Federal Court  Cour fédérale

Date: 20191002

Docket: IMM-1645-19

Citation: 2019 FC 1251

Ottawa, Ontario, October 2, 2019

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

EARL MASON

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This case is about the interpretation of the inadmissibility provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. The Minister alleges that Mr. Mason, a foreign national, is inadmissible pursuant to section 34(1)(e) of the Act, for "engaging in acts of violence that would or might endanger the lives or safety of persons in Canada." Mr. Mason, however, rejects this. He argues instead that section 34 deals with "security grounds," which means that it only applies to cases of terrorism, war crimes or organized criminality. The

difference between the Minister and Mr. Mason is a pure issue of statutory interpretation. The Immigration Appeal Division [IAD] of the Immigration and Refugee Board preferred the Minister's interpretation of section 34(1)(e). Mr. Mason now seeks judicial review of the IAD's decision.

[2] Both parties agree that the IAD's decision must be reviewed on a standard of reasonableness, but do not agree on what that means in practice. Thus, in order to decide this case, I must address how a reviewing court must approach the decision of a tribunal concerning the interpretation of legislation. After outlining a method to perform such a review, I find that the IAD's interpretation of section 34(1)(e) is unreasonable, because it disregards the structure of the Act and renders meaningless the provisions regarding inadmissibility on criminality grounds. I conclude that section 34(1)(e) cannot apply to any criminal or violent conduct that has no link with national security.

I. Background

[3] At the root of this case is an incident that took place on May 13, 2012, at a music concert held at the Canadian Legion in Surrey, British Columbia. It is alleged that, after a dispute arose, Mr. Mason discharged a firearm eight times and injured two persons. As a result of that incident, two charges of attempted murder were laid against Mr. Mason on May 30, 2014. However, on November 23, 2015, the charges were stayed. I have no precise information as to why the charges were stayed.

[4] A CBSA officer then prepared a report pursuant to section 44 of the Act, alleging that Mr. Mason had become inadmissible to Canada under section 34(1)(e). That report was referred to the Immigration Division [ID] of the Immigration and Refugee Board. It was agreed to bifurcate the proceedings. The ID would first determine whether, as a matter of law, section 34(1)(e) applies beyond cases of terrorism, organized crime, war crimes or crimes against humanity. In the event of a positive answer, the ID would then hold a hearing to make the necessary factual findings.

[5] On March 20, 2018, the ID decided that section 34(1)(e) applies only to cases raising a "security element," not to "mere criminal offences." The Minister appealed to the IAD.

[6] On February 6, 2019, the IAD reversed the ID's decision. The IAD's reasons abundantly refer to the parties' submissions, and it is not always clear whether the IAD accepts or rejects them. Nevertheless, I understand that the IAD's decision was mainly based on the following propositions:

- It is not enough to rely on the ordinary meaning of the words of section 34(1)(e) (paragraph 20), nor on a comparison with the other sub-paragraphs of that section (paragraphs 21 and 27). Nevertheless, a dictionary definition of "security," which does not relate exclusively to national security, is useful (paragraph 25).
- The expressions "security" and "security grounds" in section 34 must have a meaning different than those of "security of Canada" or "national security," which are used elsewhere in the Act (paragraph 23).
- Various other inadmissibility provisions have been interpreted as not requiring a criminal conviction.
- Inadmissibility is not a criminal sanction. While imposing a criminal sanction without a conviction would offend Canadian values, making a person inadmissible does not.

[7] As a result, the IAD found that section 34(1)(e) does not require evidence that the conduct that gives rise to inadmissibility be related to national security. It need only be related "to security in a broader sense," which includes "ensuring that individual Canadians are secure from acts of violence that would or might endanger their lives or safety."

[8] Mr. Mason now seeks judicial review of the IAD's decision.

II. Analysis

[9] I am granting Mr. Mason's application, as I find the IAD's interpretation to be unreasonable. To explain why I do so, it is necessary to begin with a discussion of the method for deciding whether a decision regarding an issue of statutory interpretation is reasonable. I will then apply that method to the IAD's interpretation of section 34(1)(e).

A. *Reasonableness and Statutory Interpretation*

[10] Both parties agree that in principle, the IAD's decision must be reviewed on a standard of reasonableness. Mr. Mason, however, argues that in cases such as this, the Act admits of only one reasonable interpretation. In contrast, the Minister asks me to give considerable deference to the IAD's decision.

[11] These widely diverging views of what deference requires in matters of statutory interpretation mirror the fundamental tension between the need to enforce the rule of law and the need to respect the autonomy of administrative decision-makers. That tension lies at the core of

judicial review: *Dunsmuir v New Brunswick*, 2008 SCC 9 at paragraph 25, [2008] 1 SCR 190 [*Dunsmuir*]. Deference forbids courts from substituting their own views for those of the decision-maker. However, it does not permit decision-makers to subvert Parliament's intention.

[12] Avoiding those pitfalls requires a principled framework for assessing the reasonableness of statutory interpretation decisions. Even though the jurisprudence of the Supreme Court of Canada offers many examples of such cases, it does not provide a detailed method.

[13] Many textbooks outline the methods of statutory interpretation. The most current include Elmer Driedger's classic book, now published as Ruth Sullivan, *Sullivan on the Construction of Statutes* (Toronto: LexisNexis, 2014); Pierre-André Côté, in collaboration with Stéphane Beaulac and Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed. (Toronto: Carswell, 2011) [Côté, *Interpretation of Legislation*]; Ruth Sullivan, *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016) [Sullivan, *Statutory Interpretation*]. These authors describe the "modern" method of interpretation, adopted by the Supreme Court of Canada in numerous cases, in particular *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, which requires attention to the text, context and purpose of the provision to be interpreted. They do not, however, explain how that method is to be applied in the context of judicial review, to determine if an administrative tribunal's interpretation is reasonable or not.

(1) Existing Approaches

[14] Certain distinguished jurists have endeavoured to fill this gap and to give a more systematic account of the process through which courts, on judicial review, decide whether an interpretation given to legislation by an administrative decision-maker is reasonable.

[15] Justice David Stratas of the Federal Court of Appeal has proposed to rely on what he calls "badges of unreasonableness:" *Delios v Canada (Attorney General)*, 2015 FCA 117 [*Delios*]; *Re:Sound v Canadian Association of Broadcasters*, 2017 FCA 138 [*Re:Sound*]. The idea is that the presence of certain features in an administrative decision gives rise to a suspicion, if not a presumption, that the decision is unreasonable. Certain features may reflect the opposite, denoting "badges of reasonableness:" *Canada (Transport, Infrastructure and Communities) v Farwaha*, 2014 FCA 56 at paragraph 100, [2015] 2 FCR 1006. These badges would include:

- Whether a tribunal's interpretation of legislation accords with the legislation's purpose: *Montréal (City) v Montreal Port Authority*, 2010 SCC 14 at paragraph 42, [2010] 1 SCR 427; *Wilson v Atomic Energy of Canada Ltd*, 2016 SCC 29 at paragraph 69, [2016] 1 SCR 770;
- Whether the tribunal "applies its previous jurisprudence in the same way on similar facts:" *Re:Sound*, at paragraph 61;
- Whether the tribunal made "key factual findings with no rational basis or entirely at odds with the evidence:" *Delios*, at paragraph 27;
- Whether the tribunal failed to take context into account: *Dunsmuir*, at paragraph 74.

[16] Such badges are not conclusive. There may be an explanation for what, at first sight, looks like a badge of unreasonableness. For example, the decision-maker may have explained why an interpretation that apparently contradicts the purpose of the legislation is nevertheless

warranted by a careful review of the statutory scheme. In such cases, the decision may well be reasonable.

[17] Professor Paul Daly analyzed judicial review of statutory interpretation decisions at length in "Unreasonable Interpretations of Law" (2014) 66 SCLR (2d) 233 [Daly, "Unreasonable Interpretations"]. He cautions about the use of the principles of statutory interpretation in assessing the reasonableness of a tribunal's decision. Those principles would be too "technical," geared towards the identification of one right answer to interpretive problems and their use would result in the imposition of a legalistic method on administrative decision-makers who were supposed to be free from such constraints. Professor Daly suggests that review for reasonableness should begin with a search for "indicia" of unreasonableness – akin to Justice Stratas's "badges" – and, where such indicia are present, the reviewing court should assess whether the decision-maker has given a valid explanation. Such "indicia" would include "[i]llogicality, inconsistency with statutory purpose or underlying values, differential treatment and unexplained changes in policy" (at 260); see also, for a longer list of such indicia, Sheila Wildeman, "Making Sense of Reasonableness" in Colleen M Flood and Lorne Sossin, *Administrative Law in Context*, 3rd ed (Toronto: Emond Montgomery, 2018) 437 at 500–503.

[18] Those approaches have the merit of providing lawyers and judges with useful tools to identify unreasonable administrative decisions. They underscore the fact that unreasonableness does not stem from mere disagreement about the proper interpretation of legislation.

[19] What is ironic, however, is that most of the “badges” or “indicia” that have been identified are closely linked with the methods of statutory interpretation. There might be little practical difference between saying that an interpretation contrary to legislative purpose is a badge of unreasonableness and saying that the decision-maker failed to apply the purposive method of interpretation. This raises the question of which methods of interpretation give rise to such “badges,” and on what basis the selection is made.

(2) Proposed Approach

[20] In my view, it is not useful to set aside the principles of statutory interpretation when we review administrative decisions. They are not overly legalistic or technical. Rather, as Lord Hoffmann observed twenty years ago, they embody “the common sense principles by which any serious utterance would be interpreted in ordinary life:” *Investors Compensation Scheme v West Bromwich Building Society*, [1997] UKHL 28, [1998] 1 All ER 98 at 114. And, quite frankly, we have no alternative set of principles to apply in the administrative context.

[21] Statutory interpretation principles are not incompatible with deference. Their use does not necessarily lead to what has sometimes been termed “disguised correctness review.” A deferential review of statutory interpretation decisions is possible if the reviewing judge keeps in mind the following two propositions: (1) many statutory interpretation problems admit of more than one reasonable answer; and (2) the methods of statutory interpretation are not binding rules that dictate a particular outcome.

[22] In reality, methods of statutory interpretation provide guides, "clues" or "pointers." They provide reasons for preferring one interpretation over another. Their weight depends on the problem at hand. For example, in one situation the literal method may be inconclusive, while the purposive method may provide a strong argument. In some situations all the methods point towards one interpretation; in others, the methods point in different directions. They reduce the uncertainty regarding the meaning of legislation but they cannot eliminate it in all cases. Thus, on judicial review, the methods of statutory interpretation should be used not to determine one correct answer, but to decide whether the interpretation chosen by the decision-maker is one "that the statutory language can reasonably bear" (*McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paragraph 40, [2013] 3 SCR 895) [*McLean*].

[23] This is consistent with the manner in which the process of interpretation and the role of "rules" or "principles" of interpretation are currently conceptualized. Professor Côté puts it as follows in *Interpretation of Legislation* at 41–42:

> Unlike ordinary legal rules, specific principles of statutory interpretation are rarely conclusive arguments in themselves: most solutions to problems of interpretation are the result of the application and interaction of several principles. The best solution is the one that most probably reflects legislative intent, in the light of all the relevant interpretive principles, not just one. A single indication of legislative intent is rarely sufficient. This contrasts sharply with ordinary legal rules, where it is only necessary to identify the relevant legal rule in order to settle a dispute.
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> Recourse to principles of interpretation to determine the meaning or scope of an enactment requires that the act be read in light of all relevant principles. To do this, the reader must prepare a kind of balance sheet. It is quite possible that nearly all principles will point to a single interpretation […].
>
> On the other hand, indications of legislative intent drawn from the application of interpretive principles are often contradictory: several conflicting interpretations may seem warranted.

[24] Noting that principles of interpretation "do not impose binding constraints," Professor Sullivan explains in *Statutory Interpretation* at 30:

> The failure to "follow" a rule of statutory interpretation is not an appealable or reviewable error. Although bad interpretations may be appealed or reviewed, the error lies in failing to interpret the statute correctly or reasonably, not in failing to apply a particular statutory interpretation rule. As Lord Reid wrote in *Maunsell v Olins* [[1975] AC 373 at 382 (HL)]:
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> > They [the rules of statutory interpretation] are not rules in the ordinary sense of having some binding force. They are our servants, not our masters. They are aids to construction, presumptions or pointers. Not infrequently one "rule" points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular "rule."
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> As Lord Reid indicates, the function of the rules is not to dictate outcomes in statutory interpretation cases. When the rules all point to the same interpretation, the interpreter may feel bound to adopt that interpretation. An alternative interpretation would likely be set aside as incorrect or unreasonable. But if ordinary meaning supports one outcome while purpose and presumed intent support another, the interpreter must rely on his or her own judgment to decide which outcome is better.

[25] The standard of reasonableness implies that the assessment of the strength of the various interpretive "clues" is primarily a matter for the administrative decision-maker. However, the reviewing judge must assess the arguments, not to redo the weighing exercise, but rather to ensure that the decision-maker did not overlook a very strong argument – a "knock-out punch" – or choose one interpretation when the "clues" pointed overwhelmingly in the other direction.

[26] This analytical process is not fundamentally different from what reviewing courts do when they assess a decision-maker's findings of fact. The role of the reviewing court is not to

reweigh evidence. Nevertheless, disregarding a significant piece of evidence without giving any explanation (*Cepeda-Gutiérrez v Canada (Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paragraph 17) or making a finding in the face of overwhelming evidence to the contrary (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paragraph 92) may render a decision unreasonable.

[27] What is a "knock-out punch" in the context of statutory interpretation? It is an argument that is internally consistent, that withstands scrutiny and that is not met by a countervailing argument of similar force. It is an argument that can be considered to be conclusive evidence of Parliament's intent.

[28] Such a "knock-out punch" may be based on any of the recognized methods of interpretation. It may be a textual argument: the words of the statute simply cannot bear the meaning that the decision-maker gave to them. In most cases, however, textual arguments are not conclusive. It may also be an argument based on the structure of the statutory scheme or on legislative history.

[29] It must be emphasized that the assessment of the strength of an argument does not depend on the method of interpretation that is involved. It would be presumptuous to state, for example, that purposive arguments are always stronger than contextual arguments. The assessment must be performed in the specific context of the question at issue. It must be informed by the reviewing judge's knowledge of, and practical experience in statutory interpretation.

[30] *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53, [2011] 3 SCR 471 [*Mowat*], exemplifies this approach. The Canadian Human Rights Tribunal had decided that it had jurisdiction to award costs against the losing defendant. Legislative history was the "knock-out punch" that, according to the Supreme Court, rendered the Tribunal's decision unreasonable. That history made it clear that Parliament had explicitly considered, and rejected, giving the Tribunal power to award costs. The arguments that the Tribunal resorted to in order to justify its decision were too weak to counterbalance legislative history. In particular, the fact that the Tribunal's interpretation would, in its view, better achieve the legislation's purpose was not a sufficiently strong argument.

[31] In other cases, the reviewing court may not find a "knock-out punch." No argument stands out as being conclusive. The methods of interpretation provide clues pointing to both contending interpretations. Then, the decision-maker's interpretation should be considered to be reasonable, even though it is not the reviewing judge's preferred interpretation.

[32] *McLean* is an example of such a situation. The British Columbia Securities Commission was empowered to make certain types of orders against issuers on the basis of similar orders made by the securities commission of another province. The legislation provided for a six-year limitation period for making such orders. It was not clear, however, whether the limitation period started to run when the impugned conduct took place or when the other province's commission made its order. The Supreme Court reviewed the text, the legislative history, the purpose of the provision and the consequences of each proposed interpretation. It found that there were credible arguments on both sides. But there was no "knock-out punch" that rendered the Commission's

interpretation unreasonable. This was a case, suggested the Court, where both interpretations would be reasonable.

[33] I would venture to add that, in the administrative law context, the concept of policy choice may help clarify the analysis. Parliament often empowers administrative decision-makers to make broad policy choices. In other cases, however, Parliament itself makes the policy choice and simply tasks an administrative decision-maker to apply it in individual situations. When that is the case, a decision that overturns or disregards that policy choice may well be unreasonable.

[34] It should be noted that the method proposed here does not require the reviewing judge to determine in advance the extent of the "range of reasonable outcomes," for example by considering the nature of the issue, the area of law involved or the nature of the interests at stake. While there will be cases where there is only one reasonable outcome, this will be the result, and not the premise, of the interpretive exercise.

[35] Moreover, nothing turns on whether the legislation to be interpreted is "clear" or "ambiguous." On this, I fully agree with Professor Daly in "Unreasonable Interpretations." The lack of analytical usefulness of this distinction is now widely recognized and its use as a "gateway" to statutory interpretation is firmly rejected: *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at paragraph 34, [2002] 1 SCR 84; *Montréal (City) v 2952-1366 Québec Inc*, 2005 SCC 62 at paragraphs 9–10, [2005] 3 SCR 141; Sullivan, *Statutory Interpretation*, at 70–72. This is no less true on judicial review.

[36] In this regard, “clarity” or a single reasonable outcome may be, in some cases, the result of a deferential review of a statutory interpretation decision, but it cannot be the premise of the exercise.

[37] Lastly, I note that reviewing statutory interpretation decisions may also involve the consideration of binding authority by the decision-maker: *Céré v Canada (Attorney General)*, 2019 FC 221 at paragraphs 36–43; see also Paul Daly, “The Principle of Stare Decisis in Canadian Administrative Law” (2015) 49 RJTUM 757. As the issue does not arise in this case, however, I will say nothing further about it.

B. *Reasonableness of the IAD’s Decision*

[38] I now turn to the decision of the IAD that is the subject of Mr. Mason’s application for judicial review. I find that this decision is unreasonable. There is a “knock-out punch” – the structure of the provisions of the Act regarding inadmissibility is incompatible with the IAD’s interpretation. As I explain below, this is a strong argument, the force of which is not lessened by the Minister’s counterpunches.

(1) The Structure of the Inadmissibility Provisions of the Act

[39] Division 4 of Part I of the Act governs inadmissibility – reasons why a permanent resident or foreign national may be denied entry to, or required to leave Canada. There is a wide array of reasons that may render a person inadmissible, including misrepresentation and failure to comply with provisions of the Act (sections 40 and 41), health and financial reasons (sections

38 and 39), criminality (section 36), organized criminality (section 37), war crimes and crimes against humanity (section 35) and “security” (section 34). As this list shows, there is considerable variation in the seriousness of the conduct or situation that gives rise to inadmissibility.

[40] That variation is reflected in the categories of persons who may fall under the different heads of inadmissibility. Broadly speaking, in contrast to foreign nationals, permanent residents are only subject to the more serious forms of inadmissibility (sections 34, 35 and 37).

[41] The variation in the consequences of inadmissibility is also reflected in the forms of relief available to inadmissible persons. Broader relief is offered to those with more innocuous profiles. As explained in detail below, this includes a distinction between criminality and security-related issues. The first difference in remedies amongst the various grounds of inadmissibility relates to the availability of an appeal to the IAD. While section 63 of the Act provides that several categories of findings of inadmissibility may be appealed to the IAD, section 64(1) denies such a right of appeal where a person is “found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.” As a result, persons who come under those categories cannot invoke the IAD’s humanitarian and compassionate [H&C] jurisdiction, provided for in sections 67(1)(c) or 68(1). The obvious implication is that inadmissibility on security grounds is considered to be particularly serious. Only certain forms of criminality may be equated to security grounds for those purposes.

[42] The second difference with respect to remedies relates to the availability of a pre-removal risk assessment [PRRA]. Inadmissible persons may not be removed from Canada if their removal would expose them to certain kinds of risks mentioned in sections 96 and 97 of the Act, such as persecution in their country of citizenship. However, with respect to the grounds of inadmissibility mentioned in sections 34, 35 and 37, only a "restricted" PRRA is available: sections 112(3) and 113(d). In a nutshell, for those persons, only the threats to life and physical security mentioned in section 97 are considered.

[43] Inadmissibility for serious criminality gives rise to a modified form of PRRA. However, the range of risks that may be taken into account is broader than for inadmissibility on security grounds. For serious criminality, the factors giving rise to refugee status under section 96 may be considered in addition to those under section 97. The peculiarity in this scheme is that where a person is inadmissible for serious criminality, the potential risks of removal may be disregarded where the person would be a "danger to the public in Canada" (section 113(d)(i)). In contrast, where the inadmissibility stems from security reasons, war crimes or similar reasons, the risk of removal may be disregarded "because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada" (section 113(d)(ii)). The phrase "security of Canada" indicates that the concerns that give rise to inadmissibility under section 34 involve national security and are distinct from criminality or even serious criminality. This once again points away from the IAD's interpretation, and towards Mr. Mason's.

[44] The third difference relates to the manner in which discretionary relief may be granted. Under section 36(3), inadmissibility for criminality or serious criminality may be cured where the person concerned obtains a record suspension for offences committed in Canada. With respect to offences committed outside of Canada, inadmissibility is cured where the Minister is of the opinion that the person concerned is rehabilitated, or the person has been "deemed" by the statute to have been rehabilitated. I am told that the Minister's power in this regard has been delegated to immigration officers.

[45] Where, however, inadmissibility arises under section 34 or certain parts of sections 35 or 37, the only remedy is to apply to the Minister, who may grant relief if "it is not contrary to the national interest:" section 42.1. This is one of the few powers in the Act that the Minister must exercise in person and cannot delegate: section 6(3). So, once again, we clearly see the distinction drawn in remedies available to those who are inadmissible on security-related grounds, and those inadmissible on criminality grounds.

[46] Grounds for inadmissibility are also differentiated for the purposes of H&C applications made under section 25. An inadmissible person may file an H&C application for permanent residence despite inadmissibility, except where the inadmissibility results from sections 34, 35 or 37.

[47] Moving away from distinctions within the grounds of inadmissibility themselves, another important difference relevant to the interpretive exercise relates to the standard of proof needed to find someone inadmissible. The general rule, found in section 33, is "reasonable grounds to

believe that [the facts] have occurred, are occurring or may occur." In contrast, when an offence took place in Canada, section 36 requires a conviction, which, obviously, implies that the offence was proven beyond a reasonable doubt. Where the offence took place abroad, there is no requirement of a conviction ("committing" a qualifying act suffices), although with respect to a permanent resident, there must be proof on a balance of probabilities: section 36(3)(d). Other restrictions have been built into section 36. Permanent residents become inadmissible for "serious criminality" as it is defined in the Act, whereas foreign nationals may also become inadmissible for criminality that does not qualify as such. In addition, section 36(3)(e) provides that a person may not become inadmissible for an offence committed while they were a young offender.

[48] This review of the structure of the inadmissibility regime shows that it is the result of a number of policy choices as to the degree of seriousness of the different grounds for inadmissibility, the availability of an appeal or other forms of relief and the standard of proof. In this regard, criminality stands apart from other grounds of inadmissibility, in that criminality requires a conviction if the offence was committed in Canada and its regime is carefully calibrated according to several factors including the seriousness of the offence and whether it was committed by a permanent resident or a foreign national.

[49] The IAD's decision upsets the carefully crafted structure of the Act. The IAD's interpretation of section 34(1)(e) brings under that provision a vast range of criminal offences that "would or might endanger the lives or safety of persons in Canada." It does not require a conviction. It may relate to the likelihood of future events, instead of offences that have been

committed. There are few internal limits to the range of conduct covered, as the concept of "safety of persons" may be given a wide scope. An example is provided by a decision issued by the ID on June 25, 2019, (*Dleiow v. Canada (Public Safety and Emergency Preparedness)*, 2019 CanLII 129531) as yet unreported, and bearing file no B4-01116. The ID applied section 34(1)(e) to a case of domestic violence. The perpetrator pled guilty to one offence of breaking and entering and received a conditional sentence. That offence did not trigger section 36. The ID, however, relied on police reports which referred to subsequent acts of domestic violence for which no charges were laid, apparently because of the victim's lack of cooperation. On the strength of the IAD's decision in the present case, the ID concluded that such conduct fell within the purview of section 34(1)(e). Moreover, the ID rejected the idea that there is an implicit requirement of seriousness in the wording of section 34(1)(e).

[50] The IAD's interpretation thwarts Parliament's intention and policy choices in at least two ways. First, the IAD's interpretation brings under the most severe category of inadmissibility a vast range of conduct that includes acts that are below the thresholds set by section 36. Thus, offences that Parliament considered not to be serious enough to warrant deportation, especially in the case of permanent residents, could nevertheless lead to inadmissibility. Second, it discards the requirement of a conviction that is central to section 36 for offences committed in Canada. Even though inadmissibility is not in and of itself a penal consequence, Parliament made the policy choice to require a conviction and proof beyond a reasonable doubt for someone to become inadmissible for reasons of criminality. As illustrated by the ID's June 2019 domestic violence decision, the IAD's interpretation reverses Parliament's choice for a wide range of offences.

[51] Given the careful wording of section 36, it cannot have been Parliament's intention to allow this to happen. Therefore, the structural argument is a strong one. It renders the IAD's decision unreasonable, unless the Minister shows that equally strong arguments buttress that decision. I now turn to a review of the Minister's arguments.

(2) Absence of Strong Counter-Arguments

[52] There are two manners of countering an interpretive argument. It is possible to challenge its internal logic or to suggest reasons why the argument is not as persuasive as it might seem. One can also, while acknowledging the force of an argument, put forward other, unrelated arguments that point in the other direction.

[53] I first note that the IAD itself failed to address the structural argument, despite Mr. Mason's raising it. The Minister did not offer any internal criticism of the argument, in the sense that he has not shown that it is based on faulty logic. What the Minister submitted, though, is that the structural argument should not carry much weight because the various grounds of inadmissibility may overlap. There may indeed be overlap in some cases. For example, it stands to reason that organized criminality caught by section 37 may also constitute criminality under section 36. The cases cited by the Minister were cases where the overlap was between those two provisions: *Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326, [2007] 3 FCR 198; *Canada (Citizenship and Immigration) v Dhillon*, 2012 FC 726, [2014] 1 FCR 325. In those cases, Parliament made a conscious choice to provide a more severe regime for certain kinds of criminality. However, the degree of overlap that results from the IAD's decision is much greater.

As I mentioned above, it is difficult to understand how Parliament could have intended section 34(1)(e) to render section 36 meaningless.

[54] I am thus left to assess whether there are other arguments that would counterbalance the structural argument and that could render the IAD's decision reasonable. Those arguments may be found in the decision itself or they may be provided by the Minister.

[55] First, arguments about the ordinary meaning of the word "safety" are not dispositive. The IAD recognized as much, at paragraph 20 of its decision, when it said that "[t]hat approach is insufficient." The same should apply, in my view, to the IAD's use of a dictionary definition of the word "security," found in the heading of section 34. Moreover, any argument based on the difference in meaning between "safety" and "security" is blunted by the fact that they both translate to the same word, *"sécurité,"* in the French text of the Act.

[56] Second, the argument that requiring a nexus to national security in section 34(1)(e) would render section 34(1)(d) redundant has some merit. Section 34(1)(d) renders inadmissible on security grounds those who are "a danger to the security of Canada." Section 34(1)(e) does so for those "engaging in acts of violence that would or might endanger the lives or safety of persons in Canada."

[57] Indeed, certain cases have alluded to this potential redundancy and have suggested that the two subsections have different meanings: *SR v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1118 at paragraphs 52–54; *Suresh v Canada (Minister of Citizenship*

and Immigration), 2002 SCC 1 at paragraph 91, [2002] 1 SCR 3 (regarding the predecessor provisions). The evolution of the wording of section 34 and its predecessor provisions over the years, however, lessens the force of this argument. I am unable to discern any clear policy choice behind the juxtaposition of sections 34(1)(d) and 34(1)(e) that would displace the structural arguments that I discussed above. As a result, the two subsections may have overlapping meanings and the redundancy argument has limited weight.

[58] Third, the Minister also invokes an-oft quoted statement in *Medovarski v Canada (Citizenship and Immigration)*, 2005 SCC 51 at paragraph 10, [2005] 2 SCR 539 [*Medovarski*], to the effect that Parliament intended to prioritize security when adopting the Act. One should not lose sight of the fact, however, that the Supreme Court was dealing with the transitional provisions of the Act and the tightening of the rules regarding criminality.

[59] More generally, while it is useful to have regard to legislative purpose when interpreting a statute, one must remain conscious of the difficulties associated with this kind of reasoning. Statutes often strike a balance between various competing purposes. This is especially so with the Act – section 3 lists no less than nineteen different purposes that it seeks to achieve. Thus, the invocation of a statute's purpose does not override a careful examination of its internal logic. Indeed, in *Medovarski*, the main basis of the Court's decision is a detailed analysis of the wording of the relevant provisions and the manner in which they interacted with one another. Had the Court intended to say that an interpretation that results in greater security should always prevail for that reason alone, it would not have been necessary to engage in such a detailed analysis. Thus, the Minister's purposive argument is not conclusive.

[60] Lastly, the IAD mentioned, at paragraph 35, that the "most compelling argument" was that the interpretation it adopted was not "contrary to Canadian values, the fundamental values of the Charter and our history as a parliamentary democracy." While it would be contrary to such values to impose criminal sanctions without a trial, the IAD noted that immigration consequences are not criminal sanctions.

[61] I must say that I am somewhat puzzled by this argument. It is not based on a recognized method of statutory interpretation. The fact that a proposed interpretation is consistent with Canadian values does not provide any insight into Parliament's intent. If we push this logic to its conclusion, it would mean that a decision-maker may disregard legislation as long as it does so in a manner that does not offend Canadian values. This, obviously, would be incompatible with the rule of law.

[62] Likewise, the Minister argued at the hearing of this application that Mr. Mason's egregious conduct calls for consequences. I have no sympathy for Mr. Mason if he did what is alleged. However, one's feeling that certain conduct deserves punishment is no reason to overturn the policy choices made by Parliament. In this case, Parliament decided that one would not be inadmissible for criminality (alleged to have been committed in Canada) without a conviction, unless it is a case of national security, war crimes or organized criminality. Parliament did not intend the inadmissibility provisions to be a backstop for the failures of the criminal justice system. If there is a perceived gap in the legislation, it is for Parliament to address, not the IAD.

(3) Legislative History

[63] Both parties advanced arguments based on the historical context of the adoption of the predecessor to section 34(1)(e) and its evolution as the Act was amended or replaced. Mr. Mason says that the provision was adopted in haste in 1976 to keep out of the country persons who could commit terrorist acts during the Montreal Olympic Games. The Minister says, on the other hand, that by keeping section 34(1)(e) in the Act when it added more specific references to terrorism, Parliament revealed an intent to cast a wider net.

[64] On judicial review, both parties' arguments are inconclusive on this point. Different aspects of legislative history may reasonably support each interpretation. A court tasked with interpreting the provision might engage in a deeper analysis to buttress one conclusion. There may be, however, reasonable disagreement as to what can be gleaned from legislative history in this case. This would not be sufficient, in and of itself, to render the decision unreasonable.

III. Disposition and Certified Question

[65] As the decision is unreasonable, I will allow this application for judicial review.

[66] Usually, where a decision is unreasonable, the proper course is to send it back to the decision-maker for a new decision to be made. However, an exception may be made where the decision-maker could only reach one reasonable decision: *Canada (Attorney General) v Philps*, 2019 FCA 240 at paragraph 41. In this particular case, the parties agreed to bifurcate the proceedings, on the understanding that an answer favourable to Mr. Mason on the statutory

interpretation issue would effectively end the matter. I see no reason to depart from that understanding. Thus, I will simply quash the IAD's decision, which has the effect of restoring the ID's decision.

[67] Both parties ask me to certify a serious question of general importance, thus enabling the Federal Court of Appeal to review the matter.

[68] As the Federal Court of Appeal noted in *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paragraph 46, [2018] 3 FCR 674, in order to be certified, a question "must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance."

[69] The question that I am asked to certify is the central question in this matter and is dispositive. It may arise in a large number of cases where criminal charges against a permanent resident or foreign national are dismissed or stayed or where such a person is convicted for an offence that is not covered by section 36.

[70] The parties, however, each proposed their version of the question referring to the "correctness" of the IAD's interpretation. I thus rephrase the question as follows, incorporating reasonableness as the applicable standard of review:

> Is it reasonable to interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in a manner that does not require proof of conduct that has a nexus with "national security" or "the security of Canada?"

[71] Finally, Mr. Mason requested an extension of time, because he was a few days late in filing his application record. As this request was not opposed by the Minister, I grant Mr. Mason’s motion.

JUDGMENT in IMM-1645-19

THIS COURT'S JUDGMENT is that

1. The applicant's motion for extension of time is granted;

2. The application for judicial review is granted;

3. The decision of the Immigration Appeal Division in this matter is quashed;

4. The following serious question of general importance is certified:

> Is it reasonable to interpret section 34(1)(e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, in a manner that does not require proof of conduct that has a nexus with "national security" or "the security of Canada?"

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	EARL MASON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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APPEARANCES:

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