Federal Court Cour fédérale

Date: 20120611

Docket: IMM-6888-11

Citation: 2012 FC 726

Ottawa, Ontario, June 11, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

RAJINDER SINGH DHILLON

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] Mr. Dhillon, a citizen of India, is a permanent resident of Canada. In October 2003, Mr. Dhillon and another man carried four hockey bags filled with 78.55 kg of marijuana from Canada into the United States. In December 2003, Mr. Dhillon pleaded guilty in Washington State to conspiracy to import marijuana over 50 kg; he was convicted in March 2004 and sentenced to nine months imprisonment and three years supervised release. Upon completion of

his sentence in the United Sates, he was deported to Canada, where he faced allegations that he was inadmissible to Canada.

[2] In a decision dated February 18, 2010 (the ID Decision), a member of the Immigration and Refugee Board, Immigration Division (ID) concluded that Mr. Dhillon was inadmissible to Canada for serious criminality under s. 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], but not inadmissible under s. 37(1)(b) of *IRPA* in respect of organized crime.

[3] Both Mr. Dhillon and the Minister of Citizenship and Immigration (Minister) appealed the ID Decision to a panel of the Immigration and Refugee Board, Immigration Appeal Division (IAD). In a decision dated September 16, 2011 (the IAD Decision), the IAD dismissed the appeal of the Minister from the ID Decision. Stated differently, the IAD concluded that Mr. Dhillon was not inadmissible to Canada under s. 37(1)(b) of *IRPA*. The basis of the IAD Decision was that drug smuggling did not constitute a crime included in s. 37(1)(b).

[4] In this application for judicial review, the Minister seeks to overturn the IAD Decision.

II. Issues

[5] This application raises one issue. Specifically, can the IAD's conclusion that Mr. Dhillon is not inadmissible under s. 37(1)(b) of *IRPA* for having been convicted of conspiracy to import marijuana into the United States withstand scrutiny on the applicable standard of review?

[6] A preliminary issue is for this Court to establish the applicable standard of review. Is the IAD's interpretation of s. 37(1)(b) of *IRPA* reviewable on a standard of reasonableness or correctness?

III. Statutory Context

[7] I begin with an overview of the relevant statutory provisions.

[8] Sections 36 and 37 of *IRPA* establish the two bases of inadmissibility that are relevant on this application. Section 36 describes the circumstances in which a permanent resident or a foreign national is inadmissible on grounds of serious criminality or criminality. In summary form relevant to this application, s. 36(1)(b) provides that a person is inadmissible on grounds of serious criminality for "having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years". There is no dispute that Mr. Dhillon falls under this provision.

[9] Section 37 establishes that an individual may also be found inadmissible on the basis of organized criminality. Of particular relevance to this application is s. 37(1)(b):

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37.** (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :
. . .	. . .

(*b*) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.	*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.

[10] Once a foreign national or permanent resident in Canada is found to be inadmissible, the normal next step is the issuance of a removal order. In the case before me, Mr. Dhillon is currently subject to a removal order because of the finding of the ID, as affirmed by the IAD, that he is inadmissible to Canada for serious criminality under s. 36(1)(b).

[11] Most persons who are the subject of a removal order have an automatic right of appeal to the IAD (*IRPA*, above at s. 63(3)). Pursuant to s. 67(1)(c) of *IRPA*, an appeal may be allowed if:

... taking onto account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	... il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

[12] In other words, a person who is inadmissible may be permitted to remain if "special relief" is warranted on the basis of humanitarian and compassionate (H&C) considerations.

[13] However, Parliament determined that certain persons found to be inadmissible to Canada should not be permitted to appeal to the IAD on H&C grounds. Specifically, s. 64 of *IRPA* prevents those found inadmissible under s. 37 from appealing their removal order to the IAD:

64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.	**64.** (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant.
[Emphasis added]	[Je souligne]

[14] For purposes of s. 64(1), serious criminality includes only a crime that "was punished in Canada by a term of imprisonment of at least two years" (*IRPA*, above at s. 64(2)). Mr. Dhillon, does not meet this threshold as his crime was committed and punished in the United States.

[15] Simply stated, the result of this statutory scheme is the following:

1. if Mr. Dhillon is inadmissible for serious criminality under s. 36(1)(b), he has a right of appeal to the IAD where he may argue that sufficient H&C considerations warrant "special relief"; and

2. if Mr. Dhillon is inadmissible on grounds of organized criminality under s. 37(1)(b), he loses his right of appeal to the IAD.

IV. Standard of Review

[16] The question before the IAD was whether Mr. Dhillon was inadmissible to Canada on the grounds of organized criminality. Since Mr. Dhillon does not dispute that he committed a crime that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, there was no factual determination to be made by the IAD. Thus, the only question before the IAD was one of pure statutory interpretation: Does s. 37(1)(b) include the crime committed by Mr. Dhillon?

[17] The Court of Appeal, in *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at para 15, [2007] 3 FCR 198 [*Sittampalam*], held that the assessment of the proper interpretation of the language in s. 37(1)(a) of *IRPA* was a question of law subject to review on a standard of correctness. Arguably, a statutory interpretation of the closely-related s. 37(1)(b) should be subject to the same standard.

[18] However, I hesitate to rely wholly on *Sittampalam*. Since the Court of Appeal's determination of a correctness standard, the Supreme Court of Canada has held, in a number of decisions, that decisions of tribunals involving interpretation of their "home" legislation are entitled to deference. As instructed by the Supreme Court of Canada, unless the question is one of "general legal importance", a tribunal's decision will generally be reviewed on a reasonableness standard. For example, in *Canada (Canadian Human Rights Commission) v*

Canada (Attorney General), 2011 SCC 53 at para 24, [2011] 3 SCR 471 [*Mowat*], the Supreme Court unanimously wrote:

> In substance, if the issue relates to the interpretation and application of its own statute, is within its expertise and does not raise issues of general legal importance, the standard of reasonableness will generally apply and the Tribunal will be entitled to deference.
>
> [Emphasis added]

[19] Does the question of whether drug smuggling is a transnational crime within the meaning of s. 37(1)(b) raise an issue of general legal importance? I think that the better legal view is that it does.

[20] The question of inadmissibility of foreign nationals or permanent residents to Canada transcends an IAD determination of whether a person is able to access the H&C provisions in an appeal to the IAD. A finding of inadmissibility due to serious criminality or organized crime has implications for and application to a number of other processes involved in the immigration context. For example, a visa officer in an overseas post must take into account the admissibility of a person applying for permanent residence status. An immigration officer may conclude that a claim is not eligible to be referred to the Refugee Protection Division of the Immigration and Refugee Board because of inadmissibility. In sum, there are many tribunals or decision-makers who must consider and apply s. 37(1)(b) in their daily jobs. In this sense, the question before me is one of general legal importance. I would apply a standard of review of correctness.

[21] However, if I am wrong on this question of standard of review, I will also determine whether the interpretation found by the IAD was reasonable. When applied to a question of

statutory interpretation, it appears to me that a decision that does not accord with the well-established principles of statutory interpretation will be unreasonable. As stated in *Mowat*, above at paragraph 33:

> The question is one of statutory interpretation and the object is to seek the intent of Parliament by reading the words of the provision in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, quoted in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21).

[22] In *Mowat*, the Supreme Court concluded that, when a full contextual and purposive analysis of the provisions was undertaken, it became clear that no reasonable interpretation supported the conclusion reached by the tribunal (*Mowat*, above at para 34).

V. IAD Decision

[23] It was not disputed before the IAD that the Respondent had engaged in activity "in the context of transnational crime". The only issue was whether the importation of marijuana constituted an activity "such as people smuggling, trafficking in persons or money laundering".

[24] In determining which other activities might be covered by s. 37(1)(b), the IAD considered the relationship between the listed activities; interpreted the provision in light of s. 3(3) of *IRPA*; and considered the cases cited by the parties.

[25] First, the IAD noted that there was a relationship between people smuggling and trafficking in persons, and, while less obvious, between people smuggling and money

laundering, as the *United Nations Convention against Transnational Organized Crime*, 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003, ratified by Canada 13 May 2002) (the Convention, or *UNCTOC*) references both money laundering and trafficking in persons. Noting that corruption and obstruction of justice are also referenced in the Convention, the IAD reasoned that an argument could be made that they also fall within s. 37(1)(b). The IAD also held that "the enumerated activities in paragraph 37(1)(b) do not all necessarily have to be connected, as Parliament could have been providing two different types of activities and indicating that activities such as *either* of those two different activities would fall under paragraph 37(1)(b)" (emphasis in original). As will be seen, however, the IAD went on to require that there be "an articulable similarity between the subject offence and either human trafficking (people smuggling/trafficking in persons) or money laundering" as well as a "significant similarity" between the unlisted activity and those two activities.

[26] Second, the IAD considered the interpretation of s. 37(1)(b) in light of ss. 3(3)(a), (b), (c) and (f) of *IRPA*. Those provisions, which describe the application of *IRPA*, are set out here for ease of reference:

(3) This Act is to be construed and applied in a manner that	(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :
(*a*) furthers the domestic and international interests of Canada;	*a)* de promouvoir les intérêts du Canada sur les plans intérieur et international;
(*b*) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;	*b)* d'encourager la responsabilisation et la transparence par une meilleure connaissance des programmes d'immigration

(*c*) facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations;	et de ceux pour les réfugiés;
…	*c)* de faciliter la coopération entre le gouvernement fédéral, les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux;
(*f*) complies with international human rights instruments to which Canada is signatory.	…
	f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.

[27] With respect to s. 3(3)(a), the IAD reasoned that it was not clear how reading drug trafficking into s. 37(1)(b) of *IRPA* would further Canada's domestic and international interests, as the loss of the right to appeal a removal order on humanitarian and compassionate grounds could also hinder those interests. The IAD noted that "[t]he evidence and argument on that point simply are not before me". The IAD then reasoned that,

> If inclusion of all transnational crimes was the intention of Parliament, then Parliament would likely have used other wording, to clearly define that and given that drug trafficking is a common transnational crime, I find it unlikely that Parliament overlooked listing it within the enumerated offences in paragraph 37(1)(b). I must conclude that Parliament carefully chose the language and list of enumerated offences and I am bound to interpret the specific wording chosen by Parliament in my analysis. I note that paragraph 37(1)(a) already removes the right of appeal for persons who meet the definition in that paragraph, of organized criminality.

[28] Regarding s. 3(3)(b), the IAD stated that excluding drug trafficking from s. 37(1)(b) would not remove accountability for that offence, as it continues to have serious criminal sanctions as well as serious consequences under *IRPA*, including the issuance of a removal order with the right of appeal on humanitarian and compassionate grounds or possibly removal under s. 37(1)(a). In addition, the IAD reasoned that "'importing' drug trafficking into the enumerated list in paragraph 37(1)(b) is anything but transparent".

[29] As for s. 3(3)(c), the IAD found that it was impossible, in the absence of clearer language indicating Parliament's intention, to conclude which interpretation would facilitate cooperation. The IAD thus reasoned that it was only possible to "construe the provisions of paragraph 37(1)(b) according to the language utilized by Parliament".

[30] The IAD then considered s. 3(3)(f), and found that he had "not been directed to any international obligation that mandates the removal of appeal rights, based on humanitarian and compassionate grounds, for persons convicted of serious drug charges".

[31] The third step of the IAD's reasoning included a consideration of three cases cited by the Minister: *Canada (Public Safety) v Almonte* (2009), ID 0003-A8-02583; *Canada (Public Safety) v Halls* (2010), ID 0003-A3-02628; and *Sidhu v Canada (Minister of Public Safety and Emergency Preparedness)*, [2011] IADD No 1288 (QL), 2011 CanLII 93851 (IRB) [*Sidhu*]. The IAD found that the first two cases were unhelpful and that, while relevant, the decision in *Sidhu* was unsupportable. In particular, the IAD explained that he understood the panel in *Sidhu* to have held that very little similarity is required between the activities listed in s. 37(1)(b) and

"unlisted" activities caught by that provision. In contrast, the IAD stated that he believed "significant similarity is required to satisfy the description, 'such as'". The IAD thus disagreed with the conclusion of the panel in *Sidhu* that the "common elements" of organized criminality and movement across international borders linked unlisted activities to the listed activities, and thus made drug smuggling an "obvious, although unlisted, activity to associate with the listed activities in paragraph 37(1)(b)" (see *Sidhu*, above at para 16). According to the IAD, organized criminality is an unhelpful "attribute" because, although "a generalized 'organized criminality'" applies to both ss. 37(1)(a) and (b), "[t]here must be a purpose for Parliament to have utilized these two sections, one specifying the components of organized criminality and the other specifying 'activities such as…' the enumerated list". The IAD further held that movement across international borders is not a "true common factor" that can help identify unlisted activities, because it applies to all transnational crimes, and s. 37(1)(b) is clearly narrower.

[32] The IAD then proceeded to articulate its view that a significantly higher level of similarity is required for an unlisted activity to be caught by s. 37(1)(b):

> The consequence of a paragraph 37(1)(b) determination is extremely serious, being the elimination of any right to appeal. Inclusion of a category of offences under that provision, therefore, ought not to be made without a clear and rational association having been established. I conclude that <u>in order for an activity to meet the test of being "such as" the enumerated activities, there must be an articulable similarity between the subject offence and either human trafficking (people smuggling/trafficking in persons) or money laundering and the activity must have significant similarity to those two activities</u>. If the only similarity is that the offences are transnational, as submitted by the Minister, then this similarity has not been made out.
>
> [Emphasis added]

[33] The IAD accordingly dismissed the Minister's appeal, noting that the Respondent remained subject to a deportation order under s. 36(1)(a), although he had a right of appeal to seek humanitarian and compassionate relief.

VI. Analysis

A. *The principles*

[34] As noted at paragraph [16] above, the only question before the IAD was one of pure statutory interpretation: Does s. 37(1)(b) include conspiracy to import marijuana into the United States?

[35] In this question of statutory interpretation, I am guided by much jurisprudence. In *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, [1998] SCJ No 2, Mr. Justice Iacobucci, speaking for the unanimous Court, endorsed the statement of Elmer Driedger in *Construction of Statutes*, 2d ed (Toronto: Butterworths, 1983) that:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[36] The remarks of Chief Justice McLachlin and Justice Major in *Canada Trustco Mortgage Co v Canada*, 2005 SCC 54 at para 10, [2005] 2 SCR 601 are also helpful:

> It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of

> Parliament": see *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.
>
> [Emphasis added]

[37] In undertaking the task of interpreting a statute, the court should not ignore the words used. The Supreme Court of Canada recently confirmed that statutory interpretation "involves a consideration of the ordinary meaning of the words used and the statutory context in which they are found" (*Celgene Corp v Canada (Attorney General)*, 2011 SCC 1 at para 21, [2011] 1 SCR 3). The Court further explained that "[t]he words, if clear, will dominate; if not, they yield to an interpretation that best meets the overriding purpose of the statute" (*Celgene*, above at para 21).

[38] From this brief synopsis of the jurisprudence, I learn that, where there are conflicting but not unreasonable interpretations available, the contextual framework of the legislation becomes even more important.

B. *The words used*

[39] As taught by the jurisprudence, I begin by looking at the words of the provision in question. Section 37(1)(b) states that,

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	**37.** (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :
…	…
(*b*) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.	*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.

[40] The IAD correctly points out that Parliament chose not to expressly refer to drug smuggling in s. 37(1)(b). I agree that Parliament could have explicitly included drug trafficking in the list of transnational crimes that attract the severe consequences of being implicated in organized criminality. Does this omission mean that international drug smuggling is not caught by s. 37(1)(b)?

[41] At its narrowest, the issue on this application is whether the phrase “such as” can refer to drug smuggling.

[42] I note at the outset that the French version of s. 37(1)(b) uses the word “telles”. It is almost identical to the English phrase “such as”. According to the *Collins-Robert French-*

English, English-French Dictionary, 2d ed (Toronto: Collins, 1987), “telle” translates as “such” or “like”, while “telle que” means “like” or “such as”. There is no conflict between the French and English versions of the provision in question.

[43] The IAD held that the phrase “such as” requires that there be “significant similarity” between the activity sought to be included and the listed offences. I do not agree.

[44] In my view, in its ordinary use, the phrase “such as” is illustrative and suggests an example rather than a limit. This interpretation is supported by this Court’s decision in *Hadwani v Canada (Minister of Citizenship and Immigration)*, 2011 FC 888 at para 9, 394 FTR 156 [*Hadwani*], where Justice Hughes held that the notation “i.e.” in a Canadian High Commission document check list denoted “such as”, thus “meaning a degree of flexibility is permissible”. In that case, Justice Hughes found that a Designated Immigration Officer had erred in rejecting the hospital record of a birth, when the check list only stated that documents “such as” a birth certificate were required (*Hadwani*, above at para 10). In my opinion, the IAD’s requirement of “significant similarity” also creates too high a standard.

[45] This conclusion is further supported by the principle that the limited class, or *ejusdem generis*, rule does not apply where general words precede rather than follow a specific enumeration. As the Supreme Court explained in *National Bank of Greece (Canada) v Katsikonouris*, [1990] 2 SCR 1029 at 1040, [1990] SCJ No 95:

> Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it. <u>But it</u>

> would be illogical to proceed in the same manner when a general term precedes an enumeration of specific examples. In this situation, it is logical to infer that the purpose of providing specific examples from within a broad general category is to remove any ambiguity as to whether those examples are in fact included in the category. It would defeat the intention of the person drafting the document if one were to view the specific illustrations as an exhaustive definition of the larger category of which they form a part.
>
> [Emphasis added]

[46] In this case, the general term “activities” precedes the listed activities, suggesting that those offences are examples only and that the provision does not establish a limited class. Because the listed activities are non-exhaustive examples, there is, as correctly argued by the Minister, no room for the application of the implied exclusion rule either (see *United Taxi Drivers’ Fellowship of Southern Alberta v Calgary (City),* 2004 SCC 19 at para 14, [2004] 1 SCR 485).

[47] Moreover, as is more apparent from the contextual review that follows, it appears likely that Parliament highlighted “people smuggling, trafficking in persons or money laundering” for the purpose of removing any ambiguity as to whether these crimes are included in the category.

[48] While the IAD appears to acknowledge that the examples in s. 37(1)(b) are not exhaustive, the words of the IAD, in its decision, show that the tribunal took an overly-narrow view. For example, at paragraph 10 of its decision, the IAD states that “... it is not clear on the evidence before me how Canada’s international interests would be furthered by adding drug trafficking to the list of offences in paragraph 37(1)(b) ...”. With respect, these words show that the IAD was indeed – and unreasonably – treating this as an exhaustive list.

[49] That is not to say that the IAD's conclusion that s. 37(1)(b) does not include all transnational offences is incorrect. In the same way that the phrase "such as" is not entirely exclusive, it also cannot be wholly inclusive, otherwise, as Mr. Dhillon points out, that phrase would be redundant.

[50] Having reviewed the words of the provision, I am not persuaded that it is sufficiently (or at all) clear that international drug smuggling is either included or excluded from the "activities" caught by s. 37(1)(b). Thus, the next step of my analysis is to review the contextual framework of the legislation.

C. *Contextual framework*

[51] There are two key contextual matters that are relevant. The first is the context of s. 37(1)(b) within *IRPA* and the second is the notion of drug smuggling and transnational crime in the context of Canada's international obligations.

(1) Prioritization of security for Canadians

[52] As noted above, the first aspect of the contextual framework is the overall statutory scheme of *IRPA* in addressing criminality and serious criminality. The provision in question does not sit in isolation in *IRPA*; rather, it is contained in the division of *IRPA* dealing with inadmissibility and must be read in context. In ss. 34 to 37, in particular, *IRPA* addresses the inadmissibility of persons on a number of grounds: security (s. 34), human and international

rights violations (s. 35), serious criminality (s. 36) and organized criminality (s. 37). Read together, these provisions clearly signal the intent of Parliament to address criminality seriously. For certain classes of persons, Parliament has stripped away the right to appeal to the IAD on H&C grounds, subject to s. 64(2).

[53] Mr. Dhillon, like the IAD, places significant weight on the fact that a finding that drug smuggling is captured by s. 37(1)(b) would result in the removal of the individual's right to appeal on the basis of H&C grounds. This argument ignores the interest of Canada in maintaining the security of Canadians. The Federal Court of Appeal has endorsed a broad interpretation of s. 37(1)(a) on the basis that *IRPA* "signifies an intention, above all, to prioritize the security of Canadians" (*Sittampalam*, above at para 36). This priority was even more strongly expressed in the Supreme Court of Canada's decision in *Medovarski v Canada (Minister of Citizenship and Immigration); Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paras 9-10, [2005] 2 SCR 539, where the unanimous Court stated:

> 9 The *IRPA* enacted a series of provisions intended to facilitate the removal of permanent residents who have engaged in serious criminality. This intent is reflected in the objectives of the *IRPA*, the provisions of the *IRPA* governing permanent residents and the legislative hearings preceding the enactment of the *IRPA*.
>
> 10 The objectives as expressed in the *IRPA* indicate an intent to prioritize security. This objective is given effect by preventing the entry of applicants with criminal records, by removing applicants with such records from Canada, and by emphasizing the obligation of permanent residents to behave lawfully while in Canada. This marks a change from the focus in the predecessor statute, which emphasized the successful integration of applicants more than security: e.g., see s. 3(1)(*i*) of the *IRPA* versus s. 3(*j*) of the former Act; s. 3(1)(*e*) of the *IRPA* versus s. 3(*d*) of the former Act; s. 3(1)(*h*) of the *IRPA* versus s. 3(*i*) of the former Act. Viewed collectively, the objectives of the IRPA and its provisions concerning permanent residents, communicate a strong desire to

> treat criminals and security threats less leniently than under the former Act.

An interpretation which prioritizes a foreign national's appeal rights is accordingly inconsistent with the broad intention of *IRPA*.

[54] In sum, this emphasis on security for Canadians supports an expansive view of s. 37(1)(b) that arguably includes the crime of "Conspiracy to Import Marijuana—over 50 kilograms" for which Mr. Dhillon was convicted.

(2) International treaties

[55] The second consideration is the notion of transnational crime and Canada's interest in this subject through its international treaty obligations. One of the objectives of *IRPA* is the promotion of "international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks" (*IRPA*, above at s. 3(1)(i)).

[56] Two of the more relevant international treaties are the following:

- *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*, 20 December 1988, 1582 UNTS 95 (entered into force 11 November 1990, ratified by Canada 5 July 1990) [*1988 Drugs Convention*]; and

- *UNCTOC*, above.

[57] Mr. Dhillon submits that drug smuggling is a "totally different offenc[e]" from people smuggling, human trafficking and money laundering. Similarly, and relying on the *UNCTOC*, the IAD appeared to find a link between money laundering and trafficking in persons but concluded that there was no "articulable similarity" between drug smuggling and either human trafficking or money laundering. I do not agree. The problem with this position is that both the IAD and Mr. Dhillon have failed to appreciate the nature of the crime of drug trafficking or smuggling within the larger context of international crime and Canada's international treaty obligations.

[58] While neither the *1988 Drugs Convention* nor the *UNCTOC* is incorporated into Canadian law, s. 3(1)(i) directs that *IRPA* must be construed and applied in a manner that complies with them (see *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 73, [2006] 3 FCR 655). At the very least, a proper contextual interpretation of s. 37(1)(b) should be informed by those international treaties.

[59] A review of the background information provided by the Minister on this application is informative. As of the date of the *1988 Drugs Convention*, the main focus of the states parties was on drug trafficking. However, it is clear that drug trafficking and money laundering are inextricably linked. This is apparent from the *1988 Drugs Convention*, which establishes a

connection between drug trafficking and money laundering. In particular, the preamble to that convention refers to the states parties' desire,

> [T]o conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances …
>
> [Emphasis added]

[60] In addition to requiring that states parties criminalize, *inter alia*, the production, distribution, sale and purchase of narcotics, the *1988 Drugs Convention* also requires criminalization of what is commonly referred to as money laundering. In particular, Article 3.1 states that,

> 1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:
>
> …
>
> *b)* i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
>
> ii) The concealment or disguise of the true nature; source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences ...

[61] The inclusion of this provision in the *1988 Drugs Convention* indicates that, since at least 1988, states have recognized that money laundering is an important aspect of international drug trafficking. The close relationship between money laundering and drug trafficking has been long recognized. As pointed out by Professor Gerhard Kemp in his article, "The United Nations Convention Against Transnational Organized Crime: A milestone in international criminal law" (2001) 14 S Afr J Crim Just 152 at 157:

> The provisions of the Convention criminalizing money laundering is clearly based on the provisions of the 1988 United Nations Drug Convention. However, under the 1988 Convention the crime of money laundering is restricted to laundering proceeds of drug offences.

[62] In 2000, Canada signed the *UNCTOC*. The foreword to the *UNCTOC* similarly refers to the relationship between the narcotics trade and other transnational crimes:

> Arrayed against these constructive forces, however, in ever greater numbers and with ever stronger weapons, are the forces of what I call "uncivil society". They are terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society.
>
> [Emphasis added]

[63] The *UNTOC* thus expaned the notion of serious organized transnational crime beyond an exclusive focus on drug crimes.

[64] In a real sense, money laundering overlaps substantially with drug trafficking. Quite simply, drug smuggling and trafficking give rise to money laundering (see e.g. Peter M. German, *Proceeds of Crime and Money Laundering: Includes Analysis of Civil Forfeiture and Terrorist Financing Legislation* (Toronto: Carswell, 1998) at 1A-9). In this context and with this

understanding of the nature of the crimes involved, it is not logical to me that Parliament would include money laundering as a transnational crime under s. 37(1)(b) and not drug smuggling.

[65] Certainly, it would have been clearer for Parliament to specifically list drug smuggling in the provision. However, we must appreciate that, in 2001 when this provision was implemented into our immigration law, the crimes of people smuggling, money laundering, and human trafficking were not as well known. Nations were searching for ways to control, not only drugs, but these transnational crimes as well. The fact that Parliament chose to highlight these three crimes can be seen as a direction that these three transnational crimes were included, even though a reader might not initially direct his mind to them. It does not mean, in my view, that Parliament intended to exclude the equally serious transnational crime of drug smuggling from s. 37(1)(b).

[66] It follows that the words of s. 37(1)(b), when read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of *IRPA*, the object of *IRPA*, and the intention of Parliament include the activity of transnational drug smuggling. Stated differently, the crime of "Conspiracy to Import Marijuana—over 50 kilograms" for which Mr. Dhillon was convicted is the foundation for a finding of inadmissibility on grounds of both serious criminality under s. 36(1)(b) of *IRPA* and organized criminality under s. 37(1)(b) of *IRPA*.

[67] In my view, the IAD failed to have regard to: (a) the intention of Parliament to prioritize security of Canadians; and (b) the interrelationship of drug smuggling and money laundering as

reflected in the relevant international instruments. In addition, the IAD erred in concluding that the only similarity between the activities listed in s. 37(1)(b) and drug smuggling is that both offences are transnational.

[68] If the IAD Decision is reviewable on a standard of correctness, the interpretation by the IAD is incorrect. On a standard of reasonableness, the interpretation was unreasonable; paraphrasing the words of the Supreme Court in *Mowat*, above at paragraph 34, when a full contextual and purposive analysis of s. 37(1)(b) is undertaken, it becomes clear that no reasonable interpretation supports the conclusion reached by the IAD.

VII. Conclusion

[69] In summary, I conclude that:

(a) the use of the words “such as” does not limit the application of s. 37(1)(b) to the crimes of people smuggling, trafficking in persons and money laundering;

(b) the loss of Mr. Dhillon’s right to an appeal to the IAD on H&C grounds is consistent with the objective of Parliament to prioritize security for Canadians; and

(c) a textual, contextual and purposive analysis to find a meaning that is harmonious with *IRPA* as a whole results in a conclusion that the transnational crime of drug smuggling is included in s. 37(1)(b).

[70] Accordingly, this application for judicial review will be allowed.

[71] I wish to make it clear that I am not concluding that all transnational crimes will fall within the meaning of s. 37(1)(b). Clearly, there may be transnational crimes that do not fit within the definition. However, I am satisfied that the crime of drug smuggling of which Mr. Dhillon was convicted is included in the proper meaning of s. 37(1)(b). I express no views on any other transnational crimes or how "similar" such crimes would have to be to fall within that provision.

[72] The Minister proposes the following question for certification:

> Is the importation of narcotics into another country a transnational crime for the purposes of the section 37(1)(b) inadmissibility provision?

[73] I agree that the question is one of general importance that should be certified. The question satisfies the requirements set out by the Court of Appeal in *Liyanagamage v Canada (Minister of Citizenship and Immigration)*, 176 NR 4 at paras 4-6, [1994] FCJ No 1637 (QL) (see also *Zazai v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89 at paras 11-12, 318 NR 365; and *Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at paras 22-29, [2010] 1 FCR 129). Specifically, the question is a serious question of broad

significance and it would be dispositive of the appeal. I would, however, rephrase the question as follows:

> Is the importation of narcotics into another state an activity ‘such as people smuggling, trafficking in persons or money laundering’ within the meaning of s. 37(1)(b) of *IRPA*?

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is allowed, the decision of the IAD is quashed and the matter remitted to the IAD for re-consideration by a different member of the IAD, in accordance with these reasons; and

2. the following question of general importance is certified:

> Is the importation of narcotics into another state an activity 'such as people smuggling, trafficking in persons or money laundering' within the meaning of s. 37(1)(b) of *IRPA*?

"Judith A. Snider"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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