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 RESPONDENT

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OVERVIEW

[1] This case is about the decision to deport a Canadian permanent resident following convictions for both serious and organized crimes under the *Immigration and Refugee Protection Act* (IRPA).[1] Despite the Appellant's claims, his section 7 rights under the *Canadian Charter of Rights and Freedoms* (*Charter*)[2] are not engaged at any stage of the immigration proceedings because the claimed interests are not within the protective scope of section 7; furthermore, any deprivation resulting from deportation would accord with the principles of fundamental justice, or could be justified under section 1. This Court should reject this appeal and uphold the conclusions of the Federal Court of Appeal and the Federal Court.

[2] The Appellant argues that his liberty and security of the person rights under section 7 are engaged at the admissibility stage, as well as at the deportation stage. He claims any deprivation of these section 7 rights resulting from deportation would not accord with the principles of fundamental justice, and the infringement cannot be saved under section 1 of the *Charter*.

[3] None of the Appellant's claims can succeed because neither of the Appellant's claimed rights actually fall within the ambit of protection provided by section 7. While this Court may depart from established principles and overrule earlier findings on the basis that curative provisions cannot negate the engagement of section 7 rights, the Appellant's section 7 rights are not engaged at any stage regardless. The Appellant cannot establish a "sufficient causal connection" to find engagement since there is no constitutionally-protected right to choose where to establish one's home, and Canadian courts have consistently rejected expanding the protective scope of security of the person to include typical psychological stresses in the immigration context. Recognizing either of the claimed interests would constitute unjustified expansions.

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[1] 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.

[4] Even at the actual deportation stage, there is no deprivation of section 7 rights in a manner that does not accord with the principles of fundamental justice. The application of the law here is not overbroad, because it is capturing conduct directly related to the legislative objective, nor is it grossly disproportionate since the effects are not inordinate to the point of being completely out of sync with the objective. Furthermore, there are curative provisions in the *IRPA* which act as safety valves and ensure any deprivations comport with the principles of fundamental justice.

[5] Despite the Appellant's claims, sources of international law cannot save his claims. The Appellant cannot successfully rely on such sources to create an enforceable legal obligation in Canadian courts, thus overriding Canadian jurisprudence.

[6] Any deprivation which does not accord with the principles of fundamental justice could still be saved by Section 1 of the Charter.

PART I: FACTS

A) Background

[7] The Appellant, Mr. Revell, is a 55 year-old British citizen. He immigrated to Canada in 1974 at the age of 10, and has since resided in Canada as a permanent resident, but he never applied for Canadian citizenship, thus leaving his status conditional. The Appellant has three adult children and three grandchildren in Canada, and lives in Alberta with his girlfriend.

[8] In March 2008, the Appellant was convicted of possession for the purposes of trafficking, and of trafficking in cocaine (2008 convictions) following an investigation of the East End Hells Angels chapter. He was sentenced to five years in prison. Subsequently, the Canada Border Services Agency (CBSA) reported the Appellant under subsection 44 (1) of the *IRPA* (2008 report). The Appellant, assisted by counsel, made submissions regarding whether he should be

referred to an admissibility hearing. In 2009, the CBSA declined to refer him to an admissibility hearing, but the Appellant was unaware of this decision due to an oversight. The CBSA had been simultaneously considering whether the Appellant was also inadmissible for organized criminality, but this investigation was put aside.

[9] In 2013, the Appellant pleaded guilty to assault with a weapon and assault causing bodily harm resulting from allegations of his then-girlfriend (2013 conviction). He received a suspended sentence as well as two years probation.

[10] After the 2013 conviction, the CBSA again sought submissions from the Appellant regarding whether he should be referred to an admissibility hearing, which he did with the assistance of counsel. On February 3, 2015 a CBSA officer produced a report (2015 report) which concluded that the Appellant was inadmissible pursuant to paragraph 36 (1) (a) of the *IRPA* for the 2013 convictions as well as paragraph 37 (1) (a) for the 2008 convictions, and recommended referral to an admissibility hearing. The Minister's delegate found the 2015 report to be well founded and referred the Appellant to an admissibility hearing pursuant to subsection 44 (2) of the *IRPA*.

[11] In 2016, the Appellant was again reported and referred to an admissibility hearing under paragraph 36 (1) (a) for one of the 2008 convictions. He made additional submissions.

[12] In 2016, there was a two-day hearing held by the Immigration Division (ID) of the Immigration and Refugee Board to analyze all of the section 44 (2) referrals. The ID considered the evidence adduced by Appellant which discussed the impact deportation would have on him and his family.

[13] The Appellant's family, friends, and psychologist Dr. Karl Williams also adduced evidence on behalf of the Appellant. Dr. Williams' report stated that the forced separation would

be “devastating” for the Appellant, and without his family he “would be devoid of direction and purpose.” His children and his girlfriend made similar comments.

[14] The Appellant was found inadmissible pursuant to both paragraphs 36 (1) (a) (serious criminality) and 37 (1) (a) (organized criminality). These findings negated his ability to appeal to the Immigration Appeal Division, and the organized criminality finding barred the Appellant from applying for a humanitarian and compassionate grounds exemption under the *IRPA*.

B) Procedural History

[15] The ID found the evidence established that the Appellant’s section 7 liberty right was engaged “as he will be deprived of the right to make a personal choice of where to establish his home, free from state interference.”[3] They did not make any explicit findings regarding security of the person. However, the ID found this deprivation was in accordance with the principles of fundamental justice, and therefore not an infringement of the Appellant’s section 7 rights.

[16] The Federal Court determined that the ID had erred by finding that section 7 could ever be engaged at the admissibility hearing stage,[4] reiterating that deportation itself would not *per se* engage section 7. Furthermore, the ID erred in finding that section 7 was engaged by the Appellant’s circumstances. The Court upheld the ID’s determination that the principles of fundamental justice were observed, and that there was no deprivation as a result.

[17] The Federal Court of Appeal upheld the Federal Court’s decision to dismiss the Appellant’s “section 7 arguments as premature” as well as “finding an inadmissibility determination does not engage section 7.”[5] The Court noted that the Appellant’s claims were clearly not protected by liberty, but appeared less certain regarding security of the person.[6] The

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[3] *Canada (Minister of Public Safety and Emergency Preparedness) v Revell*, [2016] I.D.D. No. 44 (QL) at para 31 [*Revell* ID].
[4] *Revell v Canada (Citizenship and Immigration*), 2017 FC 905 at para 114 [*Revell* FC].
[5] *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 272 at para 57 [*Revell* FCA].
[6] *Ibid* at paras 70, 76.

Court also upheld the finding that there was no gross disproportionality or overbreadth.[7] Finally, the Court noted that while international law sources can be used to inform Charter interpretation, Canadian courts are not obligated to depart from long-held principles because of such sources.[8] The Court did not address whether the alleged infringement could be justified under section 1.

[18] The Supreme Court of Canada (SCC) denied the Appellant's application for leave to appeal.[9]

PART II: POINTS IN ISSUE

[19] The issues are as follows:

1) Whether section 7 of the *Charter* is engaged at the admissibility hearing stage?
2) If so, whether ordering the deportation 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 so, whether the violation is justified under section 1 of the *Charter*?

PART III: ARGUMENT

1) Section 7 Is Not Engaged Because The Appellant Cannot Establish Causation

[20] The Appellant cannot establish the "sufficient causal connection" required to engage section 7 because the Appellant's claimed interests do not fall within the protective scope of section 7. First, it must be reiterated that Canadian courts have consistently held that section 7 is not engaged at the admissibility hearing stage.[10] It is possible that the recent guidance provided

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[7] *Ibid* at para 107.
[8] *Ibid* at para 135.
[9] *Revell v Minister of Citizenship and Immigration*, 2019 FCA 272, leave to appeal to SCC refused, CanLII 25169 [*Revell* SCC Application].
[10] See *Charkaoui v Canada (Citizenship and Immigration*), 2007 SCC 9, para 17 [*Charkaoui*]; *Medovarski v Canada (Minister of Citizenship and Immigration)*; *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 46 [*Medovarski*]; see also *Revell* FCA, *supra* note 5 at para 38 which cites a large body of Canadian case law supporting this principle.

by the SCC in *Canadian Council for Refugees v Canada (Citizenship)* (*CCR*)[11] regarding the role of curative measures could persuade this Court to depart from the established body of immigration law and overturn the lower courts' findings on this basis; however, it must be emphasized that it is the Appellant's lack of protected interests which prevent section 7 engagement at any stage of the proceedings, let alone at the admissibility stage. The guidance in *CCR* cannot allow for recognition of section 7 engagement where implications of protected interests are unsubstantiated.

[21] To begin, the Court should determine whether the Appellant's claimed interests actually fall within the ambit of section 7 protection because "[i]f no interest in life, liberty or security of the person is implicated in the circumstances before the court, then the analysis stops…"[12]. The first step of the section 7 engagement test set out in *Bedford v Attorney General of Canada* (*Bedford*)[13] requires a "substantial causal connection" between the impugned state action and the engagement of a protected interest under section 7. The onus is on the Appellant to show engagement, in the sense that the impugned state action "causes a limitation or negative impact on, an infringement of, or an interference with [section 7 rights]."[14] This Court should uphold the findings that the Appellant's interests are not protected by section 7.

[22] There is no persuasive case law supporting either of the interests claimed here: the singular basis for the proposition that liberty encompasses the right to choose where to establish one's residence has no legal force; furthermore, the security of the person interest has rarely been recognized, implying a limited scope which has historically excluded the psychological stresses

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[11] 2023 SCC 17 [*CCR*].
[12] *Kreishan v Canada (Minister of Citizenship and Immigration)*, 2019 FCA 223, at para 89, citing *Begum v Canada (Citizenship and Immigration)*, 2018 FCA 181 at para 110 [*Begum*]; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 47 [*Blencoe*].
[13] 2013 SCC 72 at para 75 [*Bedford*].
[14] *CCR*, *supra* note 11 at para 56.

inherent in immigration proceedings. We further support our argument by observing that the underlying basis for the Appellant's claims - separation from his family - render recognizing protection here inappropriate, since family unity has been consistently rejected by Canadian courts. Alternatively, we submit that the Appellant has not demonstrated severe enough effects to merit section 7 protection based on previous immigration case law.

A) Liberty Does Not Include Right To Choose Where To Establish One's Home

[23] The Federal Court and the Federal Court of Appeal justifiably overturned the ID's conclusion that section 7 was engaged because liberty does not protect the Appellant's right to choose where to establish his home.[15] Although liberty protects the choices which are "fundamentally or inherently personal…"[16] this "does not include every personal decision an individual may wish to make."[17] The inherently personal decisions which have been clearly recognized to be protected by liberty include whether to have children,[18] and concerning medical treatment[19]; in contrast, the SCC has rejected that the liberty interest protects lifestyle choices such as smoking marijuana,[20] the right to exercise one's chosen profession or a particular career,[21] and in the immigration context specifically, the right to remain with one's partner.[22] There is no Canadian case law where a majority supports the proposition that liberty protects the right to choose where to establish a home, and recognition of such a right would be an unjustified expansion without consideration or consultation of affected interests. The protective scope cannot be expanded to include protection against interference with the family or the home on the

[15] *Revell* FC, *supra* note 4 at paras 114, 130; *Revell* FCA, *supra* note 5 at para 66.
[16] *Godbout v Longueuil (City)*, [1997] 3 SCR 844 at para 66, 1997 CanLII 335 (SCC) [*Godbout*].
[17] *Begum*, *supra* note 12 at para 96.
[18] *R v Morgentaler*, [1998] 1 SCR 30 at 167-71, 1988 CanLII 90 (SCC).
[19] *Carter v Canada (Attorney General)*, 2015 SCC 5 at paras 66—68 [*Carter*].
[20] *R v Malmo-Levine; R v Caine*, 2003 SCC 74 at paras 86—87 [*Malmo-Levine*].
[21] *Walker v Prince Edward Island*, [1995] 2 SCR 407 at para 1, 1995 CanLII 92 (SCC); see also *Chaoulli v Quebec*, 2005 SCC 35 at paras 201—202.
[22] *Medovarski, supra* note 10 at paras 45—46.

basis of opinions from the United Nations Human Rights Committee (UNHRC), as this would create legal obligations enforceable in Canadian courts on the basis of non-binding opinions.

[24] The ID's reliance on *Romans v Canada (Minister of Citizenship and Immigration)* (*Romans*)[23] was erroneous because the singular explicit proposition for constitutional protection of the right to choose where to establish one's home is not of legal force. In *Romans*, the Federal Court considered the SCC's expansion of liberty beyond freedom from physical constraint, and noted Justice La Forest's reasons in *Godbout v Longueuil (City)* (*Godbout*) which endorsed liberty including the right to choose where to establish one's home.[24] In *Romans*, the Court's subsequent reliance on *Godbout* to find section 7 was engaged[25] was incorrect because Justice La Forest's conclusions regarding the scope of the liberty interest were not supported by a majority.

[25] The remaining six judges in *Godbout*, penning two sets of reasons, refrained from expressing an opinion on the expansion of section 7 because they felt it would be misguided to consider expanding the protective scope without further submissions from interested parties.[26] Justice Cory specifically recognised that expanding the scope "would have a significant effect on municipalities."[27] In a subsequent case, the SCC held it was unclear that section 7 protected the place of residence, but refused to decide since any deprivation was not shown to be contrary to the principles of fundamental justice.[28] The refusal to expand the scope is even more logical since, as Professor Peter Hogg has recognized, the framers of the *Charter* specifically omitted a right to property in section 7.[29] Thus, any judicial expansion of the scope to include such a right

[23] 2001 FCT 466 [*Romans*].
[24] *Ibid* at para 21 citing *Blencoe*, *supra* note 12 at para 49; *Godbout*, *supra* note 16 at para 20.
[25] *Ibid* at para 22.
[26] *Godbout*, *supra* note 16 at para 1 (Major J, writing for Lamer CJ and Sopinka and Major JJ,), paras 117—18 (Cory J, writing for Gonthier, Cory and Iacobucci JJ).
[27] *Ibid* at para 118.
[28] *Alberta (Aboriginal Affairs and Northern Development) v Cunningham*, 2011 SCC 37 at paras 93—94.
[29] Peter W Hogg, "The Brilliant Career of Section 7 of the Charter" (2012) 58 SCLR 195—96.

would override this intentional choice. So, while choosing where to establish one's residence is undoubtedly a personal choice, it is not clear that it is one which merits constitutional protection.

[26] The Appellant may argue that international instruments such as the *International Covenant on Civil and Political Rights* (*ICCPR*),[30] are sufficiently persuasive to expand the scope of liberty and find engagement; however, it is not clear that the Appellant's rights under the ICCPR are violated. In *Stewart v Canada*, Stewart was a long-term permanent resident facing deportation to Scotland due to his criminal convictions.[31] Stewart claimed that his deportation would violate multiple *ICCPR* provisions, including Articles 17 (the right to be free from arbitrary or unlawful interference with family and home) and 23 (the family unit's entitlement to protection). The UNHRC noted the deportation was issued lawfully with the aim of furthering a legitimate state interest, and Stewart's Canadian connections received due consideration in the deportation proceedings, so the interference was not unlawful nor arbitrary.[32] The UNHRC concluded the facts did not disclose a violation of Stewart's ICCPR rights.[33]

[27] As a result, this Court should uphold both the Federal Court and the Federal Court of Appeal's decision to overturn the ID's findings. There is a stark lack of case law where a clear majority recognizes a constitutionally-protected right to choose where to establish a home. Both domestic and international claims arguing for a liberty interest which protects interference with one's family or one's home have been rejected. Furthermore, the Court would be remiss in recognizing an expansion of the scope without hearing from affected parties.

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[30] 19 December 1966, 999 UNTS 171, arts 17, 23 (1) (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].
[31] *Stewart v Canada* (1996), CCPR/C/58/D/538/1993, UN Human Rights Committee, online <https://juris.ohchr.org/casedetails/551/en-US> at para 2.4 [*Stewart*].
[32] *Ibid* at para 12.10.
[33] *Ibid* at para 13.

B) Typical Psychological Stresses In Immigration Are Not Constitutionally Protected

[28] This Court should also uphold the findings of both the Federal Court and the Federal Court of Appeal that the Appellant's security of the person's interest was not engaged. The Appellant's psychological stresses are not clearly within the protective scope and recognition here would expand the scope beyond its intended bounds. Review of the case law implies there is a requisite quality to the psychological stresses which are within the scope, and the Appellant's stresses do not have this quality because his stresses are typical for immigration proceedings. This Court should not expand the protective scope here because the Appellant's stresses are founded upon separation from his family, when claims for family unity in the immigration context and elsewhere have been rejected. Alternatively, the Appellant has not demonstrated sufficiently severe stresses to merit protection when compared to similar (yet more severe) claims which were nonetheless rejected.

[29] The expansion of the scope of security of the person to include state-imposed psychological stresses outside of the penal context was developed in *New Brunswick (Minister of Health and Community Services) v. G. (J.)* (*G.(J.)*).[34] There, the majority of the SCC held that denial of legal aid to parents who were in dispute with the government over custody of their children constituted a violation of the security of the person.[35] In so concluding, they created a threshold to determine whether psychological stresses were sufficiently severe to trigger section 7 protection, stating that the effect on a person's psychological integrity must be "serious and profound" and "greater than ordinary stress or anxiety…" without needing to rise to the level of nervous shock or psychiatric illness.[36]

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[34] [1999] 3 SCR 46, 1999 CanLII 653 (SCC) [*G.(J.)*].
[35] *Ibid* at para 81.
[36] *Ibid* at para 60.

[30] However, the majority simultaneously recognised a broad interpretation of the interest would produce significant consequences, and that not all state-imposed psychological stresses merited constitutional protection. They noted that "countless government initiatives could be challenged on the ground that they infringe the right to security of the person, massively expanding the scope of judicial review, and in the process trivializing what it means for a right to be constitutionally protected."[37]

[31] In *G.(J.)*, the protection arose from interference with the psychological integrity of the parent caused by "direct state interference with the parent-child relationship, through a procedure in which the relationship is subject to state inspection and review."[38] In contrast, stresses caused by a child's jail sentence or conscription to the army would not violate the parent's security of the person.[39] The psychological stresses merited protection since the state was judging the parent's fitness and possibly "usurping the parental role,"[40] showing the particular quality of stress which triggers protection. This is further supported by the recognition that "[n]ot every state action which interferes with the parent-child relationship will restrict a parent's right to security of the person."[41] Only stresses with a particular quality engage section 7, implying a limited protective scope.

[32] This implication is supported by the SCC's findings in *Blencoe v British Columbia (Human Rights Commission*).[42] Blencoe was dismissed from his politician's role following one public claim of sexual harassment and two additional sexual harassment claims filed subsequently at the British Columbia Human Rights Council (later Commission). Blencoe

[37] *Ibid* at para 59.
[38] *Ibid* at para 61.
[39] *Ibid* at para 63.
[40] *Ibid* at para 64.
[41] *Ibid* at para 63.
[42] *Blencoe*, *supra* note 12.

claimed the thirty month delay in resolving the claims violated his security of the person right because of the prejudice experienced during the delay.

[33] The Court held that Blencoe's circumstances did not meet the threshold to engage section 7 protection, despite the fact Blencoe was no longer employable as a politician, he and his family had moved twice, his financial resources were exhausted, and evidence (documented medical leave and an antidepressant prescription) demonstrated that Blencoe suffered both physically and psychologically.[43] The Court declined to recognize Blencoe's right in these circumstances because such recognition "would be to stretch the meaning of this right."[44] Both *G.(J.)* and *Blencoe* underscore the limited protective scope which would only protect against interferences of a certain quality.

[34] The Appellant's interests here do not have this requisite quality. Immigration processes undoubtedly cause stress and often lead to the separation of families, but the state is not directly interfering and "usurping" a family member's role in the manner seen in *G.(J.)*. Furthermore, although being a parent is a life-long role, it is not clear the protection includes children who are no longer minors, or extend even further to grandchildren. Along that line of thought, the Appellant's situation seems more akin to the example given in *G.(J.)* of a parent's stresses arising from a child's conscription, which was deemed outside the scope of protection. The Appellant's claim cannot be accepted because the interference is not of the same quality which engaged section 7 protection in *G.(J.)*.

[35] Furthermore, the Appellant's claim should be rejected because Canadian courts have repeatedly rejected section 7 claims arising from the psychological stresses rooted in the separation of families in immigration cases. In *Begum v Canada (Citizenship and Immigration)*

[43] *Ibid* at para 86.
[44] *Ibid*.

(*Begum*),[45] the Federal Court of Appeal considered whether the rejection of Begum's sponsorship application for her family due to Begum's failure to meet minimum income requirements would engage Begum's security of the person interest. In rejecting Begum's claim, the Court noted courts' consistent refusal to "recognize a right to family unity or family reunification under section 7."[46] There was also no right "of parents and children not to be separated by state action."[47] Furthermore, there was repeated rejection for the proposition that "the removal of parents of Canadian born children to their countries of origin, when they are inadmissible to remain in Canada, engage the children's section 7 interests."[48]

[36] If this Court were to expand the protective scope of the security of the person to include psychological stresses arising from typical consequences in the immigration context, such as family separation and starting anew, this would open the floodgates for judicial review as acknowledged in *G.(J.)*. Immigration processes which separate families inherently create psychological stress of all degrees, but recognition of this right would allow any foreign national who could be separated from their family to launch a section 7 claim and essentially negate Canada's ability to create legislative conditions for foreign nationals who wish to come to or remain in Canada, as the Court in *Begum* recognized.[49]

[37] Alternatively, if this Court expands the protective scope to include psychological stresses in immigration processes, we submit that the Appellant's stresses still cannot meet the high threshold. While we concede the Appellant's separation from his family and returning to an

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[45] *Begum*, *supra* note 12.
[46] *Ibid* at para 100.
[47] *Ibid*, referring to *Idahosa v Canada (Minister of Public Safety and Emergency Preparedness)*, 2008 FCA 418 at paras 45—49; *Naredo v Canada (Minister of Employment and Immigration)*, 1995 CarswellNat 1826 (Fed. C.A.).
[48] *Begum*, *supra* note 12 at para 101, referring to *Lagner v Canada (Minister of Employment and Immigration)*, 1995 CarswellNat 1337 (Fed. C.A.); *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130.
[49] *Begum*, *supra* note 12 at para 105.

unfamiliar country would cause stress, Canadian case law shows that even where claimants have adduced evidence demonstrating more severe stress and other extenuating circumstances, courts refuse to overturn or distinguish those cases from *Medovarski v Canada (Minister of Citizenship and Immigration)* (*Medovarski*) recognize the engagement of section 7 despite the SCC's holding in *Medovarski* that deportation itself cannot engage section 7.

[38] For example, although the Appellant was not required to show his stresses rose to the level of nervous shock or psychiatric illness, it is worth noting in *Begum*, the Federal Court of Appeal rejected section 7 engagement even though Begum received formal diagnoses for depression, post-trauma distress, and "the likely presence of Posttraumatic Stress Disorder," and was medicated for a period, which was purportedly caused by the separation from her family.[50] The Court still upheld the IAD's finding that Begum's stresses were insufficient "to establish a violation of her constitutional right to security."[51]

[39] Even in similar (yet more severe) circumstances, the Federal Court of Appeal refused to depart from long-established principles to recognize the engagement of section 7 by deportation. In *Moretto v Canada (Minister of Citizenship and Immigration)* (*Moretto*),[52] Moretto came to Canada as an infant and lived in Canada for 50 years as a permanent resident; Moretto's conditional stay of removal was canceled following a serious criminality conviction under subsection 68(4).[53] Moretto also claimed deprivation of his section 7 liberty and security of the person rights. Although the Federal Court of Appeal relied on *Medovarski* to justify their findings, it is important to highlight that the Court refused to distinguish Moretto's circumstances based on the length of time Moretto had been in Canada, when Medovarski had only been in

[50] *Begum*, *supra* note 12 at para 5.
[51] *Ibid* at para 107.
[52] 2019 FCA 261 [*Moretto*].
[53] *Ibid* at paras 19, 21—22.

Canada for a few years. Moreover, they declined to distinguish *Medovarski* despite the Court's explicit recognition that Moretto's evidence of psychological stresses was stronger than that of the Appellant's here.[54]

[40] Moretto's deportation was found to likely lead to more severe psychological stresses as he did not speak the language of his country of citizenship, he had evidence of both addiction and mental health problems, and he heavily relied on his family within Canada for "emotional, financial and psychological support."[55] Furthermore, a psychologist's reports presented a dire picture, stating that deportation would lead Moretto to likely gravitate back into "passive and/or active patterns of self-destructive behaviour" and would likely "represent a life-shortening event for him."[56] Despite this evidence, Moretto's consequences did not rise beyond those 'typical' with immigration proceedings.[57]

[41] In contrast to *Moretto,* the Appellant is not or has not adduced evidence showing financial reliance on his family, a pattern of addiction or mental health issues, or that he is being deported to a country where starting over would be exponentially more difficult due to a language barrier. In fact, Dr. Williams' report noted that the Appellant showed "no evidence of a thought disorder" and the levels of anxiety the Appellant was suffering was "normal".[58] Since Moretto's claim was rejected despite greater evidence demonstrating severe consequences, it would be illogical for the Court to recognize engagement of security of the person where the Appellant has failed to demonstrate equal, let alone more severe consequences.

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[54] *Ibid* at para 52.
[55] *Ibid* at para 49.
[56] *Ibid.*
[57] *Ibid* at para 52.
[58] *Revell* FC, *supra* note 4 at para 127.

2) Deportation Does Not Violate Section 7 In A Manner Which Does Not Accord With The Principles Of Fundamental Justice

[42] The Appellant's rights cannot be engaged by deportation because, as outlined above, the Appellant's claimed interests are not within the ambit of protection provided by section 7. Although *CCR* narrowed the possibility that curative measures could negate engagement,[59] this Court is free to uphold the long-held principle that deportation in itself does not *per se* engage section 7, especially given the lack of threat here to protected section 7 interests. Alternatively, and without prejudice to our prior argument, if this Court finds section 7 is engaged (at either the admissibility stage or at deportation), any resulting deprivation would be in accordance with the principles of fundamental justice. This position is further supported due to the renewed role of curative provisions in this stage of the analysis. Furthermore, the Appellant's reliance on international law sources as sufficiently persuasive to overturn long-held principles should fail.

A) Deportation Does Not *Per Se* Engage Section 7

[43] If this Court finds that the Appellant's claimed interests do fall within the section 7 ambit, we further submit that recognizing deportation itself is sufficient to engage section 7 would run afoul of the large body of Canadian case law holding that section 7 is not engaged by deportation.[60] Although the Appellant relies on *Charkaoui v Canada (Citizenship and Immigration*) (*Charkaoui*)[61] to argue that section 7 has a renewed role in the immigration context, the Appellant overestimates the value of that case and its applicability here.

[44] In *Charkaoui*, three appellants were issued certificates of inadmissibility and upon issuance, they were arrested and detained.[62] The certificates were issued following allegations

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[59] *CCR*, *supra* note 11 at para 71.
[60] See *Charkaoui*, *Medovarski supra* note 10; see also *Moretto*, *supra* note 52 at para 47.
[61] *Charkaoui*, *supra* note 10.
[62] *Ibid* at para 10.

that they were threats to the security of Canada due to involvement in terrorist activities. The appellants challenged the certificate scheme on multiple constitutional bases, including section 7.[63] The SCC considered whether section 7 was engaged by the provisions which outlined the certificate and detention process. In rebutting the government's argument that *Medovarski* meant section 7 could not apply to an immigration matter, the Court held that *Medovarski* did not render deportation proceedings immune from section 7 scrutiny.[64] The Court instead refined the holding in *Medovarski*, stating "[w]hile the deportation of a non-citizen in the immigration context may not *in itself* engage s.7 of the *Charter*, some features associated with the deportation, such as detention in the course of the certificate process or the prospect of deportation to torture, may do so."[65]

[45] In *Charkaoui*, the Court found that the appellants had been denied their liberty through the indefinite period of detention following issuance of a certificate.[66] With regards to security of the person, the Court recognized that removal of a foreign national to a place where his life or freedom could be threatened and the irreparable harm of the possible accusation that a person is a terrorist associated with a security certificate were sufficient to engage section 7.[67] However, this simply reiterates the SCC's holding in *Suresh v Canada (Minister of Citizenship and Immigration)* (*Suresh*) that "barring extraordinary circumstances, deportation to torture will generally violate the principles of fundamental justice protected by s.7 of the *Charter*."[68] Despite the Appellant's claims, *Charkaoui* did not expand the engagement of section 7 at the deportation stage in any meaningful way.

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[63] *Ibid* at para 11.
[64] *Ibid* at paras 16—17.
[65] *Ibid.*
[66] *Ibid* at para 13.
[67] *Ibid* at para 14.
[68] *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 76.

[46] The circumstances in *Charkaoui* are also completely distinct from the case here. The Appellant is facing no risk of torture upon return to England, nor is he being held in detention for an indefinite period. There is also no certificate accusing the Appellant of terrorism. On the basis of *Charkaoui* and *Suresh*, section 7 is still only engaged at the deportation stage when there is a risk to liberty, in the sense of being free from detention, and security of the person, in the sense of being free from the threat of torture. Since the Appellant is not facing a risk in either sense, deportation in these circumstances would not engage section 7 rights at all.

B) Any Deprivation Of Section 7 Rights Would Accord With The Principles Of Fundamental Justice

[47] If this Court finds that deportation deprives the Appellant of his section 7 rights, this Court should still find that any resulting deprivation is in accordance with the principles of fundamental justice and reject the Appellant's claims of gross disproportionality or overbreadth. The deprivation of the Appellant's rights is closely connected with the *IRPA*'s objective of protecting the safety and security of the Canadian community, and the deleterious impacts on the Appellant cannot outweigh this crucial objective. While both the governing legislation and exercise of discretion must accord with the principles of fundamental justice, courts tend to give considerable deference to an administrative decision-maker like the ID,[69] because administrative decision-makers possess expertise and specialized knowledge, and are particularly familiar with weighing competing Charter values.[70] As an administrative decision-maker has been delegated power by Parliament or the legislature, the role of courts is "not to 'second guess' substantive outcomes made by public authorities in the executive branch."[71]

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[69] *Ibid* at paras 39—41; see also *Kindler v Canada (Minister of Justice)*, [1991] 2 SCR 779 at 837—37, 1991 CanLII 78 (SCC).
[70] *Dore v Barreau du Quebec*, 2012 SCC 12 at para 47.
[71] Colleen M. Flood, Paul Daly, *Administrative Law in Context*, 4th ed (Toronto: Emond, 2022) at 91.

i) The Provisions And Their Application Are Not Overbroad

[48] The Appellant's claim that the legislation and its application is overbroad should be rejected because the provisions are capturing conduct which is directly linked to the purpose of the provisions. The lack of what the Appellants views as an assessment of his personal circumstances does not render the *IRPA* overbroad, especially since this perception is incorrect. Examination of the *IRPA* shows there are sufficient curative measures to ensure that any deprivation is not overbroad.

[49] Examination of the purposes and the effects of the impugned provisions show that neither the provisions nor the effects are overbroad because the *IRPA* has a focused purpose of facilitating the removal of permanent residents with criminal convictions. When determining the purpose of the legislation, courts can look at statements of purpose in the legislation, the text, context and scheme of legislation, and extrinsic evidence such as legislative history.[72]

[50] The Federal Court of Appeal affirmed that the purpose of the Act is "to prevent non-citizens convicted of serious offenses from remaining in the country…"[73] The *IRPA* promotes the objectives stated in section 3(1) through controlling access to Canada for non-citizens, and excluding any non-citizen who would clash with the stated objectives, such as "to protect public health and safety and to maintain the security of Canadian society".[74]

[51] In terms of the text, context and scheme of the legislation, as well as the legislative history, it is clear that compared to former immigration legislation, the *IRPA* has taken a much stronger stance with regards to security by enacting provisions which are less lenient towards criminals and security threats.[75] This prioritization of security was confirmed by the Court's

[72] *R v Moriarty*, 2015 SCC 55 at paras 25, 28, 31.
[73] *Revell* FCA, *supra* note 5 at para 93, citing *Canada (Minister of Employment and Immigration) v Chiarelli*, 1992 CanLII 87 (SCC), [1992] 1 SCR 711, at 733 [*Chiarelli*].
[74] *IRPA, supra* note 1 at paragraph 3(1) (h).
[75] *Chiarelli*, *supra* note 73 at 733; *Medovarski*, *supra* note 10 at paras 46—47.

interpretation of the purpose in *Medovarski*.[76] Paragraphs 36 (1) (a) and 37 (1) (a) operate to facilitate this objective by removing foreign nationals who pose a threat to the safety and security of Canadian society. These provisions simply provide legislative confirmation that non-citizens do not have an unqualified right to remain in Canada, and those who fall within them clash with the objective of protecting Canadian society's safety and security. This is further supported by the corollary obligation of permanent resident's to behave lawfully while in Canada.[77] This Court should adopt the Federal Court of Appeal's articulation of the purpose of the *IRPA*.

[52] In *Bedford*, the SCC found the legislation would be overbroad if the legislation's effect on some groups bore no relationship in achieving the objective of the law.[78] There, the *Criminal Code* provisions were found overbroad because the provisions punished anyone provided assistance to sex workers' operations, without distinguishing between exploitors (i.e., pimps) and persons legitimately hired to diminish the risks associated with sex work (i.e., security guards or accountants).[79]

[53] The Appellant may argue that the provisions are overbroad because they would include people who are no longer a risk to the security of Canada, and because they do not provide consideration for the impact of deportation on a permanent resident such as himself. In rebuttal, there is no way to interpret the *IRPA* as affecting permanent residents who are not a threat to the security of Canadian society: the inadmissibility provisions are limited to serious offenses or offenses involving organized crime groups. The determination that the Appellant, as a criminal convicted under two headings of inadmissibility, can be removed from Canada does not overshoot the recognized purposes in any form; it is simply the operation of the *IRPA*.

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[76] *Medovarski*, *supra* note 10 at paras 10—11.
[77] *Tran v Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50 at para 40 [*Tran*]; *Revell* FCA, *supra* note 5 at para 110.
[78] *Bedford*, *supra* note 13 at para 112.
[79] *Ibid* at para 142.

[54] Moreover, the available curative mechanisms would prevent the *IRPA*, and its application, from being overbroad. Curative measures have been recognized as a remedial means of rendering a deprivation of a section 7 right to be in accordance with the principles of justice.[80] These measures operate by providing specific exemptions which can be applied after the fact to a breach created by the operation of a general rule.[81]

[55] In *Canada (Attorney General) v PHS Community Services Society* (*PHS*), the SCC considered whether provisions surrounding the prohibition on drugs would interfere with the operation of a safe injection site in a manner which engaged section 7.[82] After finding that the some of the provisions deprived both staff and clients of the safe injection site of their section 7 rights,[83] the Court then noted that the impugned provisions could not be considered in isolation.[84] The legislation had safety valves, such as regulations guiding when an exemption would be appropriate, and a broad discretion for the Minister of Health to grant exemptions.[85] The Court concluded that the existence of such safety valves would prevent the legislation from being applied in a way that did not accord with the principles of fundamental justice, thus there was no violation of section 7.[86] The reasoning in *PHS* was most recently applied in *CCR*, where the SCC recognized some of the same mechanisms such as temporary resident permits and humanitarian and compassionate exemptions as curative measures.[87]

[56] Assuming this Court follows *CCR* with regards to the role curative measures can play, the lower courts correctly recognized (albeit to negate engagement) the existence of such avenues

[80] *CCR*, *supra* note 11 at para 68.
[81] *Ibid.*
[82] 2011 SCC 44 [*PHS*].
[83] *Ibid* at para 94.
[84] *Ibid* at para 109.
[85] *Ibid* at paras 110—113.
[86] *Ibid* at para 114. The Court also held that the Minister's decision to not grant an exemption was found to be grossly disproportionate (para 133) and arbitrary (para 132).
[87] *CCR*, *supra* note 11 at para 70.

for the Appellant. Briefly, these options include an humanitarian and compassionate grounds exemption (which we concede that to access, the Appellant would need to successfully acquire a Ministerial declaration), the said Ministerial declaration, and a temporary resident permit.[88] These measures would prevent any deprivation which does not accord with the principles of fundamental justice.

[57] The Appellant may submit that these mechanisms are "illusory" and cannot cure any deprivations since there is no guarantee that any of these mechanisms will succeed and allow him to remain in Canada. However, as the SCC recognized in *CCR*, an exemption would be illusory only "if there were no possibility of accessing it in law…" or is "unavailable in practice."[89] Here, there are exemptions written into the legislation, and the Appellant has failed to demonstrate that none of these curative measures would be accessible to him in practice. After examination of both the purpose of the *IRPA*, its effects, and the availability of curative measures, it is clear that there is no overbreadth.

ii) The Effects On The Appellant Are Not Grossly Disproportionate

[58] The Appellant's claim that the provisions and their application create grossly disproportionate effects for him should also fail. This Court should follow the lower courts' reliance on Canadian case law holding that gross disproportionality does not apply in circumstances where a permanent resident is deported due to criminal convictions.[90] Even if the Court departs from prior case law and applies a gross disproportionality analysis, the effects on the Appellant are not 'totally out of sync' with the objective of the *IRPA*.

[59] Gross disproportionality considers "whether the law's effects on life, liberty and security of the person are so grossly disproportionate to its purpose that it cannot be rationally

[88] *Revell* FCA, *supra* note 5 at paras 10—12, 47—50.
[89] *CCR*, *supra* note 11 at para 158.
[90] *Revell* FCA, *supra* note 5 at paras 110, 116.

connected."[91] The threshold for gross disproportionality is high,[92] as it only applies "in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure".[93] However, a "grossly disproportionate effect on one person" is sufficient to find a provision overbroad.[94] The analysis does not consider the beneficial effects of the law for society.[95]

[60] Here, the Court must consider whether consequences of deportation on the Appellant, which result in separation from his family and starting anew in England, can outweigh the explicit legislative objective of protecting the safety and security of Canadian society. The Federal Court of Appeal justifiably relied on *Canada (Minister of Employment and Immigration) v Chiarelli* and *Medovarski* to conclude that gross disproportionality does not apply in the current situation.[96]

[61] Furthermore, it is important that the section 7 analysis is conducted in a contextual approach.[97] In the immigration law context, the most fundamental common law principle is that non-citizens do not have an unqualified right to enter or remain in the country.[98] As a permanent resident, the Appellant's status in Canada was conditional, and by repeatedly committing non-trivial crimes, the Appellant violated the very condition set out for him to abide by in order to be permitted to stay in Canada as a permanent resident.

[62] The Appellant may argue that his chance of reoffending is very low and he will not impose a security risk to the community, so the decision of deporting him because of his

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[91] *Bedford*, *supra* note 13 at para 120.
[92] *Carter*, *supra* note 19 at para 89.
[93] *Ibid;* see also *Malmo-Levine*, *supra* note 20 at para 175.
[94] *Bedford*, *supra* note 13 at para 122.
[95] *Ibid* at para 121.
[96] *Revell* FCA, *supra* note 5 at para 102.
[97] *Kindler*, *supra* note 69 at 848; see also *Chiarelli*, *supra* note 73 at 732—33.
[98] *Chiarelli*, *supra* note 73 at 733.

criminality is disproportionate. To begin, it is repeatedly affirmed in cases like *Tran v Canada (Public Safety and Emergency Preparedness)* and *Medovarski* that permanent residents have an obligation under the *IRPA* to behave lawfully and not engage in serious criminality.[99] Furthermore, with regards to the risk the Appellant poses, the 2015 report found that the Appellant's continued presence within Canada posed a risk to society;[100] it is not clear that the Appellant has adduced sufficient evidence to rebut this conclusion. Furthermore, the legislature created these provisions to only apply to certain crimes: it was within their discretion to determine that conviction for specific types of crimes was sufficient to render a permanent resident inadmissible. It is clear that his offenses, which include involvement with drug trafficking linked to an organized criminal group and assault with a weapon of his then-girlfriend, pose a threat to the Canadian community.

[63] The Appellant may also argue that separation with his family and starting a life anew in another country imposes grossly disproportionate impacts on him. We concede that separation with his children and grandchildren could have a slightly disproportionate impact. However, because the gross disproportionality test requires the impacts being "totally out of sync" with the objective, a slight disproportionality does not suffice. Here, it is not clear that separation from his family creates consequences which are so out of sync from those typical in the immigration context. The question of gross disproportionality does not assess whether the legislature chose the least impairing way,[101] but whether the negative impacts are grossly disproportionate to the objective. Having found the provision not overbroad nor grossly disproportionate, potential infringements on the Appellant's section 7 rights are in accordance with the principle of fundamental justice, so there is no section 7 violation.

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[99] *Tran*, *supra* note 77 at para 40; *Medovarski*, *supra* note 10 at para 10.
[100] *Revell* SCC Application, *supra* note 9 (Application, Appellant at Tab 6 (E) 354).
[101] *Bedford*, *supra* 13 at note 6.

iii) The Appellant Cannot Rely on Principles and Decisions in International Law

[64] Finally, the Appellant may argue principles and decisions from international law could be sufficiently persuasive to save his claims, but this argument should fail because the UNHRC opinions only offer persuasive value for interpreting and applying Canadian law, which the UNHRC itself acknowledges.[102] In *De Guzman v Canada*, the Federal Court of Appeal affirmed that international human rights instruments, including relevant international covenants and quasi-judicial decisions of international tribunals, are persuasive but not determinative in Canadian courts.[103] Furthermore, international instruments have separate provisions which allow states to limit rights or override other obligations in the interests of public safety or security.

[65] The Appellant may cite the UNHRC's opinion in *Warsame v Canada (Warsame)* to argue that his deportation would violate his rights under the ICCPR. There, the UNHRC concluded that Canada's deportation of Warsame violated Warsame's right to life, the right to freedom from cruel punishment, the right to remain in one's "own country", and the right to family life, entrenched in the ICCPR in Articles 6, 7, 12 and 17 respectively.[104] The Appellant may argue that according to this decision, one's "own country" not only refers to the country of nationality, but a country an individual has deep ties with. However, the UNHRC's opinions in *Warsame* have little persuasive value here because of the differences in the factual circumstances, and in light of other UNHRC opinions about Article 12(4).

[66] In *Warsame*, the UNHRC noted there was no proof that Warsame possessed Somali citizenship,[105] which, among other reasons, supported the conclusion that Canada was Warsame's own country within the meaning of Article 12(4). In contrast, here it is certain in Revell's case he

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[102] *Ahani v Canada (Attorney General)*, 2002 CanLII 23589 at paras 35—38 (ONCA).
[103] *De Guzman v Canada*, 2005 FCA 436 at paras 66, 89.
[104] *Warsame v Canada* (2011), CCPR/C/102/D/1959/2010, UN Human Rights Committee, online: <https://juris.ohchr.org/casedetails/1639/en-US> [*Warsame*]; *ICCPR*, *supra* note 30.
[105] *Warsame*, *supra* note 104 at para 8.5.

will be able to return to England as a citizen - he will not be left stateless. The UNHRC also considered the fact that Warsame also lacked language skills to live in Somalia, cultural ties and familial and clan support,[106] all of which would have made him a target for militia and pirate groups. Because of this, the UNHRC concluded that Warsame would face a real risk of harm under Articles 6 and 7.[107] In contrast, the Appellant's return to England at most deprives his right to remain with his family, forces him to start over, and subjects him to some psychological stress. The Appellant speaks English, and is not facing any of the same risks with regards to militia and pirate groups.

[67] Despite academic claims,[108] it is not firmly established that mere long term residency and familial ties can make a country become the "own country" of a non-citizen within the meaning of Article 12(4) of the ICCPR, since there are UNHRC opinions which hold otherwise and which are more similar to this case. In *Stewart*, the UNHRC concluded that there was no violation of Article 12(4) because it was not guaranteed that a country of a long-term resident will become their "own country."[109] Furthermore, Stewart chose to maintain his conditional status by not applying for Canadian citizenship, and a condition of that status was not to commit crimes.[110] The UNHRC concluded that in those circumstances, an individual forfeited both rights and obligations imposed upon him.[111] This Court can consider the UNHRC's analysis in *Stewart* and factor in the Appellant's own actions, such as his failure to solidify his status in Canada by applying for citizenship, and committing criminal offense, which should bar any finding that Canada is the Appellant's 'own country' within the meaning of Article 12(4).

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[106] *Ibid* at para 8.2.
[107] *Ibid* at paras 7.8, 8.3.
[108] Timothy E. Lynch, "Right to remain", (2022) 31:3, *Wash. Int'l L.J.* 315.
[109] *Stewart, supra* note 31 at paras 12.4—12.5.
[110] *Ibid* at paras 12.5—12.6.
[111] *Ibid* at para 12.8.

[68] Finally, it is a fundamental principle in international law that states have sovereignty to regulate population entering into its territory and expel foreign nationals.[112] A corollary of this sovereignty is that many international instruments allow states to impose limits on access and other rights for reasons of safety and security. This principle has manifested in the treaties such as the *UN Convention Relating to the Status of Refugees* (Refugee Convention), and the *European Convention on Human Rights* (ECHR). Article 8 of the ECHR protects the right to respect for family and private life, but allows for states to limit this right as necessary in the interests of public safety.[113] Even more telling is Article 33 (2) of the Refugee Convention, which provides that if there is reasonable grounds that a refugee constitutes "danger to the community of that country", then the country has a right to expel the refugee.[114] This limit is permitted despite the general obligation of all signatories not to return refugees to a country where they face a well-founded fear of persecution (also known as the duty of *non-refoulement*). Although the Appellant is not a refugee, since expulsion of a refugee (despite the risks of persecution) is permitted if there is a danger to the community, it seems illogical that the Appellant could not be expelled on the same basis, without even facing the same risks. Both of the instruments show that international law respects the sovereignty of states to take measures in the interests of public safety and security.

3) Any Deprivation Not In Accordance With The Principles Of Fundamental Justice Could Be Saved Under Section 1

[69] Without prejudice to the above arguments, even if this Court finds a section 7 violation

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[112] Linda S. Bosniak, "Human Rights, State Sovereignty, and the Protection of undocumented Migrants under the International Migrant Workers Convention" (1991) 25:4 Int'l Migration Rev 737, at 742—43.
[113] *European Convention on Human Rights*, 4 November 1950, 213 UNTS 221, art 8.
[114] *United Nations Convention Relating to Status of Refugees*, 28 July 1951, [1969] Can. T.S. No. 6, art 33(2).

which does not accord with the principles of fundamental justice, this deprivation could nonetheless be saved under section 1 through the *Oakes* analysis because the government can meet the onus of demonstrating the limitation is justified under section 1.[115]

[70] The *IRPA*'s objective of protecting Canadian society's security is sufficiently important to override any section 7 deprivation. Public safety and security cannot be seen as anything less, especially since there is international recognition for limiting deeply-entrenched rights and freedoms in the interests of public safety, as discussed above.

[71] Under the *R v Oakes* test, when assessing whether the means chosen are proportional, the court considers whether there is rational connection between the means and objective, whether the chosen means minimally impair the rights at stake, and whether the salutary effects outweigh the deleterious effects.[116]

[72] There is a rational connection between the deportation of the Appellant and the limitation on his section 7 rights. The government can establish the rational connection by showing a causal connection between infringements and benefits based on reason or logic.[117] Deporting a non-citizen for multiple convictions of serious crimes is not arbitrary or based on irrational considerations[118] - it is a decision based on criminal convictions for non-trivial offenses and is logically related to protecting the security and safety of Canadian society. It is reasonable to deport someone like the Appellant, who committed multiple crimes in order to protect the safety and security of Canadian society.

[73] Furthermore, deporting a non-citizen with multiple convictions to a country where he faces no risk of torture is reasonable. While the minimal impairment question asks whether the

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[115] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 134 [*Hutterian*].
[116] *R v Oakes*, [1986] 1 SCR 103 at para 139, 1986 CanLII 46 (SCC).
[117] *RJR- MacDonald Inc. v. Canada (Attorney General),* [1995] 3 SCR 199 at para 153, 1995 CanLII 64 (SCC); see also *Hutterian*, *supra* note 115 at para 48.
[118] *R v Oakes*, *supra* note 116 at para 104.

law impairs the right as little as possible, the SCC has recognized that the actual test is less stringent than the language implies[119]: legislation satisfies the minimal impairment stage if Parliament chose one of the possible reasonable means to effectively achieve the objective.[120] In *Bedford*, the law was found not to be minimally impairing since it caught non-exploitive relationships;[121] in contrast, here the law only encompasses non-citizens who have committed serious crimes, and it also provides multiple exemptions which help ensure only the non-citizens who actually pose a risk to the safety and security of Canadian society are deported.

[74] Finally, the salutary effects outweigh the deleterious effects here. The deleterious effects are psychological stresses on the Appellant resulting from separation from his family and starting anew, which are typical effects in the immigration context. The salutary effects of deportation are protecting the community from the threat of a repeat offender convicted for serious crimes, as well as generally protecting the integrity of the Canadian immigration system by holding permanent residents to their obligation not to commit serious crimes.

[75] The SCC in *Carter* recognized that a public good can be sufficient to justify section 7 violation under section 1.[122] International rights-based instruments also have recognized that the objective of public safety can permissibly limit other rights. In light of the above, the public good of the safety and security of Canadian society can outweigh the interference with the Appellant's section 7 rights caused by deportation, thus justifying the section 7 infringement under section 1.

PART IV: ORDER SOUGHT

[76] The Respondent respectfully requests that the Honourable Court dismiss the appeal and answer the Certified Questions in the negative.

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[119] *Hutterian, supra* note 115, paras 194—195.
[120] *Canada v JTI MacDonald Corp.*, 2007 SCC 30 at para 43.
[121] *Bedford, supra* note 13 at para 162.
[122] *Carter, supra* note 19 at para 95.

APPENDIX: LIST OF AUTHORITIES

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