was engaged in an exercise of statutory interpretation. As is well-known, this is fundamentally a matter of reading the provisions in issue in context, according to the grammatical and ordinary meaning of the text, and in harmony with the scheme of the Act, the object of the Act and the intention of the legislature (*Barreau du Québec* at para 26; *Bell ExpressVu* at para 26; *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, quoting Elmer Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87). As discussed above, care must be taken when drawing on criminal law concepts to interpret immigration law. An immigration decision-maker must be alive to the fundamental differences between the two legal regimes and must recognize the risks of distorting the intended import of the legislative framework he or she is applying when drawing on concepts developed in a different context. The member's reasons leave me with serious doubts that she approached the interpretive exercise in this way. While a learned dissertation on the similarities and differences in how criminal law and immigration law deal with terrorism is not required of an administrative decision-maker who is determining whether someone is inadmissible to Canada as a result of involvement in terrorism, some understanding that concepts developed in one context cannot simply be transplanted into a different context must be demonstrated.

[54] Here, the member attempts to ground her use of "terrorist activity" from the *Criminal Code* under section 34(1)(c) of the *IRPA* in the suggestion that for both the *Criminal Code* and the *IRPA*, "the key element within the definition of terrorism focuses on the protection of civilians." Even if it can be said that the protection of civilians was the "focus" of the Court's understanding of terrorism in *Suresh* (*Fuentes v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 379 at para 56), the proposition relied on by the member is too broad to be of any use for present purposes. *Suresh* refers to the targeting of civilians but the understanding of terrorism set out there includes a great deal more. This proposition also begs the fundamental question of whether the criminal law and immigration law protect civilians in the same ways from the same things when it comes to terrorism.

[55] The respondent submits that the member considered the *Criminal Code* definition of "terrorist activity" to be consistent with *Suresh* and simply used it as an interpretive aid when applying section 34(1)(f) of the *IRPA*. I cannot agree. While the *Criminal Code* definition is not inconsistent with *Suresh*, it goes well beyond what the Supreme Court of Canada identified as the "essence" of what was meant by the term "terrorism" in the *Immigration Act.* The member's approach resulted in a very broad sweep being given to the concept of engaging in terrorism without any justification for this being offered.

[56] As the applicant emphasized in his submissions, it follows from the member's characterization of the BNP as an organization that engages in terrorism that anyone who has been a member of this political party in any capacity is inadmissible to Canada. While each case turns on its own facts, a survey the applicant prepared of recent decisions dealing with

inadmissibility due to membership in a terrorist organization demonstrates that the BNP stands entirely alone amongst terrorist organizations as a legal political party with broad popular support that engages in democratic elections and which, as a result of the electoral process, from time to time has formed the government. At the risk of oversimplification, most of the organizations that have been labeled terrorist organizations for purposes of section 34(1)(f) of the *IRPA* are either transnational or national movements operating outside the lawful political realm. The *raison d'être* of many of these movements is to seek the violent overthrow of an existing political regime and its replacement with a radically different one. The organizations that do engage in conventional political activities but have been found to be terrorist organizations typically have distinct political and armed wings. The BNP does not.

[57] As well, to the extent that it is appropriate to rely on the criminal law in this context, it is noteworthy that the BNP is not a listed entity under section 83.05 of the *Criminal Code*. This, of course, is not determinative of the proper characterization of the BNP for immigration law purposes; at the same time, it is not irrelevant. As Justice de Montigny observed in *Karakachian v Canada (Citizenship and Immigration)*, 2009 FC 948 at para 40: "The fact that an organization does not appear on that list can nevertheless be considered one indicia among others that it is not a terrorist organization, at least in the eyes of the Canadian government." (For what it is worth, other countries with similar listing procedures (e.g. the United Kingdom and Australia) have not listed the BNP either.)

[58] The applicant describes the result in the case at bar as absurd. While I would not go that far, I do share the concerns expressed by my colleague Justice Mosley in *AK* about "the notion

that a general strike called by a political party in an effort to force the party in power to take steps such as proroguing Parliament or convening by-elections, falls within the 'essence of what the world understands by 'terrorism'" (at para 41). To be sure, the case law has permitted incremental developments building on the *Suresh* understanding of this "essence." For example, a threat to cause death or serious bodily harm (even if there was no intention to actually carry it out), if made for the purpose of compelling a government to do or abstain from doing any act, can fall within the scope of engaging in terrorism under section 34(1)(c) of the *IRPA* (*Soe* at paras 32-35). So, too, does providing material support to a terrorist organization (*Harkat v Canada (Citizenship and Immigration)*, 2012 FCA 122 at para 149). Attempting or conspiring to cause death or serious bodily injury for the purpose of intimidating a population or compelling a government to do or abstain from doing any act would also no doubt be captured by section 34(1)(c). These are all criminal law concepts but applied in this way they build naturally and incrementally on the "essence" of terrorism articulated in *Suresh*. The same cannot be said about the decision in the case at bar. The political order in Bangladesh faces many challenges from all sides. If the actions of the BNP warrant the label of "terrorism" under Canadian law at all, this requires a better explanation than the member provided to meet the requirements of justification, transparency and intelligibility.

[59] The shortcomings in the member's understanding of terrorism are compounded by her failure to apply some of the essential elements of the concept of "terrorist activity" she purports to import from the *Criminal Code*. I turn to this next.

C. *Is the member's determination that there are reasonable grounds to believe the BNP is an organization that engages in terrorism and subversion reasonable?*

(1) Terrorism

[60] The member considered extensive documentary evidence concerning recent political history in Bangladesh and the activities of the BNP. The member's reasons for concluding that this evidence provided reasonable grounds to believe the BNP engages in terrorism can be broken down as follows. First, the evidence "clearly demonstrates" that throughout its history the BNP has acted pursuant to political or ideological purposes. Second, the evidence also demonstrates that the BNP has used *hartals* and blockades with the intention of intimidating the public or a segment of the public with regards to its security, including its economic security, or compelling a person or a government to do or refrain from doing any act. Third, there is a "direct link" between *hartals* and blockades called for by the BNP and acts of violence.

[61] The member stated the following in summarizing her conclusions:

> [. . .] it is true that the calling of hartals may not be in and of itself an act of terrorism. However, given the gross impact of the hartals that were called by the Bangladesh National Party on civilians and the economy, the use of them for prolonged periods [despite] the consequences, namely violence, loss of life, and significant economic impact, the Bangladesh National Party bears responsibility for [. . .] the outcomes of calling hartals, because the calling of hartals by the Bangladesh National Party leadership time and again over a significant period of time set off a chain of events that in my view establishes that these hartals in this context amounts to terrorist activity.

[62] Further, in response to the submission that the BNP did not officially sanction violence and had even denounced it, the member stated that "the very real consequence of violence

connects [*sic*] with political actions initiated by them renders them complicit in that violence and the consequences of that political action."

[63] Moreover, the member even appears to have been prepared to find that the economic impact of the *hartals* and blockades as means of attempting to influence the government "alone would amount to engaging in terrorism." She states: "There are more than reasonable grounds to establish the calling of strikes and traffic blockades as a means of forcing the government to a particular action had a severe and significant financial impact [on] the economy which amounts to terrorism."

[64] In my view, in reaching the conclusion that the use of *hartals* and blockades constitutes terrorist activity and, as such, falls within section 34(1)(c) of the *IRPA*, the member failed to address a crucial limiting condition on the scope of "terrorist activity" as defined in the *Criminal Code*. As a result, she extended the reach of that concept unreasonably.

[65] Taking the *Criminal Code* definition of "terrorist activity" into account as the member did, clause (E) of this definition potentially applies to *hartals* and blockades. The evidence before the member could support a finding that at least some *hartals* and blockades called for by the BNP intentionally caused serious interference with and serious disruption to essential services, facilities and systems, whether public or private, in Bangladesh. However, *hartals* and blockades are a form of advocacy, protest, dissent or stoppage of work. Advocacy, protest, dissent or stoppage of work that intentionally causes serious interference with or serious disruption to essential services, facilities or systems is specifically excluded from what is meant

by "terrorist activity," even if those actions are undertaken to intimidate the public with regard to its security (including economic security) or to compel a government to act or refrain from acting in a certain way. This exclusion is subject to a single exception: advocacy, protest, dissent or stoppage of work which intentionally causes serious interference with or serious disruption to essential services, facilities or systems can constitute terrorist activity if it is also intended to cause death or serious bodily harm by the use of violence, to endanger a person's life, or to cause a serious risk to the health or safety of the public or any segment of the public. Absent at least one of these specific intentions, advocacy, protest, dissent or stoppage of work cannot constitute terrorist activity, even if it intentionally causes serious interference with or serious disruption of essential services, facilities or systems, and even if it is undertaken to intimidate the public or to cause a government to act or refrain from acting in a certain way. As the Supreme Court of Canada explained in *Khawaja*, this "removes from the ambit of clause (E) a large slice of expressive activity, provided it is not aimed at the violent, dangerous ends contemplated in clauses (A) to (C)" (at para 73).

[66] Here, however, the member found that *hartals* and blockades fell within the definition of "terrorist activity" simply because there was a causal connection between them and acts of violence. She also appears to have been prepared to find that they constitute terrorist activity simply because they involved causing economic harm to pressure the government. Even assuming that *hartals* and blockades could satisfy the ulterior purpose and motive elements of the definition of "terrorist activity" (as the member found), the member should have considered that they are forms of advocacy, protest, dissent or stoppage of work and, as such, could constitute terrorist activity only if they were called with the intention of causing death or serious

bodily harm by the use of violence, with the intention of endangering lives, or with the intention of causing a serious risk to the health or safety of the public. Even if *hartals* and blockades called for by the BNP have led to these results, this is not sufficient. Intending to do these types of harm is an essential element of the *Criminal Code* definition. Indeed, it reflects part of what the Supreme Court of Canada expressed in *Suresh* as the "essence" of what the world understands by "terrorism." It was a serious error for the member to fail to consider it. Having decided to rely on the *Criminal Code* definition of "terrorist activity," it was incumbent on the member to apply it properly. Absent an express finding that when it called for *hartals* and blockades the BNP intended to cause death or serious bodily harm by the use of violence, to endanger a person's life, or to cause a serious risk to the health or safety of the public, the finding that this constitutes terrorist activity and, as such, engagement in terrorism within the meaning of section 34(1)(c) of the *IRPA*, cannot stand. As a result, this aspect of the finding that the applicant's membership in the BNP rendered him inadmissible under section 34(1)(f) of the *IRPA* cannot be sustained.

(2) Subversion

[67] The member's finding that the BNP also engages in subversion can be dealt with much more briefly. The member instructed herself that instigating or engaging in the subversion by force of any government within the meaning of section 34(1)(b) of the *IRPA* requires either encouraging or engaging in acts of violence intended to overthrow a government. In finding that the BNP's calling of *hartals* and blockades constitutes subversion, the member specifically cited, among other things, her earlier finding that this constitutes engaging in terrorism. While the concepts of subversion and terrorism are distinct, I cannot be sure that the member's analysis of

whether there were reasonable grounds to believe that the BNP engages in subversion was not affected by her erroneous approach to terrorism. As a result, this issue must be reconsidered as well.

V. CERTIFIED QUESTION

[68] The parties were provided with the Court's reasons in draft form and given the opportunity to provide submissions on what questions, if any, should be certified under section 74 of the *IRPA*. Both parties declined to propose such a question. I agree that no question of general importance arises.

VI. CONCLUSION

[69] For these reasons, the application for judicial review is allowed, the decision of the Immigration Division dated September 19, 2017, is set aside, and the matter is remitted for reconsideration by a differently constituted panel.

JUDGMENT IN IMM-4223-17

THIS COURT'S JUDGMENT is that

1. The application for judicial review is allowed.
2. The decision of the Immigration Division dated September 19, 2017, is set aside, and the matter is remitted for reconsideration by a differently constituted panel.
3. No question of general importance is stated.

"John Norris"
Judge

ANNEX

***Immigration and Refugee Protection Act*, SC 2001, c 27**

Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	**a)** être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
(b) engaging in or instigating the subversion by force of any government;	**b)** être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	**b.1)** se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(c) engaging in terrorism;	**c)** se livrer au terrorisme;
(d) being a danger to the security of Canada;	**d)** constituer un danger pour la sécurité du Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	**e)** être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	**f)** être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

***Criminal Code*, RSC 1985, c C-46**

Terrorism

Interpretation

Definitions

83.01 (1) The following definitions apply in this Part.

…

terrorist activity means

(a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences:

(i) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on December 16, 1970,

(ii) the offences referred to in subsection 7(2) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on September 23, 1971,

(iii) the offences referred to in subsection 7(3) that implement the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents*, adopted by the General Assembly of the United Nations on December 14, 1973,

(iv) the offences referred to in subsection 7(3.1) that implement the *International Convention against the*

Terrorisme

Définitions et interprétation

Définitions

83.01 (1) Les définitions qui suivent s'appliquent à la présente partie.

…

activité terroriste

a) Soit un acte — action ou omission, commise au Canada ou à l'étranger — qui, au Canada, constitue une des infractions suivantes :

(i) les infractions visées au paragraphe 7(2) et mettant en oeuvre la *Convention pour la répression de la capture illicite d'aéronefs*, signée à La Haye le 16 décembre 1970,

(ii) les infractions visées au paragraphe 7(2) et mettant en oeuvre la *Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile*, signée à Montréal le 23 septembre 1971,

(iii) les infractions visées au paragraphe 7(3) et mettant en oeuvre la *Convention sur la prévention et la répression des infractions contre les personnes jouissant d'une protection internationale, y compris les agents diplomatiques*, adoptée par l'Assemblée générale des Nations Unies le 14 décembre 1973,

(iv) les infractions visées au paragraphe 7(3.1) et mettant en oeuvre la *Convention internationale*

Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979,

(v) the offences referred to in subsection 7(2.21) that implement the Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on March 3, 1980, as amended by the Amendment to the Convention on the Physical Protection of Nuclear Material, done at Vienna on July 8, 2005 and the International Convention for the Suppression of Acts of Nuclear Terrorism, done at New York on September 14, 2005,

(vi) the offences referred to in subsection 7(2) that implement the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, signed at Montreal on February 24, 1988,

(vii) the offences referred to in subsection 7(2.1) that implement the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, done at Rome on March 10, 1988,

(viii) the offences referred to in subsection 7(2.1) or (2.2) that implement the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, done at Rome on March 10, 1988,

(ix) the offences referred to in subsection 7(3.72) that implement the *International Convention for the*

contre la prise d'otages, adoptée par l'Assemblée générale des Nations Unies le 17 décembre 1979,

(v) les infractions visées au paragraphe 7(2.21) et mettant en oeuvre la Convention sur la protection physique des matières nucléaires, faite à Vienne et New York le 3 mars 1980, et modifiée par l'Amendement à la Convention sur la protection physique des matières nucléaires, fait à Vienne le 8 juillet 2005, ainsi que la Convention internationale pour la répression des actes de terrorisme nucléaire, faite à New York le 14 septembre 2005,

(vi) les infractions visées au paragraphe 7(2) et mettant en oeuvre le *Protocole pour la répression des actes illicites de violence dans les aéroports servant à l'aviation civile internationale, complémentaire à la Convention pour la répression d'actes illicites dirigés contre la sécurité de l'aviation civile*, signé à Montréal le 24 février 1988,

(vii) les infractions visées au paragraphe 7(2.1) et mettant en oeuvre la *Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime*, conclue à Rome le 10 mars 1988,

(viii) les infractions visées aux paragraphes 7(2.1) ou (2.2) et mettant en oeuvre le *Protocole pour la répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental*, conclu à Rome le 10 mars 1988,

(ix) les infractions visées au paragraphe 7(3.72) et mettant en oeuvre la *Convention internationale*

Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997, and

pour la répression des attentats terroristes à l'explosif, adoptée par l'Assemblée générale des Nations Unies le 15 décembre 1997,

(x) the offences referred to in subsection 7(3.73) that implement the *International Convention for the Suppression of the Financing of Terrorism*, adopted by the General Assembly of the United Nations on December 9, 1999, or

(x) les infractions visées au paragraphe 7(3.73) et mettant en oeuvre la *Convention internationale pour la répression du financement du terrorisme*, adoptée par l'Assemblée générale des Nations Unies le 9 décembre 1999;

(b) an act or omission, in or outside Canada,

b) soit un acte — action ou omission, commise au Canada ou à l'étranger :

(i) that is committed

(i) d'une part, commis à la fois :

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(A) au nom — exclusivement ou non — d'un but, d'un objectif ou d'une cause de nature politique, religieuse ou idéologique,

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(B) en vue — exclusivement ou non — d'intimider tout ou partie de la population quant à sa sécurité, entre autres sur le plan économique, ou de contraindre une personne, un gouvernement ou une organisation nationale ou internationale à accomplir un acte ou à s'en abstenir, que la personne, la population, le gouvernement ou l'organisation soit ou non au Canada,

(ii) that intentionally

(ii) d'autre part, qui intentionnellement, selon le cas :

(A) causes death or serious bodily harm to a person by the use of violence,

(A) cause des blessures graves à une personne ou la mort de celle-ci, par l'usage de la violence,

(B) endangers a person's life,

(B) met en danger la vie d'une personne,

(C) causes a serious risk to the health or safety of the public or

(C) compromet gravement la santé ou la sécurité de tout ou partie de

any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law. (activité terroriste)

la population,

(D) cause des dommages matériels considérables, que les biens visés soient publics ou privés, dans des circonstances telles qu'il est probable que l'une des situations mentionnées aux divisions (A) à (C) en résultera,

(E) perturbe gravement ou paralyse des services, installations ou systèmes essentiels, publics ou privés, sauf dans le cadre de revendications, de protestations ou de manifestations d'un désaccord ou d'un arrêt de travail qui n'ont pas pour but de provoquer l'une des situations mentionnées aux divisions (A) à (C).

Sont visés par la présente définition, relativement à un tel acte, le complot, la tentative, la menace, la complicité après le fait et l'encouragement à la perpétration; il est entendu que sont exclus de la présente définition l'acte — action ou omission — commis au cours d'un conflit armé et conforme, au moment et au lieu de la perpétration, au droit international coutumier ou au droit international conventionnel applicable au conflit ainsi que les activités menées par les forces armées d'un État dans l'exercice de leurs fonctions officielles, dans la mesure où ces activités sont régies par d'autres règles de droit international. (terrorist activity)

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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Kareena R. Wilding	FOR THE RESPONDENT

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