File No. 34258

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N :

MUHSEN AHEMED RAMADAN AGRAIRA

Appellant
(Respondent in the Court of Appeal)

- and -

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent
(Appellant in the Court of Appeal)

FACTUM OF THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

(Pursuant to r.42 of the *Rules of the Supreme Court of Canada*)

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PART I – STATEMENT OF FACTS

A. OVERVIEW

1. Muhsen Ahemed Ramadan Agraira challenges the decision of the Minister of Public Safety and Emergency Preparedness (the Minister) to refuse him exceptional relief pursuant to ss. 34(2) of the *Immigration and Refugee Protection Act (IRPA)*. Mr. Agraira was determined to be inadmissible to Canada because he was a member of the Libyan National Salvation Front (LNSF),[1] an organization that has committed terrorist acts. The Minister personally denied Mr. Agraira that relief, as the Minister was not satisfied that Mr. Agraira's presence in Canada would not be detrimental to the national interest.

2. A contextual and purposive interpretation of the term "national interest" in ss. 34(2) of the *IRPA* supports the Federal Court of Appeal's conclusion that it must be understood within the context of national security and public safety. These are, and always have been, the dominant considerations in determining whether to grant ministerial relief under this section. The ministerial relief provision was not intended to be an alternative avenue for the consideration of humanitarian and compassionate circumstances for those who are inadmissible on national security grounds. The assessment of such considerations takes place in s. 25 of the *IRPA*.

3. The procedures outlined in the immigration manuals for the processing of applications for Ministerial relief were followed in this case. There was no breach of any legitimate expectation. Nor does the doctrine confer a substantive right to interpret the provision a certain way. The Minister considered all submissions but concluded that the Appellant failed to show that his admission would not be detrimental to the national interest. The Minister's exercise of discretion is entitled to significant deference given his specific expertise in national security and public safety. His decision was reasonable and the Federal Court of Appeal did not err in upholding it.

[1] Also referred to as the "National Front for the Salvation of Libya" [NFSL].

B. IMMIGRATION HISTORY

4. Mr. Agraira is a Libyan citizen who in 1996 sought refugee protection in Germany on the basis of his membership in the LNSF. His claim was rejected. On March 7, 1997, Mr. Agraira entered Canada using a fraudulent Italian passport. He applied for Convention refugee status on March 13, 1997, on the basis of his involvement with the LNSF.[2]

5. The LNSF was formed in 1981 as a secular, dissident, anti-Gaddafi movement, with a paramilitary structure. It had organized various activities aimed at overthrowing the former Gaddafi regime, targeting and attacking Libyan officials and assets. In 1983, the LNSF led a coup attempt against the Gaddafi regime, in which several of its members were executed. In January 1984, a member of the LNSF shot and killed the Libyan ambassador in Rome. In May 1984, twenty of its members armed with rocket propelled grenades and automatic weapons attacked Gaddafi's headquarters in Tripoli. All twenty members were killed and their bodies were publicly displayed. In 1985, the organization took responsibility for assassinating another Libyan diplomat in Rome. In July 1995, a clash with Libyan security forces resulted in several LNSF members being killed and injured.[3]

6. Since his arrival in Canada in 1997, Mr. Agraira has changed his story about the nature of his involvement with the LNSF five times. He gave his first version at the time of his refugee determination,[4] the second during an interview with a Canadian Security Intelligence Service (CSIS) officer, his third version during an interview with an immigration officer,[5] and his fourth version was contained in his application for Ministerial relief.[6] The fifth version was in his affidavit in support of his application for judicial review of the Ministerial relief decision.[7]

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[2] Personal Information Form [PIF] **[Appellant's Record [AR] vol 3, tab 16, pp 388, 398-400]** (A form submitted to the refugee tribunal which provides background information about the claimant and the claim).
[3] Sean D. Hill & Richard H. Ward, "Extremist Groups: An International Compilation of Terrorist Organizations, Violent Political Groups, and Issue-oriented Militant Movements", Office of International Criminal Justice, University of Illinois, Chicago, (1996) at 688-690 **[AR vol 3, tab 16, pp 384-387]** (submitted to the Minister together with the Briefing Note and Recommendation) **[AR vol 3 tab 16, pp 376-381]**
[4] Reasons for Decision of the Immigration and Refugee Board (DS Chen, P Prabhakara), October 24, 1998 [IRB Decision], **[AR vol 3, tab 16, pp 410-415]**; PIF **[AR vol 3, tab 16, pp 398-400]**.
[5] Interview report and notes of J Knight, Officer, Citizenship and Immigration Canada [CIC] Oshawa, July 22, 2002 [CIC interview report and notes] **[AR vol 3, tab 16, pp 401-403, 406-409]**.
[6] Request to Seek Ministerial Relief submissions, July 16, 2002 [Appellant's Ministerial Relief submissions] **[AR vol 3, tab 16, pp 289-295]**.
[7] Appellant's affidavit, June 15, 2009 **[AR Vol 3, tab 15, pp 227-230]**.

7. For the purpose of his refugee claim, Mr. Agraira said that he had joined the LNSF in 1994 and that he had belonged to a cell with eleven members, which usually met twice a month. They were taught how to approach people, engage in political discourse and raise funds for the organization. He stated that he had attended meetings, sought potential members, solicited donations, delivered leaflets containing information critical of the Libyan regime, watched and reported on the movement of supporters of the Libyan regime, and was considered by the LNSF to be in training.[8]

8. In 1998, the Immigration and Refugee Board (IRB) rejected Mr. Agraira's refugee claim due to his lack of credibility.[9] It found serious implausibilities and a number of inconsistencies in his evidence. Specifically:

(a) His explanation about why he had not produced his Libyan passport as proof of his identity to the German authorities was implausible;

(b) Given the repressive nature of the Gaddafi regime and the severe punishments for dissidents and their families, it was implausible that Mr. Agraira's father would have kept his government job and continued to reside in Libya without any major problems;

(c) If Mr. Agraira had truly been wanted by authorities he would not have been able to obtain an exit permit either personally or through his cell member.

(d) Mr. Agraira could not explain the omission of information about what he was doing between 1986 and 1990.

(e) Mr. Agraira could not explain the contradiction between his testimony and the documentary evidence regarding: the date on which he had obtained his German visa; whether there was a requirement for an exit permit from Libya; how he had found out that his cell members had been arrested.[10]

9. In 1999, Mr. Agraira's Canadian wife, who he had married in 1997, sponsored[11] his application for permanent residence from within Canada.[12] His application was approved on the basis of this relationship, subject to a determination of his admissibility.[13] Mr. Agraira relied on his marriage and living with his wife and step-children as part of the humanitarian considerations

[8] PIF **[AR vol 3, tab 16, pp 398-400]**.
[9] Application for leave to judicially review this decision was dismissed by Cullen J in *Agraira v MCI* (20 April 1999), Ottawa IMM-5825-98, (FC) **[Respondent's Book of Authorities [RBOA tab 25]**.
[10] IRB Decision, **[AR vol 3, tab 16, pp 410-415]** (The IRB also found Mr. Agraira's delay of nearly one week before seeking refugee protection in Canada inconsistent with a well-founded fear of persecution).
[11] Sponsorship agreement, **[AR vol 3, tab 16, pp 262-266]**.
[12] Application for Permanent Resident Status, **[AR vol 3, tab 16, pp 234-243]** (The couple were married in a religious ceremony in 1997 and in a civil ceremony in 1999).
[13] Letter from J Knight, CIC, May 1, 2002, **[AR vol 3, tab 16, p 286]**.

in his relief application to the Minister in 2002. Although the couple divorced in 2005,[14] Mr. Agraira did not advise the Minister of this change of status while his application for ministerial relief was being processed.

10. In May 2002, during an interview with an immigration officer, Mr. Agraira admitted having been a member of the LNSF. Mr. Agraira claimed that he "made up stories regarding the extent of his involvement" to bolster his refugee claim. The officer identified several inconsistencies in his story. Although Mr. Agraira claimed not to know much about the LNSF, he was able to name its founder and the current leader. Having stated that he attended meetings of the LNSF in Libya, he then asserted that he did not attend meetings but only discussed the group with his friends. Finally, he said that he had had no contact with the group since leaving Libya, but then admitted that he had received newsletters from U.S. chapters of the organization since arriving in Canada.[15]

11. When the officer indicated to Mr. Agraira that the answers he had given her appeared to contradict answers he had given to the CSIS agent, he accused the CSIS agent of pressuring him into admitting membership in the LNSF.[16]

12. At the conclusion of the interview, the officer was of the view that Mr. Agraira was inadmissible to Canada. Mr. Agraira advised the officer that he would like to seek ministerial relief and would obtain counsel to do so.[17]

13. On May 22, 2002, the Department of Citizenship and Immigration (CIC) sent Mr. Agraira a letter advising him about the ministerial relief process. The letter stated that the relief determination will require an assessment of the detriment that he poses to the national interest of Canada as well as any humanitarian and compassionate circumstances pertinent to his case. It advised Mr. Agraira to make such written representations as he deemed necessary and submit any relevant documentary evidence.[18]

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[14] Appellant's affidavit, June 15, 2009, para 12 **[AR Vol 3, tab 15, p 229]**.
[15] CIC interview report and notes **[AR vol 3, tab 16, pp 401- 403, 406-409]**.
[16] CIC interview report and notes **[AR vol 3, tab 16, p 402]**.
[17] CIC interview report and notes **[AR vol 3, tab 16, p 402]**.
[18] Letter from S Fournier, CIC, May 22, 2002, **[AR vol 3, tab 16, p 287]**.

14. In July 2002, Mr. Agraira applied for Ministerial relief pursuant to ss. 34(2) of the *IRPA.* His submissions described the basis of his refugee claim, his involvement with the LNSF, the nature of the LNSF as an organization and its status at the time Mr. Agraira had joined. In these submissions he presented the fourth version of his involvement in the LNSF, claiming to have been an active member, who had carried out basic functions. He also maintained that he has been a member of the LNSF since his arrival in Canada.[19]

15. Mr. Agraira also noted the humanitarian factors in his case, that he: is married to a Canadian citizen, lives with his wife and her two children, has his own transport business, does not require social assistance and does not have a criminal record. He also submitted letters of support.[20]

16. When preparing her report on the interview, the immigration officer noted further inconsistencies between Mr. Agraira's submissions in support of his request for ministerial relief and his previous statements. For example, in his request for ministerial relief,[21] as in his Personal Information Form (PIF),[22] Mr. Agraira claimed that he had attended clandestine meetings where he was taught how to approach potential members and how to solicit donations. Yet, in the interview with her, he had said that he did not know how the LNSF funded itself or how it recruited members.[23]

17. The officer noted that Mr. Agraira had declared to the IRB that he was a member; he had declared to the CSIS agent that he was a member and he had through his own legal counsel stated that he was and still considers himself a member of this organization.[24] On July 22, 2002, the officer prepared a report, indicating that in her opinion, Mr. Agraira was inadmissible to Canada on the ground that he was a member of an organization that had engaged, engages, or will engage in terrorism pursuant to ss. 34(1)(*f*) of the *IRPA* which states:

> 34.(1) A permanent resident or a foreign national is inadmissible on security grounds for …

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[19] Appellant's Ministerial Relief submissions **[AR vol 3, tab 16, pp 289-295]**.
[20] Appellant's Ministerial Relief submissions **[AR vol 3, tab 16, pp 294-295, 349-372]**.
[21] Appellant's Ministerial Relief submissions **[AR vol 3, tab 16, pp 289-290]**.
[22] PIF **[AR vol 3, tab 16, pp 398-400]**.
[23] CIC interview report and notes **[AR vol 3, tab 16, pp 401, 407]**.
[24] CIC interview report and notes **[AR vol 3, tab 16, pp 402-403]**; Appellant's Ministerial Relief submissions **[AR vol 3, tab 16, p 290]**.

> (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) or (c).
>
> Exception
>
> (2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.[25]

18. In August 2005, a Canada Border Services Agency (CBSA) official prepared a briefing note for the Minister together with a recommendation that relief be granted to Mr. Agraira pursuant to ss. 34(2) of the *IRPA*. The recommendation was based on the opinion that there was not enough evidence to conclude that Mr. Agraira's continued presence in Canada would be detrimental to the national interest. The briefing note outlined Mr. Agraira's immigration history, the details of his involvement with the LNSF, his ongoing contradictions about his activities with the LNSF, information about the LNSF as a terrorist organization, and Mr. Agraira's personal circumstances including his family, employment, training and community support.[26] The briefing note was shared with Mr. Agraira and he was offered an opportunity to make further comments, but he declined to do so.[27]

19. On January 27, 2009, the Minister denied Ministerial relief to Mr. Agraira. His decision stated:

> After having reviewed and considered the material and evidence submitted in its entirety as well as specifically considering these issues:
>
> - The applicant offered contradictory and inconsistent accounts of his involvement with the Libyan National Salvation Front (LNSF).
> - There is clear evidence that the LNSF is a group that has engaged in terrorism and has used terrorist violence in attempts to overthrow a government.
> - There is evidence that LNSF has been aligned at various times with Libyan Islamic opposition groups that have links to Al-Qaeda.
> - It is difficult to believe that the applicant, who in interviews with officials indicated at one point that he belonged to a "cell" of the LNSF which operated

[25] Report pursuant to s 44(1) *Immigration and Refugee Protection Act*, **[AR vol 3, tab 16, pp 404-405]** (application for leave to judicially review this decision was dismissed by the Federal Court (Kelen J.), September 9, 2009 IMM-1727-09) **[RBOA tab 24]**.
[26] Alain Jolicoeur, President, Canada Border Services Agency, Briefing Note and Recommendation for the Minister [Briefing Note] **[AR vol 1, tab 2, pp 5-10].**
[27] Letter from D Tammola, CIC, August 22, 2005 **[AR vol 3, tab 16, p 375]**; Letter from David P Yerzy, Appellant's Counsel, August 30, 2005, **[AR vol 3, tab 16, p 374]**.

> to recruit and raise funds for the LNSF, was unaware of the LNSF's previous activity.
>
> It is not in the national interest to admit individuals who have had sustained contact with known terrorist and/or terrorist-connected organizations. Ministerial relief is denied.[28]

C. THE LEGISLATIVE SCHEME

(a) The Immigration Act

20. Mr. Agraira was initially alleged to be inadmissible in May 2002 pursuant to the former *Immigration Act*[29] as he was a member of the LNSF, an organization for which there are reasonable grounds to believe has engaged in terrorism.[30] That statute also provided for Ministerial relief if the applicant could satisfy the Minister that his "admission would not be detrimental to the national interest."[31]

(b) The Immigration and Refugee Protection Act

21. On June 28, 2002, the *IRPA*[32] came into effect, entirely replacing the *Immigration Act*.[33] On July 22, 2002, an immigration officer reported Mr. Agraira to be inadmissible on security grounds pursuant to ss. 34(1)(f) of the *IRPA*. Ministerial relief is available pursuant to ss. 34(2) of the *IRPA*. The relevant provisions remained substantially the same.

22. Section 34 of the *IRPA* provides as follows:

Division 4 - Inadmissibility	**Section 4 - Interdictions de territoire**
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 or an act of subversion against a democratic government, institution or process as they are understood in Canada;	*a*) être l'auteur d'actes d'espionnage ou se livrer la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(*b*) engaging in or instigating the subversion by	*b*) être l'instigateur ou l'auteur d'actes visant au

[28] Minister's decision refusing relief, January 27, 2009, **[AR vol 1, tab 2, p 11]**.
[29] *Immigration Act*, RSC 1985, c I-2, as amended by *An Act to amend the Immigration Act and other Acts as a consequence thereof*, SC 1992, c 49 **[RBOA tab 2]**.
[30] Report pursuant to section 44(1) of the *Immigration and Refugee Protection Act* **[AR vol 3, tab 16, pp 404-405]**.
[31] *Supra* note 29 s 19(1)(f)(iii)(B) **[RBOA tab 2]**.
[32] *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) **[RBOA tab 13]**.
[33] *Supra* note 29 **[RBOA tab 2]**.

force of any government; (*c*) engaging in terrorism; (*d*) being a danger to the security of Canada; (*e*) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or **(*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*) or (*c*). Exception **(2)** The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	renversement d'un gouvernement par la force; ***c*)** se livrer au terrorisme; *d*) constituer un danger pour la sécurité du Canada; *e*) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada; ***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*) ou *c*). Exception **(2)** Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

23. A positive decision by the Minister to grant this exceptional relief under ss. 34(2) of the *IRPA* would have resulted in the Appellant no longer being inadmissible to Canada under s. 34 for all purposes including entering or remaining in Canada either permanently or temporarily.

24. Similar ministerial relief exemptions are provided for inadmissibility on the basis of human or international rights violations and for organized criminality.[34] When the *IRPA* first came into force in 2002 the Minister of Citizenship and Immigration was responsible for making the determinations on ministerial relief requests.[35] After the *Canada Border Services Agency Act* (*CBSA Act)*[36] was enacted in 2005, this authority was transferred to the Solicitor General, who was later styled the Minister of Public Safety and Emergency Preparedness (Minister of Public Safety) with the creation of the Department of Public Safety and Emergency Preparedness (DPSEP).

25. In 2008, s. 4 of the *IRPA* was amended[37] and formally identified the Minister of Public Safety as being responsible for ministerial relief determinations. The Minister of Public Safety assumed authority for the administration of the *IRPA* as it relates to: examinations at ports of

[34] *IRPA, supra* note 32 ss 35(2) and 37(2) **[RBOA tab 13]**.
[35] *IRPA, supra* note 32 s 4 **[RBOA tab 13]**.
[36] *Canada Border Services Agency Act*, SC 2005, c 38, ss 5(1), 5(2), 118 [*CBSA Act*] **[RBOA tab 4]**.
[37] *An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act*, SC 2008, c 3, s 1, amending SC 2001, c 27 [**RBOA tab 1**].

entry, the enforcement of the *IRPA* including arrest, detention and removal, the establishment of policies respecting enforcement and inadmissibility on grounds of security, organized criminality or violating human or international rights, and ministerial relief determinations under ss. 34(2), 35(2), and 37(2) of the *IRPA*.[38]

26. The Minister is specifically prohibited from delegating a ministerial relief determination.[39] "It is the Minister personally, who decides certain matters that may have serious implications for national security or the national interest."[40]

(c) The CBSA and Department of Public Safety and Emergency Preparedness

27. The CBSA was created on December 12, 2003,[41] and was composed of various sectors of Citizenship and Immigration Canada, the Canada Customs and Revenue Agency, and the Canadian Food Inspection Agency.[42] The *CBSA Act*[43] enacted in November 2005 formally established the CBSA and, among other things, amended the *IRPA* to transfer responsibility for ministerial relief decisions to the Minister responsible for the CBSA, who at that time was the Solicitor General of Canada.[44] The CBSA's mandate was to provide integrated border services to support national security and public safety priorities and to facilitate the free flow of persons and goods, including animals and plants.[45]

28. The CBSA became part of the portfolio of the new DPSEP which integrated into one new department the core activities of the previous Department of the Solicitor General, the Office of Critical Infrastructure Protection and Emergency Preparedness and the National Crime

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[38] *IRPA, supra* note 37 ss 4(2), as amended by *An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act*, SC 2008, c 3, s 1**[RBOA tab 1]**.
[39] *IRPA, supra* note 32 ss 6(3) **[RBOA tab 13]**.
[40] Canada, Citizenship and Immigration Canada, *Clause by Clause Analysis, Immigration and Refugee Protection Act (Bill C-11)*, September 2001, at 5 [**RBOA tab 57**].
[41] *Public Service Rearrangement and Transfer of Duties Act*, RSC 1985, c P-34 [**RBOA tab 14]**.
[42] See *Order Transferring Certain Portions from the Department of Citizenship and Immigration to the Canada Border Services Agency*, SI/2003-215, (2003) C Gaz II, 3231 **[RBOA tab 17]**. See also *Order Transferring Certain Portions of the Canada Revenue Agency to the Canada Border Services Agency*, SI/2003-216, (2003) C Gaz II, 3232 **[RBOA tab 18]**. See also *Order Transferring Certain Portions of the Operations Branch of the Canadian Food Inspection Agency to the Canada Border Services Agency*, SI/2003-217, (2003) C Gaz II, 3233 **[RBOA tab 19]**.
[43] *CBSA Act*, *supra* note 36, at ss 5(1) **[RBOA tab 4]**.
[44] See *CBSA Act*, *supra* note 36, at ss 5(1), 5(2), 118 **[RBOA tab 4];** *IRPA, supra* note 32, at s 4 **[RBOA tab 13]**.
[45] *CBSA Act*, *supra* note 36 at ss 5(1) **[RBOA tab 4]**.

Prevention Centre.[46] The aim was to bring under one Minister many of the agencies that had functions pertaining to national security and public safety at the federal level, including the RCMP and CSIS. The Minister of Public Safety became responsible for exercising leadership, at the national level, for many of the matters relating to public safety and emergency preparedness.[47] The *CBSA* was mandated to provide services to departments and agencies for which the Minister of Public Safety had responsibility.[48]

29. Beginning in late 2003, all immigration enforcement functions were moved from CIC to the CBSA, which came under the umbrella of the DPSEP. For this reason, the briefing note on the Appellant's ministerial relief request was prepared by CBSA and not CIC officials, and was ultimately considered by the Minister of Public Safety.

30. Throughout the ongoing transfer of functions from CIC to the CBSA, the Minister of Citizenship and Immigration retained responsibility over requests for exemptions based on humanitarian and compassionate grounds pursuant to s. 25 of the *IRPA*.[49] In these applications officials consider a wide variety of factors, such as the best interests of any child directly affected by the decision, establishment, and the presence of family in Canada or in the home country.[50] Positive factors are weighed against the grounds of inadmissibility or reasons for non-compliance with the Act. A favourable decision could result in the granting of permanent resident status.

31. Section 24 of the *IRPA* is also relevant. Section 24 permits an officer to issue a temporary resident permit to a foreign national who is inadmissible or does not meet the requirements of the Act, if the officer is "of the opinion that it is justified in the circumstances" taking into account any Ministerial instructions that may apply. Once issued, a temporary

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[46] *Department of Public Safety and Emergency Preparedness Act*, SC 2005, c 10, s 8 [*DPSEP Act*] **[RBOA tab 5]**. See also *Order Transferring from the Department of National Defence to the Department of the Solicitor General the Control and Supervision of the Office of Critical Infrastructure Protection and Emergency Preparedness*, SI/2003-229, (2003) C Gaz II, 3245 **[RBOA tab 20]**; *Order Transferring from the Department of Justice to the Department of the Solicitor General the Control and Supervision of the National Crime Prevention Centre*, SI/2003-230, (2003) C Gaz II, 3246 **[RBOA tab 21]**.
[47] *DPSEP Act*, *supra* note 46 at s 4(2) **[RBOA tab 5]**.
[48] *CBSA Act*, *supra* note 36 at s 5(2) **[RBOA tab 4]**.
[49] *IRPA*, *supra* note 32 s 25(1) **[RBOA tab 13]**.
[50] Canada, Citizenship and Immigration Canada, *Clause by Clause Analysis, Immigration and Refugee Protection Act (Bill C-11)*, September 2001 at 22 **[RBOA tab 57]**; similar provision previously enacted by *An Act to amend the Immigration Act and other Acts as a consequence thereof, 1992*, S.C. 1992, c. 49, ss 6(5) **[RBOA tab 2]**.

resident permit, the foreign national may remain in Canada as a temporary resident. The permit is subject to cancellation.[51]

32. Also relevant is the Pre-Removal Risk Assessment (PRRA) process provided for in the *IRPA*. Before Mr. Agraira could be removed from Canada, the PRRA would examine whether he would be at risk of torture or of a risk to his life or of cruel and unusual treatment or punishment if returned to Libya. If the process were to conclude in a decision that he should be allowed to remain in Canada, this would have the effect of staying his removal.[52]

D. JUDGMENTS BELOW

(a) Federal Court

33. On December 23, 2009, Mosley J. of the Federal Court allowed Mr. Agraira's application for judicial review. Mosley J. indicated that discretionary ministerial decisions should be accorded significant deference, as the power conferred on the Minister cannot be delegated and the Minister has acquired expertise in matters of national security and the national interest in the course of his functions. The political nature of this discretionary decision also favoured deference.[53]

34. He decided that on a standard of review of reasonableness, the Minister's decision was not reasonable because the reasons did not address or balance factors referred to in the guidelines for ministerial relief, IP10,[54] which Mosley J. considered relevant. He decided that the Minister was bound to specifically address the following:

- whether the applicant posed a threat to Canada's security;
- whether the applicant posed a danger to the public;
- the period of time the applicant had been in Canada;
- whether it is consistent with Canada's humanitarian reputation of allowing permanent residents to settle in Canada;

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[51] *IRPA, supra* note 32 at s 24 **[RBOA tab 13]**; Canada, Minister of Manpower and Immigration, *A report of the Canadian immigration and population study: The Immigration Program*, (Ottawa: Information Canada, 1974) at 161 [*Green Paper* Vol 2] **[RBOA tab 60]**.

[52] *IRPA supra* note 32, ss 97, 112 and 115 **[RBOA tab 13]**.

[53] *Federal Court Decision, Agraira v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1302 at paras 13-17, **[AR vol 1, tab 3, pp 16-18]**.

[54] Citizenship and Immigration Canada, *IP10: Refusal of National Security Cases/Processing of National Interest Requests*, (Manual) (Ottawa: Citizenship and Immigration Canada, 2005), [*IP10*] Appendix D **[AR vol 3**, **tab 18**, **pp 437-439]** (CIC publishes "Operation Manuals" to be used by employees of CIC and the CBSA for guidance in the exercise of their functions and in applying the legislation. Chapter 10 of the Inland Processing Manual is referred to as the IP10. See online: Citizenship and Immigration Canada <http://www.cic.gc.ca>.

- the impact on both the applicant and all other members of society of the denial of permanent residence;
- the adherence to all of Canada's international obligations;
- and that the applicant has been a productive member of society, owning a business earning over $100,000 per year.[55]

35. Mosley J. certified a two-part question of general importance for appeal to the Federal Court of Appeal:

> When determining a ss. 34(2) application, must the Minister of Public Safety consider any specific factors in assessing whether a foreign national's presence in Canada would be contrary to the national interest? Specifically, must the Minister consider the five factors listed in Appendix D of IP10? [56]

(b) Federal Court of Appeal

36. The Federal Court of Appeal unanimously allowed the Minister's appeal. The Court identified two standards of review: correctness with respect to the statutory interpretation of what constitutes "national interest" for the purposes of ss. 34(2) of the *IRPA,* and reasonableness with respect to the Minister's determination of whether Mr. Agraira's presence in Canada is detrimental to the national interest.[57]

37. The Court noted that the onus was on Mr. Agraira to satisfy the Minister that his presence in Canada is not detrimental to the national interest. The Court concluded that the term "national interest" must be understood within the context of national security and public safety. It based this conclusion on the legislative evolution of ss. 6 and 34(2) of the *IRPA* as well as on the separation of the determination of the national interest in ss. 34(2) from the assessment of humanitarian and compassionate considerations at s. 25 of the *IRPA.* [58]

38. The Court held that Parliament's transfer of responsibility for deciding ministerial relief applications from the Minister of Citizenship and Immigration to the Minister of Public Safety was a significant factor in determining the meaning and context of the term "national interest." Parliament had left the discretion to waive the provisions of the *IRPA* on the basis of humanitarian and compassionate considerations with the Minister of Citizenship and

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[55] *Federal Court Decision, supra* note 53 at paras 25-26 **[AR vol 1, tab 3]**.
[56] *Federal Court of Appeal Decision, MPSEP v Agraira,* 2011 FCA 103 at para 29 (question certified pursuant to ss 74(1) of *IRPA*) **[AR vol 1, tab 5]**.
[57] *Federal Court of Appeal Decision, supra* note 56 at paras 32-33 **[AR vol 1, tab 5]**.
[58] *Federal Court of Appeal Decision, supra* note 56 at paras 40-50 **[AR vol 1, tab 5]**.

Immigration. The proper forum in which to advance an application based on humanitarian and compassionate factors was under s. 25 of the *IRPA*, not in an application for ministerial relief under ss. 34(2) of the *IRPA*, which therefore had to be made on different considerations.[59]

39. The Court also held that the test of whether a foreign national's presence in Canada is detrimental to the national interest is not a net-detriment test. The Minister of Public Safety is not required to balance the possible contribution to the national interest against the possible detriment to the national interest and to refuse only those applications that result in a net detriment to the national interest. There is nothing in the statutory language which requires such a balancing and the very specific mandate of the Minister of Public Safety militates against such a requirement.[60]

40. The Court concluded that the Minister of Public Safety's decision was reasonable. The Minister found that Mr. Agraira was not credible, a conclusion the Court found was amply supported by the various conflicting versions of the story Mr. Agraira offered to immigration authorities and the courts. The lack of credibility was fatal to his application as the Minister could have no faith in any of his representations. In the result, the Minister cannot be said to have acted unreasonably in concluding that Mr. Agraira's presence in Canada is detrimental to the national interest.[61]

41. The Court of Appeal answered the certified questions as follows:

> Q1: When determining a ss. 34(2) application, must the Minister of public Safety consider any specific factors in assessing whether a foreign national's presence in Canada would be contrary to the national interest? A: National security and public safety.
>
> Q2. Specifically, must the Minister consider the five factors listed in Appendix D of IP10? A: No[62]

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[59] *Federal Court of Appeal Decision, supra* note 56 at para 45 **[AR vol 1, tab 5]**.
[60] *Federal Court of Appeal Decision, supra* note 56 at para 51**[AR vol 1, tab 5]**.
[61] *Federal Court of Appeal Decision, supra* note 56 at para 67-71**[AR vol 1, tab 5]**.
[62] *Federal Court of Appeal Decision, supra* note 56 at para 74**[AR vol 1, tab 5]**.

PART II – POINTS IN ISSUE

42. The issues raised in this appeal are:

a) Whether the Court of Appeal erred in its determination that national interest in ss. 34(2) of the *IRPA* must be interpreted in the context of national security and public safety;

b) Whether any legitimate expectations which were created by the guidelines were met;

c) Whether the Court of Appeal made any palpable and overriding errors in its determination that the Minister's decision was reasonable;

PART III – ARGUMENT

A. STANDARDS OF REVIEW

43. The Minister's discretionary, non-delegable decision whether to grant relief based on Canada's national interest is subject to only one standard of review: reasonableness.

44. Mosley J. correctly determined that based on well settled past jurisprudence the reasonableness standard applies to the decision as a whole. The Minister's decision should be entitled to significant deference as it is a discretionary one, and it concerns matters in which he has expertise. The Minister must interpret and apply the phrase "national interest" which is found in his enabling statute, the *IRPA*, with which he has particular familiarity. This exercise, whether characterised as an exercise of discretion, an exercise of statutory interpretation of his home statute or an application of the law to the facts, attracts a standard of reasonableness.[63]

45. Although Mosley J. identified reasonableness as the standard of review, he actually applied a correctness standard. In requiring the Minister to address each of the guideline factors in his reasons, including matters such as Mr. Agraira's income, length of stay in Canada and lack

[63] *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 58, 60-61, [2008] 1 SCR 190 [*Dunsmuir*] **[RBOA tab 37]**; *Smith v Alliance Pipeline Ltd.*, 2011 SCC 7 at para 26, [2011] 1 SCR 160 [*Smith*] **[RBOA tab 53]**; *Canada (Canadian Human Rights Commission) v Canada (AG)*, 2011 SCC 53 at paras 18 & 24, [2011] 3 SCR 471[*Mowat*] **[RBOA tab 31]**; *Nor-Man Regional Health Authority Inc. v Manitoba Association of Health Care Professionals*, 2011 SCC 59 at para 38, [2011] 3 SCR 616 [*Nor-Man Regional Health*] **[RBOA tab 47]**; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at para 39, [2011] 3 SCR 654 [*Alberta Teachers*] **[RBOA tab 27]**.

of criminal record he did not apply any deference. Applying the wrong standard of review, despite having identified the correct one, amounts to an error on a question of law.[64]

46. Although the Court of Appeal ultimately arrived at the right conclusion on the outcome, it erred in law in its finding that two different standards of review were applicable in the judicial review of the Minister's decision: correctness on the interpretation to be given to the "national interest" in ss. 34(2) of the *IRPA*, and reasonableness for the Minister's determination that Mr. Agraira had not satisfied him that his admission to Canada was in the national interest.[65]

47. The Court of Appeal erred in selecting and applying correctness to the interpretation of "national interest". As the selection of a standard of review is a question of law, the Court of Appeal's decision on this point is subject to an appellate standard of review of correctness.[66] This Court should determine that reasonableness is the only applicable standard of review, assess the reasonableness of the Minister's decision, and conclude that it is a reasonable decision. Indeed here, the Court of Appeal found the decision to be correct with respect to the statutory interpretation issues. *A fortiori*, it may be upheld on the more deferential reasonableness standard.

48. Applying the reasonableness standard, the Court of Appeal upheld the Minister's decision that Mr. Agraira's presence in Canada would not be in the national interest. This conclusion does not contain any palpable and overriding errors[67] and should not be reversed.

B. **LEGISLATIVE EVOLUTION AND HISTORY**

49. The legislative history of ss. 34(1) and (2) of the *IRPA*, whose predecessor provisions date back to the early 1900s, supports the Federal Court of Appeal's conclusion that the term "national interest" must be understood within the context of national security and public safety. These are, and always have been, the dominant considerations in determining whether to grant ministerial relief. The Court of Appeal did not have this legislative evolution before it, as the impact of the Ministerial transfer had not been raised by either party in the Courts below.

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[64] *Housen v Nikolaisen*, 2002 SCC 33 at para 27, [2002] 2 SCR 235 [*Housen*] **[RBOA tab 38]**; *Dr Q v College of Physicians and Surgeons of British Columbia*, 2003 SCC 19 at para 43, [2003] 1 SCR 226 [*Dr Q*] **[RBOA tab 36]**.
[65] *Federal Court of Appeal Decision, supra* note 56 at para 32-33**[AR vol 1, tab 5]**.
[66] *Housen, supra* note 64 **[RBOA tab 38]**; *Dr Q, supra* note 64 **[RBOA tab 36]**.
[67] *Housen, supra* note 64 **[RBOA tab 38]**; *Dr Q, supra* note 64 **[RBOA tab 36]**.

However, this history provides evidence of Parliamentary intent which this Court may now consider in its interpretation of national interest.[68]

50. The transfer of responsibility for ministerial relief determinations to the Minister of Public Safety must be viewed within the broader national security context. These changes occurred during a period when Canada's security concerns became critical priorities. The creation of the DPSEP and CBSA, and the consequential amendments to the *IRPA* were all part of a new national security policy instituted by the Canadian government beginning in the early 2000s. These amendments served to reaffirm and heighten the emphasis which had traditionally been placed on public safety and national security in ministerial relief applications. They were Parliament's response to the terrorist attacks of September 11, 2001, and to the increasingly complex and dangerous security environment.

51. In considering whether to grant an exemption under ss. 34(2) of the *IRPA*, it is the national security and public safety aspect of the national interest that is engaged, subject further to any other consideration that the Minister, in his discretion, deems appropriate.[69] This discretion does not include the consideration of humanitarian and compassionate factors.

(a) The Early Legislation (1910-1952)

52. Historically, certain classes of people were seen to be "undesirable" or "unsuitable" immigrants because they "endangered the interests of Canadians or of Canada itself."[70] The "prohibited classes" in early immigration legislation were classes of persons who were excluded from Canada because they were considered a danger to public health or safety.[71] The first prohibited classes specifically dealing with security grounds were enacted in the 1919 legislation

[68] *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 31[*Rizzo*] **[RBOA tab 52];** *Mowat, supra* note 63 at para 33, **[RBOA tab 31]**.
[69] See for example, House of Commons, Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness, *Bill C-6*, 38th Parl, 1st Sess, (27, October 2004) (Minister of Public Safety, Anne McLellan) at p 2 [**RBOA tab 81**].
[70] Canada, Minister of Manpower and Immigration, *A report of the Canadian immigration and population study: The Immigration Program*, (Ottawa: Information Canada, 1974) at 143, 147-8 [*Green Paper* Vol 2] **[RBOA tab 60]**.
[71] Canada, Minister of Manpower and Immigration, *White Paper on Immigration*, (Ottawa: Roger Duhamel, 1967) (Hon. Jean Marchand, Minister of Manpower and Immigration) at 5, 24 [*White Paper*] **[RBOA tab 61]**.

which made persons involved in espionage or subversive activities inadmissible to or removable from Canada.[72] These early security clauses did not contain a ministerial relief provision.

53. The first ministerial relief provision was enacted in 1952 for members or associates of any organization, group or body that was or had been involved in subversion by force or other means of democratic government, institutions or processes.[73] An applicant under this first ministerial relief provision had to satisfy the Minister that they had ceased to be a member or associate of the organization, group or body in question, and that their admission would not be detrimental to the security of Canada.[74]

(b) Modernization of the Immigration Program in 1976

54. Starting in the late 1960s, there was a growing awareness that the *Immigration Act*[75] was no longer adequately serving Canada's needs. The federal government launched a fundamental review of immigration legislation and policy with a view to modernizing the statutory framework.[76] There followed an unprecedented nation-wide debate with thousands of organizations and individuals being consulted. The central theme which emerged from this process was that the immigration program must reflect the national interest domestically and internationally. Expressions such as "national interest," "contrary to the interests of Canada," "in the interests of Canada and Canadians" and "affecting Canadian interests" appeared throughout the policy papers and in various contexts, including health, security, and the economy. Discussion of the security clauses in the prohibited classes continued to be tied to language of risk, danger, and threat to Canada and Canadians, and public safety and national security.[77]

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[72] *An Act to Amend the Immigration Act*, SC 1919, c 25, ss 3, 3(n), 3(o), 3(q) **[RBOA tab 3]**; *Immigration Act*, SC 1910, c 27, s 3**[RBOA tab 12]**; *Immigration Act*, RSC 1927, c 93, ss 3, 3(n), 3(o), 3(q)**[RBOA tab 11]**.

[73] *Immigration Act*, SC 1952, c 42, ss 5, 5(l), consolidation in *Immigration Act*, RSC 1952, c 325 **[RBOA tab 10]**; See also *Immigration Act*, RSC 1970, c I-2, s 5**[RBOA tab 8]**; (as these security provisions of the prohibited classes were essentially maintained in the 1970 consolidation); *Debates of the Senate*, 21st Parl, 6th Sess, (25 June 1952) at 511 (Hon JG Turgeon)**[RBOA tab 66]**; *House of Commons Debates*, 21st Parl, 6th Sess, (10 June, 1952) (Hon WE Harris, Minister of Citizenship and Immigration) p 3074-3075**[RBOA tab 74]** *House of Commons Debates*, 21st Parl, 6th Sess, (30 May 1952) at 2741 (Hon Alphonse Fournier)**[RBOA tab 75]**.

[74] *Immigration Act*, SC 1952, c 42, s 5(l) **[RBOA tab 9]**; See also *House of Commons Debates*, 21st Parl, 6th Sess, (June 10, 1952) at 3075 (Hon. WE Harris, Minister of Citizenship and Immigration)**[RBOA tab 74]**; See also *Green Paper* Vol 2, *supra* note 70, at 148-9 **[RBOA tab 60]**.

[75] *Immigration Act*, RSC 1952, c 325 [*Immigration Act* 1952] **[RBOA tab 10]**.

[76] *White Paper*, *supra* note 71, at p 5 and generally **[RBOA tab 61]**.

[77] See *White Paper supra* note 71, at 7, 24-5 **[RBOA tab 61]**; See also *Green Paper* Vol 2, *supra* note 70 at 146-8 **[RBOA tab 60]**; Canada, Minister of Manpower and Immigration, *A report of the Canadian immigration and population study: Immigration Policy Perspectives*, (Ottawa: Information Canada, 1974) ch 3 National Interest and International Responsibility at 37-51 generally and at 37, 48, 59, 63, 66-67 [*Green Paper* Vol 1]**[RBOA tab 59]**.

55. The 1974 ministerial *Green Paper* outlined the basic principles for Bill C-24, which was Canada's response to the policy debate and consultations which had taken place.[78] In its chapter on the "National Interest and International Responsibility", the *Green Paper* offered some discussion of "national interest" within the broader immigration and selection context. It was recognized that inadmissibility classes had to be updated to reflect current threats such as terrorism.[79] The prevailing theme was that the immigration program should be based on what was in Canada's national interest, keeping in mind both domestic and international considerations.

56. The resulting *Immigration Act, 1976*[80] included measures to protect Canada against dangers and risks presented by the contemporary phenomenon of international terrorism and subversives.[81] The goal was that these provisions would protect the physical, economic and social well-being of Canada. However, these provisions would also be flexible enough to adjust to changing conditions.[82]

57. The security grounds covered espionage, subversion against democratic government which included sabotage, subversion by force of any government, and engaging in acts of violence that would or might endanger the lives or safety of persons in Canada or membership or participation in an organization that was likely to engage in such acts of violence which would include acts of terrorism.[83] These provisions did not explicitly use the term "terrorism" as there was a concern that there would be difficulty with its interpretation. In addition, the provision covered inadmissibility only for anticipated future acts. [84] There was no corresponding ministerial relief exemption.

58. The debates and committee materials for Bill C-24 indicated concern that the membership provision as initially drafted was overly broad and that it would capture innocent

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[78] Bill C-24 *An Act respecting Immigration to Canada*, 30th Parl, 2nd Sess, 1976, c 52 (assented to 5 August 1977) **[RBOA tab 15]**; *Immigration Act, 1976*, SC 1976-77, c 52 **[RBOA tab 7]**; consolidated in *Immigration Act*, RSC 1985, c I-2, s 118 **[RBOA tab 6]**; *House of Commons Debates*, 30th Parl, 2nd Sess, Vol IV (10 March 1977) at 3862 (Hon Bud Cullen, Minister of Manpower and Immigration) **[RBOA tab 73]**.
[79] *Green Paper* Vol 1 *supra* note 77 at 37-49 **[RBOA tab 59]**.
[80] *Immigration Act, 1976*, SC 1976-77, c 52 **[RBOA tab 7]**.
[81] *Immigration Act, 1976*, SC 1976-77, c 52, paras 19(1) (e), (f), (g), 27(1) (a) **[RBOA tab 7]**.
[82] Canada, Citizenship and Immigration Canada, *Clause by Clause Analysis, An Act respecting Immigration to Canada*, (*Bill C-24*), 1976, excerpts provided regarding ss 2(1), 19, 27, at 4 **[RBOA tab 58]**.
[83] *Immigration Act, 1976*, SC 1976-77, c 52, ss 19(1) (e) (f) and see especially s 19(1) (g) **[RBOA tab 7]**.
[84] *Supra* note 82 at 54-55 **[RBOA tab 58]**.

association or membership. The government conceded that the term "associates" might pick up persons innocent of actual terrorist acts, such as lawyers or accountants working for the organizations that participated in terrorism. Ultimately, the provision was changed to refer to persons "likely to participate in the unlawful activities of an organization…" However, the term "members" was retained.[85]

59. As Senate Committee documents show, persons who had engaged in terrorist acts, or who were members of organizations that had engaged in such acts were presumptively considered to be a risk to the security of Canada. In response to the question of whether members of the Basque terrorist organization would be admissible, the Assistant Deputy Minister, provided the following answer:

> People who are strongly involved in a terrorist organization to the point that they have committed crimes in the name of that organization, however justifiable their motives may be, tend to import those same beliefs to Canada. A member of the Basque terrorist organization, for example, would not lose his desire overnight to see a Basque homeland. There would be a presumption that such persons might be inclined to continue violent political activity of one sort or another using Canada as a base, and that, obviously, would be undesirable from Canada's point of view. However, someone who simply advocates Basque independence and is considered in Spain as politically unacceptable as a result of that belief, that person, on application for landed immigrant status in Canada, would not be refused simply on the ground of his political opinion.
>
> ...
>
> It is always difficult to be sure that a particular individual is himself likely to carry out such acts. However, because he belongs to a terrorist organization, there is the presumption that there is that risk.[86]

60. In response to the concerns about the over-breadth of the security inadmissibility provisions, the 1976 Act contained a ministerial relief exemption for persons found inadmissible on grounds of espionage or subversion if they could satisfy the Minister that their admission would not be detrimental to the "national interest."[87] This was a departure from the terminology used in the earlier ministerial relief exemption provisions, which had referred to the person's

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[85] *Supra* note 82 at 54-55 **[RBOA tab 58]**; *House of Commons Debates*, 30th Parl, 2nd Sess, Vol 4 (11-15 March 1977) at 3898 (Andrew Brewin), at 4013 (David Orlikow) **[RBOA tab 72]**; House of Commons, Standing Committee on Labour, Manpower, and Immigration, *Bill C-24, Minutes of Proceedings and Evidence*, 30th Parl, 2nd Sess, No 29 (5 June 1977) at 30:36, (5 July 1977) at 45:112-116 **[RBOA tab 83]**.
[86] Senate, Standing Senate Committee on Foreign Affairs, *Bill C-24* (3 August 1977) at 28:60-1 **[RBOA tab 86]**.
[87] *Immigration Act, 1976*, SC 1976-77, c 52, s 19(1) (e) **[RBOA tab 7]**.

admission not being detrimental to the "security of Canada." All subsequent versions of ministerial relief exemptions have referred to the "national interest."

61. No specific definition of "national interest" was provided in the legislation or in the Clause by Clause Analysis. However, the Clause by Clause document provides a clear indication that despite the change in terminology, the dominant consideration in the national interest in this context continued to relate to national security. The new relief clause had been amended so as to place the onus squarely on the individual "to satisfy the Minister that his admission would not be a risk to Canada or Canadians." [88]

(c) The 1992 Amendments

62. Subsequent amendments to immigration legislation generally refined and strengthened the inadmissibility security clauses. The 1992 legislation extensively amended all aspects of Canada's immigration law and administration.[89] It was designed to improve the management of immigration, including the ability to better protect Canadian society from abuses and security threats.[90]

63. New inadmissibility provisions for espionage, subversion and terrorism were added, with a specific reference to "terrorism"[91] for the first time. New inadmissibility classes were added for "organized crime"[92] and for senior members of, or senior officials in the service of, a government that is engaged in terrorism, systematic or gross human rights violations, war crimes or crimes against humanity.[93]

64. The ministerial relief exemption was available for all three of these serious grounds of inadmissibility: security, organized crime, and war crimes for senior officials only. However, the exemption only applied to persons who had committed such acts in the past and not for those

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[88] *Supra* note 82 at 51-52 **[RBOA tab 58]** (See also discussion regarding the decision not to include a "national interest" class *per se* due to confusion with "national interest cases" at 57).
[89] Bill C-86 *An Act to amend the Immigration Act and other Acts as a consequence thereof*, 34th Parl, 1992, c 49, s 11 (assented to 17 December 1992) **[RBOA tab 16]**.
[90] House of Commons, Library of Parliament, *Legislative Summary for Bill C-86: The Immigration and Refugee Protection Act* (20 July 1992) Margaret Young at 1, 13-16 **[RBOA tab 79]**.
[91] *Immigration Act*, RSC 1985, c I-2, ss 19(1)(e)(ii), 19(1)(e)(iv)(C), 19(1)(f)(ii), 19(1)(f)(iii)(B), as amended by *An Act to amend the Immigration Act and other Acts as a consequence thereof*, SC 1992, c 49, s 11**[RBOA tab 6]**.
[92] *Supra* note 91 s 19(1) (c 2) **[RBOA tab 6]**.
[93] *Supra* note 91, s 19(1) (l), **[RBOA tab 6]**.

who it was anticipated would commit future acts.[94] The Act did not permit ministerial relief decisions to be delegated.[95] Persons for whom there were reasonable grounds to believe had engaged in terrorism, or who are or were members of organizations that had engaged in acts of terrorism, could only be exempted from this inadmissibility if they could satisfy the Minister that their admission would not be detrimental to the national interest.[96]

65. The debate on Bill C-86 reflected concerns that the new provision targeting group membership was overly broad, and would catch innocent activities or "acceptable violence" used by groups opposing tyrannical governments. Officials appearing before the Legislative Committee confirmed that the anti-terrorism provision intentionally did not distinguish between "acceptable" and "unacceptable" violence. The provision reflected the policy that all violence was unacceptable and that there was no appropriate way to distinguish between innocent and guilty members of such organizations. Accordingly, all members of an organization that was caught by the section were included, and it would be up to the Minister to decide whether someone's admission would not be detrimental to the national interest.[97]

(d) Increasing concern about National Security and Public Safety

(i) The IRPA

66. The *IRPA* came into force on June 28, 2002 and replaced the *Immigration Act.*[98] This new Act was part of the government's response to the complex and dangerous threat environment after September 11, 2001, as well as to the growing criticism of Canada's enforcement program and border security. The balanced package of reforms was tough in respect of criminals and security risks, and included enforcement measures aimed at protecting the safety and security of Canada, while at the same time maintaining an open door to legitimate immigrants and refugees. The Senate Committee wrote:

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[94] *Supra* note 91, s 19(1) (e) **[RBOA tab 6]**.
[95] House of Commons, Library of Parliament, *Legislative Summary for Bill C-86: The Immigration and Refugee Protection Act* (28 July 1992) Jay Sinha and Margaret Young at 15 **[RBOA tab 79]**.
[96] *Supra* note 91, ss 19(1) (f) (ii), 19(1) (f) (iii) (B) **[RBOA tab 6]**.
[97] See eg House of Commons, Legislative Committee, *Bill C-86,* (27-28 July 1992) (Brian Grant) (Hon Bernard Valcourt, Minister of Employment and Immigration) at 2:26-27, 3:54-56, more generally starting at 3:46 **[RBOA tab 77]**; House of Commons, Legislative Committee, *Bill C-86, Statement of the Refugee Lawyers Association* (30 July 1992)at 5A:34 **[RBOA tab 76]**; Senate, Standing Committee on Social Affairs, Science and Technology, *Bill C-11*, 34th Parl, 3rd Sess, No 16 (18 August 1992)(Brian Grant) at 14:48-49 **[RBOA tab 90]**; *supra* note 95 at 33 **[RBOA tab 79].**
[98] *Immigration Act*, RSC 1985, c I-2 **[RBOA tab 6]**.

> The Committee recognizes that Bill C-11 represents a major overhaul of Canada's immigration and refugee protection legislation, and it will thus likely set the standard for many years to come. The Committee also fully appreciates that the current context in which the Bill is being considered is one of heightened security concerns following the profoundly tragic events of 11 September 2001 in the United States. In this context the Committee realizes that the Bill must embody a balance that will respect the needs and rights of individuals while simultaneously serving the public interest particularly with respect to security concerns and meeting Canada's international obligations.[99]

67. There was a corresponding marked change in the tone of the debates regarding security generally, with an emphasis on security policy and enforcement. Members stressed the need for improving procedure so that criminals and persons who were security risks could not enter Canada to begin with and that they would not be able to disappear underground once here.[100]

68. The *IRPA* continued inadmissibility provisions on national security grounds, including espionage, subversion, and terrorism.[101] Permanent residents and foreign nationals were inadmissible on security grounds for engaging in terrorism or for being a member of an organization that engages in terrorism.[102]

69. Subsection 34(2) of the *IRPA* maintained the Minister's non-delegable authority to grant an exemption, where the person concerned satisfied the Minister that their presence in Canada would not be detrimental to the national interest.[103] Nothing in the legislative history or in the debates indicates that the previous emphasis on national security and public safety had changed. In fact, speaking before the Legislative Committee on Bill C-11, departmental officials confirmed the scope of the provision and stressed that the exemption in ss. 34(2) was meant to be an exceptional measure. Each case would have to be assessed individually. A "person who has absolutely no connection or dealings" with the terrorist/subversive activity might be exempted.

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[99] Senate, Standing Committee on Social Affairs, Science and Technology, *Ninth Report*, 37th Parl, 2nd Sess, No 26 (23 October 2001) at 1-2 (Chair: Michael Kirby) **[RBOA tab 89]**; see also *Debates of the Senate*, 37th Parl, 1st Sess, (25 September 2001) (Dan Hays) **[RBOA tab 65]**.
[100] See *House of Commons Debates*, 37th Parl, 1st Sess, No 018 (26 February 2001) at 1171, 1178, 1185, 1218, 1223 **[RBOA tab 69]**; Senate, Standing Committee on Social Affairs, Science and Technology, *Bill C-11*, 37th Parl, 2nd Sess, No 26 (1 October 2001) at 1-2 (Chair: Michael Kirby) (Joan Atkinson) **[RBOA tab 88]**.
[101] *IRPA*, *supra* note 32, s 34(1) **[RBOA tab 13]**.
[102] *IRPA*, *supra* note 32, s 33 (these inadmissibility provisions apply to past, present or future acts.) **[RBOA tab 13]**.
[103] See similar exemptions for senior officials in the service of a government that has committed human or international rights violations under *IRPA*, ss 35(2), and in relation to organized criminality under *IRPA*, ss 37(2)(a) **[RBOA tab 13]**.

However, "[i]f you know that the organization is involved in these activities, then you're no longer innocent."[104]

(ii) New National Security Policy

70. The legislative history illustrates unequivocally that the enactment of the *IRPA*, the creation of the CBSA and the DPSEP, and the subsequent transfer of responsibility for ministerial relief determinations to the Minister of Public Safety, were part of the broader national security response to the evolving and growing terrorist threat, particularly after the events of September 11, 2001.[105]

71. The Standing Senate Committee on National Security and Defence made it clear in its October 2003 report[106] that national security had become a core issue for Canadians, and that the nature of the major threat to Canada's security and the security of the continent had clearly changed. It was imperative that Canada move quickly to respond to these threats. The Committee made recommendations to improve the national security structure in Canada generally.[107] These included the creation of a permanent department under the direction of the Deputy Prime Minister to coordinate and oversee borders, national security issues, natural and man-made disaster and the coasts.

72. In December 2003, Prime Minister Martin announced a series of legislative and organizational changes that were intended to ensure that Canada could better respond to what was considered an increasingly complex and dangerous threat environment. In April 2004, the Prime Minister tabled the first comprehensive statement of Canada's national security policy,[108] which demonstrated that national security and public safety were at the forefront of the federal government's agenda. Three core national security interests were identified, namely, protecting

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[104] House of Commons, Standing Committee on Citizenship and Immigration, proceedings, Bill C-11, (15 May 2001) at 34 and generally at 31-34 (evidence of Daniel Therrien) (evidence of Elizabeth Tromp) (Chair: Joe Fontana) **[RBOA tab 82]**.

[105] *House of Commons Debates*, 38th Parl, 1st Sess, No 25 (16 November 2004) at 1394-1395 (John Maloney) **[RBOA tab 67]**; *House of Commons Debates*, 38th Parl, 1st Sess, No 5 (14 October 2004) at 402-404 (Roy Cullen) **[RBOA tab 68]**; *Supra* note 69 at 1-3 **[RBOA tab 81]**.

[106] Senate, Standing Committee on National Security and Defence, *Canada's Coastlines: The Longest Under-Defended Borders in the World* (October 2003) **[RBOA tab 87]**; *Debates of the Senate*, 38th Parl, 1st Sess, (23 November 2004) at 318(Tommy Bank) **[RBOA tab 64]**.

[107] *Supra* note 106 at 107-133**[RBOA tab 87]**.

[108] Canada, Privy Council Office, *Securing an Open Society: Canada's National Security Policy*, (2004), online: Privy Council Office <www.pco-bcp.gc.ca> **[RBOA tab 62]**.

Canada and Canadians at home and abroad, ensuring Canada was not a base for threats to our allies, and contributing to international security. These were consistent with the *IRPA* objectives which formed the basis for the security inadmissibility grounds under s. 34 of the *IRPA* throughout the history of that provision.[109]

73. Following the recommendation of the Standing Senate Committee, the national security policy proposed an integrated national security framework, coordinated by the new DPSEP and its Minister. Although already in existence since 2003, the *DPSEP Act* formally established the Department and the Minister of Public Safety, which intended to support the core functions of security and intelligence, policing and enforcement, corrections and crime prevention, border services, immigration enforcement, and emergency management. Key departments and agencies including CSIS, the RCMP, Emergency Management, the CBSA and others were brought together under one minister.[110]

74. In addressing the legislative committee on Bill C-6, *An Act to establish the Department of Public Safety and Emergency Preparedness and to amend or repeal certain acts*, the first Minister of Public Safety stated that:

> All of the additional measures that have been implemented over these past ten months are aimed at strengthening the actions Canada has taken since 9/11 to close security gaps and ensure that our national interests in human safety and security are protected.
>
> …
>
> Speaking for myself, I think the development of that policy signals a very important new step and level of commitment and focus on the national security of this country. It is obviously now our shared obligation - parliamentarians as well as this department and others - to ensure the implementation of that national security policy. That, at the end of the day, speaks to our ability, working with the provinces, territories, and others, to protect Canadians… [111] (Emphasis added)

75. This Bill was supported in principle by all political parties in the House of Commons and the Senate. The legislation was generally considered vital to the present and future security and well-being of all Canadians. While some referred to the legislation as a housekeeping bill, it was clear that it was more than just a measure to create a new government department and

[109] *IRPA*, *supra* note 32 at s 3(1)(h), 3(1)(i) **[RBOA tab 13]**.
[110] *DPSEP ACT*, *supra* note 46, ss 2-6 **[RBOA tab 5]**; *Supra* note 108 **[RBOA tab 62]**.
[111] *Supra* note 69 at 2 **[RBOA tab 81]**.

Minister, "[i]t is the latest step on a journey intended to safeguard a public trust - the most important public trust that government and Parliament hold, that is, the duty of the Government of Canada and of Parliament to ensure that all Canadians live in a safe and secure environment."[112] In speaking to her role as leader of the new DPSEP, the first Minister of Public Safety stated:

> It's very clear that it is anticipated that the minister of this department will play a leadership role in terms of bringing together not only the elements of this department, but also a leadership role around coordination and facilitation of other departments within the Government of Canada, other agencies, and then also, where appropriate and required, working with other levels of government, foreign governments, and so on.
>
> In terms of other mechanisms, for example, the Prime Minister created a new committee of cabinet on December 12, the public safety, security and emergency preparedness committee. I chair that committee. All the key departments that deal with safety, security, and emergency preparedness - the fisheries department, the coast guard, the transport department, which is obvious for a host of reasons, the immigration department, foreign affairs, justice, and the defence department - are all brought together under my chairmanship.
>
> We are responsible, for example, for the implementation of the national security policy as a government priority. We are responsible, in a sense, for dealing with all matters as a government as it relates to the public safety and security of Canadians, and our ability to be prepared for emergencies, be they man-made or natural. So that is another mechanism.
>
> …
>
> Clearly, my role in this department, among other things, is to ensure that we are exercising leadership at the national level in relation to matters of public safety and emergency preparedness.[113] (Emphasis added)

C. INTERPRETATION OF SUBSECTION 34(2) OF THE *IRPA*

76. The Federal Court of Appeal did not err in law in its interpretation of ss. 34(2) of the *IRPA*. It conducted a contextual and purposive analysis of that provision consistent with the modern approach to statutory interpretation. A contextual and purposive interpretation strongly supports the Court's ultimate finding that the term "national interest" in the ministerial relief exemption must be understood within the context of national security and public safety.

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[112] *Debates of the Senate*, 38th Parl, 1st Sess, (23 February 2005) at 790, and generally 788-791 (Tommy Banks) **[RBOA tab 63]**.
[113] *Supra* note 69 at 6-7 **[RBOA tab 81]**.

77. The Court examined ss. 34(2), the context in which it is located within the *IRPA*, the purposes of the *IRPA* and other provisions of the Act. It considered the objectives of the *IRPA* and this Court's jurisprudence, as well as the legislative evolution and history[114] of other relevant legislation concerning national security and public safety in Canada, in concluding that national security and public safety are to be prioritized in considering applications under ss. 34(2) of the *IRPA*. Indeed, the legislative history clearly demonstrates that public safety and national security, which are objectives of the *IRPA*,[115] have always been the dominant considerations in determining whether a person's admission would not be detrimental to the national interest in ss. 34(2).

(a) Principles of Statutory Interpretation

78. The proper approach to statutory interpretation requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament.[116] The interpretation is determined by a three-pronged analysis: textual, contextual, and purposive. The interpretive factors need not be applied in a formulaic fashion, as they are closely related and interdependent, and need not be canvassed separately in every case.[117] The Court of Appeal did not err by not prioritizing a textual analysis of ss. 34(2) of the *IRPA*.

(i) Text: Ordinary sense of national interest

79. The parties agree that the ordinary meaning of the term "national interest" refers to matters which concern Canada or Canadians. Considered in the abstract, an analysis of what is in the national interest can encompass a myriad of factors. However, in this case, the text in ss. 34(2) of the *IRPA* is inextricably related to the context and purpose of the provision, relating to national security and public safety.

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[114] *Federal Court of Appeal Decision*, *supra* note 56 at para 49 **[AR vol 1, tab 5]**; Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Ontario: LexisNexis Canada Inc, 2008) at 280-281, 357, 577-578 **[RBOA tab 93]**; see, for example, *R v Ulybel Enterprises Ltd*, 2001 SCC 56 at para 33, [2001] 2 SCR 867 **[RBOA tab 51]**; *IRPA*, *supra* note 32, ss 3(1)(h) and 3(1)(i) **[RBOA tab 13]**.

[115] *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 10, [2005] 2 SCR 539 [*Medovarski*] **[RBOA tab 41]**; *Supra* note 104 at 32 **[RBOA tab 82]**.

[116] EA Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87 **[RBOA tab 92]**; *Rizzo*, *supra* note 68 **[RBOA tab 52]**; *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559 [*Bell ExpressVu*] **[RBOA tab 30]**; *Mowat*, *supra* note 63 **[RBOA tab 31]**.

[117] *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 28, [2002] 1 SCR 84 **[RBOA tab 33]**; *Bell ExpressVu*, *supra* note 116 **[RBOA tab 30]**.

(ii) Purpose: Focus on National Security and Public Safety

80. The availability of ss. 34(2) of the *IRPA* as a means by which innocent members can be exempted from a determination of non-admissibility is consistent with the overarching safety and security purposes of the provision.

81. As this Court recognized, public safety and national security are considerations clearly present in the objectives of the *IRPA* and these objectives "indicate an intent to prioritize security…"[118] The object of s. 34 within the *IRPA* is to ensure the safety and security of Canadians. The object of ss. 34(2), directed as it is to the question of inadmissibility on security grounds, albeit as a relieving provision, must also be interpreted consistently with ensuring the safety and security of Canadians.

82. The Court of Appeal recognized that "innocent" or coerced members of terrorist organizations may qualify for relief.[119] These examples are consistent with this Court's own description of the relief provision and Parliament's purpose in enacting it. In *Suresh*, this Court noted that it was not Parliament's intention to render persons inadmissible "who innocently contribute to or become members of terrorist organizations" given the ministerial relief provision which exempts persons who satisfy the Minister that their admission would not be detrimental to the national interest:

> This permits a refugee to establish that the alleged association with the terrorist group was innocent. In such case, the Minister, exercising her discretion constitutionally, would find that the refugee does not fall within the targeted s. 19 class of persons eligible for deportation on national security grounds.[120]

(iii) Context: Supports Court of Appeal's interpretation

83. Subject to the exercise of discretion under ss. 34(2) of the *IRPA*, persons described in ss. 34(1) are by definition persons whose presence in Canada would be detrimental to the national interest. As the Court of Appeal held, the national interest is predominantly concerned with national security and public safety and must be interpreted through that lens.[121] It is evident that the presence in Canada of persons who are inadmissible on security grounds is inherently

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[118] *Medovarski, supra* note 115 at para 10, **[RBOA tab 41]**.
[119] *Federal Court of Appeal Decision, supra* note 56 at para 64 **[AR vol 1, tab 5]**.
[120] *Suresh v Canada (Minister of Citizenship and Immigration),* 2002 SCC 1 at paras 109-110, [2002] 1 SCR 3 [*Suresh*] **[RBOA tab 54]**.
[121] See Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Ontario: LexisNexis Canada Inc, 2008) at 355-357 **[RBOA tab 93]**.

inimical to the national interest, unless they satisfy the Minister that their presence in Canada would not be detrimental to the national interest.

84. Ministerial relief is available from any ground of inadmissibility in s. 34 of the *IRPA* including, *inter alia*, engaging in espionage or subversion against a democratic government, engaging in terrorism, being a danger to the security of Canada, engaging in acts of violence that would endanger the lives or safety of persons in Canada, or being a member of an organization that there are reasonable grounds to believe has engaged or will engage in violence or terrorism.[122]

85. Subsection 34(2) of the *IRPA* is integrated with and complementary to ss. 34(1). While the dominant considerations in ss. 34(2) are national security and public safety, this is not satisfied merely by a lack of present dangerousness to national security or public safety. Given that only one provision of ss. 34(1) refers to danger to national security, it is clear that a lack of present danger is not on its own sufficient to demonstrate that the applicant's presence would not be detrimental to the national interest. These considerations support the Court of Appeal's conclusion that national security concerns should be at the forefront of a ss. 34(2) "national interest" decision.

86. A consideration of s. 34 of the *IRPA* itself, the immediate context, and *IRPA* as a whole, both suggest a strong focus on security issues. So too does the related legislation, the *CBSA Act* and the *DPSEP Act*. The legislative histories lend further support to this proposition. By contrast, the Appellant's argument fails to sufficiently consider the necessary context and in fact wholly ignores that the national interest is a term of longstanding usage whose meaning is coloured by its context.[123]

87. As immigration legislation and policy has developed over the years, the term national interest has been used in a variety of contexts such as health, the economy, and security.[124] At issue here is the inadmissibility provision based on security grounds. The national interest

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[122] *IRPA, supra* note 32 at s 34 **[RBOA tab 13]**.
[123] *White Paper, supra* note 71 at 7, 24-25 **[RBOA tab 61]**; *Green paper* Vol 1, *supra* note 77 **[RBOA tab 59]**.
[124] See e.g. *White Paper, supra* note 71, at 7, 24-5**[RBOA tab 61]**; See also *Green Paper* Vol 2, *supra* note 70 at 147-8 **[RBOA tab 60]**; *Green Paper* Vol 1 *supra* note 77 **[RBOA tab 59]**; *Charkaoui (Re)*, 2009 FC 342, [2010] 3 FCR 67, at para 58 **[RBOA tab 32]**.

exemption is complementary to that provision. Accordingly, the national interest considerations will predominantly be factors that relate to that context.

88. Until the Court of Appeal's decision in this case, the existing jurisprudence was that of the Federal Court. That jurisprudence did not consider the legislative history of ss. 34(2) and had insufficient regard for the intent of the provision or its text. The Federal Court jurisprudence required the Minister to consider a wide range of factors in determining a relief application.[125] Yet, the mere existence of a favourable employment record is of limited pertinence to the question of what constitutes the national interest in the case of a person who is inadmissible on national security grounds. Certainly such factors cannot be of such importance in this analysis that the failure to advert to them explicitly constitutes a reversible error.[126]

(iv) No error in considering transfer of Ministerial responsibility

89. In interpreting the "national interest" in ss. 34(2) of the *IRPA*, the Court of Appeal did not err in considering the impact of the legislative transfer of responsibility for relief decisions to the Minister of Public Safety. This is an important element of the context. Moreover, it is not the mere fact of a transfer of responsibility from one Minister to another that is at issue here, but that this transfer occurred within the broader security context and for purposes which are consistent with the existing historical concerns for national security and public safety.

90. The legislative histories indicate an intention to bring national security to the forefront through the creation of the CBSA and the DPSEP, as well as the transfer of responsibilities to the Minister of Public Safety. Both the *DPSEP Act* and the *CBSA Act* strongly emphasize the Minister's mandate of protecting public safety. These Acts further support the prioritization of public safety and national security when considering the national interest in the determination of an application for relief.

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[125] *Abdella v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FC 1199 at para 19 **[RBOA tab 23]**; *Alfridi v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1192 at para 45 **[RBOA tab 28]**; *Ismeal v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 1366 at paras 15-18 **[RBOA tab 39]**; *Naeem v Canada (Minister of Citizenship and Immigration)*, 2007 FC 123 at paras 56 and following, [2007] 4 FCR 658 **[RBOA tab 44]**; *Tameh v Canada (Minister of Public Safety and Emergency Preparedness*, 2008 FC 884 at para 41 and following, 332 FTR 158 **[RBOA tab 55]**; *Al Yamani v Canada (Minister of Public Safety & Emergency Preparedness)*, 2007 FC 381 at para 69, 311 FTR 193 **[RBOA tab 26]**.

[126] *Federal Court Decision, supra* note 53 at para 25-26 **[AR vol 1, tab 3].**

91. In any event, should this Court determine that the Court of Appeal placed undue weight on the transfer of ministerial responsibility as an interpretive consideration, a purposive and contextual interpretation of ss. 34(2) of the *IRPA* leads to the same result.

92. Contrary to the Appellant's arguments, the Court of Appeal's interpretation for ss. 34(2) of the *IRPA* is not new. As the legislative history demonstrates, the principal considerations in ministerial relief applications for security grounds have *always* been national security and public safety. Indeed, the Appellant himself acknowledges that national security and public safety can be determinative in appropriate circumstances. Accordingly, there was no need for an amendment to the text of ss. 34(2), as he suggests. The Minister's discretion to determine whether an applicant's presence in Canada is detrimental to the national interest has not changed.

(b) Principle of consistent expression

93. An examination of the legislative scheme, including s. 25 of the IRPA, forms part of the contextual considerations. The Appellant's own argument regarding the use of consistent expression[127] demonstrates that Parliament did not intend that applications under ss. 34(2) of the *IRPA* for ministerial relief be used for the consideration of those factors that are assessed separately in humanitarian and compassionate applications. The Court correctly held that the broad language in ss. 34(2) of the *IRPA* should be interpreted to avoid an overlap with s. 25 of the *IRPA*, especially given that the relief powers in ss. 34(2) and neighbouring provisions are located within specific contexts of inadmissibility rather than in the overarching position occupied by s. 25 of the *IRPA.* In designating the Minister personally to provide the relief in ss. 34(2), Parliament clearly did not intend to duplicate the relief in s. 25 of *IRPA*.

(c) Interpretation consistent with the Charter

94. The Appellant did not raise a *Charter* challenge before the Courts below and should not now be permitted to advance these arguments for the first time before this Court. In any event, the *Charter* is not engaged and the Court of Appeal's interpretation of ss. 34(2) of the *IRPA* is not inconsistent with the *Charter*.

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[127] *R v Zeolkowski*, [1989] 1 SCR 1378 at para 732, 61 DLR (4th) 725 **[RBOA tab 50]**; *Thomson v Canada (Deputy Minister of Agriculture)*, [1992] 1 SCR 385, 89 DLR (4th) 218 **[RBOA tab 56]**; Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Ontario: LexisNexis Canada Inc, 2008) at 214-218 **[RBOA tab 93]**.

95. A "*Charter* values" interpretation is not required as there is no ambiguity in the statute. The Court of Appeal's interpretation and application of ss. 34(2) of the *IRPA* is in clear accordance with the intent of the legislator and there is no genuine ambiguity. The Appellant has not shown that the term "national interest" is subject to differing but equally plausible interpretations.[128] Nor has he shown how the Court of Appeal's interpretation of ss. 34(2) of the *IRPA* is not in accordance with the *Charter* and its values.

96. The Court of Appeal recognised the broad sweep of ss. 34(1) of the *IRPA* and relied on this Court's decision in *Suresh* in which this Court decided that the precursor provisions to ss. 34(1) and (2) of the *IRPA* did not infringe ss. 2(b) or (d) of the *Charter*. This Court held that *Charter* protection does not apply to pre-entry conduct and that the statutory scheme which prevents foreign nationals who are members of terrorist organizations from being admissible to Canada does not violate the *Charter*.[129]

97. The Court of Appeal addressed the issue of whether innocent members in a terrorist organization could ever obtain relief.[130] It relied on this Court's conclusions in *Suresh* that the ministerial relief can be obtained where a person can show that their contribution or association was innocent.[131] The Court of Appeal recognized that there may be other cases in which persons who are found inadmissible under ss. 34(1) of the *IRPA* may justify their conduct in such a way to benefit from ministerial relief, such as individuals who could persuade the Minister that their participation was coerced.[132]

98. When read in its entirety, s. 34 of the *IRPA* is sufficiently circumscribed to ensure that "innocent" members of terrorist organizations are not inadmissible. This is precisely the purpose of ministerial relief, as set out in ss. 34(2) of the *IRPA*. To that extent, the right to freedom of association is not infringed. The Court of Appeal, in deciding that the Minister has the obligation to make decisions in accordance with the Constitution, arrived at an appropriate interpretation with sufficient consideration of the *Charter* in the context of this case.[133]

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[128] *Bell ExpressVu, supra* note 116 at paras 62-66 **[RBOA tab 30]**.
[129] *Suresh, supra* note 120 at paras 102-110 **[RBOA tab 30]**.
[130] *Federal Court of Appeal Decision* at paras 63-65 **[AR vol 1, tab 5]**.
[131] *Suresh, supra* note 120 at para 110 **[RBOA tab 54]**.
[132] *Federal Court of Appeal Decision, Supra* note 56 at para 64 **[AR vol 1, tab 5]**.
[133] *Federal Court of Appeal Decision, Supra* note 56 at para 50 **[AR vol 1, tab 5]**; see also *Doré v Barreau du Québec*, 2012 SCC 12 at paras 24, 28 **[RBOA tab 35]**.

(d) Interpretation consistent with Canada's international obligations

99. The Court of Appeal's interpretation does not place Canada in breach of any of its international obligations. The Court of Appeal correctly decided that the exercise of the Minister's discretion does not raise any issue of Canada's international obligations, as it does not necessarily result in the removal of Mr. Agraira from Canada.[134] The Appellant has not shown how the international human rights treaties referred to in his argument are relevant to the interpretation of ss. 34(2) of the *IRPA*.

100. The Appellant is not being removed from Canada on the basis of the Minister's decision to refuse him ministerial relief. A decision pursuant to s. 34(2) deals with the admissibility of foreign nationals to Canada and not their deportation. Moreover, before any future removal could take place, he is eligible for a Pre-Removal Risk Assessment[135] which will examine whether he would be at risk of torture, risk to life or risk of cruel and unusual treatment or punishment on his return to Libya. A decision that he should be allowed to remain in Canada will have the effect of staying his removal. This process fulfils Canada's *non-refoulement* obligations.[136]

101. Furthermore, there is no factual underpinning for the Appellant's arguments with respect to Canada's international legal obligations. He has twice been denied Convention refugee status due to his lack of credibility. He has not, to date, provided any credible evidence that he is at risk of being tortured. Nor has he presented any evidence on how the Minister's decision affects the best interests of any child or his family.

(e) Deference to Minister's understanding of national interest factors

102. The legislative scheme and the legislative history both point to a strong deference to the Minister's assessment of what constitutes the national interest when determining an application for ministerial relief. The *IRPA* does not specify any factors that the Minister must consider, leaving the sole discretion to make such assessments in the Minister's hands. Throughout the history of the ministerial relief provisions, the legislators consistently left to the Minister's

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[134] *Federal Court of Appeal Decision, supra* note 56 at para 50 **[AR vol 1, tab 5]**.
[135] *IRPA, supra* note 32, s 112, 114, 115 **[RBOA tab 13]**.
[136] *Németh v. Canada (Justice)*, [2010] 3 SCR 281, 2010 SCC 56 at para 17-24, 32-39 **[RBOA tab 45]**; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, **[**1998] 1 SCR 982**,** 160 DLR (4th) 193 **[RBOA tab 49]**.

judgment the precise parameters of the national interest in any given case but always on the assumption that considerations of national security and public safety were to be the primary ones. Positive relief was made possible, in the exceptional case, where an applicant had satisfied the Minister that their presence in Canada would not be detrimental to the national interest.

103. In assessing the "national interest" the Minister has flexibility to consider broader non humanitarian and compassionate concerns, such as international security.[137] By contrast, it is not open to a reviewing Court to impose such other factors as it may wish to be considered as being in the national interest. That is inconsistent with the principle of deference that must be observed in the judicial review of decisions at the political end of the spectrum.[138]

104. While it is open to the Minister to identify other considerations when deciding whether to grant relief, the national interest test, phrased as it is in such lofty terms, supports the view that it was not intended for the consideration of the same factors as are at issue in an application for humanitarian and compassionate relief pursuant to s. 25 of the *IRPA*. The lack of consistent expression between sections 25 and 34(2) points to the different interpretation that must be given to each provision.

105. Parliament did not intend that the relief power under s. 34 of the *IRPA* be exercised on the basis of a "netting out" of all the various pros and cons associated with an applicant's continued presence in Canada, such that considerations completely unrelated to the inadmissibility considerations themselves could regularly outweigh the presumption that an inadmissible applicant's continued presence in Canada is inimical to the national interest.

(f) Interpretation not "fettering"

106. The Appellant's argument that the Court of Appeal fettered the Minister's discretion is no more than an embellishment on his statutory interpretation arguments and should be rejected for the same reasons.

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[137] *Supra* note 108, **[RBOA tab 62]**.
[138] *A & Others v. Secretary of State for the Home Department*, [2004] UKHL 56 at para 29 **[RBOA tab 22]**; *Lake v Canada (Minister of Justice)*, 2008 SCC 23 at para 37, [2008] 1 SCR 761 **[RBOA tab 40]**.

D. NO BREACH OF LEGITIMATE EXPECTATIONS

107. There was no breach of legitimate expectations in this case. The doctrine of legitimate expectations is concerned with procedural rights, and cannot compel a substantive result. It cannot be used to compel the Minister to consider certain factors. Here, the process outlined in the applicable guidelines was followed. Further, and contrary to the Appellant's argument, the Minister considered all of Mr. Agraira's submissions, including in respect of humanitarian and compassionate factors.

(a) The Guidelines – objectives highlight safety and security

108. The applicable guidelines highlight safety and security as the objectives of the inadmissibility and ministerial relief provisions. The guidelines also set out procedures to be followed by immigration officials and do not bind the Minister in his substantive exercise of discretion. CIC publishes operation manuals (guidelines) to be used by employees of CIC and the CBSA for guidance in the exercise of their functions and in applying the legislation.[139] In 2002, at the time Mr. Agraira applied for ministerial relief, the applicable guidelines dealing with relief from inadmissibility were titled "OP17 – Evaluating Inadmissibility".[140] In 2009, at the time of the Minister's refusal, the applicable guidelines had been changed to "IP10 - Refusal of National Security Cases/Processing of National Interest Requests".[141] There were no significant differences between the two sets of guidelines.

109. The guidelines emphasize the fact that ministerial relief is exceptional and that the decision to grant relief is entirely within the discretion of the Minister.[142] They state that the objective of the inadmissibility and ministerial relief programs is to help achieve the protection of the health, safety and security of Canadians. The IP10 specifically sets out the objectives:

(1) to protect the safety and security of Canadians;

(2) to deny access to Canada to persons who are security risks or involved in organized crime;

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[139] Citizenship and Immigration Canada, online: <http://www.cic.gc.ca>.
[140] Citizenship and Immigration Canada, *OP17: Evaluating Inadmissibility* (Manual) (Ottawa: Citizenship and Immigration Canada, 2001) [*OP17*] **[RBOA tab 91]**.
[141] *IP10, supra* note 54 **[AR vol 3, tab 18, pp 423-442]**.
[142] *IP10, supra* note 54, s 9.1 **[AR vol 3, tab 18, p 431]**; *OP17, supra* note 140, s 5.5 at 29**[RBOA tab 91]**.

(3) to ensure that Canada does not become a safe haven for persons who have been involved in war crimes or crimes against humanity. [143]

110. Both sets of guidelines outlined similar procedures to be followed in requests for ministerial relief based on national interest considerations.[144] Applicants were invited to make their submissions addressing a number of factors including, but not limited to: why they are seeking admission to Canada, any special circumstances, evidence that they do not constitute a danger to the public, and their current activities such as employment, education, family situation, and community involvement.[145]

111. An officer would prepare a request to the Minister for his/her decision. The request would consist of the applicant's submissions and supporting documentation; a report outlining the applicant's grounds for inadmissibility and any personal or exceptional circumstances; and a recommendation to the Minister regarding whether relief is to be granted or not.[146]

112. The guidelines suggested the following factors be addressed in the recommendation to the Minister:

1. Will the applicant's presence in Canada be offensive to the Canadian public?
2. Have all ties with the regime\organization been completely severed?
3. Is there any indication that the applicant might be benefiting from assets obtained while a member of the organization?
4. Is there any indication that the applicant might be benefiting from previous membership in the regime\organization?
5. Has the person adopted the democratic values of Canadian society? [147]

113. The Court of Appeal appropriately determined that the guidelines could not bind the Minister in his exercise of discretion. However, the Court was mistaken in concluding that since the guidelines were contained in CIC's manuals that they did not apply to the work of CBSA's

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[143] *IP10, supra* note 54, s 2 **[AR vol 3, tab 18, p 426]**; *OP17, supra* note 140, s 1.2 at 1**[RBOA tab 91]**.
[144] *IP10, supra* note 54, s 1, 9 **[AR vol 3, tab 18, pp 426, 431-433]**; *OP17, supra* note 140, s 5.5at 29-32**[RBOA tab 91]**.
[145] *IP10, supra* note 54, Appendix B **[AR vol 3, tab 18, p 435]**; *OP17, supra* note 140, Appendix B at 41 **[RBOA tab 91]**.
[146] *IP10, supra* note 54 **[AR vol 3, tab 18, pp 423-442];** *OP17, supra* note 140 **[RBOA tab 91]**.
[147] *IP10, supra* note 54, Appendix D **[AR vol 3, tab 18, pp 437-439]**; *OP17, supra* note 140, at 30-32 **[RBOA tab 91]**.

officers.[148] Yet, the authorship of the guidelines was not essential to the Court of Appeal's reasoning, and it should not be allowed to impair a defense of the reasonableness of the Minister's decision. In fact, the Court of Appeal expressly premised its reasoning with the proviso that "even if one sets aside the fact that the guidelines were not issued by the minister whose decision is under review..."[149]

(b) Guidelines cannot confer substantive rights

114. While the guidelines created expectations with respect to procedures, which were followed by immigration officials, they did not and could not create any substantive rights.[150] The guidelines could not bind the Minister to consider factors which are not relevant to the national interest analysis.

115. It is evident that the relative usefulness of a departmental guideline for purposes of judicial review must always be a function of quality of the particular guidelines in question. That said, it is the interpretation of the provision itself that is the starting point. The guidelines must flow from it and not the reverse.

116. In *Baker*, this Court described the departmental guidelines at issue to be a "useful indicator of what constitutes a reasonable interpretation of the power conferred by the section."[151] However, that statement cannot be extrapolated to the point of deriving a legal principle that would suppose that any and all departmental guidelines are invariably to be deemed to set the parameters for reasonable or unreasonable interpretations of any statutory power the guidelines happen to describe.

117. There is no doubt about the validity of the Court of Appeal's conclusion that "It is trite law that a departmental document cannot alter the law as laid down by Parliament." This reflects an established view that administrative interpretations of legislation are not binding on

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[148] Citizenship and Immigration Canada, online: http://www.cic.gc.ca: The website indicates that the guidelines apply to both CIC and CBSA officials.
[149] *Federal Court of Appeal Decision*, *supra* note 56 at para 57 **[RBOA tab 56]**.
[150] *Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 78, [2002] 1 SCR 249 **[RBOA tab 42]**; *Mount Sinai Hospital Center v Quebec (Minister of Health and Social Services)*, 2001 SCC 41 at paras 29, 32-35, [2001] 2 SCR 281**[RBOA tab 43]**; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 26 [*Baker*] **[RBOA tab 29]**.
[151] *Baker supra* note 150 at para 72 **[RBOA tab 29]**.

administrative decision makers themselves, let alone on the courts.[152] It is equally well established that the doctrine of legitimate expectations cannot create substantive rights. Consequently, the doctrine cannot in effect expand the scope of a statutory power beyond the limits intended by Parliament. Applied to this case, it cannot mandate the consideration of factors not relevant to the national interest analysis by the Minister.

(c) Guideline procedures were followed

118. It is not disputed that the guidelines created expectations as to the procedures to be followed. These procedures were followed. In May 2002, CIC sent Mr. Agraira a letter advising him about the ministerial relief process. The letter stated that this determination will require an assessment of the detriment that he poses to the National Interest of Canada as well as any humanitarian and compassionate circumstances pertinent to his case.[153] Mr. Agraira had a meaningful opportunity to present evidence and submissions to support his case. He was provided with a further opportunity to respond to information that officials obtained and provided to the Minister.[154] The Minister reviewed Mr. Agraira's submissions, the CBSA's briefing note and its recommendation. He then exercised his statutory discretion to reach his own conclusion. As the Appellant himself has submitted the Minister has the discretion to decide what factors are determinant and can balance them as he deems appropriate.[155]

119. Mr. Agraira's submissions, including the humanitarian and compassionate submissions,[156] did not satisfy the Minister that it was not detrimental to the national interest to grant relief to Mr. Agraira. He is a person who has been a member of an organization that has committed terrorist acts and he has continued to provide contradictory evidence regarding his membership in the organization in order to bolster his chances of obtaining status in Canada.

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[152] *Federal Court of Appeal Decision, supra* note 56 at para 64 **[AR vol 1, tab 5]**; see also *Placer Dome Canada Ltd v Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 SCR 715 **[RBOA tab 48]**.
[153] Letter from S Fournier, CIC, May 22, 2002, **[AR vol 3, tab 16, p 287].**
[154] Letter from D Tammola, CIC, August 22, 2005 **[AR vol 3, tab 16, p 375]**; Letter from David P Yerzy, Appellant's Counsel, August 30, 2005, **[AR vol 3, tab 16, p 374]** (Mr. Agraira declined to provide any further submissions in response to this letter).
[155] *Chogolzadeh v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FC 405 at paras 41 **[RBOA tab 34]**.
[156] Appellant's Ministerial Relief submissions **[AR vol 3, tab 16, pp 289-295]**.

(d) Minister's decision need not refer to every consideration

120. The Minister was not required in his reasons to address every factor submitted by Mr. Agraira and all of the questions set out in the IP10 guidelines. The Minister considered all of the submissions including the brief ones on the humanitarian and compassionate factors. It is clear that there is a reasonable basis for the decision which is apparent on the record. This Court should therefore uphold the decision as being a reasonable one.

121. Reasons do not have to be perfect or comprehensive. When reviewing a decision on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum – the result is to be looked at in the context of the evidence, the parties' submissions and the process.[157] The adequacy of the Minister's decision in this case is to be evaluated in the context of Mr. Agraira's submissions, the content of the CBSA's recommendation, the procedures followed as well as the Minister's decision. The Minister's opening phrase must be accepted at face value: "After having reviewed and considered the material and evidence submitted in its entirety …."[158] The record supports the significance of those issues identified by the Minister on which the reasonableness of the decision can be based – the LNSF's past engagement in terrorism, the Appellant's membership in the LNSF, the Appellant's sustained contact with the LNSF, and the Appellant's contradictory and self-serving descriptions as to his level of involvement.

122. Here, the Minister must personally exercise a statutory power that has been cast in subjective and discretionary language. Limited reasons may be supplemented by a reviewing court's own search for a reasonable basis on which the outcome of the decision may rest. If "a reasonable basis is apparent to the reviewing court", judicial deference is better served by not invalidating the decision simply because the court would have produced more cogent reasons.[159]

123. The guidelines here were followed. They identified the program objectives which emphasized national security, public safety and precluding Canada as a safe haven refuge for war criminals or those who have committed crimes against humanity. The factors specified for

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[157] *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 12-14, [2011] 3 SCR 708 **[RBOA tab 46]**; *Alberta Teachers, supra* note 63 at paras 54-55 **[RBOA tab 27]**. See also *Baker, supra* note 151 para 44 **[RBOA tab 29]**.
[158] Minister's decision refusing relief, January 27, 2009, **[AR vol 1, tab 2, p 11]**.
[159] *Alberta Teachers, supra* note 63 at para 55 **[RBOA tab 27]**.

consideration in the guidelines were addressed to the extent that was presented by Mr. Agraira himself, in the briefing note and the recommendation to the Minister.[160]

E. THE DECISION IS REASONABLE

124. The Minister decided not to grant relief to Mr. Agraira. The Minister's conclusion that Mr. Agraira had not satisfied him that his presence in Canada would not be detrimental to the national interest is reasonable. The Minister's decision is transparent, it can be justified and it is intelligible. In short, it falls within the range of possible, acceptable outcomes described by *Dunsmuir*.[161]

125. The Minister of Public Safety is uniquely placed to determine what is in the national interest in respect of public safety and national security in a given case. This is largely a matter of judgment and policy.

126. Mr. Agraira had a meaningful opportunity to present evidence and submissions he considered relevant to his case. He was provided with ample opportunity to respond to information that officials obtained and provided to the Minister. He offered self-serving contradictory explanations as to his role and activities for the LNSF in order to advance his immigration opportunities. It was not considered to be in the national interest to admit to Canada an individual who lacked credibility and who had sustained contact with a group that had committed terrorist acts.

127. The Minister's decision is reasonable. As the Court of Appeal stated:

> The Minister found that Mr. Agraira was not credible, a conclusion which is amply supported by the various conflicting versions of his story offered by Mr. Agraira at various points in his dealings with the immigration system and the courts. This lack of credibility is fatal to Mr. Agraira's application as the Minister can have no faith in any of his representations. In the result, the Minister cannot be said to have acted unreasonably in concluding that Mr. Agraira's presence in Canada is detrimental to the national interest.[162]

F. CONCLUSION

128. The central theme that runs through the legislative history of the national security inadmissibility provisions, together with their corresponding relief provisions, is one of national

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[160] Briefing Note **[AR vol 1, tab 2, pp 5-10]**.
[161] *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 51-62, [2008] 1 SCR 190 **[RBOA tab 37]**.
[162] *Federal Court of Appeal Decision*, *supra* note 56 at para 71 **[AR vol 1, tab 5]**.

security and public safety. While the wording of the various provisions has periodically undergone revision to better respond to emerging issues, this pre-eminent concern of legislators remains unchanged.

129. The belief that the admission of certain classes of persons is contrary to Canada's national interest is at the heart of these provisions. At the same time, legislators have also been concerned to provide a means for relief for "innocent" members by permitting them to demonstrate to the Minister that their admission would not be contrary to the national interest. The phrase "national interest" within the inadmissibility provisions should therefore be interpreted within the context and purpose of those provisions which is national security and public safety.

PART IV – COSTS

130. The Minister of Public Safety seeks his costs in this appeal.

PART V – NATURE OF ORDER SOUGHT

131. The appeal should be dismissed with costs to the Respondent Minister.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 22nd day of May, 2012.

Urszula Kaczmarczyk
Of Counsel for the Respondent

Marianne Zoric
Of Counsel for the Respondent

PART VI – TABLE OF AUTHORITIES

Authority	**Cited at paragraph**
Statutes	
An Act to amend the Immigration Act and other Acts in consequence thereof, SC 1992, c 49	20, 30, 62, 63
An Act to Amend the Immigration Act, SC 1919, c 25	52
An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act, SC 2008, c 3	25
Canada Border Services Agency Act, SC 2005, c 38	24, 27, 28, 86, 90
Department of Public Safety and Emergency Preparedness Act, SC 2005, c 10	28, 73, 86, 90
Immigration Act, 1976, SC 1976-77, c 52	56, 60
Immigration Act, SC 1952, c 42	53
Immigration Act, SC 1910, c 27	52
Immigration Act, RSC 1985, c I-2	20, 55, 63, 66
Immigration Act, RSC 1970, c I-2	53
Immigration Act, RSC 1952, c 325	53, 54
Immigration Act, RSC 1927, c 93	52
Immigration and Refugee Protection Act, SC 2001, c 27	1, 2, 14, 17, 18, 21, 25, 27, 30-32, 36-38, 42, 44, 46, 49-51, 60, 68-70, 72, 76-81, 83-85, 86, 89, 91-99, 102, 104, 105

PART VII – STATUTES RELIED ON

***An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act,* SC 2008, c 3**

An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act, **SC 2008, c 3**

ENABLING AUTHORITY	MISE EN APPLICATION
Minister of Citizenship and Immigration	Compétence générale du ministre de la Citoyenneté et de l'Immigration
4. (1) Except as otherwise provided in this section, the Minister of Citizenship and Immigration is responsible for the administration of this Act.	**4.** (1) Sauf disposition contraire du présent article, le ministre de la Citoyenneté et de l'Immigration est chargé de l'application de la présente loi.
Designated Minister	Ministre désigné
(1.1) The Governor in Council may, by order, designate a minister of the Crown as the Minister responsible for all matters under this Act relating to special advocates. If none is designated, the Minister of Justice is responsible for those matters.	(1.1) Le gouverneur en conseil peut, par décret, désigner tout ministre fédéral qu'il charge des questions relatives à l'avocat spécial dans le cadre de la présente loi; à défaut de désignation, le ministre de la Justice en est chargé.
Minister of Public Safety and Emergency Preparedness	Compétence du ministre de la Sécurité publique et de la Protection civile
(2) The Minister of Public Safety and Emergency Preparedness is responsible for the administration of this Act as it relates to	(2) Le ministre de la Sécurité publique et de la Protection civile est chargé de l'application de la présente loi relativement :
(*a*) examinations at ports of entry;	(a) au contrôle des personnes aux points d'entrée;
(*b*) the enforcement of this Act, including arrest, detention and removal;	(b) aux mesures d'exécution de la présente loi, notamment en matière d'arrestation, de détention et de renvoi;
(*c*) the establishment of policies respecting the enforcement of this Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or	(c) à l'établissement des orientations en matière d'exécution de la présente loi et d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou pour activités de criminalité organisée;
(*d*) determinations under any of subsections 34(2), 35(2) and 37(2).	(d) à la prise des décisions au titre des paragraphes 34(2), 35(2) ou 37(2).
Specification	Précisions du gouverneur en conseil
(3) Subject to subsections (1) to (2), the Governor in Council may, by order,	(3) Sous réserve des paragraphes (1) à (2), le gouverneur en conseil peut, par décret :
(*a*) specify which Minister referred to in any of subsections (1) to (2) is the Minister for the purposes of any provision of this Act; and	
(*b*) specify that more than one Minister may be the Minister for the purposes of any	

***An Act to amend the Immigration and Refugee Protection Act (certificate and special advocate) and to make a consequential amendment to another Act,* SC 2008, c 3**

provision of this Act and specify the circumstances under which each Minister is the Minister.	(a) préciser lequel des ministres mentionnés à ces paragraphes est visé par telle des dispositions de la présente loi;
Publication	(b) préciser que plusieurs de ces ministres sont visés par telle de ces dispositions, chacun dans les circonstances qu'il prévoit.
(4) Any order made under subsection (3) must be published in Part II of the *Canada Gazette*.	Publication
	(4) Tout décret pris pour l'application du paragraphe (3) est publié dans la partie II de la *Gazette du Canada*.

Immigration and Refugee Protection Act, SC 2001, c 27

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

Designation of officers **6.** (1) The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated. Delegation of powers (2) Anything that may be done by the Minister under this Act may be done by a person that the Minister authorizes in writing, without proof of the authenticity of the authorization. Exception (3) Notwithstanding subsection (2), the Minister may not delegate the power conferred by subsection 77(1) or the ability to make determinations under subsection 34(2) or 35(2) or paragraph 37(2)(*a*).	Désignation des agents **6.** (1) Le ministre désigne, individuellement ou par catégorie, les personnes qu'il charge, à titre d'agent, de l'application de tout ou partie des dispositions de la présente loi et précise les attributions attachées à leurs fonctions. Délégation (2) Le ministre peut déléguer, par écrit, les attributions qui lui sont conférées par la présente loi et il n'est pas nécessaire de prouver l'authenticité de la délégation. Restriction (3) Ne peuvent toutefois être déléguées les attributions conférées par le paragraphe 77(1) et la prise de décision au titre des dispositions suivantes : 34(2), 35(2) et 37(2)*a*).

Temporary resident permit **24.** (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time. Exception (2) A foreign national referred to in subsection (1) to whom an officer issues a temporary resident permit outside Canada does not become a temporary resident until they have been examined upon arrival in Canada. Instructions of Minister (3) In applying subsection (1), the officer shall act in accordance with any instructions	Permis de séjour temporaire **24.** (1) Devient résident temporaire l'étranger, dont l'agent estime qu'il est interdit de territoire ou ne se conforme pas à la présente loi, à qui il délivre, s'il estime que les circonstances le justifient, un permis de séjour temporaire titre révocable en tout temps. Cas particulier (2) L'étranger visé au paragraphe (1) à qui l'agent délivre hors du Canada un permis de séjour temporaire ne devient résident temporaire qu'après s'être soumis au contrôle à son arrivée au Canada. Instructions (3) L'agent est tenu de se conformer

that the Minister may make. Restriction (4) A foreign national whose claim for refugee protection has been rejected or determined to be withdrawn or abandoned by the Refugee Protection Division or the Refugee Appeal Division may not request a temporary resident permit if less than 12 months have passed since their claim was last rejected or determined to be withdrawn or abandoned.	aux instructions que le ministre peut donner pour l'application du paragraphe (1). Réserve (4) L'étranger dont la Section de la protection des réfugiés ou la Section d'appel des réfugiés a rejeté la demande d'asile ou dont elle a prononcé le désistement ou le retrait de la demande ne peut demander de permis de séjour temporaire que si douze mois se sont écoulés depuis le dernier rejet de la demande d'asile ou le dernier prononcé du désistement ou du retrait de celle-ci.

Humanitarian and compassionate considerations — request of foreign national **25.** (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected. Payment of fees (1.1) The Minister is seized of a request referred to in subsection (1) only if the applicable fees in respect of that request have been paid. Exceptions (1.2) The Minister may not examine the request if the foreign national has already made	Séjour pour motif d'ordre humanitaire à la demande de l'étranger **25.** (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché. Paiement des Frais (1.1) Le ministre n'est saisi de la demande que si les frais afférents ont été payés au préalable. Exceptions (1.2) Le ministre ne peut étudier la demande de l'étranger si celui-ci a déjà présenté une telle demande et celle-ci est toujours pendante.

such a request and the request is pending.	Non-application de certains facteurs
Non-application of certain factors	(1.3) Le ministre, dans l'étude de la demande d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.	Critères Provinciaux
Provincial Criteria	(2) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.
(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.	Séjour pour motif d'ordre humanitaire à l'initiative du ministre
Humanitarian and compassionate considerations - Minister's own initiative	**25.1** (1) Le ministre peut, de sa propre initiative, étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
25.1 (1) The Minister may, on the Minister's own initiative, examine the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	Dispense
Exemption	(2) Il peut dispenser l'étranger du paiement des frais afférents à l'étude de son cas au titre du paragraphe (1).
(2) The Minister may exempt the foreign national from the payment of any applicable fees in respect of the examination of their circumstances under subsection (1).	Critères provinciaux
Provincial criteria	(3) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.
(3) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does	Séjour dans l'intérêt public
	25.2 (1) Le ministre peut étudier le cas de

not meet the province's selection criteria applicable to that foreign national. Public policy Considerations **25.2** (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by public policy considerations. Exemption (2) The Minister may exempt the foreign national from the payment of any applicable fees in respect of the examination of their circumstances under subsection (1). Provincial Criteria (3) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.	l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que l'intérêt public le justifie. Dispense (2) Il peut dispenser l'étranger du paiement des frais afférents à l'étude de son cas au titre du paragraphe (1). Critères Provinciaux (3) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

Security **34.** (1) A permanent resident or a foreign national is inadmissible on security grounds for (*a*) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada; (*b*) engaging in or instigating the subversion by force of any government; (*c*) engaging in terrorism; (*d*) being a danger to the security of Canada; (*e*) engaging in acts of violence that would or	Sécurité **34.** (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants : *(a*) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada; *(b*) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force; *(c*) se livrer au terrorisme; *(d*) constituer un danger pour la sécurité du

might endanger the lives or safety of persons in Canada; or (*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*) or (*c*). Exception **(2)** The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	Canada; *(e*) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada; *(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*) ou *c*). Exception **(2)** Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

Human or international rights violations **35.** (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for (*a*) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*; (*b*) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*; or (*c*) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with	Atteinte aux droits humains ou internationaux **35.** (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants : *(a)* commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*; *(b*) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*; *(c*) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou le séjour au Canada est limité au titre d'une décision, d'une résolution ou d'une mesure d'une organisation internationale d'États ou

that organization or association. Exception (2) Paragraphs (1)(*b*) and (*c*) do not apply in the case of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.	une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert avec cette organisation ou association. Exception (2) Les faits visés aux alinéas (1)(*b*) et (*c*) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

Organized criminality **37.** (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for (*a*) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or (*b*) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering. Application **(2)** The following provisions govern subsection (1): (*a*) subsection (1) does not apply in the case of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the	Activités de criminalité organisée **37.** (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants : *(a*) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan; *(b*) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité. Application **(2)** Les dispositions suivantes régissent l'application du paragraphe (1) : *(a*) les faits visés n'emportent pas

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national interest; and (*b*) paragraph (1)(*a*) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.	interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national; *(b*) les faits visés à l'alinéa (1)*a*) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se livre aux activités qui y sont visées.

Canada Border Services Agency Act, SC 2005, c 38

***Canada Border Services Agency Act*, SC 2005, c 38**

Mandate of Agency	Mission de l'Agence
5. (1) The Agency is responsible for providing integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the program legislation, by	**5.** (1) L'Agence est chargée de fournir des services frontaliers intégrés contribuant à la mise en oeuvre des priorités en matière de sécurité nationale et de sécurité publique et facilitant le libre mouvement des personnes et des biens — notamment les animaux et les végétaux — qui respectent toutes les exigences imposes sous le régime de la législation frontalière. À cette fin, elle :
(a) supporting the administration or enforcement, or both, as the case may be, of the program legislation;	*(a)* fournit l'appui nécessaire à l'application ou au contrôle d'application, ou aux deux, de la législation frontalière;
(b) implementing agreements between the Government of Canada or the Agency and a foreign state or a public body performing a function of government in a foreign state to carry out an activity, provide a service or administer a tax or program;	*(b)* met en oeuvre tout accord conclu entre elle ou le gouvernement fédéral et un État étranger ou un organisme public remplissant des fonctions gouvernementales dans un État étranger et portant sur l'exercice d'une activité, la prestation d'un service, l'administration d'une taxe ou l'application d'un programme;
(c) implementing agreements between the Government of Canada or the Agency and the government of a province or other public body performing a function of the Government in Canada to carry out an activity, provide a service or administer a tax or program;	*(c)* met en oeuvre tout accord conclu entre elle ou le gouvernement fédéral et le gouvernement d'une province ou un organisme public remplissant des fonctions gouvernementales au Canada et portant sur l'exercice d'une activité, la prestation d'un service, l'administration d'une taxe ou l'application d'un programme;
(d) implementing agreements or arrangements between the Agency and departments or agencies of the Government of Canada to carry out an activity, provide a service or administer a program; and	*(d)* met en oeuvre tout accord ou entente conclu entre elle et un ministère ou organisme fédéral et portant sur l'exercice d'une activité, la prestation d'un service ou l'application d'un programme;
(e) providing cooperation and support, including advice and information, to other departments and agencies of the Government of Canada to assist them in developing, evaluating and implementing policies and decisions in relation to program legislation for which they have responsibility.	*(e)* fournit aux autres ministères ou organismes fédéraux l'appui et la collaboration nécessaires, notamment par la prestation d'avis ou de renseignements,
Support	
(2) The Agency may provide support, through the provision of services, to departments and agencies for which the Minister is responsible, in accordance with	

***Canada Border Services Agency Act*, SC 2005, c 38**

agreements or arrangements entered into with those departments and agencies.	pour les aider dans l'élaboration, l'examen et la mise en oeuvre des orientations et des décisions relatives à la législation frontalière qui relève d'eux. Assistance **(2)** Elle peut en outre appuyer, par la prestation de services, les ministères ou organismes relevant du ministre, conformément à tout accord ou entente conclu avec eux.

Department of Public Safety and Emergency Preparedness Act*, SC 2005, c 10; originally introduced as Bill C-6 (38th Parliament, 1st Session),titled *An Act to establish the Department of Public Safety and Emergency Preparedness and to amend or repeal certain acts

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ESTABLISHMENT OF THE DEPARTMENT Department established **2.** (1) There is established a department of the Government of Canada, called the Department of Public Safety and Emergency Preparedness, over which the Minister of Public Safety and Emergency Preparedness, appointed by commission under the Great Seal, presides. Minister (2) The Minister holds office during pleasure and has the management and direction of the Department.	MISE EN PLACE Constitution du ministère **2.** (1) Est constitué le ministère de la Sécurité publique et de la Protection civile, placé sous l'autorité du ministre de la Sécurité publique et de la Protection civile. Celui-ci est nommé par commission sous le grand sceau. Ministre (2) Le ministre occupe sa charge à titre amovible; il assure la direction et la gestion du ministère.

POWERS, DUTIES AND FUNCTIONS OF THE MINISTER Powers, duties and functions **4.** (1) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction — and that have not been assigned by law to another department, board or agency of the Government of Canada — relating to public safety and emergency preparedness. National leadership (2) The Minister is responsible for exercising leadership at the national level relating to public safety and emergency preparedness.	ATTRIBUTIONS DU MINISTRE Attributions **4.** (1) Les attributions du ministre s'étendent d'une façon générale à tous les domaines de compétence du Parlement liés à la sécurité publique et à la protection civile qui ne sont pas attribués de droit à d'autres ministères ou organismes fédéraux. Rôle de premier plan (2) À l'échelon national, le ministre est chargé d'assumer un rôle de premier plan en matière de sécurité publique et de protection civile.

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Portfolio coordination and leadership **5.** The Minister shall coordinate the activities of the entities for which the Minister is responsible, including the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Canada Border Services Agency, the Canadian Firearms Centre, the Correctional Service of Canada and the National Parole Board, and establish strategic priorities for those entities relating to public safety and emergency preparedness.	Portefeuille — coordination et priorités stratégiques **5.** Le ministre coordonne les activités des entités dont il est responsable, notamment la Gendarmerie royale du Canada, le Service canadien du renseignement de sécurité, l'Agence des services frontaliers du Canada, le Centre canadien des armes à feu, le Service correctionnel du Canada et la Commission nationale des libérations conditionnelles, et établit, en matière de sécurité publique et de protection civile, leurs priorités stratégiques.