

Federal Court



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**Dockets: IMM-5466-23
IMM-5481-23**

Citation: 2025 FC 1840

Ottawa, Ontario, November 19, 2025

PRESENT: The Honourable Mr. Justice Gleeson

Docket: IMM-5466-23

BETWEEN:

ROMAN SLEPCSIK

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

and

**DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
CANADIAN CIVIL LIBERTIES ASSOCIATION**

Interveners

Docket: IMM-5481-23

AND BETWEEN:

ROMAN SLEPCSIK

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION, MINISTER OF PUBLIC
SAFETY AND EMERGENCY
PREPAREDNESS AND THE ATTORNEY
GENERAL OF CANADA**

Respondents

and

**DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
CANADIAN CIVIL LIBERTIES ASSOCIATION**

Intervenors

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JUDGMENT AND REASONS

I. Overview

[1] In a decision dated April 4, 2023, the Refugee Protection Division [RPD] allowed the Minister of Public Safety and Emergency Preparedness's [Minister] application for cessation of Mr. Roman Slepčsik's refugee status under paragraph 108(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD found the Applicant had voluntarily reavailed himself of the protection of his country of nationality.

[2] The RPD's cessation decision resulted in the automatic loss of Mr. Slepčsik's permanent resident [PR] status and his inadmissibility, as provided for by sections 40.1 and 46(1)(c.1) of the IRPA and subsection 228(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR].

[3] Following the RPD's decision, Mr. Slepčsik [the Applicant] commenced two separate Applications for Leave and for Judicial Review [Applications].

[4] In IMM-5466-23, the Applicant challenges the reasonableness of the RPD's decision to cease his refugee status. In IMM-5481-23, he argues that sections 40.1 and 46(1)(c.1) of the IRPA and subsection 228(1) of the IRPR are not constitutionally valid.

[5] In this Judgment and Reasons, I first provide a general overview of the proceedings before this Court, followed by a general overview of the cessation regime. I then review the

Applicant's background circumstances, before addressing the administrative law issues originally raised in IMM-5466-23. I then turn to a consideration of the constitutional validity arguments advanced in IMM-5481-23 and I conclude with a consideration of whether the questions proposed for certification should be certified.

[6] For the reasons that follow, the Applications are dismissed and I find that sections 40.1 and 46(1)(c.1) of the IRPA and subsection 228(1) of the IRPR are constitutionally valid. The two questions the Parties have jointly proposed are certified.

II. Proceedings in the Federal Court

[7] As noted above, the Applicant commenced two Applications following the RPD's decisions.

[8] The constitutional issues raised in IMM-5481-23 are similar to those before the Court in *Jude Upali Gnanapragasam and the Canadian Council for Refugees v Minister of Public Safety and Emergency Preparedness, Minister of Citizenship and Immigration and the Attorney General of Canada*, Federal Court Docket IMM-8432-22 [*Gnanapragasam*].

[9] By Order dated May 2, 2024 (*Gnanapragasam v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 761), Justice Henry Brown struck and dismissed IMM-8432-22 on grounds of mootness [Justice Brown Order] and endorsed the Parties' joint proposal to add the record developed in IMM-8432-22 to the records in IMM-5481-23 and IMM-5466-23.

Specifically, the Justice Brown Order:

1. Consolidated IMM-5466-23 and IMM-5481-23, the matters now before the Court.
2. Added to the record in IMM-5466-23 and IMM-5481-23 the affidavits and further affidavits, transcripts of oral cross-examinations of the affiants, the responses to written examinations and such further material from the record filed in IMM-8432-22 as desired by the Applicant or Respondents.
3. Granted the interveners in IMM-8432-22-namely, the Canadian Civil Liberties Association [CCLA] and the David Asper Centre of Constitutional Rights [Asper Centre]-the same rights as interveners in IMM-5466-23 and IMM-5481-23 as they had in IMM-8432-22 resulting from the terms of intervention ordered by Justice Ahmed (*Gnanapragasam v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 1735).

[10] The Canadian Council for Refugees [CCR], originally a Party in IMM-8432-22, subsequently sought intervener status in these proceedings by way of motion. Associate Judge Trent Horne dismissed that motion (*Slepcsik v Canada (Citizenship and Immigration)*, 2024 FC 1106).

III. The IRPA Cessation Regime

[11] Section 108 of the IRPA provides:

108 (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:
(a) the person has voluntarily reavailed themselves of the

108 (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants :
a) il se réclame de nouveau et volontairement de la

protection of their country of nationality;	protection du pays dont il a la nationalité;
(b) the person has voluntarily reacquired their nationality;	b) il recouvre volontairement sa nationalité;
(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;	c) il acquiert une nouvelle nationalité et jouit de la protection du pays de sa nouvelle nationalité;
(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or	d) il retourne volontairement s'établir dans le pays qu'il a quitté ou hors duquel il est demeuré et en raison duquel il a demandé l'asile au Canada;
(e) the reasons for which the person sought refugee protection have ceased to exist.	e) les raisons qui lui ont fait demander l'asile n'existent plus.
(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).	(2) L'asile visé au paragraphe 95(1) est perdu, à la demande du ministre, sur constat par la Section de la protection des réfugiés, de tels des faits mentionnés au paragraphe (1).
(3) If the application is allowed, the claim of the person is deemed to be rejected.	(3) Le constat est assimilé au rejet de la demande d'asile.
(4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country	(4) L'alinéa (1)e) ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection

which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.	du pays qu'il a quitté ou hors duquel il est demeuré.
--	--

[12] Subsection 108(1) requires that a claim for refugee protection be rejected in specific circumstances that include an individual having voluntarily reavailed themselves of the protection of their country of nationality. Subsection 108(2) requires that the Minister bring an application of cessation before the RPD, which is then required to determine if the refugee protection conferred under subsection 95(1) of the IRPA has ceased. Where the application is allowed, the individual's claim for protection is deemed rejected pursuant to subsection 108(3).

[13] An application for cessation must, pursuant to Rule 64(3) of the *Refugee Protection Division Rules*, SOR/2012-256 [*RPD Rules*], be served on the impacted individual when it is referred to the RPD.

[14] In the course of a cessation hearing, the RPD is limited to consideration of factors related to the issue of cessation. More specifically, the RPD shall not consider humanitarian and compassionate [H&C] factors, or possible risks the impacted individual may face if ultimately removed to their country of nationality (*Bermudez v Canada (Citizenship and Immigration)*, 2016 FCA 131 at paras 38–40 [*Bermudez FCA*]; *Chokheli v Canada (Citizenship and Immigration)*, 2020 FC 800 at para 66 [*Chokheli*], citing *Abadi v Canada (Citizenship and Immigration)*, 2016 FC 29 at para 20 [*Abadi*] and *Balouch v Canada (Minister of Public Safety and Emergency Preparedness)*, 2015 FC 765 at para 19 [*Balouch*]).

[15] Where the RPD allows an application for cessation pursuant to subsection 108(2) of the IRPA, and the impacted individual holds PR status, paragraph 46(1)(c.1) of the IRPA provides that, in most cases, the individual's PR status is also lost:

46 (1) A person loses permanent resident status	46 (1) Emportent perte du statut de résident permanent les faits suivants :
(a) when they become a Canadian citizen;	a) l'obtention de la citoyenneté canadienne;
(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;	b) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;
(c) when a removal order made against them comes into force;	c) la prise d'effet de la mesure de renvoi;
(c.1) on a final determination under subsection 108(2) that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d);	c.1) la décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l'un des alinéas 108(1)a) à d), la perte de l'asile;
(d) on a final determination under section 109 to vacate a decision to allow their claim for refugee protection or a final determination to vacate a decision to allow their application for protection; or	d) l'annulation en dernier ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection;
(e) on approval by an officer of their application to renounce their permanent resident status.	e) l'acceptation par un agent de la demande de renonciation au statut de résident permanent.

[Emphasis added.]

[Non souligné dans l'original.]

[16] In addition, and pursuant to subsection 40.1(2) of the IRPA, the individual is deemed inadmissible to Canada and subject to the removal process provided for at section 44 of the IRPA.

40.1 (1) A foreign national is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.

40.1 (1) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant la perte de l’asile d’un étranger emporte son interdiction de territoire.

(2) A permanent resident is inadmissible on a final determination that their refugee protection has ceased for any of the reasons described in paragraphs 108(1)(a) to (d).

(2) La décision prise, en dernier ressort, au titre du paragraphe 108(2) entraînant, sur constat des faits mentionnés à l’un des alinéas 108(1)a) à d), la perte de l’asile d’un résident permanent emporte son interdiction de territoire.

[Emphasis added.]

[Non souligné dans l’original.]

[17] Where cessation pursuant to subsection 108(2) is allowed for the reasons described in paragraph 108(1)(e)—“the reasons for which the person sought refugee protection have ceased to exist”—the individual does not lose PR status (IRPA, s 46(1)(c.1)) nor are they deemed inadmissible (IRPA, s 40.1(2)). In other words, despite the cessation and deemed refusal of refugee protection resulting from a 108(2) decision, where an application for cessation is allowed for the reasons described at 108(1)(e), the impacted individual, if holding PR status, maintains that status and is not deemed inadmissible to Canada.

[18] Section 40.1 and paragraph 46(1)(c.1) were introduced into the IRPA in 2012 following the *Protecting Canada's Immigration System Act*, SC 2012, c 17 [PCISA or Bill C-31] coming into force.

[19] These new provisions were followed by the addition of paragraph 228(1)(b.1) to the IRPR which provides for a departure order to issue where cessation is the basis for inadmissibility:

228 (1) For the purposes of subsection 44(2) of the Act, and subject to subsections (3) and (4), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the following circumstances, the report shall not be referred to the Immigration Division and any removal order made shall be

[...]

(b.1) if the foreign national is inadmissible under subsection 40.1(1) of the Act on grounds of the cessation of refugee protection, a departure order;

[Emphasis added.]

228 (1) Pour l'application du paragraphe 44(2) de la Loi, mais sous réserve des paragraphes (3) et (4), dans le cas où elle ne comporte pas de motif d'interdiction de territoire autre que ceux prévus dans l'une des circonstances ci-après, l'affaire n'est pas déférée à la Section de l'immigration et la mesure de renvoi à prendre est celle indiquée en regard du motif en cause :

[...]

b.1) en cas d'interdiction de territoire de l'étranger au titre du paragraphe 40.1(1) de la Loi pour perte de l'asile, l'interdiction de séjour;

[Non souligné dans l'original.]

[20] In addition, affected individuals may not request a temporary resident permit (IRPA, s 24(4)), receive a pre-removal risk assessment [PRRA] (IRPA, s 112(2)(b.1)), or, with limited

exceptions, apply for PR status on H&C grounds (IRPA, s 25(1)), during the 12 months following the cessation decision.

[21] Prior to *PCISA* coming into force, protected persons holding PR status did not automatically lose that status upon a cessation for the reasons detailed at paragraphs 108(1)(a)-(d) of the IRPA. The stated purpose of the *PCISA* was to “among other things, provide for the expediting of the processing of refugee protection claims.”

IV. Issues

[22] The Applications raise two principal issues:

1. Whether the RPD erred in determining the Applicant’s refugee protection had ceased [Administrative Law Issues]; and
2. Whether sections 40.1 and 46(1)(c.1) of the IRPA and subsection 228(1) of the IRPR infringe sections 7, 12, 15 and/or 2(d) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]* and, if so, whether the infringement is justified under section 1 [Constitutional Issues].

[23] I will first consider the Applicant’s background and the Administrative Law Issues.

V. Applicant's Background

[24] The Applicant is a Czech citizen of Roma ethnicity who arrived in Canada in September 1997. The RPD's predecessor, the Convention Refugee Determination Division [CRDD], granted him Convention Refugee [CR] status in August 1998.

[25] In October 1999, the Applicant was granted PR status. He has lived in Canada for over 25 years.

[26] Between 2001 and 2021, the Applicant visited the Czech Republic on eight occasions for a range of personal reasons, which included moving out of his apartment and selling his belongings in the Czech Republic, attending funerals of relatives, and caring for his girlfriend and his brother. Each time he visited the Czech Republic, the Applicant travelled on his Czech passport; a passport that he renewed at least twice—once in either 2006 or 2007, and again in 2019.

[27] The Applicant did not travel to the Czech Republic until 2001, that is, after he obtained PR status in 1999, and maintains he was unaware that by returning to the Czech Republic he risked his PR status.

[28] Upon his re-entry to Canada in January 2021, a Canadian Border Services Agency [CBSA] officer briefly interviewed the Applicant. When asked as to the purpose of his trip, the Applicant indicated that he had returned to the Czech Republic to care for his girlfriend who had

recently undergone an operation. According to the CBSA officer's notes, the CBSA officer asked the Applicant if he still required protection against the Czech Republic, to which the Applicant replied: "No not really, things have changed. I should apply for Canadian citizenship now because I don't really need [refugee protection]." Following this interaction, the CBSA officer believed the Applicant had voluntarily reavailed himself of the protection of the Czech Republic and referred the matter to the Minister.

[29] In May 2021, the Minister's delegate filed an Application for Cessation of Refugee Protection [Cessation Application] with the RPD on the grounds that the Applicant had voluntarily reavailed himself of the protection of the Czech Republic.

VI. Administrative Law Issues

A. *RPD Decisions under Review*

[30] The impugned RPD decision was issued in two parts. First, the RPD rendered a preliminary decision on February 6, 2023, responding to the Applicant's motion, brought pursuant to Rule 50 of the *RPD Rules*, challenging the jurisdiction of the RPD to consider the Cessation Application and seeking a stay of cessation proceedings [Preliminary Decision].

[31] Second, on April 4, 2023, following a hearing on February 7, 2023, the RPD issued a decision on the Minister's Cessation Application, which also addressed, but did not decide, the Applicant's constitutional validity arguments [Cessation Decision].

(1) Preliminary Decision

[32] The Applicant took the position on the preliminary motion that the RPD lacked the jurisdiction to hear the Cessation Application because the IRPA cessation provisions only apply to refugees whose status was conferred by the RPD, and, in his case, it was the CRDD—a decision-maker that is not referenced in subsections 108(2) or 95(1) of the IRPA—that had conferred CR status.

[33] The RPD dismissed the jurisdictional challenge. It found the RPD, as established in the IRPA, is a continuation of the CRDD and that CRDD decisions therefore fall within the ambit of subsection 108(2) of the IRPA. The RPD reasoned that to hold otherwise would be to conclude that orders of the CRDD recognizing CR status would be of no effect; individuals subject to CRDD recognition would have lost that recognition when the CRDD ceased to operate, which is not the case.

[34] The Applicant also argued that the Cessation Application should not proceed because the Minister failed to inform him that the filing of a cessation application pursuant to subsection 108(2) was being contemplated. The failure to give notice, he argued, deprived him of the opportunity to make submissions in advance of the Cessation Decision, thereby breaching his procedural fairness rights.

[35] The RPD rejected the argument, finding there had been no denial of procedural fairness. The Minister acted in accordance with section 108 of the IRPA and Rule 64 of the *RPD Rules*,

which contemplate notice upon the Minister filing a cessation application with the RPD. The RPD, not the Minister, renders the decision on the issue of cessation and the RPD afforded the Applicant a hearing which included an opportunity to make representations to counter the Minister's allegations.

(2) Cessation Decision

[36] The RPD first considered the Applicant's argument to the effect it was barred from issuing a decision allowing cessation because to do so would trigger the operation of paragraph 46(1)(c.1) of the IRPA, which would impose consequences on the Applicant that violate sections 7, 12 and 15 of the *Charter*. The RPD determined it lacked jurisdiction to address the Applicant's arguments challenging the constitutional validity of paragraph 46(1)(c.1) of the IRPA. The RPD found that although it had jurisdiction to consider constitutional issues that were properly before it, it had no jurisdiction to decide the constitutional issues raised in this case because it exercised no decision-making power or authority pursuant to paragraph 46(1)(c.1).

[37] In considering the issue of reavilment, the RPD determined that the Applicant had actually reavailed himself of the protection of the Czech Republic because he had renewed his Czech passport after obtaining CR status, and he had travelled to that country on numerous occasions while using his Czech passport. The RPD further found that his reasons for travel did not amount to "exceptional circumstances" that would permit this type of return.

[38] Per this Court's decision in *Nsende v Canada (Minister of Citizenship and Immigration)*, 2008 FC 531 at paras 10-14, the RPD relied on the tripartite reavilment test laid out in the

United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees*, UNHCR, 2019, UN Doc HCR/1P4/ENG/REV.4 (2019) [UNHCR Handbook] in concluding the Applicant had indeed voluntarily reavailed himself of Czech protection. The three-part conjunctive reavilment test is set out at paragraph 119 of the UNHCR Handbook and states:

1. the refugee must act voluntarily;
2. the refugee must intend to re-avail themselves of the protection of their country of nationality; and
3. the refugee must actually obtain the protection of their own country.

[39] The RPD recognized that where an individual applies for a passport from their home country, a rebuttable presumption of reavilment arises and that the presumption is stronger when the individual uses that passport to travel back to their country of nationality. In this instance, the Applicant renewed his Czech passport on two separate occasions after being recognized as a CR and subsequently used that passport to travel to the Czech Republic on several occasions. The RPD concluded that the presumption applied to the Applicant.

[40] The RPD further found that the Applicant failed to rebut the presumption. The RPD noted the Applicant was not forced or coerced to return to the Czech Republic, instead he returned to the Czech Republic voluntarily to tend to family and personal matters. The RPD also

found that the Applicant's behaviour indicated that he intended to reavail, despite his reported lack of subjective knowledge, and that his actions constituted reavailment.

[41] Relying on the decision of the Federal Court of Appeal [FCA] in *Canada (Citizenship and Immigration) v Galindo Camayo*, 2022 FCA 50 [Camayo], the RPD found that a lack of subjective knowledge was but one consideration where reviewing the intent to reavail, and that the other considerations favoured a finding of reavailment. Finally, the RPD found that the Applicant actually obtained the protection of the Czech Republic. It noted that the type of protection required to satisfy this prong was not state protection, but diplomatic protection. In using his Czech passport to travel, the Applicant was travelling under the diplomatic protection of the Czech Republic, and thus actually obtained the protection of that country.

B. *Issues and Standard of Review*

[42] Two issues arise from the Preliminary Decision; the Applicant alleges that the RPD erred in:

1. concluding it had jurisdiction to consider the Cessation Application; and
2. finding the Minister had not breached the Applicant's procedural fairness rights.

[43] The Applicant further argues that the Cessation Decision is unreasonable, again raising two issues; the RPD's failure to:

1. engage with and weigh the Applicant's evidence relating to the issue of intent to reavail; and

2. consider the Applicant's submissions to the effect that paragraph 108(1)(e) of the IRPA provided an alternative ground for cessation that would avoid the automatic loss of PR status.

[44] The Supreme Court of Canada [SCC] teaches that, except where clear legislative intent or the rule of law requires the correctness standard be adopted, the reasonableness standard of review is to be presumptively applied (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 17, 25 [Vavilov]; *Society of Composers, Authors and Music Publishers of Canada v Entertainment Software Association*, 2022 SCC 30 at para 28). None of the exceptions identified in the jurisprudence arise—the presumptive standard of reasonableness is therefore to be adopted in reviewing the issues raised.

[45] A reasonable decision “is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.” (Vavilov at para 85.)

C. *Analysis*

- (1) Did the RPD err in concluding it had jurisdiction to consider the Cessation Application?

[46] The Applicant argues that the RPD erred in finding it had jurisdiction to consider and determine the Cessation Application.

[47] The Applicant submits subsection 108(2) of the IRPA only allows the RPD to cease refugee protection as provided for in subsection 95(1) of the IRPA. Paragraph 95(1)(b), in turn, provides that only the “Board” as defined in section 2 of the IRPA can determine if a person is a CR. The CRDD does not fall within the definition of the “Board” at section 2 and therefore the RPD does not have the authority to hear cessation applications that relate to refugees whose status was conferred by the CRDD.

[48] In addressing the issue of jurisdiction, the RPD engaged with the arguments advanced by the Applicant and considered the relevant provisions of the IRPA and the IRPR. The RPD in turn concluded that the “Board” referenced in subsection 95(1) of the IRPA includes the CRDD.

[49] The Applicant submits this conclusion unreasonably broadened the RPD’s authority because Parliament intended the current Immigration and Refugee Board of Canada [IRB] to be a separate legal entity from the IRB established under the former *Immigration Act*, RSC 1985, c I-2 [*Immigration Act*]. The Applicant also argues the RPD misinterpreted the mechanisms by which the IRPA confers or recognizes refugee protection. These arguments essentially mirror the submissions that were made to and considered by the RPD.

[50] I am not persuaded that the RPD adopted an unreasonable interpretation of the IRPA, more specifically of sections 2, 95 and 108 and the relevant transitional provisions. Although the RPD’s analysis is brief, it is responsive to the arguments advanced by the Applicant and is supported by a logical chain of analysis.

[51] The RPD recognizes the inconsistency between the language used in sections 108 and 95(1) and the transitional provisions in the IRPA and the IRPR, but concludes that subsections 108(1) and 95(1) are to be interpreted in a manner that is consistent with those transitional provisions. This is because the RPD finds section 188 of the IRPA provides for the continuation of the predecessor IRB and the IRPR provides that IRB decisions made prior to the enactment of the IRPA remain in force. Specifically, section 317 of the IRPR provides that orders and decisions made under the predecessor legislation remain in effect under the IRPA and section 338 of the IRPR provides that refugee protection conferred under the predecessor legislation is conferred under the IRPA.

[52] Recognizing that administrative decision-makers are not required to engage in a formalistic analysis when interpreting a statute, the analysis, when reviewed within the context of the submissions made and the expertise of the RPD, is consistent with a “modern approach” to statutory interpretation (*Vavilov* at paras 118–120), and the interpretation adopted is one that was reasonably available to the RPD.

[53] The Applicant’s arguments advancing the view that the RPD’s interpretation is unreasonable essentially mirror the submissions made to the RPD on the issue. While the Applicant’s arguments on judicial review reflect disagreement with the RPD’s interpretation, that disagreement is not sufficient to demonstrate that the interpretation is unreasonable, or that this Court’s intervention is warranted.

(2) Did the RPD err in concluding there had been no breach of procedural fairness?

[54] It is not disputed that the Minister gave the Applicant notice that the Cessation Application had been commenced, but did not give earlier notice that cessation proceedings were being considered. The Applicant submits that the Minister's failure to give notice of the intention to commence the Cessation Application was a breach of procedural fairness.

[55] The lack of notice, the Applicant argues, prevented him from being able to make submissions as to (1) whether the Minister should exercise their discretion to apply for cessation at all, and (2) which cessation pathway under subsection 108(1) is more appropriate. The Applicant's position on these matters would, it is submitted, have allowed for a fairer decision on the issue of "whether to commence a cessation application." The Applicant further submits that the breach of fairness at this stage of the process cannot be cured.

[56] The Applicant relies on the decisions of this Court in *Bermudez v Canada (Citizenship and Immigration)*, 2015 FC 639 [*Bermudez FC*] and *Kandasamy v Canada (Citizenship and Immigration)*, 2015 FC 855 to argue that there is a minimal duty of fairness owed at the stage in the process where a cessation application is being considered and that the minimal duty includes a right to notice. The Applicant also acknowledges that the jurisprudence of this Court is inconsistent on this question, the Court concluding differently in *Romero v Canada (Citizenship and Immigration)*, 2014 FC 671 [*Romero*].

[57] The Respondent argues that the Applicant was not entitled to notice of the Minister's intention to make an application to the RPD, submitting that following the decision of the FCA in *Bermudez FCA*, there is no basis in law for the Applicant's assertion to the contrary.

[58] As was noted by Justice Cecily Strickland in *Romero*, the cessation process as set out in the IRPA is a two-step process. The decision to make a cessation application pursuant to subsection 108(2) is the first stage of that process. The 108(2) decision affects an individual's interests, but does not determine those interests. On this basis and after considering the *Baker* factors within the context of the cessation procedure, Justice Strickland concluded that the content of the duty of fairness owed did not require notice or an opportunity to make submissions (*Romero* at paras 77, 79).

[59] In *Bermudez FC* at para 35, the Court concluded that where the first stage of the cessation process involved a PR, the scope of the duty of fairness did include the opportunity to make full submissions as to why an application for cessation should not be made. However, in *Bermudez FCA*, the FCA rejected this view of the scope of the duty of fairness, stating that this would be tantamount to creating a bifurcated process contrary to the intent of Parliament and the terms of section 108 of the IRPA:

[47] [...] the respondent insists that he was entitled to what can only be described as a "pre-hearing hearing" before the hearings officer, one that would take place prior to the full hearing before the RPD. He also submits that the wording "[o]n application by the Minister" at subsection 108(2) of the IRPA entails that the said application should only be made after an H&C assessment has been conducted by the hearings officer. The hearings officer, the respondent argues, should also provide reasons which could be judicially reviewed before the Federal Court.

[48] In reality, the respondent's submission, if accepted, would be tantamount to creating a bifurcated process under the IRPA where cessation applications involve a permanent resident. With respect, this is something that Parliament did not intend and the terms of section 108 of the IRPA do not allow for this.

[49] Indeed, it is apparent upon a plain reading of subsections 108(1) and (2) of the IRPA that Parliament intended that the RPD, a quasi-judicial body with broad procedural powers, be responsible for determining whether cessation has occurred in any particular case, not the hearings officer. Thus, when a cessation application is filed before the RPD, the person at issue has an opportunity to fully and fairly present their case in an open and impartial process before the RPD. Specifically, a person appearing before the RPD can file submissions, is entitled to a full quasi-judicial hearing, has a right to counsel, has a right to call witnesses and has a right to lead evidence. This process allows the RPD to perform its adjudicative functions and make a decision as to whether a cessation application pursuant to the subsection 108(2) is allowed or dismissed. The RPD assesses the full evidence and takes into account criteria such as voluntariness, intention and whether reavilment occurred. It follows that the filing of the application under subsection 108(2) can only be viewed as a preliminary determination that triggers the proceedings before a quasi-judicial body, namely the RPD.

[Emphasis added.]

[60] The Applicant argues that *Bermudez FCA* is of no application here because it is silent on the issue of notice. I disagree.

[61] As the Applicant acknowledges in written submissions, the purpose of notice is to provide an affected individual with the opportunity to make submissions (*Apotex Inc v Canada (Health)*, 2015 FC 1161 at para 113). To accept the Applicant's position that this matter is to be distinguished from *Bermudez FCA* would introduce the very bifurcated process the FCA expressly found was neither intended by Parliament nor allowed for by section 108.

[62] The decision in *Bermudez FCA* is dispositive; the scope of the duty owed to the Applicant under subsection 108(2) of the IRPA does not require notice. The RPD therefore reasonably concluded there was no breach of procedural fairness.

- (3) Did the RPD err by failing to engage with and weigh the Applicant's evidence relating to the issue of intent to reavail?

[63] At the outset of its analysis, the RPD acknowledged the guidance provided by the FCA in *Camayo*. The RPD acknowledged that *Camayo* instructed it to have regard for the particular circumstances of the refugee and the context in which reavilment occurred; that the focus of its analysis was to be on the Applicant's conduct and the inferences to be drawn from it; and that the FCA had identified a series of factors that might assist the Applicant in rebutting the presumption of reavilment, but that none of the identified factors was necessarily dispositive of the issue. It then identified the three factors to be considered: (1) voluntariness, (2) intention, and (3) reavilment.

[64] The Applicant submits that by failing to meaningfully consider and weigh the evidence that he lacked subjective knowledge of the potential immigration consequences of returning to his country of origin, the RPD's finding on the "intention" factor is unreasonable. I disagree.

[65] The RPD noted that where a refugee obtains or renews a passport from their country of origin, the jurisprudence recognizes a factual but rebuttable presumption that the refugee intended to reavail. The RPD acknowledged that this presumption does not relieve the Minister of their burden of proving reavilment, but where the presumption is established, an applicant

bears the onus of demonstrating they did not actually seek reavilment (*Chokheli* at paras 44-45, citing *Abadi* at paras 16-17; *Li v Canada (Citizenship and Immigration)*, 2015 FC 459 at para 42). This presumption is particularly strong where the individual has then travelled to the country of origin on a passport issued by that country.

[66] The RPD found the Minister had established the facts to engage the presumption – a finding that is not disputed.

[67] Having reasonably found the presumption to have arisen, the RPD then proceeded to consider a series of factors consistent with those identified by the FCA in *Camayo* at para 84 in assessing whether the presumption had been rebutted. These factors included, but were not limited to, the Applicant's reasons for and frequency of travel, the passport renewals, and the Applicant's personal attributes.

[68] The RPD also considered whether the evidence disclosed ongoing subjective fear and engaged with the Applicant's evidence that he lacked specific knowledge of the consequences of his travel.

[69] Having engaged with the evidence relating to the factors relevant to the rebuttal of the presumption, none of which are determinative, the RPD concluded the Applicant had not rebutted the presumption.

[70] I am satisfied that the RPD both acknowledged and grappled with the Applicant's subjective intent evidence as one of the factors it considered in concluding the Applicant's actions disclosed an intent to reavail. The RPD's conclusion was one that was reasonably available on the evidence. I see no error on the RPD's part.

- (4) Did the RPD err by failing to address the cessation pathway under paragraph 108(1)(e) of the IRPA?

[71] I also reject the argument that the RPD erred by failing to address the Applicant's submissions that, in the event his refugee status was to be ceased, the RPD should do so under 108(1)(e) as opposed to 108(1)(a).

[72] Paragraph 108(1)(e) of the IRPA states that "a claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection" when "the reasons for which the person sought refugee protection have ceased to exist."

[73] The Applicant acknowledges that the RPD is not obligated to address every submission made, but submits this matter was central and, on this basis, should have been considered.

[74] In post-hearing written submissions to the RPD, the Applicant raised the 108(1)(e) cessation pathway as an alternative argument, dedicating seven paragraphs to the issue, five addressing the RPD's jurisdiction and discretion to consider the 108(1)(e) pathway. In the remaining two paragraphs, the Applicant cites only limited and generalized references to the country condition evidence and the Applicant's testimony to suggest the reasons for protection

ceased to exist. The Applicant submits the country condition evidence discloses that widespread discrimination against the Roma not rising to the level of persecution remains, and the same evidence “appears to show effective state protection” (emphasis added), but cites only a single document in support of these assertions. These submissions belie the assertion now made that the alternative pathway argument was central.

[75] The Applicant’s Roma ethnicity, which was central to the initial grant of protection, is a factor that remains unchanged. In the absence of meaningful evidence demonstrating a durable or material change in the conditions faced by Roma in the Czech Republic, the RPD was not able to rely on 108(1)(e) in its cessation determination. As was the case in *Kaya v Canada (Citizenship and Immigration)*, 2023 FC 123 at para 36, the RPD was not presented with a choice between 108(1)(a) and 108(1)(e).

[76] In light of the absence of choice and the limited submissions made, I am unable to conclude the RPD erred by not addressing the Applicant’s alternative pathway argument.

D. Conclusion

[77] In summary, the RPD’s Preliminary Decision and Cessation Decision are reasonable. The RPD did not err in its consideration of the issue of jurisdiction nor in finding that the scope of the duty of fairness in the context of a 108(2) decision does not include a right to notice. The RPD’s cessation determination is also reasonable.

[78] I now turn to the constitutional questions that have been raised.

VII. Constitutional Issues

[79] The Applicant challenges the constitutionality of sections 40.1 and 46(1)(c.1) of the IRPA and paragraph 228(1)(b.1) of the IRPR [Impugned Provisions] which provide for the automatic loss of PR status, inadmissibility, and removal following a cessation determination pursuant to subsection 108(2) of the IRPA. The Applicant submits the Impugned Provisions impose serious harms on long-term PRs who are established in Canada and thus violate sections 7, 12, 15, and 2(d) of the *Charter*.

A. *Relief Sought*

[80] The Applicant seeks the following relief:

1. A declaration that section 40.1 of the IRPA is of no force or effect pursuant to section 52 of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Constitution Act, 1982*] because it violates sections 7, 12, 15 and 2(d) of the *Charter* and is not saved by section 1.
2. A declaration that paragraph 46(1)(c.1) of the IRPA is of no force or effect pursuant to section 52 of the *Constitution Act, 1982* because it violates sections 7, 12, 15 and 2(d) of the *Charter* and is not saved by section 1.
3. A declaration that paragraph 228(1)(b.1) of the IRPR is of no force or effect pursuant to section 52 of the *Constitution Act, 1982* because it violates sections 7, 12, 15 and 2(d) of the *Charter* and is not saved by section 1.

[81] It is not disputed that the Court has the jurisdiction to grant the declaratory relief sought (*PH v Canada (Attorney General)*, 2020 FC 393 at para 43, citing *Deegan v Canada (Attorney General)*, 2019 FC 960 at paras 212–240, *Fédération des francophones de la Colombie-Britannique v Canada (Employment and Social Development)*, 2018 FC 530 at paras 55–65, *Bilodeau-Massé v Canada (Attorney General)*, 2017 FC 604 at paras 38–88).

B. *Notice of Constitutional Question*

[82] The Applicant served a Notice of Constitutional Question dated January 17, 2023. Only the Attorney General of Canada responded.

C. *The Evidence*

[83] In considering the Constitutional Issues raised, the Court is not limited to the evidentiary record that was before the RPD (*Native Council of Nova Scotia v Canada (Attorney General)*, 2011 FC 72 at para 24; *State Farm Mutual Automobile Insurance Company v Privacy Commissioner of Canada*, 2010 FC 736 at para 54).

[84] A significant number of affidavits have been filed and are relied upon by the Parties. A number of the affiants were cross-examined and those transcripts also form part of the record in these proceedings. The following is a listing of the affidavits filed by each Party:

1. The Applicant:

- i. The Applicant, Roman Slepcsik, sworn on May 23, 2023, June 22, 2023, and July 28, 2023.

- ii. Jude Upali Gnanapragasam, former Canadian Refugee, sworn on September 2, 2022, and June 29, 2023.
- iii. Daphne Gnanapragasam, daughter of Jude Upali Gnanapragasam, sworn on April 4, 2022.
- iv. Ali Hassan, former Canadian Refugee, sworn on June 21, 2023.
- v. Muhammad Farhan Aslam, former Canadian Refugee, sworn on June 26, 2023.
- vi. Mashid Ahangarani Farhani, former Canadian Refugee, sworn June 28, 2023.
- vii. Celeste Shankland, Immigration Counsel, sworn on June 27, 2023.
- viii. Douglas Cannon, Immigration Counsel, sworn on June 28, 2023.
- ix. Nir Gepner, Immigration Counsel, sworn on June 27, 2023.
- x. Martin Ginsherman, Designated Representative before the Immigration and Refugee Board, sworn on June 28, 2023.
- xi. Naumana Mussarat, Director of Programs at Humanity First Canada, sworn on June 28, 2023.
- xii. Janet Dench, Executive Director of the Canadian Council for Refugees, sworn on August 9, 2022.
- xiii. Thomas Clark, former Coordinator of the Inter-Church Committee for Refugees, Expert – historical perspective of refugee resettlement and the impact of the loss of PR upon cessation, sworn on February 23, 2022, and June 27, 2023.

- xiv. Antje Ellermann, Professor at the University of British Columbia's Department of Political Science, Expert – Canadian immigration policy, sworn on June 28, 2023.
- xv. Audrey Macklin, Professor in the Faculty of Law at the University of Toronto, Expert – Canada's immigration, refugee and citizenship laws, sworn on June 29, 2023.
- xvi. Meb Rashid, medical doctor and a member in good standing with the College of Physicians and Surgeons of Ontario, Expert – impact on the mental health of a refugee where PR is lost, sworn on June 28, 2023.
- xvii. Ezat Mossallanejad, trauma counselor, policy analyst and researcher for the Canadian Centre for Victims of Torture, Expert – traumatic effect that a second relocation would have on a refugee, and their family, as a result of cessation and loss of PR, sworn on April 4, 2022, and June 27, 2023.

2. The Respondents:

- i. Ana Goulart, Legal Assistant at the Department of Justice, sworn on October 28, 2022.
- ii. David Chan, Acting Director in the Asylum Policy Branch at Immigration, Refugees and Citizenship Canada, sworn on August 16, 2023.
- iii. Dorota Smolarz, Paralegal at the Immigration Law Division, Department of Justice, sworn on August 14, 2023.

[85] The Respondents detail a series of concerns with the Applicant's affidavit evidence:

1. The Respondents note that Celeste Shankland, Douglas Cannon and Nir Gepner, immigration counsel, each have links to the CCR, an Applicant in IMM-8432-22. The Respondents also submit the evidence of the affiants reporting mental health consequences is based on observation only, and that each of the affiants have been critical of Canada's cessation regime.
2. Applying the admissibility test for expert evidence, the Respondents submit many of the expert affidavits filed by the Applicant are either inadmissible or ought to be given less weight. Specifically, the Respondents take issue with the following affidavit evidence:
 - i. The affidavit of Thomas Clark outlining the Canadian approach to cessation – It amounts to opinion evidence on Canadian law, Mr. Clark having failed to demonstrate expertise in this area and lacking objectivity.
 - ii. The affidavit of Antje Ellerman addressing the policy implications of the Impugned Provisions – The affiant lacks expertise in this area and in the field of psychology, has written little on the issue of cessation, and has demonstrated a lack of understanding of the cessation regime.
 - iii. The affidavit of Audrey Macklin which provides a comparative overview – The direct evidence of how the cessation regimes in those jurisdictions function should be preferred.
 - iv. The affidavit of Ezat Mossallanejad – The affiant lacks the expertise, his close connection to CCR calls into question his objectivity.

- v. The affidavit of Dr. Meb Rashid – His family medicine practice does not establish expertise in mental health and psychiatric fields. He lacks practical experience with patients whose refugee status has been cessated or have lost PR status, and again connections to CCR suggest a lack of objectivity.
- 3. Martin Ginsherman’s affidavit [Ginsherman Affidavit] expresses views on how a cessation finding impacts individuals lacking in capacity based on impression. The affiant lacks expertise in medicine or psychology and his characterization of the cessation regime as being cruel and disproportionate suggests a lack of objectivity.

[86] The Respondents’ identified concerns with the three affidavits provided by immigration counsel highlight the frailties of evidence provided by practitioners based on their practice experience. While evidence of practitioners is often based on significant experience, it is also largely anecdotal and, for reasons of privilege, generally unsupported by documentation. However, I note these concerns go to weight, not admissibility. I hold the same view in regard to the Ginsherman Affidavit.

[87] In *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 [*White Burgess*], the SCC held that the role of an expert is to assist the Court, not to advocate. The Court further noted that experts “have a special duty to the court to provide fair, objective and non-partisan assistance” (*White Burgess* at para 2).

[88] To be admissible, expert evidence must satisfy four threshold requirements: (1) relevance; (2) necessity in assisting the trier of fact; (3) absence of an exclusionary rule; and (4) a properly qualified expert (*White Burgess* at para 19).

[89] The Respondents' concerns with the expert evidence are expressed generally around the themes of objectivity, accuracy and/or the expertise. However, with one exception, the Respondents do not object to the admission of the expert evidence. The exception is the affidavit of Thomas Clark sworn on June 27, 2023 [Clark Affidavit] which the Respondents argue is inadmissible on the basis that the affiant provides opinion evidence on Canadian law. In taking this position, the Respondents have not identified any specific sections, paragraphs or sentences as being inadmissible.

[90] Having reviewed the Clark Affidavit, I am satisfied that the affiant has largely provided contextual background evidence that describes the development of Canadian immigration laws and the practical impact of those laws. That said, Mr. Clark does opine at paragraph 15 that "...by providing refugees with a right to be processed for landing as permanent residents, Canada has provided refugees with a means of permanently resettling here." This conclusion is one that is subject to legal argument and is for the Court to determine. The opinion is therefore inadmissible and has not been considered (*Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43 at paras 16–18).

[91] I am otherwise satisfied that the expert evidence satisfies the threshold requirements for admissibility.

[92] I also note that each of the experts have executed a Certificate Concerning the Code of Conduct for Expert Witnesses [Code] which sets out an expert's overriding duty to the Court to provide impartial assistance. While I acknowledge the various objectivity concerns the Respondents have raised, I am of the view that the Code responds to these concerns.

[93] Excepting my single concern with the Clark Affidavit, the expert evidence and opinions are of assistance to the Court and are accepted into evidence.

D. *Interveners*

[94] As noted above, the Justice Brown Order granted the CCLA and the Asper Centre rights as interveners (Justice Brown Order at para 5).

[95] The intervener CCLA's submissions are confined to the question of whether the operation of the impugned provisions of the IRPA violate section 7 of the *Charter*. The intervener Asper Centre has limited its submissions to the issue of whether the automatic loss of PR status following a cessation finding pursuant to section 108 amounts to cruel and unusual punishment or treatment contrary to section 12 of the *Charter*.

E. *Preliminary Matters*

[96] The Respondents raise two preliminary matters:

1. Whether a finding in respect of the Administrative Law Issues in the Applicant's favour renders determination of the Constitutional Issues unnecessary; and

2. Whether this Court's decision in *Norouzi v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 368 [Norouzi], in which the Applicant's constitutional arguments have been considered and rejected, is authoritative and is a full answer to the Constitutional Issues raised.

- (1) The Administrative Law Issues are not dispositive

[97] The Respondents submit that the Administrative Law Issues raised with the RPD's decisions, if found to have merit, would be dispositive of the Constitutional Application. That being so, they argue, it would be unnecessary for this Court to determine the Constitutional Issues.

[98] The Applicant submits that for reasons of judicial economy, this Court should determine the constitutional questions irrespective of the Court's findings on the merits of the Administrative Law Issues. The Constitutional Issues will remain live issues should the matter be returned for reconsideration and should the RPD again find the Applicant to have ceased his CR status pursuant to paragraph 108(1)(a) of the IRPA.

[99] Having concluded that the RPD's cessation decision is reasonable and that the RPD has not otherwise committed any error warranting the Court's intervention, this question is moot – I need not consider the matter further.

(2) *Norouzi* is not determinative of the Constitutional Issues

[100] The Respondents rely on the doctrine of horizontal *stare decisis* to argue that this Court's decision in *Norouzi*, where Justice Richard Bell concluded "... the cumulative effect of sections 40.1, 46(1)(c.1), and 108(1) of the Act does not violate sections 7, 12, and 15 of the *Charter*" (*Norouzi* at para 45) is authoritative and that the Applicant's constitutional arguments should fail on this basis alone.

[101] In *R v Sullivan*, 2022 SCC 19, the SCC recently reviewed the doctrine of horizontal *stare decisis*, which stands for the principle that a judge should generally follow a judgment from a colleague of the same court unless one of three exceptions is of application. In addressing the proper approach to horizontal *stare decisis*, the Court states:

[75] ... Trial courts should only depart from binding decisions issued by a court of coordinate jurisdiction in three narrow circumstances:

1. The rationale of an earlier decision has been undermined by subsequent appellate decisions;
2. The earlier decision was reached per incuriam ("through carelessness" or "by inadvertence"); or
3. The earlier decision was not fully considered, e.g. taken in exigent circumstances.

[102] In *Norouzi*, the issues before the Court were whether the automatic statutory consequences flowing from cessation, and the potential forced return of the applicant to his country of origin where he reportedly faced the threat of persecution and a threat to his life, infringed sections 7, 12, and 15 of the *Charter*. Justice Bell rejected the section 7 and 12

arguments on the basis that they were premature, the removal process had not begun, and there were several options available to the applicant should removal proceed (*Norouzi* at paras 27–36). In also rejecting the section 15 claim, the Court found that refugee status is not immutable and that the applicant had failed to show the IRPA “has a disproportionate impact on him based on the fact that he belongs to the group of permanent residents who are also refugees.” (*Norouzi* at paras 39–40).

[103] The Applicant submits the issues raised in this Application differ from those before the Court in *Norouzi* and, on that basis, the doctrine of horizontal *stare decisis* does not apply. The Applicant also argues that to the extent the issues in *Norouzi* might be viewed as paralleling those raised in this instance, the Court needs to recognize that, unlike the situation in *Norouzi*, the Court now has the benefit of a full evidentiary record.

[104] I agree with the Applicant. Although *Norouzi* did consider whether the cumulative effect of the operation of sections 40.1, 46(1)(c.1), and 108(1) of the IRPA contravened sections 7, 12 and 15 of the *Charter*, the question arose in the narrow context of the 12-month waiting period between the RPD’s cessation decision and eligibility to apply for a PRRA (*Norouzi* at para 30). In this case, the issues raised are more broadly framed. It was also argued in *Norouzi* that the “facts do not allow for an analysis of the constitutionality of the sections” (*Norouzi* at para 26), which is not the case here. The Constitutional Issues raised in this Application are beyond those that were before the Court in *Norouzi* and are supported by a record that allows a full consideration of those issues.

[105] I am therefore of the opinion that the doctrine of horizontal *stare decisis* is not engaged.

F. *Are the Impugned Provisions constitutionally valid?*

[106] The Applicant's constitutional challenge raises two issues:

1. Do the Impugned Provisions infringe sections 2(d), 7 12 and 15 of the *Charter*?
2. If the answer to issue 1 is yes, is that infringement justified under section 1 of the *Charter*?

(1) Standard of Review

[107] The standard of review to be applied when considering whether a statutory provision is inconsistent with the *Charter* is correctness. As noted by the SCC in *Vavilov* at para 56, “[t]he constitutional authority to act must have determinate, defined and consistent limits, which necessitates the application of the correctness standard.”

G. *Analysis*

(1) Section 7

[108] Section 7 of the *Charter* states:

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[109] Section 7 considerations are two-fold. First, an applicant must establish that the impugned legislation deprives them of the right to life, liberty or security of the person and, second, that the deprivation is not in accordance with the principles of fundamental justice.

[110] The first part of the analysis requires the Court to ask whether the legislation causes, or creates a risk of, a limitation, a negative impact, an infringement of, or an interference with, those interests, thereby “engaging” section 7 (*Canadian Council for Refugees v Canada (Citizenship and Immigration)*, 2023 SCC 17 at para 56 [*Canadian Council for Refugees*]).

Further, an applicant must demonstrate a “sufficient causal connection” between the impugned legislation and the deprivation – or risk thereof – of a section 7 interest. The legislation need not be the only or even the dominant cause of the deprivation (*Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 76 [*Bedford*]).

(a) *Section 7 engagement in the immigration and refugee context*

[111] There is extensive jurisprudence that holds section 7 rights are not infringed by deportation alone: *Medovarski v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 46 [*Medovarski*]. This statement was later clarified in *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 [*Charkaoui*], the SCC stating that *Medovarski* does not render proceedings related to deportation in the immigration context immune from section 7 scrutiny, but instead stands for the principle that deportation of a non-citizen in itself does not engage section 7. However, certain features associated with deportation may (*Charkaoui* at para 17).

[112] In the immigration context, an inadmissibility finding, or in this case a cessation finding, is distinct from effecting removal. The jurisprudence establishes that section 7 is not engaged in this context until just prior to an individual's removal from Canada (*B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58 at para 75 [*B010*]; *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at para 67 [*Febles*]; *Revell v Canada (Citizenship and Immigration)*, 2019 FCA 262 at para 38 [*Revell*]; *Moretto v Canada (Citizenship and Immigration)*, 2019 FCA 261 at para 43 [*Moretto*]; *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at paras 81–87; and *Kreishan v Canada (Citizenship and Immigration)*, 2019 FCA 223 at paras 117–120, 127).

[113] However, the Applicant takes the position that this line of jurisprudence is inconsistent with *Bedford* and *Canadian Council for Refugees* because it suggests the threshold for section 7 engagement is more onerous than the “sufficient causal connection” standard adopted in *Bedford*. The Applicant and the intervener CCLA rely on *Bedford* and *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 [*PHS*] in submitting that section 7 is engaged where a sufficient causal connection is established between the impugned legislation and the deprivation, or risk thereof, of a section 7 protected interest. They argue there is no unique approach to determining section 7 engagement in the immigration and refugee context and that the SCC explicitly rejected *Febles* and *B010* in *Canadian Council for Refugees* (also see Gerald Heckman, “Revisiting the Application of Section 7 of the Charter in Immigration and Refugee Protection” (2017) 68 UNBLJ 312 at 351).

[114] I disagree. I find that the *Febles* line of jurisprudence remains good law for the reasons that follow.

[115] The Applicant points to the following paragraphs from *Canadian Council for Refugees* in support of the view that the *Febles* line of jurisprudence is no longer good law and should not be followed:

[72] Some have suggested that because curative mechanisms are available, refugee claimants' s. 7 interests are not engaged at the exclusion or inadmissibility determination stage. This assertion rests on a statement in *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 704, that it is at the "subsequent pre-removal risk assessment stage of the IRPA's refugee protection process that s. 7 is typically engaged" rather than earlier stages (para. 75). This comment in *B010* relied on a passage from *Febles*, which spoke to the Charter-compliance of an exclusion provision in the IRPA. Some scholars have criticized this view of curative mechanisms' role in engagement, saying that dicta from these cases should not deflect analysis from this Court's approach to s. 7 engagement established in other contexts (see Heckman, at p. 313; C. Grey, "Thinkable: The Charter and Refugee Law after *Appulonappa* and *B010*" (2016), 76 S.C.L.R. (2d) 111, at pp. 131-35 and 139; see also H. Stewart, *Fundamental Justice: Section 7 of the Canadian Charter of Rights and Freedoms* (2nd ed. 2019), at pp. 77-81 and 342).

[73] *Febles* stated that an exclusion provision was "consistent" with s. 7 of the Charter (para. 67). In line with *Bedford* and *PHS*, *Febles* should not be read as conflating the engagement and the principles of fundamental justice stages of the s. 7 analysis. As for *B010*, I observe that this Court ordered a new hearing in that appeal as a matter of statutory interpretation and found it unnecessary to consider the appellants' s. 7 challenge (para. 74). The brief comment that it is only at the pre-removal stage that "s. 7 is typically engaged" was neither a formal statement of the law nor necessary to decide the case (para. 75). It should not be taken to have changed the established law on s. 7 engagement. It is helpful to recall that in other contexts, such as extradition, s. 7 "permeates" the entire process and is "engaged, although for different purposes" at each stage of the proceedings (*United States of America v. Cobb*, 2001 SCC 19, [2001] 1 S.C.R. 587, at para. 34, per Arbour J.). In the context of ineligibility under s. 101(1)(e) of the IRPA, where

curative measures are key to the s. 7 analysis, such measures are thus best understood as relevant to the principles of fundamental justice rather than to the threshold question of engagement, in keeping with this Court's methodology in *Bedford* (see, e.g., Heckman, at pp. 347-56).

[116] The SCC's treatment of *Febles* and *B010* in *Canadian Council for Refugees* is limited and does not, in my view, equate to a rejection of that line of jurisprudence. First, section 7 engagement was not in issue (*Canadian Council for Refugees* at para 83). Second, the SCC's consideration of *Febles* was restricted to clarifying at what stage curative measures are relevant when undertaking a section 7 analysis where the issue before the Court was ineligibility under paragraph 101(1)(e), removal was immediate, and a PRRA was not available (IRPA, ss 49(2)(a), 112(2)(b)). Clarifying that *Febles* should not be read as conflating the engagement stage and the principles of fundamental justice stage of the section 7 analysis does not lead to the conclusion, as the Applicant and the intervener CCLA submit, that the SCC intended to replace or reject existing precedent.

[117] Similarly, the SCC's recognition that "s. 7 of the *Charter* is not engaged at the stage of determining admissibility to Canada under s. 37(1)" (*B010* at para 75) is *obiter*, and the acknowledgment that "in other contexts, such as extradition, s. 7 'permeates' the entire process" (*Canadian Council for Refugees* at para 73) is also insufficient to conclude the SCC's intent was to replace or reject either *Febles* or *B010* and the line of jurisprudence that flows from those decisions.

[118] My view in this regard is consistent with the approach adopted by the FCA in *Revell* at para 57.

[119] In *Revell*, the FCA considered whether section 7 of the *Charter* is engaged at the stage of determining whether a PR is inadmissible to Canada on grounds of serious criminality where the alleged section 7 deprivation arises from the uprooting of the PR from Canada. The arguments before the FCA are similar to those advanced by the Applicant and the intervener CCLA in this matter – that the “sufficient causal connection” test set out in *Bedford* is the correct test, that the cessation process is sufficiently proximate to removal to engage section 7, and that to adopt the *Febles* approach to engagement would be inconsistent with the approach in other multi-tiered contexts where the SCC has found that section 7 permeates the whole of the process.

[120] The FCA rejected the argument that the *Febles* line of jurisprudence runs counter to the low causation standard for section 7 engagement set out in *Bedford*. In doing so, the FCA noted that this very argument had been rejected in *JP v Canada (Public Safety and Emergency Preparedness)*, 2013 FCA 262, that the SCC’s statement in *B010* (albeit an *obiter* statement) and *Febles* both postdate *Bedford*, and therefore that it is fair to assume the SCC did not see any inconsistency in its holdings in *Bedford* and *Febles*.

[121] The FCA then found there is no inconsistency. This because the sufficient causal link in the context of *Bedford* refers to the link between the impugned legislation (the cause of the deprivation) and the deprivation alleged. However, in the immigration context, the causal link between state action and any eventual removal is not uncertain; what is uncertain is whether the likelihood of removal is sufficient to remove the alleged deprivation from the realm of pure speculation, thereby demonstrating a sufficient causal link between the impugned legislation in issue, or the step in the process, and the alleged deprivation. On this basis, the FCA concluded

section 7 cannot be interpreted as requiring an assessment of section 7 rights at every step of the process, and that *Bedford* does not displace the *Febles* and *B010* line of jurisprudence (*Revell* at para 45).

[122] The FCA then addressed the argument that the inadmissibility findings were sufficiently proximate to deportation for a PR to engage section 7 interests where the inadmissibility finding had the effect of reverting the affected individual to “foreign national” status, no appeal to the Immigration Appeal Division was available, and an H&C application could not be pursued. The FCA rejected this view on the basis that numerous intervening process steps remained available, and that those steps allowed for representation and provided the opportunity to make submissions (*Revell* at paras 46-52).

[123] In conducting this analysis, the FCA referred to the remaining available process steps as “safety valves” (*Revell* at para 52). However, it is clear the FCA was not undertaking an analysis of potential preventative or curative provisions at the engagement stage of the analysis.

[124] Preventative provisions are those provisions found within the broader framework that narrow the scope of the impugned legislative provision – a preventative measure limits the broad application of the impugned provision, tempering its effect and may limit or tailor an impugned provision of general application such that there is no engagement of the interests protected by section 7. Curative provisions on the other hand are remedial exceptions that repair a breach and will rarely, if ever, preclude section 7 engagement. They are generally only of relevance at the principles of fundamental justice stage of a section 7 analysis. Preventative or curative provisions

may be determinative of an alleged violation of section 7 (*Canadian Council for Refugees* at paras 68, 71).

[125] In *Revell*, despite the use of the term “safety valve,” the FCA canvassed the available steps following a cessation determination, and the procedural protections provided within those steps, to demonstrate that the proximity required to remove the alleged deprivation from the realm of pure speculation had not been established.

[126] The FCA also addressed the argument that the approach to section 7 engagement in the immigration law context did not sit well with judicial reasoning in other multi-tiered contexts – extradition law and criminal law – where it has been held that section 7 rights are engaged from the outset (*Revell* at para 53). The FCA noted that *Charter* rights take their colour from their context and found, relying on the SCC’s decision in *United States of America v Cobb*, 2001 SCC 19 [*Cobb*], that while it can be said section 7 permeates an entire process, in the immigration context this is not the same as finding an individual’s substantive right to life, liberty and security are engaged at each stage of the process (*Revell* at para 56, citing *Cobb* at para 34).

[127] On the basis of the above summarized analysis, the FCA concluded that *Medovarski*, *Febles* and *B010*, and the line of jurisprudence that relies on these decisions, are not inconsistent with *Bedford* and remain good law.

[128] I am bound by *Revell* unless I conclude, as the Applicant and the intervener CCLA invite me to do, that the SCC's decision in *Canadian Council for Refugees* has nonetheless rejected the jurisprudence upon which *Revell* relies.

[129] For the reasons set out at paragraphs 116 and 117 above, I do not. That the SCC in *Canadian Council for Refugees* makes no reference to *Revell* when clarifying at what stage curative measures are relevant when undertaking a section 7 analysis reinforces my view in this regard. As discussed above, *Revell* directly addresses the question of whether *Medovarski*, *Febles* and *B010* remain good law. The SCC was aware of *Revell* having cited the decision in *Canadian Council for Refugees* at para 44. Had the SCC intended to repudiate the analysis in *Revell*, as the Applicant argues, it is reasonable to expect the Court would have engaged with the decision. It did not.

(b) *Is section 7 engaged?*

[130] The Applicant takes the position that the consequences that automatically follow a cessation determination are sufficiently serious that section 7 interests are engaged. It is submitted the loss of PR status, inadmissibility, and removal engage section 7 security interests of affected individuals having regard to the psychological consequences following cessation, interference with family, home and community matters, and removal to a likely risk of persecution – *refoulement*.

(i) The cessation determination does not engage section 7

[131] The cessation determination underpinning this Application is directly analogous to the inadmissibility determination considered in *Revell*. As in *Revell*, the Applicant has the ability to access various administrative processes—an H&C consideration, a PRRA, a deferral of removal and a judicial stay. This factor is relevant at this stage of the analysis, not for the purpose of assessing whether these processes act as safety valves that might prevent or cure a breach of section 7, but rather to assess whether the cessation finding is sufficiently proximate to removal or deportation to engage section 7. The availability of these process steps demonstrates that there is insufficient proximity—no “sufficient causal connection” in the language of *Bedford*—between the cessation finding and any eventual removal.

[132] The Applicant further argues section 7 is engaged because any risk of *refoulement*—whether it be a prior risk or a new risk—is not assessed at the time of cessation (*Balouch* at para 19). I disagree. Again, the cessation finding is distinct from removal and other steps remain available to the Applicant where an alleged risk of *refoulement* may be considered, by a PRRA officer for instance, and subsequently reviewed by this Court. In the absence of any proximate risk of *refoulement*, section 7 is not engaged by the uprooting of a long-term PR (*Revell* at para 78, citing *Medovarski*).

[133] For the above reasons, I am of the view that a cessation determination does not engage section 7. This conclusion reflects the SCC’s holding in *Medovarski* at para 47 that the

deportation of a non-citizen in itself cannot implicate the liberty and security interests protected by section 7.

[134] That said, I recognize the Applicant's main argument is to the effect that the consequences of the automatic loss of PR status associated with cessation, including serious psychological stress and loss of employment and access to social services, engage section 7, not the cessation decision itself. I address this argument below.

- (ii) The consequences associated with cessation do not engage section 7

[135] The Applicant submits the consequences of the automatic measures that follow a cessation decision, particularly where the cessation decision impacts on a long-term PR, engage section 7. It is argued the loss of PR status, inadmissibility and removal result in psychological harm, interfere with PR status which prevents removal except in specified instances of misconduct, and result in an intrusion into the private and intimate sphere of an affected individual's life. These consequences impact upon the affected individual's security and liberty interests, thereby engaging section 7.

[136] In *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 49, the SCC acknowledges that liberty interests protected by section 7 are not restricted to freedom from physical restraint, but extend to include circumstances involving state compulsion affecting important and fundamental life choices. The Applicant also relies on *Godbout v Longueuil (City)*, [1997] 3 SCR 844, 1997 CanLII 335 (SCC) in submitting the removal of a PR from their

family, home and community constitutes a gross intrusion into the private and intimate sphere of the affected PR's life and thereby engages section 7.

[137] The Applicant points to the evidence of former Canadian refugees and immigration counsel which reports that removal following a cessation determination, should it occur, will result in separation from family including children, grandchildren, spouses or parents, and the resulting loss of support, either provided to or received from, these family members. For several, these consequences follow after the affected individual has held PR status in Canada for many years. It is the imposition of these consequences, in the absence of wrongdoing on the part of the ceased individual, which implicates the core of individual dignity and independence and necessarily engages section 7.

[138] The engagement of section 7 liberty interests based on removal from family, home, and community following the loss of PR status was considered in *Revell*. The FCA rejected the argument and found the application judge had not erred in relying on *Medovarski* in finding that, where the evidence did not demonstrate that the consequences of removal were more significant than those generally associated with deportation, deportation of a non-citizen does not engage liberty interests protected by section 7.

[139] In this case, unlike in *Revell*, evidence has been advanced to demonstrate the consequences of cessation and removal (see paragraph 137 above). However, the Applicant's evidence does not demonstrate that the consequences of removal following a cessation determination, should removal occur, are more significant than the consequences generally

associated with deportation. Evidence that removal may follow a long period of time in Canada, the resulting loss of establishment, separation from family members, and lost support does not disclose consequences that differ in kind from those that arise in any instance of deportation. These consequences are difficult, but they are the normal consequences of removal and, as such, section 7 liberty interests are not engaged.

[140] Turning to the question of psychological harm, the Respondents rely on *New Brunswick (Minister of Health and Community Services) v G(J)*, [1999] 3 SCR 46 at paras 59-60, 1999 CanLII 653 (SCC) to argue the psychological stresses disclosed in the Applicant's evidence do not satisfy the threshold of serious state-imposed psychological stress that would engage section 7. Instead, it is submitted the psychological harms disclosed are all part of the ordinary consequences that flow from the loss of status and the prospect of removal.

[141] As was the case in *Revell*, I am inclined to reject the Respondents' position in this regard. Certain of the psychological harms and stresses identified as flowing from the consequences of cessation—attempted suicide, mental health consequences that prevent daily functioning, exacerbation of pre-existing mental health conditions, hallucinations and hospitalization—are beyond the normal consequences of removal (*Revell* at paras 77-78, also see *Moretto* at paras 51-52). However, in the face of the teachings of *Medovarski*, *Revell*, and *Moretto*—jurisprudence that is binding on me establishing the psychological stresses attendant on removal do not engage section 7—I can only conclude section 7 is not engaged.

[142] Having come to this view, I need not address the Respondents' argument that the Applicant's evidence does not credibly establish that cessation in itself has a serious and profound impact on the psychological functioning of the Applicant.

[143] To the extent the Applicant argues the loss of access to provincial health care programs, the opportunity to work, and other social services engage section 7, I am not satisfied that the Applicant has demonstrated these matters fall within the scope of section 7 protections (see for instance *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35 at para 104) or, that if they do, there has been a deprivation that would engage section 7. I also note the Applicant acknowledges health care access remains available by way of a federal program that provides limited temporary health coverage in certain circumstances—the Interim Federal Health Program [IFHP]—and that a work permit may be issued subsequent to a cessation determination, albeit after a waiting period.

[144] I therefore find that the consequences that are associated with a cessation determination do not engage section 7. Had the Applicant succeeded in demonstrating section 7 engagement, it would have then been necessary to consider whether the Impugned Provisions in issue are inconsistent with the principles of fundamental justice. Although I have concluded the Applicant has not met his burden for the first part of the section 7 analysis, I nonetheless briefly turn to the Applicant's submissions on the principles of fundamental justice stage.

- (c) *Are the Impugned Provisions consistent with the principles of fundamental justice?*

[145] At this stage of the analysis, a Court must consider the legislative intent of the impugned legislative provisions to determine whether the effect of the law is (1) arbitrary—it is not connected to the objective of the law; (2) overbroad—it exceeds its objective by interfering with some conduct with no connection to the objective, and/or (3) grossly disproportionate—it is connected to the legislative intent, but the impact of the law violates basic values and norms (*Bedford* at paras 97-104). In addition, the SCC has recognized that the “principles of fundamental justice” have both a procedural and substantive element (*R v JJ*, 2022 SCC 283 at paras 116, 363–364, citing *Re BC Motor Vehicle Act*, [1985] 2 SCR 486, 1985 CanLII 81 (SCC)).

[146] The Applicant argues that the Impugned Provisions violate the principles of overbreadth and gross disproportionality and further submits that the absence of a process to consider the loss of PR status following a cessation determination breaches procedural fairness rights.

[147] To assess whether the Impugned Provisions violate these principles, it is necessary to consider “whether the law’s purpose, taken at face value, is connected to its effects and whether the negative effect is grossly disproportionate to the law’s purpose” (*Bedford* at para 125). Thus, it is first necessary to determine the legislative purpose of the Impugned Provisions.

(i) Legislative purpose of the Impugned Provisions

[148] Sections 40.1 and 46(1)(c.1) were added to the IRPA as part of the *PCISA* amendments in 2012. The Applicant notes these provisions dramatically altered the consequences of a cessation determination by causing, through their operation, a PR to automatically become an inadmissible foreign national.

[149] The Applicant points to public statements of the then Minister of Citizenship and Immigration as well as the general thrust of the *PCISA* in submitting the animating rationale for the amendments was the concern with fraudulent refugee claims, which would in turn advance the subsidiary benefits of efficiency, integrity and public confidence in the asylum system.

[150] The Respondents reject the view that addressing fraud was the animating rationale for the enactment of the Impugned Provisions. Instead, the Respondents submit that the overarching objective in introducing sections 40.1 and 46(1)(c.1) of the IRPA as part of the *PCISA* amendments was to allow for the expedited processing of refugee claims and provide a one-step process for the cessation of protected status and the loss of PR status.

[151] In determining the purpose of the Impugned Provisions, I have considered the legislative purpose of Bill C-31, the objectives of the IRPA, and the cessation scheme within the broader IRPA context. I have also considered the evidence the Parties have placed on the record, including the evidence of Mr. David Chan, Professor Antje Ellerman and Professor Audrey Macklin.

[152] The purpose of the amendments contained in Bill C-31 is broadly stated within the legislative summary as providing “among other things, ... for the expediting of the processing of refugee protection claims.”

[153] Subsection 3(2) of the IRPA in turn details the objectives of the IRPA with respect to refugees as follows:

3(2) The objectives of this Act with respect to refugees are	3(2) S’agissant des réfugiés, la présente loi a pour objet :
(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;	a) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution;
(b) to fulfil Canada’s international legal obligations with respect to refugees and affirm Canada’s commitment to international efforts to provide assistance to those in need of resettlement;	b) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d’affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller;
(c) to grant, as a fundamental expression of Canada’s humanitarian ideals, fair consideration to those who come to Canada claiming persecution;	c) de faire bénéficier ceux qui fuient la persécution d’une procédure équitable reflétant les idéaux humanitaires du Canada;
(d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular	d) d’offrir l’asile à ceux qui craignent avec raison d’être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe

social group, as well as those at risk of torture or cruel and unusual treatment or punishment;

(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;

[...]

social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;

e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;

[...]

[154] These objectives include several considerations that are, in my view, relevant in assessing the purpose of the Impugned Provisions. First, the fulfilment of Canada's international legal obligations, second, the offer of safe haven to persons with a well-founded fear of persecution or who are otherwise at risk, and third, the establishment of a fair and efficient process that maintains the integrity of the refugee protection system and upholds Canada's respect for human rights and fundamental freedoms.

[155] With the broad purpose of Bill C-31 and the objectives of the IRPA in mind, I turn to the cessation regime itself.

[156] Section 108 of the IRPA sets out the five specific circumstances in which refugee protection may be ceased. These five circumstances are reflective of Article 1 C (1) of the 1951 *United Nations Convention Relating to the Status of Refugees* [*Refugee Convention*] which provides that the "*Convention shall cease to apply*" in those circumstances. Each of the five

identified circumstances address a change in the factual circumstances that would have justified the granting of refugee protection. None of the identified circumstances speak to issues of misrepresentation or fraud as a basis for cessation.

[157] Although the cessation regime does not consider issues of misrepresentation, the IRPA does provide for a separate mechanism that allows for refugee protection to be vacated where it is determined refugee protection was obtained because of the direct or indirect withholding, or misrepresenting, of material facts (IRPA, s 109). The vacation process under section 109 would appear to be unnecessary or surplus if the animating purpose of the cessation regime was to address misrepresentation or fraud.

[158] To interpret different provisions within a legislative scheme in a manner that renders those provisions duplicative or serving the same purpose is inconsistent with the presumption against surplusage (*R v Proulx*, 2000 SCC 5 at para 28). The Applicant's position on the purpose of the Impugned Provisions is inconsistent with this presumption.

[159] A consideration of the text and context of the cessation regime as provided for at section 108 of the IRPA does not support a finding that combatting fraud or misconduct is a primary purpose or even a secondary purpose of the cessation regime. To the contrary, fraud or misrepresentation are irrelevant to cessation determinations. The Applicant's position that the primary purpose of the Impugned Provisions of the IRPA as introduced in *PCISA* is to respond to abuse or misuse of the refugee process within a cessation framework is not persuasive.

[160] I acknowledge the public statements the Applicant cites in support of the position taken and recognize that those statements suggest abuse or misuse of the refugee process was a motivating factor behind *PCISA*. However, I am not persuaded these public comments overcome the stated primary purpose of the Impugned Provisions of expediting the processing of refugee protection claims. While I need not, and indeed cannot, resolve incoherence or inconsistency resulting from public pronouncements, I do note that in Mr. Chan’s cross examination there is some suggestion that, in at least some instances, the public statements may reflect a conflation between cessation and vacation proceedings. Regardless, in this regard, the FCA’s comments in *Alexion Pharmaceuticals Inc v Canada (Attorney General)*, 2021 FCA 157 are of application here:

[53] The Board draws the standard of “reasonable pricing” from, among other things, certain statements in Parliamentary debates. But here, caution must be exercised. Such statements have “frailties [that] are many” and are of “limited weight”: *Rizzo*, at paragraph 35; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at paragraph 106. The authentic meaning of the legislation, here section 85, is the law, not what some politicians may have said about it at some place, at some time, for whatever reason: *Schmidt v. Canada (Attorney General)*, 2018 FCA 55, [2019] 2 F.C.R. 376, at paragraph 31; *Williams*, at paragraphs 50–51...

[Emphasis added.]

[161] In this instance, I give substantially more weight to the textual and contextual considerations highlighted above and conclude that the primary purpose animating the Impugned Provisions of the IRPA is expediting the processing of refugee protection claims and by extension the adoption of a one-step process to cessate refugee protection and remove PR status, a purpose that is consistent with the objectives of the IRPA and Article 1 C (1) of the *Refugee Convention*.

(ii) Overbreadth and Gross Disproportionality

[162] The Applicant's submissions on overbreadth and gross disproportionality rest on a finding that the legislative purpose of the cessation regime is to sanction persons who have defrauded the system. I have concluded otherwise.

[163] Having rejected the Applicant's characterization of the purpose of the Impugned Provisions—to combat fraud—I turn to consider whether the cessation regime generally, and the Impugned Provisions specifically, are overly broad or grossly disproportionate having regard to their primary purpose—implementing a one-step process to cessate refugee protection and remove PR status. For the below reasons, I must also reject this position.

[164] A CR's status as refugee is the basis upon which that individual CR is permitted to remain in Canada and that status is also basis for any subsequent grant of PR status. The granting of PR status does not change or alter the basis upon which the individual has been permitted to remain in Canada. That being so where, following a determination that an individual's voluntary actions have ceased their status as a CR, Parliament's choice to also automatically impose a loss of PR status and hold the individual inadmissible accords with the primary purpose of the Impugned Provisions, and legitimately gives practical effect to the loss of CR status. This is not a breach of fundamental justice (*Chiarelli* at 733-734).

[165] While the impact of cessation and the loss of PR status is unquestionably difficult, the harms demonstrated in the evidence are not different or so markedly different from what foreign

nationals subject to deportation experience to be considered grossly disproportionate. I also acknowledge the health and psychological impacts as disclosed in the evidentiary record. Again, I am unable to conclude that these impacts are grossly disproportionate within the context of the processes available following a cessation determination.

[166] In sum, a cessation proceeding is triggered by the actions of the impacted individual, is consistent with the *Refugee Convention*, and results in the loss of status that has been obtained on the basis of the affected individual's refugee status. I therefore cannot agree that, when considered within the context of the processes subsequently available, the consequences of the cessation regime are grossly disproportionate.

[167] Furthermore, as the Respondents note, to the extent the Impugned Provisions may be slightly overbroad or disproportionate, the curative provisions of the IRPA protect against any grossly disproportionate effect.

[168] The cessation process and the various processes available following a cessation determination that may be accessed allow for the consideration of individual circumstances, including capacity, the frequency of reavilment and the reasons therefore. At the stage just prior to removal, the individual circumstances of a long-term PR having lost status following cessation may also be considered (IRPA, ss 24, 25, 48, 112), including establishment in Canada and potential separation from family and community. These processes act as a clear buffer against grossly disproportionate consequences (*Revell* at para 129).

(iii) Breach of fairness

[169] The Applicant also submits that the principles of fundamental justice require that state action minimally reflect the common law duty of procedural fairness as contemplated in *Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21–28, 1999 CanLII 699 (SCC) [*Baker*].

[170] The Applicant submits that the Impugned Provisions are inconsistent with the duty of fairness required by section 7 because the loss of PR status is an automatic consequence of the cessation determination—no process is provided for to allow a determination to be made on whether revocation of PR status is justified. This in contrast to the provision of administrative and adjudicative processes in the IRPA where loss of PR status is contemplated under other pathways.

[171] I disagree. The Applicant's PR status was not acquired in isolation from their status as refugee; instead, it arises from and was obtained because of the Applicant's refugee status. Refugee status and PR status are, in this circumstance, inextricably linked. Within this specific context, fairness rights do not require a separate process to consider PR status where refugee status is lost.

[172] That prior government policy choices may have provided for a separate process to consider the loss of PR status following a cessation determination does not alter my view in this regard. A prior policy choice at best creates an expectation, but expectations cannot provide

substantive legal rights where those rights do not otherwise exist (*Baker* at para 26). As the Applicant notes, the content of the duty of fairness is based on a contextual analysis; the linkage between refugee status and PR status is highly relevant in determining what is fair in this context. In this specific context, the automatic loss of PR status is not “fundamentally unfair to the affected person” (*Charkaoui* at para 22).

[173] I have also considered the evidence submitted by both Parties as it relates to the granting and revocation of PR-type status to refugees in other jurisdictions. The evidence demonstrates widely varied approaches to both the granting of PR-type status and the consequences of reavilment. While in certain jurisdictions those holding PR-type status are not subject to cessation, this is not universally so. In many of the jurisdictions cited, waiting periods to obtain PR-type status can be lengthy—in some cases waiting periods may exceed the time that might be required for a refugee in Canada to apply for Canadian Citizenship. The widely varied practices disclosed in the evidence demonstrate that Parliament had available to it a wide array of policy choices when amending the IRPA cessation regime, but it does not demonstrate that the Impugned Provisions are constitutionally invalid.

[174] For these reasons, I find that the Impugned Provisions, in the context of the legislative scheme as a whole, are consistent with the principles of fundamental justice.

(2) Section 12

[175] Section 12 of the *Charter* states:

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

12. Chacun a droit à la protection contre tous traitements ou peines cruels et inusités.

[176] In considering section 12, two questions arise. First, whether those impacted by the cessation regime are subjected to treatment or punishment within the meaning of section 12. Second, if they are, whether such treatment or punishment is “cruel and unusual” (*Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 at 608-609, 1993 CanLII 75 (SCC) [*Rodriguez*]; *Revell* at para 123; *Canadian Doctors For Refugee Care v Canada (Attorney General)*, 2014 FC 651 at para 576 [*Canadian Doctors*]).

[177] As noted by the Respondents, the threshold for establishing a breach of section 12 is stringent and demanding—“demonstrating a breach of section 12 is a high bar: the treatment or punishment must be more than merely disproportionate or excessive—it must be so excessive as to ‘outrage standards of decency’ and be ‘abhorrent or intolerable’... [i]t is only in very rare and unique occasions that a treatment or punishment will infringe section 12” (*Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 at para 110, citing *R v Boudreault*, 2018 SCC 58 at para 45 [*Boudreault*]; also see *Revell* at para 124).

- (a) *Do the consequences of the cessation regime constitute “punishment” under section 12?*

[178] The intervener Asper Centre argues the Impugned Provisions constitute “punishment” within the meaning of section 12, as provided for in *R v KRJ*, 2016 SCC 31 where the SCC articulated the following as the test for punishment:

[41] Thus, I would restate the test for punishment as follows in order to carve out a clearer and more meaningful role for the consideration of the impact of a sanction: a measure constitutes punishment if (1) it is a consequence of conviction that forms part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence, and either (2) it is imposed in furtherance of the purpose and principles of sentencing, or (3) it has a significant impact on an offender's liberty or security interests.

[179] The intervener Asper Centre in turn submits the Impugned Provisions are intended to form part of the arsenal of sanctions for fraud, are imposed in furtherance of public confidence in the immigration system, and significantly impact the liberty and security interests of cessated PRs.

[180] Having concluded above that the Applicant has failed to demonstrate the purpose of the Impugned Provisions is to respond to wrongdoing, actual or perceived, and that section 7 interests are not engaged by the Impugned Provisions, I find little merit in the intervener's position, at least within the context of this proceeding (see paragraphs 155-160 above).

(b) *Do the consequences of the cessation regime constitute treatment under section 12?*

[181] The Applicant and the intervener Asper Centre argue that the Impugned Provisions constitute treatment within the meaning of section 12 because they reflect an active state process through which the state exercises active control over affected individuals to circumscribe rights in the context of immigration system enforcement. I disagree.

[182] The section 12 jurisprudence arises almost exclusively within the criminal or quasi-criminal context. However, the SCC has long recognized that “treatment” as used in section 12 may capture state-imposed processes in other contexts.

[183] In *Rodriguez*, the SCC considered the degree to which “treatment” may apply beyond the context of penalties in the law enforcement context. In doing so, the Court cited *Chiarelli* at 735—where it previously held deportation may “come within the scope of a ‘treatment’ in s. 12” on the basis it was imposed by the state in the context of enforcing a state administrative structure—stating:

[...] that ‘treatment’ within the meaning of s. 12 may include that imposed by the state in contexts other than that of a penal or quasi-penal nature... [h] owever... a mere prohibition by the state on certain action, without more, cannot constitute ‘treatment’ under s. 12... [t]here must be some more active state process in operation, involving an exercise of state control over the individual, in order for the state action in question, whether it be positive action, inaction or prohibition, to constitute ‘treatment’ under s. 12

(*Rodriguez* at 611-612).

[184] The Applicant and the intervener Asper Centre rely on *Canadian Doctors* where it was held that restrictions on access to the government’s IFHP constitute cruel and unusual treatment on the basis that refugee claimants who were challenging restrictions on access to the program were effectively under the administrative control of the state (*Canadian Doctors* at para 585).

[185] I accept that refugee claimants, given their circumstances, may be identified as individuals within the administrative control of the state. But that being so was not sufficient to support a finding that the changes to the IFHP amounted to “treatment” in *Canadian Doctors*.

Justice Anne Mactavish also found the changes “intentionally targeted” a “vulnerable poor and disadvantaged group,” “for the express purpose of inflicting predictable and preventable physical and psychological suffering” and to “encourage these individuals to leave the country more quickly once their refugee claims have been rejected” (*Canadian Doctors* at paras 587, 589).

[186] It was this specific circumstance—the intentional targeting of a vulnerable, poor and disadvantaged group—that caused the Court to conclude the government’s actions constituted “treatment” under section 12 (*Canadian Doctors* at para 590).

[187] In this case, I have not found that the state has implemented the Impugned Provisions for the purpose of combatting fraud or to intentionally inflict suffering or harm, as the Applicant and intervener suggest. Instead, I am satisfied that the state, operating within the scope of the legitimate policy choices available to it, has implemented the cessation regime to include automatic loss of PR status primarily for reasons of efficiency.

[188] Further, while the state has enacted a regime to address cessation, the evidence does not establish the state is responsible for the consequences that flow from the implementation of that regime. Cessation, instead, follows as a consequence of the identified and voluntary actions of an affected individual, actions that mirror the grounds for cessation as set out at Article 1 C (1) of the *Refugee Convention*. It is a refugee’s actions that are determinative of the outcome of the cessation process, including the loss of PR status (*Canadian Doctors* at para 602, citing *R v Secretary of State for the Home Department, ex parte Adam*; *R v Secretary of State for the Home*

Department ex parte Limbuela; R v Secretary of State for the Home Department ex parte Tesema (Conjoined Appeals) , [2005] UKHL 66).

[189] In this instance, the state has not adopted prohibitions or limitations, but has instead implemented a regime that is reflective of the limitations imposed on refugee status under the *Refugee Convention*. Because the consequential loss of PR status is linked to and flows from an affected individual's refugee status, has been implemented for reasons of efficiency, and occurs within the context where processes remain accessible to affected individuals, in my view the Impugned Provisions do not constitute "treatment." The Applicant has not demonstrated the Impugned Provisions constitute some "more active state process" such that affected individuals are subjected to treatment by the state (*Rodriguez* at 612; *Canadian Doctors* at para 609).

[190] The consequences of the cessation regime do not constitute treatment under section 12 of the *Charter*. I nonetheless consider below the Applicant's position that the Impugned Provisions impose treatment that is cruel and unusual, thereby infringing section 12.

(c) *Are the consequences of the cessation regime cruel and unusual?*

[191] Section 12 protects against the imposition of punishment that is so excessive that it is incompatible with human dignity—the effect of the punishment is grossly disproportionate—or is intrinsically incompatible with human dignity. Degrading and dehumanizing punishments are, by nature, always grossly disproportionate (*R v Bissonnette*, 2022 SCC 23 at paras 60-61, 64).

[192] The Applicant argues the consequences of the Impugned Provisions are grossly disproportionate because the provisions capture individuals with no connection to the statutory purpose of combatting fraud and revoke PR status in the absence of any violation of any essential condition for holding PR status. The Applicant also notes a separate process to consider PR status in cases of cessation is not a viable alternative, having been the process prior to the implementation of the Impugned Provisions.

[193] As I have reiterated above, the Applicant has not demonstrated that the purpose, let alone the primary purpose, of the Impugned Provisions is the combatting of fraud. Therefore, this aspect of the argument is of no assistance to the Applicant (see paragraphs 155-160). The Applicant's arguments otherwise substantively mirror the submissions made regarding the principles of overbreadth and gross disproportionality under section 7. The above analysis on the principles of fundamental of justice is therefore of equal application here.

[194] In considering the question of whether a treatment or punishment is grossly disproportionate in the criminal law context, a Court will consider: (1) the scope and reach of the impugned provisions; (2) the effects of the punishment on the actual or a hypothetical rights-holder; and (3) whether the punishment was founded on recognized sentencing principles (*R v Hills*, 2023 SCC 2 at para 122 [*Hills*]; *Boudreault* at paras 47-48)). None of these factors is determinative. The core question to be considered is whether the treatment or punishment is grossly disproportionate having regard to its triggers, its impacts, and social expectations (*R v Smith (Edward Dewey)*, [1987] 1 SCR 1045 at 1072, 1987 CanLII 64 (SCC); *Boudreault* at para 48; *R v Lloyd*, 2016 SCC 13 at paras 22-24). Applying the factors articulated in *Hills* to the

circumstances here, I find the Impugned Provisions do not impose grossly disproportionate for the following reasons.

[195] First, regarding the scope and reach of the Impugned Provisions, the intervener Asper Centre argues that because a wide range of individuals are subject to the provisions and the conduct that may give rise to cessation for reavilment may occur in circumstances that also vary widely, the Impugned Provisions are vulnerable to constitutional challenge.

[196] I accept that a consequence that occurs automatically and applies across a wide range of circumstances, in this case the automatic loss of PR status, may well be disproportionate. I also acknowledge that the circumstances that might trigger a cessation hearing will vary widely. However, that being so, a cessation determination under paragraphs 108(1)(a)-(d) of the IRPA will only be made in one circumstance: where the legal test for reavilment has been satisfied.

[197] Regardless of the circumstances that might have triggered an application for cessation, cessation only occurs following a hearing before the RPD and a consideration of all of the evidence. The application of the well-established reavilment test and, where necessary, consideration of whether any presumption of reavilment has been rebutted, requires the decision-maker to consider and address varied factors and circumstances in determining the question of cessation. Only those individuals who are cessated following this proceeding are subject to the automatic loss of PR status.

[198] In addition, the Impugned Provisions are only triggered where cessation follows a determination that the ceased individual has acted voluntarily. The one circumstance that will result in cessation in the absence of any voluntary individual conduct—the reasons for seeking protection has ceased to exist (IRPA, s 108(1)(e))—does not trigger the Impugned Provisions. Only those individuals who are ceased as a result of their voluntary actions are subject to the automatic loss of PR status.

[199] Second, the Applicant, relying on *Hills* at para 68, further invites the Court to consider several reasonable hypotheticals, involving the cessation of (1) an individual with extensive roots in Canada who is unaware that the PR status held flows from a refugee claim, (2) a person lacking capacity due to cognitive impairments, and (3) a young child who returns to a country of birth with a guardian. In each case, the Applicant notes cessation will result in the automatic loss of PR status and the individuals will be denied an opportunity to argue that their clear place in Canadian society warrants a compassionate maintenance of their status. The reasonable hypotheticals cited by the Applicant merely demonstrates the broad circumstances in which a cessation application might arise and be considered, a circumstance I have addressed above.

[200] Third, the cessation regime, including the automatic loss of PR status, inadmissibility and removal, is not premised on wrongdoing, but rather on the fundamental principle of immigration law—non-citizens do not have an unqualified right to remain in the country. This being so, the FCA in *Revell* held that “Parliament can impose conditions on permanent resident’s right to remain in Canada and can legitimately remove a permanent resident from the country if they

have deliberately violated an essential condition under which they were permitted to enter and remain in Canada” (*Revell* at para 54; *Chiarelli* at 733-734).

[201] Having found the Impugned Provisions do not impose grossly disproportionate consequences, I must also conclude the Impugned Provisions are not intrinsically incompatible with human dignity.

[202] The operation of the Impugned Provisions does not impose consequences that are cruel and unusual. The Impugned Provisions do not infringe the Applicant’s rights under section 12 of the *Charter*.

(3) Section 15

[203] Section 15(1) of the *Charter* states:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

15. (1) La loi ne fait acception de personne et s’applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l’origine nationale ou ethnique, la couleur, la religion, le sexe, l’âge ou les déficiences mentales ou physiques.

[204] To demonstrate that an impugned law infringes subsection 15(1), an applicant must first demonstrate a distinction, on the face of the impugned legislation or in its impact, that is based on enumerated or analogous grounds. Second, they must show that distinction imposes a burden

or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage (*R v Sharma*, 2022 SCC 39 at para 28, *R v CP*, 2021 SCC 19 at para 141; *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 27).

[205] Grounds that are analogous to those listed in subsection 15(1) are those personal characteristics that are “immutable, difficult to change, or changeable only at unacceptable personal cost” (*Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 60, 1999 CanLII 687 (SCC) [*Corbiere*]).

[206] The Applicant argues the Impugned Provisions, in purportedly providing for the prevention of fraudulent refugee claims, draw a distinction based on refugee status and perpetuate negative stereotypes.

[207] The Applicant concedes that refugee status is not immutable, but that it ought nonetheless to be recognized as an analogous ground under subsection 15(1) because it relates to a characteristic that is “changeable only at unacceptable cost to personal identity” (*Corbiere* at para 13). A change in refugee status, it is argued, may involve an unacceptable personal cost, including potential removal to countries where persecution based on central aspects of their identity may result.

[208] I am not persuaded by the Applicant’s arguments. The question of whether immigration status more broadly, and refugee status more specifically, is an analogous ground under subsection 15(1) of the *Charter* has been considered in numerous cases and rejected.

[209] For instance, *Toussaint v Canada*, 2011 FCA 213 involved an applicant who had overstayed her visa and was excluded from medical coverage on the basis of her immigration status. In rejecting the argument that immigration status qualifies as an analogous ground, Justice David Stratas for the Court stated:

[99] Further, I do not accept that “immigration status” qualifies as an analogous ground under section 15 of the Charter, for many of the reasons set out in *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC), [1999] 2 S.C.R. 203, at paragraph 13, recently approved by the Supreme Court in *Withler*, above, at paragraph 33. “Immigration status” is not a “[characteristic] that we cannot change”. It is not “immutable or changeable only at unacceptable cost to personal identity.” Finally “immigration status”—in this case, presence in Canada illegally—is a characteristic that the government has a “legitimate interest in expecting [the person] to change”. Indeed, the government has a real, valid and justified interest in expecting those present in Canada to have a legal right to be in Canada. See also *Forrest v. Canada (Attorney General)*, 2006 FCA 400, 357 N.R. 168, at paragraph 16; *Irshad (Litigation guardian of) v. Ontario (Minister of Health)*, 2001 CanLII 24155, 55 O.R. (3d) 43 (C.A.), at paragraphs 133-136

[210] As in *Toussaint*, the Applicant’s status in this case is not immutable, nor is it a characteristic that might only be changed at an unacceptable personal cost (also see *Brink v Canada*, 2024 FCA 43 at para 100; *Forrest v Canada (Attorney General)*, 2006 FCA 400 at para 16; *Irshad (Litigation guardian of) v Ontario (Ministry of Health)*, 2001 CanLII 24155 (ONCA) at paras 135-136 [*Irshad*]). As the Respondents note, the Applicant had the option to apply for, and obtain, Canadian citizenship. In addition, the government’s “real, valid and justified interest” recognized in *Toussaint* includes an interest in the status, and ongoing presence, of persons where lawful presence in Canada is premised on refugee status and that status has been ceased (*Almadhoun v Canada*, 2018 FCA 112 at para 28; *Mvana v Canada (Citizenship and Immigration)*, 2024 FCA 49 at paras 10-11).

[211] The Applicant's arguments that a change in refugee status may occur at an unacceptable personal cost are not persuasive. The "unacceptable personal costs" identified as resulting from a change in refugee status have been consistently held in the immigration context not to be unacceptable. Instead, these consequences have been consistently treated as difficult, unfortunate, but inherent consequences that arise in a removal context (*Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at para 16; *Melo v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 15140 (FC) at para 21).

[212] A risk of removal to persecution, whether that risk has the potential to impact on an individual's personal identity or not, similarly does not equate to an unacceptable personal cost where there is access to a process that allows for alleged risks to be considered prior to any removal. Cessated individuals have access to such a process (IRPA, ss 48(2), 112(2)).

[213] The Applicant also highlights the inherent vulnerability of refugees as a basis to conclude that refugee status should be recognized as an analogous ground, and relies on *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 1989 CanLII 2 (SCC) [*Andrews*] where the SCC found citizenship to be an analogous ground on the basis that non-citizens "are a group lacking in political power and as such, [are] vulnerable to having their interests overlooked and their rights to equal concern and respect violated." (*Andrews* at 152). Refugees, it is argued, like non-citizens have been recognized as an inherently vulnerable group (*Canadian Doctors* at para 9).

[214] Despite a finding of inherent vulnerability, and after considering the findings in both *Toussaint* and *Irshad* that immigration status does not qualify as an analogous ground under

section 15 of the *Charter*, the Court in *Canadian Doctors* likewise reached the conclusion that subsection 15(1) was not violated on the basis of immigration status as an analogous ground (at paras 870, 872).

[215] After reviewing *Toussaint* and *Irshad*, Justice Mactavish then cited *Lavoie v Canada*, 2002 SCC 23, where the SCC held that once recognized as immutable in some legislative contexts, an analogous ground is a constant marker of potential discrimination. She noted the contrary—that the refusal to recognize an analogous ground should not be contextually dependent—must also hold true:

[868] As was noted earlier, in *Lavoie*, the Supreme Court rejected a context-dependent approach to the identification of analogous grounds. It held that “[o]nce identified, an analogous ground stands as ‘a constant marker of potential legislative discrimination’ and need not be established again in subsequent cases”: above, at paragraph 2, citing *Corbiere*, above, at paragraphs 7–10.

[869] If the recognition of an analogous ground stands for all situations and does not have to be relitigated in every case, it follows that the refusal to recognize a particular ground as an analogous ground for the purpose of section 15 of the *Charter* should also stand for all cases and should not be judicially revisited whenever the issue arises in a different context.

[216] For the same reasons as set out in *Canadian Doctors*, the Applicants’ arguments that refugee status is an analogous ground for the purpose of section 15 cannot succeed. In turn, the section 15 claim must be dismissed.

(4) Paragraph 2(d)

[217] Paragraph 2(d) of the *Charter* states:

2. everyone has the following
fundamental freedoms:

[...]

d. freedom of association.

2. Chacun a les libertés
fondamentales suivantes:

[...]

d. liberté d'association.

[218] Paragraph 2(d) of the *Charter* protects freedom of association and relationships that are formed in pursuit of common goals (*Reference Re Public Service Employees Relations Act (Alta)*, [1987] 1 SCR 313 at para 86, 1987 CanLII 88 (SCC); *Dunmore v Ontario (Attorney General)*, 2001 SCC 94 at paras 14–17 [*Dunmore*]). However, as the Applicant acknowledges, paragraph 2(d) has been found not to protect family associations due to their private nature (*Catholic Children's Aid Society of Metropolitan Toronto v S*, 1989 Carswell Ont 247 at para 41, 1989 CanLII 259 (ON CA) [*Catholic Children's Aid*]).

[219] The Applicant nonetheless takes the position that the Court should not foreclose the possibility of constitutional protection for family association under paragraph 2(d). This because the narrow interpretation adopted in *Catholic Children's Aid* is inconsistent with the purposive and broad approach to *Charter* interpretation (*B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at 389, 1995 CanLII 115 (SCC); *Ross v New Brunswick School District No 15*, [1996] 1 SCR 825 at para 59, 1996 CanLII 237 (SCC)). It is argued that extending 2(d) rights to family relationships is consistent with a broad interpretative approach because family relationships are not expressly excluded, that inclusion is consistent with the purpose of paragraph 2(d) that allows for “the achievement of individual potential through interpersonal relationships and collective action” (*Dunmore* at para 17), and that this interpretation would allow paragraph 2(d) to be interpreted in a manner that reflects international

norms that recognize the family as a fundamental unit of society entitled to protection (*International Covenant on Civil and Political Rights*, Can TS 1976 No 47, Articles 17(1), 23(1) [ICCPR]).

[220] The Applicant argues that, should the Court adopt the proposed interpretation of paragraph 2(d), the Impugned Provisions of the IRPA infringe the 2(d) guarantee of freedom of association because of the potential risk for removal and the resultant separation family members.

[221] This argument was considered in *Moretto* where the FCA concluded the “submissions must fail” (*Moretto* at para 68). Justice Yves de Montigny recognized that the jurisprudence of the SCC had evolved towards a more generous interpretation of paragraph 2(d) of the *Charter* (*Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at paras 52-66 [MPAO]), but then determined:

[71] Broadening the scope of paragraph 2(d) had a major impact on the right to collective bargaining, but there is no indication that the “voluntariness” aspect of that right has been cast aside, nor that the above-quoted excerpt of Justice McIntyre has lost its currency. It would appear, on the contrary, that family relationship has little (if anything) in common with the underlying purpose of freedom of association as re-articulated by the Supreme Court in *MPAO*, at paragraph 58:

This then is a fundamental purpose of s. 2(d) — to protect the individual from “state-enforced isolation in the pursuit of his or her ends”: *Alberta Reference*, at p. 365. The guarantee functions to protect individuals against more powerful entities. By banding together in the pursuit of common goals, individuals are able to prevent more powerful entities from thwarting their legitimate goals and desires. In this way, the guarantee of freedom of association empowers vulnerable groups and helps

them work to right imbalances in society. It protects marginalized groups and makes possible a more equal society.

[222] In addressing the role of international norms, Justice de Montigny acknowledged that international human rights instruments to which Canada is a party can serve as interpretative tools in delineating *Charter* rights, but only where those rights are conceptually similar. He concluded that Articles 17 and 23 of the ICCPR bear no connection to paragraph 2(d), the right to freedom of association being a right expressly addressed in Article 22 of the ICCPR.

[223] That the Applicant argues the FCA failed to afford sufficient weight to the similarities between Articles 17(1) and 23(1) of the ICCPR in coming to the above conclusion is of little consequence. The FCA's conclusion in *Moretto* is both binding on me and dispositive of the paragraph 2(d) challenge.

(5) Section 1

[224] Having concluded that sections 40.1 and 46(1)(c.1) of the IRPA and paragraph 228(1)(b.1) of the IRPR do not violate sections 7, 15, 12, and/or 2(d) of the *Charter*, I need not consider the section 1 arguments the Parties have advanced.

VIII. Certified Questions

[225] The Parties jointly propose the following questions for certification:

1. Do sections 40.1 and 46(1)(c.1) of the IRPA and section 228(1)(b.1) of the IRPR infringe sections 2(d), 7, 12, and/or 15 of the *Charter*? If so, is any such infringement justified under section 1?
2. Does the RPD have the jurisdiction to determine whether refugee protection conferred by the Convention Refugee Determination Division under the *Immigration Act* has ceased?

[226] A properly certified question arises from the case, engages an issue that has been dealt with in the Court's consideration of the Application, is dispositive of the Application, transcends the interests of the parties, and raises an issue of broad significance or general importance (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36).

[227] Question 1 engages a consideration of the constitutional validity of the legislative provisions that were considered in this Application. The constitutional validity of these provisions of general application engages questions relating to the protection of the identified rights and freedoms guaranteed by the *Charter*. The provisions potentially affect all individuals that may be subject to them and the question posed arises directly from the case and is rooted in the factual and legal issues litigated.

[228] Question 2 raises an issue that is dispositive of the Administrative Law Issues raised on the Application. The question impacts on all individuals granted refugee status by the CRDD under the former *Immigration Act* and subjected to cessation proceedings under the IRPA. The

issue raised in the question therefore transcends the interests of the Parties and is of broad significance and general importance because it addresses the scope of the jurisdiction of the RPD in conducting cessation proceedings.

[229] I am satisfied that the questions as proposed satisfy the criteria for certification under paragraph 74(d) of the IRPA.

IX. Conclusion

[230] The Applications are dismissed. The RPD's cessation determination was reasonable and sections 40.1 and 46(1)(c.1) of the IRPA and paragraph 228(1)(b.1) of the IRPR are constitutionally valid. The proposed questions will be certified.

[231] None of the Parties have sought costs, and none are awarded.

JUDGMENT IN IMM-5466-23 AND IMM-5481-23

THIS COURT’S JUDGMENT is that:

1. The first sentence at paragraph 15 of the June 27, 2023 Affidavit of Thomas Clark is struck.
2. The Applications are dismissed.
3. The following two questions are certified:
 - a. Do sections 40.1 and 46(1)(c.1) of the IRPA and paragraph 228(1)(b.1) of the IRPR infringe sections 2(d), 7, 12, and/or 15 of the *Charter*? If so, is any such infringement justified under section 1?
 - b. Does the RPD have the jurisdiction to determine whether refugee protection conferred by the Convention Refugee Determination Division under the *Immigration Act* has ceased?

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5466-23

STYLE OF CAUSE: ROMAN SLEPCSIK v MINISTER OF CITIZENSHIP
AND IMMIGRATION AND DAVID ASPER CENTRE
FOR CONSTITUTIONAL RIGHTS, CANADIAN
CIVIL LIBERTIES ASSOCIATION

AND DOCKET: IMM-5481-23

STYLE OF CAUSE: ROMAN SLEPCSIK v MINISTER OF CITIZENSHIP
AND IMMIGRATION, MINISTER OF PUBLIC
SAFETY AND EMERGENCY PREPAREDNESS AND
THE ATTORNEY GENERAL OF CANADA AND
DAVID ASPER CENTRE FOR CONSTITUTIONAL
RIGHTS, CANADIAN CIVIL LIBERTIES
ASSOCIATION

PLACE OF HEARING: TORONTO, ONTARIO

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APPEARANCES:

Barbara Jackman
Prasanna Balasundaram
Asiya Hirji

FOR THE APPLICANT

Martin Anderson
Bernard Assan
Meva Motwani
Elijah Lo Re

FOR THE RESPONDENTS

Erin Simpson

FOR THE INTERVENER
DAVID ASPER CENTRE FOR CONSTITUTIONAL
RIGHTS

Jacqueline Swaisland
Warda Shazadi Meighen

FOR THE INTERVENER
CANADIAN CIVIL LIBERTIES ASSOCIATION

SOLICITORS OF RECORD:

Downtown Legal Services
Barristers and Solicitors
Toronto, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENTS

Landings LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE INTERVENERS