IN THE CROWN COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

DAVID ROGER REVELL

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

FACTUM OF THE APPELLANT

OVERVIEW...1
I: FACTS...3
II: POINTS IN ISSUE...5
III: ARGUMENT...5
1. The Appellant's Section 7 Interests Are Engaged at the Inadmissibility Hearing Stage.......5
A. Febles and B010 do not Preclude s 7 Engagement at the Inadmissibility Hearing Stage. 6
B. The Appellant's s 7 Interests are Engaged At the Inadmissibility Hearing................... 7
2. The Appellant's Section 7 Rights are Infringed...11
A. The Appellant's Section 7 Rights should be interpreted in context of International Law...12
B. The Appellant's Security of the Person Interest is Violated..13
I) The Court Must Consider the Particular Circumstances of the Appellant...............14
II) The Appellant's stress from deportation is more significant than stress generally associated with deportation..15
C. The Appellant's Liberty Interest is Violated... 17
I. Not the right to remain, but the right to choose to remain near social and family ties. 18
II. The limitation on the Appellant's liberty interest is more significant than limits generally associated with deportation...18
III. Alternatively, the possibility of detention violates the Appellant's liberty interest... 19
D. Violation of s 7 Interests are not in accordance with the Principles of Fundamental Justice...20
Chiarelli and Medovarski do not Preclude an Individualised Charter Analysis..........20
The FCA and FC Erred in Characterising the Objective of the Inadmissibility Scheme 21
I) The Scheme is Overbroad as Removal Can Fail to Improve Public Safety.............22
II) The Permanent Harm of Removal is Grossly Disproportionate to the Objective...23
Safety Valves in the Inadmissibility Scheme Do Not Cure the Charter Violation.......26
3. The Infringement of the Appellant's Rights are Not Justified by Section 1........................28
IV: ORDER(S) SOUGHT...31
APPENDIX: LIST OF AUTHORITIES...32

OVERVIEW

[1] This case is an appeal from a Federal Court of Appeal (FCA) decision upholding the constitutionality of the Inadmissibility Scheme under the *Immigration and Refugee Protection Act* (the *Act*) which deports long term permanent residents without consideration of their individual circumstances.[1] The Appellant submits the deportation of a long term permanent resident under the Inadmissibility legislative scheme unjustifiably violates s 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*).[2] Deportation under the Inadmissibility Scheme violates the Appellant's security of the person and liberty interests. The violations are not in accordance with the principles of fundamental justice because the scheme is overbroad and grossly disproportionate. The Inadmissibility Scheme cannot be saved under s 1 of the *Charter*. Thus, the Appellant asks this court to declare the Inadmissibility Scheme unconstitutional under s 52 of the *Charter* and send the case back to the Immigration Division (ID) for redetermination under s 24(2) of the *Charter*.

[2] The Supreme Court of Canada (SCC) in *Canadian Council for Refugees v Canada (Citizenship and Immigration)* (*CCR*), updated guidance on how past jurisprudence on the constitutionality of removal proceedings should be interpreted.[3] First, the SCC clarified that *Febles v Canada* (*Febles*) should not be interpreted to preclude the engagement of s 7 at the deportation stage.[4] Second, the SCC clarified that s 7 interests can be engaged in the process as a whole. As a result, the lower courts here erred in interpreting *Chiarelli v Canada (Employment*

---

[1] *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].
[2] Part I of the *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
[3] *Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 [*CCR*].
[4] *Febles v Canada*, 2014 SCC 68 [*Febles*].

and Immigration) (*Chiarelli*)[5] and *Medovarski v Canada (Citizenship and Immigration)* (*Medovarski*) to preclude the engagement of s 7 rights at the inadmissibility stage.[6]

[3] The Appellant's s 7 rights are engaged by deportation under the Inadmissibility Scheme. First, the serious psychological harm of deportation violates the Appellant's right to security of the person. The psychological stresses of deportation on a long term permanent resident are greater than the ordinary stresses of deportation. Second, the infringement on his right to choose to remain close to familial ties violates the Appellant's right to liberty.

[4] The violations of the Appellant's s 7 rights are not in accordance with the principles of overbreadth and gross disproportionality. The objective of the Inadmissibility Scheme is to protect public safety through the efficient removal of non-citizens who are a risk to the public. The scheme's overbreadth can remove a permanent resident who has lived in Canada for 40 years and poses no risk, not serving the goal of improving public safety. The scheme is grossly disproportionate because the destruction in the Appellant's family life and mental wellbeing are out of sync with the goal of facilitating the faster removal of non-citizens to protect public safety.

[5] The Inadmissibility Scheme's violation of the Appellant's s 7 rights is not justified under s 1. The Inadmissibility Scheme's objective is pressing and substantial, and rationally connected to its objective. However, the harmful effects of removal on long term permanent residents like Mr. Revell are not minimally impairing or proportional to the scheme's beneficial effects.

I: FACTS

The Appellant's Inadmissibility Proceedings

[6] Mr. David Revell, the Appellant, faced the complete upheaval of his life when he was found inadmissible to Canada. Mr. Revell, now 55 years old, immigrated to Canada at 10 years

---

[5] *Chiarelli v Canada (Employment and Immigration)*, [1992] 1 SCR 711 [*Chiarelli*].
[6] *Medovarski v Canada (Citizenship and Immigration)*, 2005 SCC 51[*Medovarski*].

old in 1964. He has 3 children and 3 grandchildren in Canada, but has no close family in England where he is a citizen. He works as an oil well technician in Alberta, where he lives with his partner. In 2008, Mr. Revell was convicted for drug possession and trafficking charges and received 5 years in prison (2008 convictions). After the 2008 convictions, an officer submitted a report of inadmissibility under s 44(1) of the *Act*. The report was not referred to the ID for an admissibility hearing after Mr. Revell made submissions to the Minister's Delegate. Mr. Revell was not warned that his previous convictions may be considered in later inadmissibility inquiries.

[7] In 2013, Mr. Revell was convicted for assault with a weapon and assault causing bodily harm following an altercation with his ex-girlfriend for which he received a suspended sentence. After the 2013 conviction, an officer submitted another report under s 44(1) of the *Act*. In 2016, the Minister's Delegate determined the report to be well-founded and referred it to the ID.

[8] In 2016, Mr. Revell attended an admissibility hearing under s 36(1)(a) for serious criminality and s 37(1)(a) for organised criminality of the *Act* for both his 2008 and 2013 convictions. Mr. Revell submitted evidence of the severe psychological harm deportation would have on him. Evidence from Dr. Karl Williams, a psychologist, and his children demonstrate that uprooting Mr. Revell, who has deep social and economic roots to Canada, could "kill him". The ID accepted the evidence and found deportation engaged his *Charter*-protected interests. Mr. Revell was determined to be inadmissible because the ID felt bound by *Chiarelli* to conclude deprivation was not contrary to the principles of fundamental justice.

Appeals to the FC and the FCA

[9] Mr. Revell sought judicial review of the ID decision at the Federal Court (FC) on the grounds that the Inadmissibility Scheme is unconstitutional. The FC did not accept his submissions and affirmed the inadmissibility finding by the ID. The FC also found that the ID

erred in considering Mr. Revell's s 7 interests at the inadmissibility stage, and relied on *Blencoe v British Columbia (Human Rights Commission)* (*Blencoe*) and *Medovarski* to conclude that Mr. Revell's s 7 interests cannot be engaged at the inadmissibility stage.[7] Mr. Revell appealed the FC's decision at the Federal Court of Appeal (FCA).

[10] The FCA reaffirmed the FC's holding that the ID erred when they found Mr. Revell's s 7 rights were engaged at the admissibility hearing stage. The FCA decision highlighted that the s 7 analysis was premature because these interests are not engaged until deportation is about to occur, and there were other steps remaining in the process prior to deportation. Mr. Revell applied for leave to the SCC, but was denied.[8]

II: POINTS IN ISSUE

[11] The present appeal raises the following issues:

1) Is s 7 of the *Charter* engaged at the admissibility hearing stage?
2) If yes, does the deportation order of a long term permanent resident in the circumstances of this case deprives them of life, liberty or security of the person in a manner that is not in accordance with the principles of fundamental justice?
3) If yes, is the violation justified under s 1 of the *Charter*?

III: ARGUMENT

1. The Appellant's Section 7 Interests Are Engaged at the Inadmissibility Hearing Stage.

[12] The role of s 7 in deportation proceedings has been refined since the initial application in *Singh v Canada (Employment and Immigration)* (*Singh*).[9] While this first application of s 7 was broad, subsequent cases and legislation have altered its role in immigration law, leaving

[7] *Revell v Canada (Citizenship and Immigration*), 2017 FC 905 [*Revell FC*], citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*].
[8] *Revell v Minister of Citizenship and Immigration*, 2019 FCA 272, leave to appeal to SCC refused, CanLII 25169.
[9] *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177 [*Singh*].

Canadian courts to grapple with how s 7 should be applied. In *CCR*, the SCC clarified the conflicting jurisprudence on s 7 engagement in removal proceedings, holding that s 7 can be engaged throughout the removal process, and that curative measures do not preclude a s 7 engagement.[10] This corrects the 'immigration exceptionalism' that scholars have criticised in Canadian courts' application of s 7 in removal processes since *Chiarelli*.[11] The FCA's decision should be overturned in light of *CCR*'s clarification of previous case law of s 7 engagement in deportation proceedings.

***A. Febles and B010* do not Preclude s 7 Engagement at the Inadmissibility Hearing Stage**

[13] The FCA erred in applying *Febles v Canada (Citizenship and Immigration)* (*Febles*)[12] and *B010 v Canada (Citizenship and Immigration*) (*B010*)[13] to find that engaging s 7 at the inadmissibility hearing stage of the removal process is premature. The FCA concluded that s 7 interests could only be engaged at a later stage in the removal process, and that *Charter* rights do not permeate the entirety of the removal process.[14] The FCA also concluded that immigration law should be distinguished from criminal and extradition law where s 7 is engaged substantively and procedurally throughout the process.[15]

[14] In *CCR*, the SCC clarified the role of *Febles* and *B010* in the s 7 analysis for removal processes. The court concluded that immigration law should not ignore how s 7 is engaged in other legal contexts: similar to criminal or extradition contexts, s 7 should permeate the entire removal process.[16] In an extradition case, *United States v Cobb*, the SCC held that although the

---

[10] *CCR*, *supra* note 3 at para 73.
[11] Joshua Blum, "The Chiarelli Doctrine: Immigration Exceptionalism and the Canadian Charter of Rights and Freedoms" (2021) 54:1 UBC L Rev Article 1.
[12] *Febles, supra* note 4.
[13] *B010 v Canada (Citizenship and Immigration*), 2015 SCC 58 [*B010*].
[14] *Revell v Canada (Citizenship and Immigration)* 2019 FCA 262 at para 41; citing *Febles*, para 67 [*Revell FCA*].
[15] *Revell FCA, supra* note 14 at para 54.
[16] *CCR*, *supra* note 3 at para 73.

committal hearing is still distant from effective removal from Canada, s 7 is engaged. For the hearing to be fair, the individual's substantive s 7 interests must be considered since s 7 is engaged at all stages of the process.[17] Although the application of s 7 in immigration law has been inconsistent with these other legal contexts, *CCR* clarifies that the previous jurisprudence does not suggest that s 7 is only engaged at the step before removal.[18]

B. The Appellant's s 7 Interests are Engaged At the Inadmissibility Hearing

[15] The SCC in *Canada (Attorney General) v Bedford (Bedford)* held that s 7 is engaged where there is a 'sufficient causal connection' between the deprivation of the individual's s 7 rights and the government action or law.[19] Here, there is a sufficient causal connection between the inadmissibility hearing and the deprivation of Mr. Revell's s 7 rights because the threat of prejudice to Mr. Revell's s 7 rights is alive since a removal order is issued upon a finding of inadmissibility.[20] In light of *CCR*, the lower courts here also erred by relying on alternative measures to preclude s 7 engagement.

[16] The Appellant reiterates that his s 7 rights were engaged throughout the deportation proceedings as there was a 'sufficient causal connection', thus meeting the standard set out in *Bedford*.[21] The FCA characterised the Appellant's argument of s 7 engagement as "foreseeability" while *Bedford* is about causal connection. The FCA rejected *Bedford*'s relevance because "[s]ection 7 of the Charter cannot be interpreted as requiring that an assessment of a person's right be made at every step of the process".[22]

[17] *United States of America v Cobb*, 2001 SCC 19 at paras 33—34 [*Cobb*].
[18] *CCR*, *supra* note 3 at para 72.
[19] *Ibid,* at para 113 quoting *Bedford* at para 78.
[20] *IRPA*, *supra* note 1 at s 45.
[21] *Bedford v Attorney General of Canada*, 2013 SCC 72 [*Bedford*].
[22] *Revell FCA*, *supra* note 14 at para 45.

[17] The FCA failed to properly apply the *Bedford* test because the individuality highlighted in *Bedford* is missing from the FCA's decision. The FCA erroneously cited *Febles* and *B010* to reject the relevance of *Bedford* to Mr. Revell's case because these cases were interpreted to preclude engagement of s 7 at the inadmissibility hearing.[23]

[18] The Appellant concedes that the inadmissibility hearing stage will not always engage the s 7 interests of individuals facing deportation. However, it is important to note that the level of emotional, social, and financial establishment of an immigrant who resided in Canada for only a few months or years cannot be compared to an immigrant who has spent 80% of their life in Canada. The level of familial support, familiarity with the society and culture, and ability to earn a living are factors to consider when determining if s 7 interests are engaged in removal.[24] What should be considered is the severity of the removal's impact on the Appellant's well-being to determine if s 7 interests can be engaged in the removal process. This was done in *Romans v Canada (Minister of Citizenship & Immigration)* (*Romans*) where FCA accepted s 7 interests were engaged based on the Romans' reliance on Canadian health care, his family, and his long term residence in Canada.[25] Without consideration of these factors, Romans could not establish that deportation engaged his s 7 interests.

[19] While s 7 may not be engaged at every inadmissibility hearing, it is engaged for long term permanent residents like Mr. Revell because of the factors mentioned above. There is a sufficient causal connection between the inadmissibility determination and Mr. Revell's s 7 interests because once the ID finds inadmissibility, an enforceable removal order is issued[26]

---

[23] *Ibid* at para 46.

[24] Immigration and Refugee Board of Canada, *Appealing a removal order based on a criminal conviction in Canada*, (2023 March 22) online: IRB-CISR <https://perma.cc/ZMM2-6C4M>

[25] *Romans v Canada (Minister of Citizenship & Immigration)*, 2001 FCT 466 at para 22 [*Romans FC]*; *Romans v Canada (Minister of Citizenship & Immigration),* 2001 FCA 272 at para 1 [*Romans FCA*].

[26] *IRPA*, *supra* note 1 at ss 44—45.

which results in deportation.[27] In this way, the threat to Mr. Revell's rights is alive from the moment he is referred to an inadmissibility hearing, which means the psychological harm resulting from deportation is not "merely speculative". A psychologist stated that the consequences of removal on Mr. Revell's mental health would be severe, and Mr. Revell's family asserted that it could 'kill him'.[28] As a result, the ID did not hesitate to conclude that the deportation consequences on Mr. Revell would be "profound".[29] Mr. Revell has demonstrated that the severance from his life in Canada would have severe consequences which other inadmissible non-citizens, with fewer connections to Canada, would not experience.

[20] In light of *CCR*, this court should overrule the lower courts' because curative or preventative measures do not prevent the engagement of the Appellant's s 7 rights at the inadmissibility hearing stage. In *CCR*, the SCC stated that only preventative, not curative legislative measures can bar the engagement of s 7; furthermore, curative measures are more appropriately assessed as part of the principles of fundamental justice analysis.[30] Here, there are no preventative measures that prevent s 7 violation of long term permanent residents as there are no exceptions for criminal or organised inadmissibility under ss 36(1) and 37(1) of the *Act*. The measures mentioned by the lower courts are curative because they would only provide a remedy to a potential s 7 violation following the application of the general rule.[31] These measures are not sufficient to preclude s 7 engagement.

[21] Thus, the *Bedford* sufficient causal connection is established here. By taking an individualised approach which considers Mr. Revell's specific connections to Canada, it is clear

---

[27] We acknowledge there are some other options available to Mr. Revell, however, the effect of these options will be discussed in detail in Part 2.

[28] *Revell FCA*, *supra* note 14 at para 76-77.

[29] *Canada (Minister of Public Safety and Emergency Preparedness PSEP) v Revell*, [2016] I.D.D. No. 44 at para 21, [*Revell ID*].

[30] *CCR, supra* note 3 at para 73.

[31] *Ibid* at para 68.

the inadmissibility hearing is sufficiently connected to the deprivation of Mr. Revell's s 7 rights to liberty and security of the person. The deprivations are not speculative since deportation is a real possibility arising from an inadmissibility hearing. Curative measures cannot preclude s 7 engagement. As a result, this court should find that Mr. Revell's s 7 rights are engaged at the inadmissibility hearing stage.

C. Medovarski and Chiarelli's Limitations as s 7 Authorities in Deportation Proceedings for Long Term PRs

[22] This court should avoid applying *Medovarski* and *Chiarelli* directly for the s 7 analysis for long term permanent residents in light of the significant developments since these cases were decided. These cases should be reinterpreted in light of the section 7 analysis articulated in *Bedford,* which first asks if the impugned legislation violates the s 7 rights of the applicant before asking whether such violations are in accordance with the principles of fundamental justice.[32] In *CCR*, the SCC cautioned against "conflating the engagement and the principles of fundamental justice stages of the s 7 analysis".[33] This is what happened in *Chiarelli*: the SCC ignored the first part of the test and concluded that s 7 was not violated as "there is no breach of fundamental justice"[34]. *Chiarelli* does not align with the current s 7 test because it conflates the two stages of the s 7 analysis. This court must first evaluate the effects of the impugned government action on s 7 interests are not first evaluated as required by the current s 7 test, the conclusion in *Chiarelli* may not apply for long term permanent residents.

[23] The fundamental principle of immigration law articulated in *Chiarelli* is that no individual enjoys an unqualified right to remain in the country; however, this principle should not have a role at the first stage of a s 7 analysis because it was formulated in response to the

[32] *Bedford*, *supra* note 21 at para 57.
[33] *CCR, supra* note 3 at para 73.
[34] *Chiarelli, supra* note 5 at 731—32.

question of whether deportation was in accordance with the principles of fundamental justice, not whether there was a rights deprivation. The analysis in *Chiarelli* was not focused on whether the rights were engaged: the SCC bypassed this question to conclude that s 7 cannot ever be deprived in deportation proceedings based on the fundamental principle of immigration law.[35]

[24] Similarly, *Medovarski* should also have limited application in the s 7 analysis. The SCC held that deportation *per se* cannot engage the s 7 interest,[36] which misapplied *Chiarelli*. The FCA erroneously applied *Medovarski* to preclude any engagement of s 7 in deportation proceedings. The FCA agrees that the analysis and reasoning in *Medovarski* was lacking but found it determinative simply because *Medovarski* had been continuously applied in later cases.[37] Relying on *Medovarski* in this way is problematic since that conclusion was reached without evaluating the scope and content of the individual's s 7 rights.

[25] The SCC in *Chiarelli* never implied that s 7 was not engaged in deportation, but the SCC in *Medovarski* came to this conclusion based on no real analysis of the severity of impairment the deportation proceedings would have on the individual's s 7 rights.[38] This type of reasoning would not satisfy the test outlined in *Bedford*, and is exactly the kind of reasoning the SCC cautioned against in *CCR* because it conflates the engagement and the principles of fundamental justice steps of the s 7 analysis.

2. The Appellant's Section 7 Rights are Infringed.

[26] The Appellant submits that the inadmissibility finding violates his liberty and security of the person's interests without being in accordance with the principles of fundamental justice.

---

[35] *Ibid* at 734.
[36] *Medovarski*, *supra* note 6 at para 45.
[37] *Revell FCA*, *supra* note 14 at paras 62, 76—77.
[38] *Medovarski*, *supra* note 6 at para 46.

A. The Appellant's Section 7 Rights should be interpreted in context of International Law.

[27] International treaties and conventions play an important role in interpreting Canadian law.[39] The Appellant concedes that treaties that have been ratified but not implemented into legislation do not place direct legal obligations on Canada when contrary to statute. However, the Appellant's view is that his s 7 rights should be interpreted in light of international law, especially given the Canadian case law recognizing the interpretive value of international law.

[28] As Canada has signed and ratified the *International Convention on Civil and Political Rights* (*ICCPR*), the FC and FCA did not afford it sufficient weight in determining the engagement of the Appellant's *Charter* rights.[40] It provides an important perspective on the *Charter* rights of long term permanent residents that the Canadian jurisprudence is largely silent on. The ID held that recent trends in international law are inconsistent with established Canadian case law. The FC only considered international law in deciding whether to depart from *stare decisis* and overturn *Chiarelli.* The FCA accepted the assistance of signed international law, but refused to consider it because it contradicted the principle in *Chiarelli* and did not warrant revisiting *Chiarelli.*[41] However, the Appellant is not asking this court to overturn *Chiarelli*, it is asking this court to consider international law in interpreting his *Charter* rights.

[29] Justice L'Heureux-Dubé in *Baker v Canada (Minister of Citizenship and Immigration)* states that international law should inform the court in statutory interpretation, judicial review, and the interpretation of the scope of rights under the *Charter*.[42] It is well established that the *Charter* should be presumed to provide at least as much protection as granted by similar rights in

---

[39] *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 69—70 [*Baker*].

[40] *International Covenant on Civil and Political Rights*, 19 December 1966, [1976] Can TS No 47, arts 17, 23(1) [*ICCPR*].

[41] *Revell FCA*, *supra* note 14 at para 137.

[42] *Baker, supra* note 39 at paras 69—71.

its signed international treaties and conventions.[43] Furthermore, the SCC in *Mason* clarified the presumption of conformity with international law has greater relevance in interpreting the *Act*.[44] The legal principle of the presumption of conformity suggests that enacted legislation should conform to Canada's international obligations.[45] Relatedly, Justice Jamal in *Mason* held that international laws can operate as important legislative constraints.[46] Finally, paragraph 3(3)(f) of the *Act* explicitly shows that the *Act* must be applied and construed in a manner that complies with international treaties and conventions that Canada has signed.[47] In light of this, the Appellant submits the lower courts' did not give sufficient weight to the interpretive value of international law, and this court should determine the scope of s 7 while giving international law due consideration.

B. The Appellant's Security of the Person Interest is Violated.

[30] The FC erred in finding the Appellant's security of the person interest was not engaged. The psychological stress the Appellant will face if deported is serious state-imposed psychological harm.

[31] An individual's security of the person interest is engaged by state interference with an individual's physical or psychological integrity.[48] This encompasses the right to be free from state interference with personal autonomy and bodily integrity.[49] The impugned state action must have a serious and profound effect on the person's physical or psychological integrity, greater

---

[43] *Revell FCA*, *supra* note 14 at para 132.
[44] *Mason v Canada (Citizenship and Immigration),* 2023 SCC 21 at para 106 [*Mason*].
[45] *National Corn Growers Assn v Canada (Import Tribunal)*, 1990 CanLII 49 (SCC), [1990] 2 SCR 1324 at 1364.
[46] *Mason*, *supra* note 44 at para 10.
[47] *IRPA*, *supra* note 1 at para 3(3)(f).
[48] *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 64 [*Carter*].
[49] *R v Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 SCR 30 at para 56 [*Morgentaler*].

than ordinary stress or anxiety when viewed objectively on a person of reasonable sensibility.[50] In *Blencoe*, the court held that the security of the person interest is violated where there is "serious state-imposed psychological stress".[51]

I) The Court Must Consider the Particular Circumstances of the Appellant

[32] The Appellant concedes that typical deportation and its attendant stresses do not engage the security of the person, except where there is serious state-imposed psychological stress beyond the ordinary stress of deportation. It is incorrect to apply *Medovarski* to automatically preclude any engagement of the security of the person in deportation. The differences in psychological stressors imposed by the state in deporting a long term resident are not the same as foreign nationals on a study permit, for example. The court in *Medovarski* did not consider the Appellant's particular circumstances. The FCA was 'reluctant' to depart from *Medovarski* despite acknowledging that Mr. Revell faces psychological harm that exceeds the ordinary consequences of removal.[52]

[33] The FCA erred in applying *Medovarski* to preclude any individuals from claiming s 7 violations from deportation outside of facing risk of torture or detention.[53] The court in *Medovarski* concluded that "even if [emphasis added] liberty and security of the person were engaged, the unfairness is inadequate to constitute a breach of the principles of fundamental justice."[54] The decision in *Medovarski* does not state that s 7 interests are not engaged: it simply states that any s 7 violations would be in accordance with the principles of fundamental justice. However, as discussed above, the s 7 analysis has been refined since these decisions.

---

[50] *New Brunswick (Minister of Health and Community Services) v G(J)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46 at para 59 [*G(J)*].
[51] *Blencoe, supra* note 7 at para 57.
[52] *Revell FCA*, *supra* note 14 at para 76.
[53] *Ibid* at paras 78—79.
[54] *Medovarski*, *supra* note 6 at para 46.

[34] The lower court's adherence to *Medovarski* does not align with the contextual interpretation of constitutional principles. In broadly stating all deportation of non-citizens will not engage the security of the person interest, the lower courts fail to follow the well-established principle that *Charter* rights are assessed by the impact of the state action on the individual and not a broad group.[55] A blanket conclusion that s 7 is never engaged in removal proceedings for all situations does not comport with the current s 7 engagement test. This approach precludes any analysis of the individual circumstances of the Appellant, which is an anomaly in *Charter* jurisprudence.

[35] In *Charkaoui v Canada (Charkaoui I)*, the SCC affirmed that we must look at the "interests at stake rather than the legal label"; furthermore, they held that *Medovarski* does not mean deportation proceedings are entirely immune from s 7 consideration, as some circumstances associated with deportation may engage it.[56] While they specifically mention detention and torture, it suggests individual and extreme circumstances have a role in determining whether the security of the person interest is engaged. Instead of precluding the consideration of the Appellant's circumstances, this court should engage in a full contextual analysis to determine if his s 7 security of the person interest is engaged.

<u>II) The Appellant's stress from deportation is more significant than stress generally associated with deportation.</u>

[36] The Appellant submits that his particular circumstances go beyond the normal consequences of deportation and the stress is far greater than the "ordinary stresses and anxieties" mentioned in *G(J)*, which the FCA accepted.[57] Mr. Revell has lived most of his life in

---

[55] *Gosselin v Québec (Attorney General)*, 2002 SCC 84 at para 77.
[56] *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 18 [*Charkaoui I*].
[57] *Revell FCA*, *supra* note 14 at para 77; *G(J)*, *supra* note 50.

Canada, whereas he last visited England about 20 years ago.[58] He has significant ties to Canada, with his 3 adult children, 3 grandchildren, a partner, and employment in Canada. He does not have any significant ties in England. The depth of his particular connection to Canada is the foundation of the extraordinary stress deportation will cause. The extreme stress he will face is evident: in the psychologist's report, Dr. Williams stated his removal to England would be devastating for him and his family; his family gave testimony that it would "kill him", cause him to be significantly depressed, and that he may not survive the stress of deportation. Mr. Revell confirmed that without his family he would be "devoid of direction and without purpose".

[37] While the court in *Medovarski* found no violation of the security of the person, the Appellant's circumstances are distinguishable. Ms. Medovarski was only in Canada for 5 years, and Mr. Esteban was here for 20 years.[59] In contrast, Mr. Revell's 40 years is double the length of Mr. Esteban's stay, thus suggesting deeper familial ties created in Canada, which would cause more stress than contemplated in *Medovarski.*

[38] The court in *Moretto v Canada (Citizenship and Immigration)* (*Moretto*) confirmed that the deportation of a long term permanent resident would meet the bar of serious state-imposed psychological stress to engage their security interest <u>but for</u> the precluding principle in *Medovarski*.[60] Similar to Mr. Revell, Mr. Moretto also had lived in Canada for over 40 years, had strong family ties in Canada, and had no ties to family or support systems in Italy. In light of the particular circumstances of Mr. Moretto, the court held that the stresses faced by him upon deportation are greater than the ordinary stresses contemplated by the SCC in *G(J)*.[61]

---

[58] *Revell ID*, *supra* note 29 at para 21.
[59] *Revell FCA*, *supra* note 14 at para 78.
[60] *Moretto v Canada (Citizenship and Immigration)*, 2019 FCA 261 at para 48 [*Moretto*] [*emphasis added*].
[61] *Ibid* at para 51.

[39] The FCA erred in requiring a higher bar than the test contemplated in *G(J)*. As outlined above, the Appellant has demonstrated he will face serious psychological consequences on being forcibly removed from his only family ties. He will face consequences that are out of the ordinary in normal deportation processes, from the depth of his connection to Canada. He meets the test contemplated in *G(J)*.

C. The Appellant's Liberty Interest is Violated.

[40] The s 7 liberty right is engaged by physical restraint, but also "where state compulsions or prohibitions affect important and fundamental life choices".[62] This right protects an individual's autonomy to make inherently private choices free from state interference.[63] In *Godbout v Longueuil (City) (Godbout)*, the court characterised this right as fundamentally personal "such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence".[64] Justice Wilson in *R v Morgentaler* characterised the right to liberty to include decisions that have profound psychological, economic, and social consequences.[65] In this broad conception of the right to liberty, the court in *Godbout* included the right to choose where to establish one's home as a fundamental choice at the heart of personal autonomy.[66]

[41] The common law principle from *Chiarelli* that no individual enjoys an unqualified right to remain in the country does not apply at this stage. The principle was formulated to answer the question of whether the principles of fundamental justice were in accordance, not whether there was a rights deprivation. *Chiarelli* cannot stand for the proposition that deportation does not necessarily interfere with the liberty interest, as stated by Justice Marceau in *Nguyen v Canada*

[62] *Blencoe*, *supra* note 7 at para 49.
[63] *Godbout v Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 SCR 844 at para 66 [*Godbout*].
[64] *Ibid*.
[65] *Morgentaler*, *supra* note 49 at 166.
[66] *Godbout*, *supra* note 63.

(Employment and Immigration) (*Nguyen*).[67] The court in *Medovarski* argued that deportation in itself cannot engage the liberty interest, however as stated above it must not preclude the consideration of the individual's circumstances.

I. Not the right to remain, but the right to choose to remain near social and family ties.

[42] The lower courts repeatedly emphasise the *Chiarelli* principle that non-citizens do not have an unqualified right to remain in Canada. However, the Appellant does not submit his right to liberty is violated because his choice to remain is removed. Instead, he submits that his liberty interest is violated as deportation under the Inadmissibility Scheme also destroys his inherently personal choice to be close to his only familial and social ties. Removal will have profound psychological, economic, and social consequences on the Appellant. Mr. Revell will experience serious psychological stress; losing his job, support system, familial ties, and connection to his home of over 40 years. The totality of effects from deportation on a long term permanent resident significantly violate their liberty to remain close to their social and familial ties.

II. The limitation on the Appellant's liberty interest is more significant than limits generally associated with deportation.

[43] The FCA erred in holding that the Appellant has not established that the consequences of deportation on his liberty interests are more significant than the consequences generally associated with deportation.[68] By deporting Mr. Revell, the state is removing any choice of Mr. Revell being connected to his partner, children and grandchildren, as well as also removing his choice in living in the only home he has known for over 40 years.

[44] In *Romans*, the FC held that a deportation order engaged the liberty interest as it prevented Mr. Romans from making the fundamental personal choice to remain in Canada in

[67] *Nguyen v Canada (Minister of Employment and Immigration)*, 1993 CanLII 2926 (FCA), [1993] 1 FC 696 at para 10.
[68] *Revell FCA*, *supra* note 14 at para 66.

light of his personal circumstances.[69] Mr. Romans had resided in Canada for over 30 years, similar to Mr. Revell, and struggled with serious mental illness. The court held that removing him from the love and support of his family, their financial support, and from his social worker is a deprivation of the right to liberty, and affirmed Mr. Romans fundamental personal choice to remain in Canada was protected as it was the only place that he had a social network and support system. Similarly, Mr. Revell submits he has a right to his choice to remain near his only social network and support system.

[45] Again, while the court in *Medovarski* held that the liberty interest was not engaged, Mr. Revell's circumstances are completely distinguishable. Medovarski only had 5 years' worth of attachments to Canada, in contrast to Mr. Revell's 40 years. The longer period logically means the consequences will be more severe for Mr. Revell, especially since he has provided evidence of the lack of any ties to England, and the fact that deportation would leave him with only one choice, the choice to cut off all social and familial ties and start over in complete isolation. Here, the constraint on Mr. Revell's liberty is far above the ordinary constraint on a non-citizen's liberty when deported. As a result, this court should find Mr. Revell's liberty right is violated.

III. Alternatively, the possibility of detention violates the Appellant's liberty interest

[46] It is established that it is not only imprisonment or detention itself that engages the right to liberty, but the possibility of it as well. Under ss 44(2) of the *Act*, an officer may arrest and detain a foreign national without a warrant. While this risk may be low, the likelihood is relevant in analysing gross disproportionality and not whether the right to liberty is deprived. A large line of previous jurisprudence seen in *Nguyen* and *Chiarelli* automatically found deportation necessarily implied and interfered with the liberty of the person. It is due to the misapplication of

[69] *Romans FC*, *supra* note 25 at paras 21—22.

Chiarelli, to preclude any s 7 engagement in the deportation context that this proposition was overturned in *Canepa v Canada* and *Williams v Canada.*[70]

D. Violation of s 7 Interests are not in accordance with the Principles of Fundamental Justice

[47] The Appellant submits that the FCA erred in finding that possible deprivations would be in accordance with the principles of fundamental justice.

Chiarelli and *Medovarski* do not Preclude an Individualised *Charter* Analysis.

[48] The lower courts erred in following *Chiarelli* to preclude considering the individual circumstances of the Appellant. In *Chiarelli*, the SCC held that breaching a statutory condition is sufficient to justify a deportation order, as "non-citizens have no unqualified right to enter or remain in the country"[71]; where the condition is breached, such as serious criminality, it is not necessary to look beyond this fact to other aggravating and mitigating circumstances to be in accord with the principles of fundamental justice".[72]

[49] The Appellant does not claim an unqualified right to remain in Canada. The Appellant submits that due to his personal circumstances, deportation would infringe his *Charter* rights. A *Charter* analysis is contextual and in the case of gross disproportionality, the analysis is based on the negative impact on the individual, thus making it necessary to consider individual circumstances when analysing for access to *Charter* protections.[73] As this court is not bound by *Chiarelli* and *Medovarski*, this court should follow modern rules of *Charter* interpretation and not halt the s 7 inquiry simply because a permanent resident breached a condition of their continued status in Canada.

---

[70] *Canepa v Canada (Minister of Employment and Immigration)*, 1992 CanLII 8567 (FCA), [1992] 3 FC 270; *Williams v Canada (Minister of Citizenship and Immigration*), 1997 CanLII 4972 (FCA), [1997] 2 FC 646.
[71] *Chiarelli*, *supra* note 5 at 734.
[72] *Ibid*.
[73] *Bedford*, *supra* note 21 at para 123.

The FCA and FC Erred in Characterising the Objective of the Inadmissibility Scheme

[50] The Appellant submits the objective of the Inadmissibility Scheme is "the protection of public safety through the efficient removal of non-citizens posing a risk to the public".

[51] In analysing whether a law which deprives an individual of s 7 interests is in accordance with the principles of fundamental justice, the court must first characterise the objective of the impugned law. In characterising the objective, the focus is on the text, context and stated purpose of the impugned provisions; the court may also consider the broader legislative scheme.[74] The objective should be characterised precisely and not "too broadly", such as a broad social norm would essentially preclude the law from *Charter* challenges.[75]

[52] First, the FCA erroneously characterised the objective of the scheme as to "protect the safety of Canadian society by facilitating the removal of permanent residents…who constitute a risk to society on the basis of their conduct".[76] The stated purpose under s 3(1)(h) of the *Act* emphasises the protection of public safety, not the removal of non-citizens who pose a risk to public safety due to serious or organised criminality. The removal of non-citizens is the means to which this objective is achieved. In *R v Safarzadeh-Markhali,* the SCC stated that the law's purpose is distinct from the means used to achieve it.[77] The 'basis of their conduct' improperly focuses on the means of the legislation, instead of its purpose.

[53] Second, the context of s 64 and 25 of the *Act* of the Inadmissibility Scheme denote an emphasis on the efficiency of removal. When an individual is inadmissible under s 36(1) or 37(1) of the *Act*, s 64 removes their right of appeal and s 25 removes their right to apply for humanitarian and compassionate considerations. Since both of these procedures would delay the

---

[74] *CCR*, *supra* note 3 at para 128.
[75] *RJR-MacDonald Inc v Canada (Attorney General),* [1995] 3 SCR 199 at para 144.
[76] *Revell FCA*, *supra* note 13 at para 110.
[77] *R v Safarzadeh-Markhali*, 2016 SCC 14 at para 26.

removal of the individual and use administrative resources, the primary effect these provisions serve is to accelerate the removal.[78] This is supported by the FCA's analysis of the legislative history and the text of the *Act,* which showed the priority is 'the speedy removal of those who pose a security risk to Canada'.[79] Overall, these provisions do not significantly increase the protection of public safety or the removal of non-citizens who pose a risk to public safety.

[54] Third, the FCA's interpretation of the object of the scheme incorrectly emphasises public safety, which is a societal interest that belongs under the s 1 analysis. In *Suresh v Canada (Minister of Citizenship and Immigration)*, the court balanced the law's object in Canada's security interests under s 1, and not under the principles of fundamental justice analysis. Otherwise, a complainant would bear the onus of balancing their individual rights against society's interests, which is a significant burden.[80] Furthermore, a complainant would be forced to balance their rights twice, in both the s 7 and s 1 analysis. The court in *Charkaoui I* confirmed that "security concerns cannot be used to excuse procedures that do not conform to fundamental justice".[81] The individual would bear too high an onus to prove that the negative effects on themself outweigh the overwhelming national security concerns on Canada as a whole, such that the scope of their s 7 right is entirely diminished.

I) The Scheme is Overbroad as Removal Can Fail to Improve Public Safety

[55] The Inadmissibility Scheme is overbroad as it can lead to the removal of long term permanent residents without improving public safety. A law is overbroad when it overreaches in its effect and interferes with conduct that is not connected to the object of the law.[82] The court in

---

[78] *Medovarski*, *supra* note 6 at para 13.
[79] *Revell FCA*, *supra* note 14 at para 111.
[80] *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 128.
[81] *Charkaoui I*, *supra* note 56 at para 21.
[82] *Bedford*, *supra* note 21 at para 112.

Carter held that the analysis of overbreadth focuses on the impact on individuals whose rights are deprived due to the overreach.[83]

[56] The FCA failed to address the reasonable hypotheticals raised by the Appellant, instead it relied on safety valves to 'cure' any possible overbreadth.[84] Under s 36(1) of the *Act*, an individual may be deported for a six month sentence for the possession of unloaded restricted firearm near ammunition, a forged passport, identity fraud, theft, and the unauthorised use of a computer.[85] The deportation would occur without meaningful consideration of their individualised circumstances or implications on their *Charter* rights. The individual may have a very low risk of re-offending and may go on to never commit another crime. This scheme would still deport the individual, even if the crime occurred 15 years ago and the individual has completely turned their life around. While the scheme may be efficient, the deportation of this individual would do nothing to further the legislative goal of protecting public safety. It may permanently destroy the psychological health and liberty of the individual. The effect of the law on long term permanent residents whose removal may not improve public safety is an inherently unfair overreach of the Inadmissibility Scheme.

II) The Permanent Harm of Removal is Grossly Disproportionate to the Objective

[57] Even if the law is not overbroad, the negative impact of the Inadmissibility Scheme on the Appellant is grossly disproportionate to its objective. In analysing gross disproportionality, the question is whether the negative impacts of the deprivation of liberty and security of the person are completely out of sync with the object of the law.[86] The analysis does not consider the beneficial effects of the law, but the negative effect of the law on the individual and the purpose

[83] *Carter*, *supra* note 48 at para 85.
[84] *Revell FCA*, *supra* note 14 at paras 114—115.
[85] *Ibid* at para 87.
[86] *Bedford*, *supra* note 21 at para 12.

of the law.[87] Particularly, a law is grossly disproportionate if the "draconian impact of the law…is outside the norms accepted in our free and democratic society".[88]

[58] The negative impacts of deportation on the Appellant are severe. The FC incorrectly held that there was not enough evidence to show the Appellant faced serious psychological harm beyond the ordinary stresses of deportation.[89] The FCA rejected this reasoning when they stated that the evidence from the ID hearing shows that the Appellant faces serious psychological harm from deportation that goes 'beyond the normal consequences of deportation' and that it is disproportionate to the object of the law.[90] Deportation under the Inadmissibility Scheme will permanently ban the Appellant from coming back to his home of 40 years and permanently fracture his familial ties, support system, and way of life.[91] As outlined above, the effect of deportation significantly harms the Appellant psychologically.

[59] The negative impacts are grossly disproportionate to the objective of the Inadmissibility Scheme. Particularly, the scheme's focus on the efficient removal for public safety is out of sync with the permanent harm the deportation will have on the Appellant, his partner, and his children. While protecting public safety is important, the Appellant's evidence shows that he faces such severe and permanent harm, which demonstrates that the effects of the scheme are grossly disproportionate to the goal of protecting public safety through the efficient removal of non-citizens who pose a risk.

[60] The deportation of a long term permanent resident without considering their personal circumstances also goes against international norms in a free and democratic society and is

---

[87] *Ibid.*
[88] *Ibid.*
[89] *Revell FC*, *supra* note 7 at para 233.
[90] *Revell FCA*, *supra* note 14 at paras 77, 120.
[91] *IRPA*, *supra* note 1 at s 52.

grossly disproportionate.[92] Particularly, it goes against the leading interpretation of Article 12.4 of the *ICCPR*, which states "[n]o one shall be arbitrarily deprived of the right to enter his own country."[93] As stated above, Canada has signed the *ICCPR* and it holds persuasive weight in determining an individual's *Charter* rights. The United Nations Human Rights Committee (UNHRC) was established under the *ICCPR* and has most frequently interpreted and applied the *ICCPR*.[94] Its decisions can help determine the application of Article 12.4 the *ICCPR* to the Appellant's *Charter* rights.

[61] The UNHRC in *Stewart v Canada* initially limited the scope of 'his own country' and found it was not a violation of the *ICCPR* to remove a long term permanent resident despite the loss of his only social and familial ties.[95] However, Mr. Stewart had the benefit of a hearing before the IAD, where his personal circumstances were fully considered in the *Charter* analysis, which Mr. Revell cannot have. The UNHRC in *Warsame v Canada (Warsame*)*, Nystrom v Australia,* and *Budlakoti v Canada* (*Budlakoti*), broadened the scope of 'his own country' to recognize the importance of considering long standing residence, close personal and family ties, intention to remain, and the absence of ties in other countries.[96] In all three cases, the individuals' long term social and family ties in their country were deep enough that the arbitrary removal of the individual violated Article 12.4 of the *ICCPR.*

[62] The current jurisprudence from the UNHRC affirms the norm of: (1) heavily considering the personal circumstances of a long term permanent resident in removal proceedings; and (2) that the individuals ties to their own country can be so significant such that removal would

---

[92] *Bedford*, *supra* note 21 at para 120.
[93] *ICCPR*, *supra* note 40 at art 12.4.
[94] Timothy E. Lynch, "The Right to Remain" (2022), 31:3 Wash Intl LJ 315 at 327 [*Lynch*].
[95] *Stewart v Canada*, (1996) UN Doc CCPR/58/D/538/1993 at paras 12.9—13.
[96] *Lynch*, *supra* note 94 at 329.

violate their rights under Article 12.4 of the *ICCPR*.[97] The removal of Mr. Revell without considering his personal circumstances doubly offends the international norms of a free and democratic society and is grossly disproportionate to the purpose of the Inadmissibility Scheme.

Safety Valves in the Inadmissibility Scheme Do Not Cure the *Charter* Violation.

[63] The FCA erred in finding that even if the Inadmissibility Scheme was overbroad or grossly disproportionate, the defect of the law would be cured by presence of safety valves in 'the process as a whole'.[98] If the impugned scheme has safety valve mechanisms that, when properly interpreted and applied, are sufficient to prevent any violations not in accordance with the principles of fundamental justice, there is no breach of s 7.[99] The FCA and FC mentions these safety valves: the s 44(1) referral stage; ID inadmissibility hearing; Pre-removal risk assessment (PRRA); and judicial review at each of these steps.[100] The mechanisms mentioned by the FCA are insufficient to prevent breaches of the Appellant's s 7 rights.

[64] Based on the finding by the ID of inadmissibility because of serious criminality and organised criminality, Mr. Revell has only a few options to remain in Canada. According to s. 44(2) of the *Act*, once the ID finds that Mr. Revell is inadmissible based on the s. 44(1) report, a removal order is made.[101] Unless this removal order is stayed, this will result in the deportation of Mr. Revell. The language in the *Act* in s 44 uses 'may', however, the use of 'may' in this section in the *Act* has been deemed not to be discretionary as usually interpreted.[102] The decision to make a report is a limited fact finding mission and especially for criminality cases, "the scope of discretion afforded to the officer and the Minister is very limited".[103]

---

[97] *Ibid* at 344.
[98] *Revell FCA*, *supra* note 14 paras 115—116, 121—122.
[99] *Canada (AG) v PHS Community Services Society*, 2011 SCC 44 at para 113 [*PHS*].
[100] *Revell FCA*, *supra* note 14 paras 121—122; *Revell FC, supra* note 7 at para 212.
[101] *IRPA*, *supra* note 1 at s 44.
[102] *Cha v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126.
[103] *Awed v Canada (Minister of Citizenship & Immigration)*, 2006 FC 469 at paras 10, 16.

[65] After the ID hearing, the Appellant can apply for a stay of removal through a PRRA. Alternatively to prolong remaining in Canada, he can try to apply for a Temporary Resident Permit (TRP) or a Minister declaration to allow him to apply for a Humanitarian and Compassionate (H&C) exemption. If the H&C exemption is granted, his permanent resident status would be regained. The TRP is a stop-gap measure, although it can be renewed, it is not intended to stay or eliminate the effect of the removal order. Once the TRP is not renewed, Mr. Revell would be back at the mercy of deportation.[104]

[66] All of these 'solutions' are highly discretionary and depend on a separate application by Mr. Revell to have the removal order stayed. This is not the relief envisioned in *PHS*, which found that a generous, wide, and accessible discretion to grant exemptions is a satisfactory safety valve.[105] The discretionary protections of a PRRA, TRP, and a Ministerial declaration do not fit *CCR*'s description of a safety valve to support the conclusion that s 7 interests are not engaged.

[67] First, the PRRA is an insufficient safety valve. While the PRRA can stay the removal order, it is not a real solution for long term permanent residents because it was never intended for applicants like the Appellant. The PRRA is listed under Division 3 of Part 2 of the *Act*, under Refugee protection.[106] This safety valve is intended to protect people that will face persecution or danger if returned to their country of origin. The criteria that the PRRA considers is tied closely with the *Geneva Convention relating to the Status of Refugees* and the *Convention Against Torture* which are not applicable to long term permanent residents like Mr. Revell. The PRRA considers risk of life, H&C factors, or cruel and unusual punishment. However, its primary focus is on the risks an individual would face upon refoulement.[107] The main consideration for the

---

[104] *Revell FCA*, *supra* note 14 at para 136-142.
[105] *PHS*, *supra* note 99 at paras 112—113.
[106] *IRPA*, *supra* note 1 at s 112.
[107] Immigration, Refugees and Citizenship Canada, *Processing pre-removal risk assessment (PRRA) applications: General policy*, (21 June 2019) online: <perma.cc/M9UD-785W>.

Appellant's hardship is his intimate ties with Canada, not the harm inflicted by his country of origin, which makes it highly unlikely that he would succeed in a PRRA application.

[68] Similarly, the Ministerial declaration is an insufficient safety valve as it has very limited applicability. The exemption is granted if the Minister is satisfied that the inadmissibility is not against national security. By nature, the discretion is focused on balancing the risk of allowing the applicant to remain and the interest of Canadian society.[108] The role of s 7 interests and the potential harm to the applicant are limited in this analysis. Further, this does not grant a stay of removal, Mr. Revell must apply for an H&C exemption to regain his PR status in Canada. This also does not allow Mr. Revell to remain in Canada: yet <u>another</u> discretionary exemption to try to remain in Canada until a decision is rendered would be required.[109] Otherwise, he will be removed until a decision is rendered which will cause significant mental anguish to Mr. Revell without his s 7 interests as a long term permanent interest being considered.

[69] All of the 'available' options suggested by the FCA are not sufficient solutions that consider his individual circumstances as a long term permanent resident of Canada. While the ID hearing could consider the Appellant's individual circumstances, they did not. Instead, they used the principle from *Chiarelli* to preclude s 7 engagement entirely. There are no safety valves that would 'cure' the defect of the Inadmissibility Scheme that violates the Appellant's s 7 rights.

<u>3. The Infringement of the Appellant's Rights are Not Justified by Section 1.</u>

[70] It is well established that s 1 will rarely justify an infringement on an individual's s 7 rights.[110] A limit on the Appellant's right to liberty and security of the person may be reasonable if (1) the objective is pressing and substantial and (2) the means chosen are proportional.[111]

---

[108] *Revell FCA, supra* note 14 at para 10.
[109] *Baker*, *supra* note 39.
[110] *Carter*, *supra* note 48 at para 95.
[111] *R v Oakes*, [1986] 1 SCR 103 at 138—140 [*Oakes*].

A. The objective is pressing and substantial.

[71] The legislative goal of the Inadmissibility Scheme is the protection of public safety through the efficient removal of non-citizens posing a risk to the public. The Appellent agrees that the goal is pressing and substantial; Canada has an interest in maintaining public safety.

B. The measure is not proportional.

[72] In determining whether the impugned scheme is proportional, the question is whether (1) there is a rational connection between the objective and the scheme, (2) it is minimally impairing, and (3) the salutary effects outweigh the deleterious effects.[112]

[73] As stated in *Re BC Motor Vehicle Act*, once a s 7 violation has been found, it would be very difficult to justify the violation under s 1.[113] Even so, the Inadmissibility Scheme is not proportional because it is not minimally impairing and the deleterious effects outweigh the salutary effects. The legislative scheme is rationally connected to the objective because barring access to the IAD and H&C exemptions for non-citizens that fall into s 36(1) and/or s 37(1) will remove at least some risks to Canadian society swiftly.

[74] First, minimal impairment asks that the limit on s 7 be "as little as possible".[114] While Parliament is not held to a standard of perfection, the current legislative scheme is not in the range of reasonable options.[115] To achieve the stated objective, Parliament cannot disregard the s 7 interests of long term permanent residents. The only limited way that s 7 can be engaged to stay Mr. Revell's removal is through the PRRA, which does not consider his s 7 interests. The Inadmissibility Scheme limits substantive s 7 protections because the Appellant has no real opportunity for his s 7 interests to be balanced against his removal based on the risk he poses.

---

[112] *Ibid*.
[113] *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486, [1985] SCJ No 73 at 523.
[114] *Oakes*, *supra* note 111 at para 70.
[115] *Ibid*.

[75] To determine if legislation is minimally impairing, the courts have encouraged consideration of other international practices, norms, and conventions.[116] In cases determined by the *UNHCR*, the deportation of a long-time resident for criminality cannot be done arbitrarily as guaranteed by Article 12.4 of the *ICCPR*.[117] The role of familial, social, economic ties are all factors to determine if a person has made a country their "own country" regardless of citizenship, such that deportation of the person should not be arbitrary.[118] Non-arbitrary expulsion is a strict standard, and at the least requires a proportionality analysis considering their ties to the country and real risk to public safety.[119] The current Inadmissibility Scheme does not afford the same level of protections as the *ICCPR*, as it allows deportation without a full proportionality analysis. If s 7 interests were considered at the ID hearing without the misapplication of *Chiarelli* or if the Appellant was given access to the IAD, the legislative goal can still be fully realised.

[76] Second, the deleterious effects outweigh the salutary effects of deporting long term permanent residents due to serious criminality and organised criminality. Two main benefits of the Inadmissibility Scheme are administrative efficiency and the protection of public safety. While the current scheme allows for speedy removal of non-citizens who pose a risk to public safety, it can also remove people that are not real risks. The court in *Singh* held that administrative efficiency does not justify the infringement of *Charter* rights.[120] The Appellant concedes that public safety and national security are important benefits of the Inadmissibility Scheme. The Inadmissibility Scheme unfairly targets long term permanent residents without adequate contemplation of the *Charter* rights engaged in the removal process. In light of the vast permanent harm the Appellant faces from the violation of his liberty and security of the person,

[116] *Carter*, *supra* note 48 at paras 103—104; *Charkaoui I*, *supra* note 56 at para 90.
[117] *ICCPR*, *supra* note 40 at art 12.4.
[118] *Lynch*, *supra* note 94 at 316.
[119] *Ibid* at 317.
[120] *Singh*, *supra* note 9.

the benefits pale in comparison. The grossly disproportionate effect of the scheme on Mr. Revell's rights cannot be justified by the government's desire to remove people convicted of crime without affording them the protections promised by the *Charter*.

[77] Jurisprudence from the UNHRC affirms that the deportation of a long term resident is not justified by the commission of violent crimes themselves, but through considering the individual circumstances and the nature of the crime.[121] In *Warsame*, Mr. Warsame committed more serious and violent crimes than Mr. Revell, yet the UNHRC found that deportation under the current Inadmissibility Scheme was disproportionate to the aim of preventing crimes.[122] In *Budlakoti*, the UNHRC noted that Mr. Budlakoti's crimes were 8 years ago and that he had not reoffended in concluding that his deportation would be arbitrary and unreasonable.[123] These factors are not considered in the analysis of Mr. Revell's *Charter* rights under the current Inadmissibility Scheme. The level of harm that Mr. Revell will suffer is disproportionate to the benefits from swiftly removing individuals defined by a broad category to be a risk to public safety.

[78] The Inadmissibility Scheme unconstitutionally violates Mr. Revell's s 7 rights and these violations are not reasonable limits under s 1.

IV: ORDER(S) SOUGHT

[79] The Appellant seeks that the Inadmissibility Scheme be declared of no force or effect under s 52 of the *Charter* and redetermine his case for inadmissibility at the ID under s 24(2) of the *Charter*.

---

[121] *Lynch*, *supra* note 94 at 347.
[122] *Warsame v Canada*, (2011) UN Doc CCPR/C/102/D/1959/2010 at para 8.6.
[123] *Budlakoti v Canada*, (2018) UN Doc CCPR/C/122/D/2264/2013 at para 9.4.

APPENDIX: LIST OF AUTHORITIES

Statutes and Regulations

Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act, 1982, Schedule B, Canada Act 1982, 1982, c 11 (UK) [RSC, 1985, Appendix II, No. 44], ss 1, 7.

Immigration and Refugee Protection Act, SC 2001, c 27 paragraphs 25, 36(1)(a), 37(1)(a), 44 (1), (2), 64.

Treaties and Other Instruments Cited

International Covenant on Civil and Political Rights, 19 December 1966, [1976] Can TS No 47, Arts 17, 23(1).

Case Law

Awed v Canada (Minister of Citizenship & Immigration), 2006 FC 469.

Baker v Canada, [1999] 2 SCR 817.

Blencoe v British Columbia (Human Rights Commission), 2000 SCC 44.

Budlakoti v Canada, (2018) UN Doc CCPR/C/122/D/2264/2013.

B010 v Canada (Citizenship and Immigration), 2015 SCC 58.

Canada (Attorney General) v Bedford, 2013 SCC 72.

Canada (Attorney General) v PHS Community Services Society, 2011 SCC 44.

Canada (Minister of Employment and Immigration) v Chiarelli, 1992 CanLII 87 (SCC), [1992] 1 SCR 711.

Canadian Council for Refugees v Canada (Citizenship and Immigration), 2023 SCC 17.

Canepa v Canada (Minister of Employment and Immigration), 1992 CanLII 8567 (FCA), [1992] 3 FC 270.

Carter v Canada (Attorney General), 2015 SCC 5.

Cha v Canada (Minister of Citizenship and Immigration), 2006 FCA 126.

Charkaoui v Canada (Citizenship and Immigration), 2007 SCC 9.

Febles v Canada (Citizenship and Immigration), 2014 SCC 68.

Godbout v Longueuil (City), 1997 CanLII 335 (SCC), [1997] 3 SCR 844.

Mason v Canada (Citizenship and Immigration), 2023 SCC 21.

Medovarski v Canada (Minister of Citizenship and Immigration); Esteban v Canada (Minister of Citizenship and Immigration), 2005 SCC 51.

Moretto v Canada (Citizenship and Immigration), 2019 FCA 261.

National Corn Growers Assn v Canada (Import Tribunal), 1990 CanLII 49 (SCC), [1990] 2 SCR 1324.

New Brunswick (Minister of Health and Community Services) v G(J), 1999 CanLII 653 (SCC), [1999] 3 SCR 46.

R v Morgentaler, 1988 CanLII 90 (SCC), [1988] 1 SCR 30.

R v Moriarty, 2015 SCC 55.

R v Oakes, [1986] 1 SCR 103.

R v Safarzadeh-Markhali, 2016 SCC 14.

Revell v Canada (Citizenship and Immigration), 2019 FCA 262.

Revell v Canada (Citizenship and Immigration), 2017 FC 905.

Romans v Canada (Minister of Citizenship and Immigration), 2001 FCT 466.

Singh v Minister of Employment and Immigration, 1985 CanLII 65 (SCC), [1985] 1 SCR 177.

Suresh v Canada (Minister of Citizenship and Immigration), 2002 SCC 1.

Stewart v Canada, (1996) UN Doc CCPR/58/D/538/1993.

United States of America v Cobb, 2001 SCC 19.

Warsame v Canada, (2011)UN Doc CCPR/C/102/D/1959/2010

Secondary Sources

Catherine Dauvergne, "How the Charter Has Failed Non-Citizens in Canada: Reviewing Thirty Years of Supreme Court of Canada Jurisprudence" (1 March 2013), 58 McGill LJ 663.

Delisle, A. and Nakache, D, "Humanitarian and Compassionate Applications: A Critical Look at Canadian Decision-Makers' Assessment of Claims from "Vulnerable" Applicants" (2022), Laws 2022, 11, 40 online: <https://doi.org/10.3390/laws11030040>.

Gerald Heckman, "Revisiting the Application of Section 7 of the Charter in Immigration and Refugee Protection" (10 September 2017), 68 UNB LJ 312.

Immigration and Refugee Board of Canada, *Appealing a removal order based on a criminal conviction in Canada*, (22 March 202) online: IRB-CISR <https://perma.cc/ZMM2-6C4M>

Immigration, Refugees and Citizenship Canada, *Processing pre-removal risk assessment (PRRA) applications: General policy*, (21 June 2019) online: <perma.cc/M9UD-785W>.

Joshua Blum, “The Chiarelli Doctrine: Immigration Exceptionalism and the Canadian Charter of Rights and Freedoms” (20 July 2020), 54 UBC L Rev 1.

Timothy E. Lynch, “The Right to Remain” (2022), 31:3 Wash Intl LJ 315.

Asha Kaushal, “The Webbing of Public Law: Looking through Deportation Doctrine” (2022), 59 Osgoode LJ 291.