Date: 20080123

Docket: IMM-6297-06

Citation: 2008 FC 82

Ottawa, Ontario, January 23, 2008

PRESENT: The Honourable Madam Justice Dawson

BETWEEN:

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Applicant

and

GLENDON ST. PATRICK STEPHENSON

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Glendon St. Patrick Stephenson is a citizen of Jamaica and a permanent resident of Canada. On January 15, 2003, he was ordered to be removed from Canada because he had been convicted of trafficking in a narcotic. Mr. Stephenson appealed the issuance of the removal order to the Immigration Appeal Division of the Immigration and Refugee Board (IAD).

[2] On October 14, 2003, the IAD stayed the removal order for a period of three years on a number of conditions. The conditions of relevance are that Mr. Stephenson:

- inform the Department of Citizenship and Immigration Canada (Department) and the IAD in writing in advance of any change of address;
- apply for extension of the validity period of his passport before it expired and provide a copy of the extended passport to the Department; and
- keep the peace and be of good behaviour.

[3] The IAD also advised that it would reconsider Mr. Stephenson's case in or about September of 2006.

[4] On August 18, 2006, the IAD notified the parties that, pursuant to subsection 68(3) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act), it would reconsider Mr. Stephenson's appeal without an oral hearing on or about September 27, 2006. This notification, pursuant to Rule 26(3) of the *Immigration Appeal Division Rules*, SOR/2002-230, required each party to provide the IAD with a written statement about whether Mr. Stephenson had complied with the conditions of his stay of removal.

[5] In response, the Minister of Citizenship and Immigration (Minister) requested an oral hearing. The Minister also submitted that Mr. Stephenson was in breach of the conditions upon which the removal order had been stayed. The Minister noted that Mr. Stephenson had:

- failed to inform the IAD of his most recent change of address;
- failed to provide the Department with a copy of an extended passport, which was required because his existing passport had expired on March 3, 2006; and

- been convicted of three offences under the Ontario *Highway Traffic Act*, R.S.O. 1990, c. H-8.

The three offences in question arose from two separate incidents. In April of 2004, Mr. Stephenson had failed to stop at a red light and had driven a motor vehicle without a proper license. In July of 2006, Mr. Stephenson had failed to surrender his driver's license. He was fined in respect of each conviction.

[6] Mr. Stephenson's only written response to the IAD's notification was to state that he had complied with the conditions of the stay.

The Decision of the IAD

[7] The IAD dealt with the reconsideration of its prior decision in brief, written reasons. In those reasons, the IAD refused the Minister's request for an oral review of Mr. Stephenson's stay because, in its view, an oral review was unnecessary and it was reasonable to render a decision in chambers.

[8] With respect to the substantive review, the IAD considered that:

- It was satisfied that Mr. Stephenson had breached the first two conditions of the stay, as set out above at paragraph 2. However, in the IAD's view, these were minor breaches because the failure to provide a copy of the extended passport lasted "only for a few months" and, while Mr. Stephenson had failed to inform the IAD of his

address as required, it appeared that he had kept the Department advised of his address.

- It was not convinced on the evidence that the three convictions in respect of the Ontario *Highway Traffic Act* offences constituted a breach of the condition to keep the peace and be of good behaviour.
- Alternatively, if the convictions did constitute a breach of that condition, it concluded that the breach was minor in nature. The convictions did not "give rise to a concern about the appellant's overall behaviour even when considered in the light of the appellant's failure to provide a change of address to the IAD and the short term failure to provide a copy of his passport."

[9] The IAD concluded that "[b]ased on the evidence before it and mindful of its responsibilities to consider all of the circumstances, the panel is prepared to cancel the appellant's stay and allow his appeal and order his removal order set aside."

The Issues

[10] While the Minister raised a number of issues, it is only necessary, in my view, to deal with two issues:

1. Did the IAD err by failing to consider all the circumstances of the case?

2. Did the IAD err by finding that the convictions under the Ontario *Highway Traffic Act* did not amount to a breach of the condition to "keep the peace and be of good behaviour"?

Did the IAD err by failing to consider all of the circumstances of the case?

[11] At the outset, it is helpful to review briefly the relevant provisions of the Act.

[12] A permanent resident may appeal to the IAD against a removal order: subsection 63(2) of the Act.

[13] Pursuant to section 66 of the Act, the IAD, after considering the appeal, must allow the appeal, stay the removal order, or dismiss the appeal.

[14] In order to allow an appeal, the IAD must be satisfied that: an error was made; a principle of fundamental fairness was not observed; or, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case: subsection 67(1) of the Act.

[15] Similarly, in order to stay a removal order, the IAD must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case: subsection 68(1) the of the Act.

[16] Where a removal order is stayed, the IAD must impose any condition prescribed by the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations): paragraph 68(2)(*a*) of the Act. Section 251 of the Regulations contains the prescribed conditions. They include the first two conditions imposed upon Mr. Stephenson, as set out above at paragraph 2.

[17] Once a stay has been issued, the IAD may cancel the stay on an application or on its own initiative: paragraph 68(2)(*d*) of the Act. Further, where a removal order has been stayed, the IAD may at any time, on an application or its own motion, reconsider the appeal: subsection 68(3) of the Act.

[18] These provisions are set out in the schedule to these reasons.

[19] As to what constitutes "sufficient humanitarian and compassionate considerations [to] warrant special relief in light of all the circumstances of the case", this Court has held that it is proper for the IAD to consider the factors identified in *Ribic v. Canada (Minister of Employment and Immigration)*, [1985] I.A.B.D. No.4 (QL). See: *Khosa v. Canada (Minister of Citizenship and Immigration)* (2005), 266 F.T.R. 138 at paragraph 6, rev'd on other grounds [2007] 4 F.C.R. 332 (C.A.), leave to appeal to the Supreme Court of Canada granted.

[20] This conclusion is consistent with the decision of the Supreme Court of Canada in *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84. There, the Supreme Court had to consider what was meant by the phrase "having regard to all the circumstances of the case".

The phrase was contained in paragraph 70(1)(*b*) of the *Immigration Act*, R.S.C. 1985, c.I-2, which was the predecessor to the current legislation. Subsection 70(1) of the Immigration Act provided:

70(1) Subject to subsections (4) and (5), where a removal order or conditional removal order is made against a permanent resident or against a person lawfully in possession of a valid returning resident permit issued to that person pursuant to the regulations, that person may appeal to the Appeal Division on either or both of the following grounds, namely,	70(1) Sous réserve des paragraphes (4) et (5), les résidents permanents et les titulaires de permis de retour en cours de validité et conformes aux règlements peuvent faire appel devant la section d'appel d'une mesure de renvoi ou de renvoi conditionnel en invoquant les moyens suivants :
(*a*) on any ground of appeal that involves a question of law or fact, or mixed law and fact; and	*a*) question de droit, de fait ou mixte;
(*b*) on the ground that, having regard to all the circumstances of the case, the person should not be removed from Canada. [emphasis added]	*b*) le fait que, eu égard aux circonstances particulières de l'espèce, ils ne devraient pas être renvoyés du Canada. [Le souligné est de moi.]

[21] At paragraph 39 of its reasons in *Chieu*, the Supreme Court observed that it had long approved of a broad approach to paragraph 70(1)(*b*) of the Immigration Act and its predecessor legislation and concluded, at paragraph 90 of its reasons, that the factors set out in *Ribic* remained the proper ones for the IAD to consider during an appeal brought by a permanent resident against a removal order.

[22] While the Act is express that all of the circumstances of the case are to be considered by the IAD when allowing an appeal or staying a removal order, the Act is silent as to what factors the IAD must consider when, pursuant to subsection 68(3) of the Act, it reconsiders an order staying removal.

[23] This is similar to the situation that prevailed under the Immigration Act. There, as noted above, paragraph 70(1)(*b*) required the IAD to have "regard to all the circumstances of the case" when deciding that an appellant should not be removed from Canada. However, subsection 74(3) of the Immigration Act, which allowed the IAD to amend the terms on which a stay was granted or to cancel a stay, was silent as to the factors to be considered. Subsection 74(3) provided:

74(3) Where the Appeal Division has disposed of an appeal by directing that execution of a removal order or conditional removal order be stayed, the Appeal Division may, at any time,	74(3) Dans le cas visé au paragraphe (2), la section d'appel peut, à tout moment :
(*a*) amend any terms and conditions imposed under subsection (2) or impose new terms and conditions; or (*b*) cancel its direction staying the execution of the order and (i) dismiss the appeal and direct that the order be executed as soon as reasonably practicable, or (ii) allow the appeal and take any other action that it might have taken pursuant to subsection (1).	*a*) modifier les conditions imposées ou en imposer de nouvelles; *b*) annuler son ordre de surseoir à l'exécution de la mesure, et parallèlement : (i) soit rejeter l'appel et ordonner l'exécution dès que les circonstances le permettent, (ii) soit procéder conformément au paragraphe (1).

[24] In *Ivanov v. Canada (Minister of Citizenship and Immigration)*, [2007] F.C.J. No. 1295 (C.A.) (QL) at paragraph 5, the Federal Court of Appeal concluded that, notwithstanding such silence, the IAD was required to consider the *Ribic* factors when cancelling a stay pursuant to subsection 74(3) of the Immigration Act.

[25] Based upon the jurisprudence cited by the Federal Court of Appeal in *Ivanov* and the similarity between the prior and the current legislation, I conclude that, as a matter of law, the *Ribic* factors continue to be the factors that the IAD is required to consider when reconsidering a decision pursuant to subsection 68(3) of the Act.

[26] I note that this conclusion is in accord with the IAD's advice to the parties in this case, as contained in its notification of reconsideration, that it "will consider all the circumstances of your case" and with the IAD's statement in its reasons that it was "mindful of its responsibilities to consider all the circumstances."

[27] This conclusion is also consistent with the fact that, as noted by the Supreme Court of Canada in *Medovarski v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 539 at paragraph 37, the granting of a stay of removal is only a temporary measure. The IAD retains an ongoing supervisory jurisdiction. An appeal to the IAD is only final when the appeal is either allowed or dismissed. Parliament has said in paragraph 67(1)(*c*) of the Act that, in order to allow an appeal, the IAD must consider all of the circumstances of the case. It is consistent with that Parliamentary intent that the *Ribic* factors be applied whether the appeal is allowed by the IAD at the outset or after an interim order staying removal has been made.

[28] I now turn to consider whether the IAD, as it was required to do, considered all the circumstances of the case when exercising its discretion. This is a question of law, reviewable on the standard of correctness.

[29] The factors identified as being relevant in *Ribic* include:

- The seriousness of the offence(s) that led to the deportation order.
- The possibility of rehabilitation.
- The length of time spent in Canada, and the degree to which the appellant is established here.
- The appellant's family in Canada and the dislocation to the family that the deportation of the appellant would cause.
- The family and community support available to the appellant.
- The degree of hardship that would be caused to the appellant by his return to his country of nationality.

[30] In its reasons, the IAD did not expressly refer to the *Ribic* factors. The IAD only considered whether Mr. Stephenson was in breach of the conditions upon which the stay of removal was granted and the effect of such non-compliance. The IAD failed to consider the seriousness of the offence that led to the removal order, and failed to consider the existence of any exceptional reasons for allowing the appeal flowing from things such as Mr. Stephenson's establishment in Canada, the

circumstances of his family in Canada, and the degree of hardship that would be caused to Mr. Stephenson if he was returned to Jamaica.

[31] I have noted the IAD did state that it was mindful of its obligation to consider all of the relevant circumstances. However, a blanket statement to that effect will not suffice in every case. Here, Mr. Stephenson failed to put any information or material before the IAD other than his statement that he had complied with the conditions of his stay. There was no evidence that the humanitarian and compassionate factors which had led to the granting of the original stay continued to be in existence. In that circumstance, I respectfully give no weight to the IAD's statement that it was mindful of its obligation to consider all of the circumstances.

[32] From the failure of the IAD to specifically mention the *Ribic* factors or to consider the matters discussed above at paragraph 30, and from the absence of evidence before the IAD concerning the continuing existence of humanitarian and compassionate factors, I conclude that the IAD erred in law by failing to consider all of the circumstances of the case when it exercised its discretion to allow the appeal and set aside the removal order.

[33] It follows that the application for judicial review will be allowed.

Did the IAD err by finding that the convictions under the Ontario *Highway Traffic Act* did not amount to a breach of the condition to "keep the peace and be of good behaviour"?

[34] I acknowledge that the application for judicial review is to be allowed in any event; however, in view of the importance of this issue, I think that it is helpful to deal with it.

[35] In two prior decisions, *Huynh v. Canada (Minister of Citizenship and Immigration)*, [2003] F.C.J. No. 1844 (QL), and *Cooper v. Canada (Minister of Citizenship and Immigration)*, (2005), 275 F.T.R. 155, this Court has held, in the context of a condition imposed by the IAD when staying a removal order, that to "be of good behaviour" means that one must abide by federal, provincial, and municipal statutes and regulatory provisions.

[36] In *Cooper*, a number of convictions in relation to provincial highway traffic offences were found to breach the condition to "be of good behaviour."

[37] Notwithstanding this jurisprudence, the IAD in the present case was not convinced that Mr. Stephenson's three Ontario *Highway Traffic Act* convictions constituted a breach of the condition to "be of good behaviour."

[38] The IAD's reasons for this conclusion were brief:

> 7. In regard to the appellant's three *Highway Traffic Act* convictions, there is an issue as to whether such convictions constitute a breach of the condition to keep the peace and be of good behaviour. The Minister quotes the Federal Court decisions in *Cooper* and *Huynh* as saying "…the criminal jurisprudence is clear that to be of good behaviour one must abide by federal, provincial and municipal statures and regulatory provisions"; implying, in the panel's opinion, that any conviction under a federal, provincial, municipal statute or regulatory provision constitutes a breach of a requirement to keep the peace and be of good behaviour. As the panel has written elsewhere, the panel is of the opinion this is a misreading of these cases. The panel believes these cases and the

> underlying Federal Court decision in *R. v. R. (D.)* more accurately stand for the proposition that a failure to be of good behaviour requires a failure to have abided by federal, provincial or municipal statutes and regulatory provisions. A failure to abide by a federal, provincial or municipal statute does not necessarily mean that there has been a failure to be of good behaviour. [footnotes omitted]

[39] On this point, the IAD footnoted and adopted its reasons in *Cao v. Canada (Minister of Citizenship and Immigration)*, [2006] I.A.D.D. No. 101 (QL). There, the same member of the IAD wrote:

> 14 In Cooper, Justice Mactavish notes:
>
> > 13. The requirement that an individual "Keep the peace and be of good behaviour" is one commonly seen in orders staying deportations under the former Immigration Act, and is, as well, a statutory condition in all probation orders in the criminal context: Criminal Code, R.S.C. 1985, c.C-46, s. 732.1(2)(a).
> >
> > 14. While there is some question as to whether the requirement that an individual be "of good behaviour" can be breached without the individual offending any law or regulation (see R. v. Gosai, [2002] O.J. No. 359 at para. 27), the criminal jurisprudence is clear that to be of "good behaviour", one must abide by federal, provincial and municipal statutes and regulatory provisions: R. v. R. (D.) (1999), 138 C.C.C. (3d) 405 (Nfld. C.A.).
> >
> > 15. Moreover, the jurisprudence of this Court is equally clear that a similar interpretation will be given to conditional orders made in the immigration context: Huynh v. Minister of Citizenship and Immigration, [2003] F.C.J. No. 1844, at para. 7.
>
> 15 In Huynh, Justice O'Reilly states:
>
> > 7. I note that in the criminal law the requirement to "keep the peace and be of good behaviour" is a statutory condition in all

> probation orders: Criminal Code, R.S.C. 1985, c. C-46, s. 732.1(2)(a). To be of "good behaviour", one must abide by federal, provincial or municipal statutes and regulations: R. v. R.(D.) (1999), 138 C.C.C. (3d) 405 (Nfld. C.A.). I see no reason why the same approach should not apply in this context.

16 The panel is interested in this reference in both Cooper and Huynh to R. v. R. (D.) and the identical statements made by Justices Mactavish and O'Reilly in these decisions: "To be of good behaviour", one must abide by federal, provincial or municipal statutes and regulations. R. v. R. (D.)." The panel is of the opinion that the Minister has concluded that this phrase "To be of 'good behaviour' means one must abide by federal, provincial or municipal statutes and regulations" means that any conviction under a federal, provincial or municipal statute or regulation automatically means that a breach of the condition "to keep the peace and be of good behaviour" has occurred. The panel cannot agree based on its review of R. v. R. (D.) and further case law.

17 R. v. R. (D.) is a lengthy decision that explores in great detail the meaning of the phrase "to keep the peace and be of good behaviour". The context for this - and this is important - is that the issue the Court was considering was whether the accused, a young person, breached his probation order to keep the peace and be of good behaviour by running away from his group home. Running away, it was noted, did not in itself constitute a statutory offence or the breach of any specific Court order, nor was the young person in question under a statutory requirement to obey the rules of the group home. In other words, this was a case in which the Court had to decide whether by running away, which was not an offence under any statutory requirement, meant that the young person in question had breached the general condition of his probation order "to keep the peace and be of good behaviour". The Court concluded that to be of good behaviour -- a concept the Court determined referred to a wider range of conduct than to keep the peace -- is limited to the notion of compliance with the law. And as the appellant committed no offence under a federal, provincial or municipal statute he could not be said to have failed to keep the peace and be of good behaviour and so the young person's conviction was set aside.

18 The Court in R. v. R. (D.) reviews the case law noting that there are two opposing views on what "good behaviour" means. According to the Court one position as exemplified by R. v Stone holds that a failure to be of good behaviour does not necessarily mean that a breach of federal provincial or municipal statutes has taken place and that a failure to be of good behaviour can refer to conduct that falls below the standard of behaviour expected of law abiding and decent citizens. The Court suggests that the contrary view in the case law is that the notion of "good behaviour" is limited to compliance with law. The Court then goes on to say:

> 13. I have concluded, with all due respect to the contrary position stated in Stone, that the concept of failure "to be of good behaviour" in the statutory conditions of a probation order is limited to non-compliance with legal obligations in federal, provincial or municipal statutes and regulatory provisions, as well as obligations in court orders specifically applicable to the accused, and does not extend to otherwise lawful conduct even though that conduct can be said to fall below some community standard expected of all peaceful citizens.

However, the Court immediately goes on in paragraph 13 to say:

> This is not to say, however, that any breach of the law, however trivial, will necessarily result in a finding of failure to be of good behaviour. It is sufficient for the purposes of this case to say that a failure to be law-abiding is a necessary prerequisite to a finding of a breach of the obligation to be of good behaviour.

19 This clarification, if you will, is significant, particularly given that both Cooper and Huynh appear to state that to be of "good behaviour" one must abide by federal, provincial and municipal statutes and regulatory provisions, directly referring to R. v. R. (D.) as their authority. The panel is satisfied, based on its review of R. v R. (D.) that R. v R. (D.) more accurately stands for the proposition that a failure to be of good behaviour requires a failure to have abided by federal, provincial and municipal statutes and regulatory provisions but that a failure to abide by a federal, provincial or municipal statute does not necessarily mean that there has been a failure to be of good behaviour. [footnotes omitted]

[40] Two concerns are immediately apparent from the IAD's reasons.

[41] First, the IAD is bound to follow decisions of this Court. Contrary to the suggestion made by the IAD at paragraph 7 of its reasons in this case, the decision of *R. v. R.(D.)* (1999), 138 C.C.C. (3d) 45 (Nfld. C.A.), is not a decision of the Federal Court. Rather, it is a decision of the Supreme Court of Newfoundland and Labrador (Court of Appeal). This Court has held in the context of conditional orders made under the Act that the condition to “be of good behaviour” requires that one abide by federal, provincial, and municipal statutes and regulations. The doctrine of *stare decisis* precludes the IAD from reaching a contrary conclusion, even where the IAD believes that the Federal Court has reached its decision in error, as the IAD suggested in this case and at paragraph 19 of its reasons in *Cao*.

[42] Second, the statement from paragraph 13 of *R. v. R.(D.)* relied upon by the IAD is *obiter dicta* because the accused in that case had not committed any offence. Further, even though *obiter*, the Supreme Court of Newfoundland and Labrador (Court of Appeal) found it unnecessary to decide whether every breach of the law, however trivial, would necessarily result in a finding of a failure to “be of good behaviour.”

[43] As the Supreme Court of Newfoundland and Labrador (Court of Appeal) explained in the companion case of *R. v. S.S.* (1999), 138 C.C.C. (3d) 430 at paragraph 22 (Nfld. C.A.):

> In D.R., this Court held that the concept of failure to "be of good behaviour" in the statutory conditions of a probation order is limited to non-compliance with legal obligations in federal, provincial or municipal statutes or regulatory provisions as well as with court orders specifically applicable to the offender, and does not extend to otherwise lawful conduct even though that conduct

> can be said to fall below some community standard expected of all peaceful citizens.

[44] This is what the decision in *R. v. R.(D.)* stands for. Even if the IAD could decline to follow pronouncements of law made by this Court, which it cannot, *R. v. R.(D.)* does not contradict this Court's decisions in *Huynh* and *Cooper*, cited above.

[45] The IAD went on to rely upon the decision of *R. v. Borland*, [1970] 2 C.C.C. 172 (N.W.T.T.C.). However, in that case, the Court found that "a conviction under such territorial legislation as the *Vehicles Ordinance* and the *Liquor Ordinance*, referred to above, may form the basis for an allegation by the crown that the accused has failed to […] 'be of good behavior.'"

[46] The portion of the *Borland* decision relied upon by the IAD dealt with the manner in which a breach of condition must be proven and is therefore not relevant to whether a breach of a provincial statute or regulation may lead to a breach of the condition to "be of good behaviour." This authority does not, as the IAD suggested, establish that convictions for some offences are incapable of establishing a breach of the requirement to "be of good behaviour."

[47] The IAD then considered an annotation to the *Borland* decision entitled "Breach of probation as an offense" by Kenneth Chasse reported at (1969) 5 C.R.N.S. 255. The passages from this article relied upon by the IAD were, in my respectful view, taken out of context.

[48] The author's view, expressed at page 260 of the article, was that:

> […] Given that a breach of the law, either provincial or federal, is bad behaviour, why should anything more than a certificate of conviction

> be required to prove the breach? […] In turning sentencing procedures into trials, undue emphasis is placed on what is or is not a breach, to the exclusion of the more important question as to whether the probation should continue.
>
> […]
>
> However, no case has gone so far as to say that a conviction must be strictly proved again in order to constitute a breach. A certificate of conviction on proof of identity, should suffice, so that the Court can get on to the important question -- should the probation continue? In the case of provincial offences and lesser criminal offences, the Court may in its discretion, refer to a transcript of the trial, or rehear some of the testimony, in answer to the probationer's contention that the breach is not really bad behaviour. But as the breach is already proved, this would be done in the interests of the probationer being fully heard and not as part of a full retrial which the offender can demand as of right.
>
> Considering a breach of probation as an offence not only leads one to believe a full trial is necessary, it also suggests that once the breach is established, the Court *must* sentence the accused. If any breach, meaning any provincial offence, required that the probation be ended, then the approach in *Regina v. Borland* would be more appropriate. However, there is no case law which says that conviction of a provincial offence is always a sufficient breach, calling for the immediate end of the recognizance and the sentencing of the accused. If *any* bad behaviour meant that the accused must be sentenced, then the question of whether a provincial offence *per se* is a breach, would be of importance. But the Court does not have to automatically send a man to jail because he took a drink on a street corner. [emphasis in original]

[49] Much the same may be said of the procedure before the IAD.

[50] In the case of convictions under federal, provincial, and municipal statutes and regulations, the resultant breach of the condition to “be of good behaviour” need not necessarily lead to the termination of a stay of removal. It is a matter for the IAD to consider “in light of all the

circumstances of the case." All of the circumstances include the nature and severity of the offences in respect of which convictions were entered.

[51] To conclude, in order to "be of good behavior", a person must abide by federal, provincial, and municipal statutes and regulations. In this case, given the evidence that convictions had been entered under the Ontario *Highway Traffic Act* against Mr. Stephenson, it was not, as a matter of law, open to the IAD to find that the convictions did not constitute a breach of the condition to "be of good behaviour". It was, however, open to the IAD to consider all the circumstances of Mr. Stephenson's case, including the nature and severity of his breach of conditions of the stay, and to determine how it should exercise its discretion.

Conclusion and certification

[52] For these reasons, the application for judicial review will be allowed and the matter will be remitted to the IAD for redetermination by a differently constituted panel.

[53] Counsel for Mr. Stephenson did not propose a certification of any question. The Minister has proposed the following question:

> Is the condition "keep the peace and be of good behaviour" as imposed in stay of deportation orders by the Immigration Appeal Division of the I.R.B. breached each and every time the person concerned is convicted of an offence under and/or found to have violated any federal, provincial, and/or municipal statute and regulation throughout Canada?

[54] In my view, because of the IAD's alternate finding, which was premised upon the assumption that the Ontario *Highway Traffic Act* convictions did constitute a breach of the condition

to “be of good behaviour”, and because of the IAD’s failure to properly consider all of the circumstances in the context of the factors identified in *Ribic*, this question would not be determinative of any appeal.

[55] For this reason, no question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is allowed, and the decision of the Immigration Appeal Division dated November 14, 2006 is hereby set aside.

2. The matter is remitted to the Immigration Appeal Division for redetermination by a differently constituted panel in accordance with these reasons.

"Eleanor R. Dawson"

Judge

APPENDIX

Subsections 63(2), section 66, subsections 67(1), 68(1), (2) and (3) of the Act read as follows:

63(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.	63(2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.

[…]	[…]
66 After considering the appeal of a decision, the Immigration Appeal Division shall (a) allow the appeal in accordance with section 67; (b) stay the removal order in accordance with section 68; or (c) dismiss the appeal in accordance with section 69.	66 Il est statué sur l'appel comme il suit : a) il y fait droit conformément à l'article 67; b) il est sursis à la mesure de renvoi conformément à l'article 68; c) il est rejeté conformément à l'article 69.
67(1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, (a) the decision appealed is wrong in law or fact or mixed law and fact; (b) a principle of natural justice has not been observed; or (c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	67(1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : a) la décision attaquée est erronée en droit, en fait ou en droit et en fait; b) il y a eu manquement à un principe de justice naturelle; c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.
[…]	[…]
68(1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.	68(1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.

(2) Where the Immigration Appeal Division stays the removal order
(a) it shall impose any condition that is prescribed and may impose any condition that it considers necessary;
(b) all conditions imposed by the Immigration Division are cancelled;
(c) it may vary or cancel any non-prescribed condition imposed under paragraph (a); and
(d) it may cancel the stay, on application or on its own initiative.

(2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande.

(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.

(3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6297-06
STYLE OF CAUSE:	MINISTER OF CITIZENSHIP AND IMMIGRATION, Applicant and GLENDON ST. PATRICK STEPHENSON, Respondent
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	DECEMBER 6, 2007
REASONS FOR JUDGMENT AND JUDGMENT:	DAWSON, J.
DATED:	JANUARY 23, 2008

APPEARANCES:

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