Federal Court  Cour fédérale

Date: 20140425

Docket: IMM-1934-14

Citation: 2014 FC 390

Ottawa, Ontario, April 25, 2014

PRESENT: The Honourable Madam Justice Mactavish

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

AHMED ABDI ISMAIL

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] At issue in this application for judicial review is the relationship between the grounds for arresting and detaining an individual under the *Immigration and Refugee Protection Act*, and the grounds that permit the continued detention of that individual by the Immigration Division of the Immigration and Refugee Board.

[2] The specific question is whether an individual who has initially been detained on the basis that there are reasonable grounds to believe that he is inadmissible to Canada and is unlikely to appear for an admissibility hearing can subsequently have his detention continued on

the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that the individual is inadmissible on security grounds.

[3] The Immigration Division concluded that detention could only be continued on the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that the individual is inadmissible on security grounds in cases where the original detention was made on the same ground.

[4] For the reasons that follow, I have concluded that notwithstanding the deference owed to the Immigration Division's interpretation of its home statute, its interpretation of the legislation at issue was unreasonable. Consequently, the Minister's application for judicial review will be granted.

I. Background

[5] On March 20, 2014, Ahmed Abdi Ismail and another man illegally entered Canada by walking across the border near Emerson, Manitoba. The two men were arrested by the Royal Canadian Mounted Police approximately 15 kilometres north of the border, whereupon they were returned to the Emerson Port of Entry.

[6] Mr. Ismail was subsequently detained under paragraph 55(2)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA* or the Act), on the basis that there were reasonable grounds to believe that he was inadmissible to Canada and that he would be unlikely to appear for his admissibility hearing, given his attempt to evade examination at a port of entry.

[7] During the examination of Mr. Ismail, it was discovered that he was a person of interest to the United States' Federal Bureau of Investigation (FBI), and that he may be inadmissible to Canada on security grounds under section 34 of *IRPA*.

[8] FBI agents then travelled to Canada in order to interview Mr. Ismail. After interviewing him on March 23, 2014, the FBI agents advised the Canada Border Services Agency (CBSA) that they had to make additional inquiries and would provide the CBSA with additional information regarding Mr. Ismail within a week.

[9] On March 25, 2014, Mr. Ismail appeared for his 48-hour detention review before the Immigration Division, at which the Minister was seeking Mr. Ismail's continued detention under paragraph 58(1)(c) of *IRPA* . This provision permits the detention of an individual on the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that the individual is inadmissible on security grounds.

[10] At this detention review hearing, the Immigration Division rejected the Minister's arguments in favour of continued detention and ordered that Mr. Ismail be released, on terms and conditions. This is the decision underlying this application for judicial review.

II. The March 25, 2014 Release Decision

[11] As noted earlier, the Minister sought Mr. Ismail's continued detention at the March 25, 2014 detention review hearing under paragraph 58(1)(c) of *IRPA*, which would permit his continued detention as the Minister took "necessary steps" to inquire into a reasonable suspicion that he was inadmissible on security grounds.

[12] The Board noted that paragraph 55(3)(b) of *IRPA* states that a "a foreign national may, *on entry into Canada*, be detained if an officer … has reasonable grounds to suspect that the … foreign national is inadmissible on grounds of security ..." [my emphasis]. Because Mr. Ismail had initially been detained inland, and not at a port of entry, the Board member held that it was not open to the Minister to seek Mr. Ismail's continued detention under paragraph 58(1)(c) of *IRPA*.

[13] The Board noted that it had limited original jurisdiction to detain foreign nationals or permanent residents, and could only do so under subsection 58(2), on the basis that an individual posed a danger to the public or was unlikely to appear for examination, an admissibility hearing or removal from Canada.

[14] Otherwise, the Board held that it must release a person unless it was established that a ground for detention "continues to exist". In other words, paragraph 58(1)(c) of the *Act* does not create a "stand-alone" basis for the Immigration Division to continue the detention of an individual if the ground for detention did not exist in the first instance.

[15] In coming to this conclusion, the Board held that paragraph 58(1)(c) of the *Act* could not be viewed in isolation, but must be considered in the context of the entire scheme for arrest and detention contained in *IRPA*, specifically the scheme set out in sections 55 to 58 of the Act.

[16] The Board observed that subsection 55(3) of the Act confers an "extraordinary power" on officers, allowing for the detention of foreign nationals or permanent residents on the basis of a mere "grounds to suspect" standard. According to the Board, it made sense that this power was

limited to ports of entry, given that it is generally recognized that everyone, including Canadians, are subject to increased scrutiny and have fewer rights at ports of entry than they would inland.

[17] In light of this, the Board found that continued detention under paragraph 58(1)(c) of *IRPA* could only be permitted by the Immigration Division in cases where the original arrest was made at a port of entry.

[18] In support of its conclusion that Mr. Ismail's continued detention could not be ordered under paragraph 58(1)(c) of the *Act*, the Board also had regard to the Immigration and Refugee Board *Chairperson's Guidelines on Detention*. The *Guidelines* state that "[g]iven the wording in section 58(2) of the IRPA, the Immigration Division cannot order detention on this ground".

[19] The Hearings Officer did not seek Mr. Ismail's continued detention on any other ground such as flight risk. As a result, the Member ordered that Mr. Ismail be released, subject to the "regular reporting conditions of refugees".

III. The Events After the Board's Decision

[20] After the Immigration Division rendered its March 25, 2014 decision ordering the release of Mr. Ismail, the Minister brought an urgent motion to have his release stayed pending the outcome of an application for judicial review of the Immigration Division's decision. A stay of the Immigration Division's release order was granted by Justice Barnes on March 27, 2014. On March 31, 2014, Justice Barnes granted leave to judicially review the Immigration Division's decision, and ordered an expedited hearing of the application.

[21] A second detention review hearing took place on April 1, 2014 at which Mr. Ismail's continued detention was ordered "for a Minister's proceeding". Mr. Ismail's 30-day detention review has been scheduled for April 29, 2014.

IV. The Mootness of the Application

[22] The parties acknowledge that because the Board's March 25, 2014 decision has been superseded by the April 1, 2014 order of the Immigration Division directing Mr. Ismail's continued detention, the order underlying this application is technically spent, and the application for judicial review is now moot.

[23] That said, both parties have asked that I exercise my discretion to deal with this matter as the issue will likely arise in Mr. Ismail's subsequent detention reviews, and in other cases as well. Indeed, the Minister has indicated his intention to ask for Mr. Ismail's continued detention under both paragraphs 58(1)(b) (flight risk) and 58(1)(c) at Mr. Ismail's April 29, 2014 detention review.

[24] The parties have also asked that I render my decision in this matter prior to Mr. Ismail's detention review on April 29, 2014.

[25] In support of his position that I should decide this case, notwithstanding the fact that the application is technically moot, Mr. Ismail cites my decision in *Es-Sayyid v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 1415, [2011] F.C.J. No. 1727. In that case I noted that issues arising in the course of detention reviews may be "capable of repetition yet evasive of review because of the very short timelines involved": at para. 28, citing *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at para. 45, [1989] S.C.J. No. 14.

[26] I agree that there appears to be a live controversy between the parties in relation to the legal question raised by this application. As a consequence, I am satisfied that this is an appropriate case in which to exercise my discretion to hear what would otherwise be a moot application.

V. Issue

[27] The Board spent some time in its analysis considering whether the power of officers to arrest "on entry into Canada" conferred by subsection 55(3) of *IRPA* may only be exercised at a port of entry, concluding that this was in fact the case.

[28] The parties agree that although this may be an interesting question, I do not have to decide this issue in this case as Mr. Ismail was not originally detained under subsection 55(3) of the Act. I agree, and would note that, in any event, this is not an application to judicially review the initial decision to detain Mr. Ismail.

[29] Mr. Ismail was originally detained under paragraph 55(2)(a) of the Act, based upon a finding that there were reasonable grounds to believe that he was inadmissible to Canada and that he was unlikely to appear for an admissibility hearing. There is no issue between the parties as to the authority of officers to have arrested and detained Mr. Ismail under that provision.

[30] Consequently, the issue for determination now is whether an individual who has initially been detained under paragraph 55(2)(a) of *IRPA* can subsequently have his detention continued under paragraph 58(1)(c) of the Act on the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that the individual is inadmissible on security grounds.

VI. Standard of Review

[31] This Court has recognized that the Immigration Division has particular expertise in interpreting and applying the detention and release provisions of *IRPA*: see *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2003 FC 1225, at para. 42, [2003] F.C.J. No. 1548; aff'd 2004 FCA 4, [2004] 3 F.C.R. 572. As such, considerable deference must be paid to the Immigration Division's assessment of its enabling legislation.

[32] Indeed, the parties agree that in coming to its decision, the Immigration Division was interpreting its home statute in relation to a question that goes to the core of its expertise, namely the review of reasons for detention under *IRPA*: see section 54. As such, the Immigration Division's decision is subject to review on the standard of reasonableness.

[33] In reviewing a decision against the reasonableness standard, the Court must consider the justification, transparency and intelligibility of the decision-making process, and whether the decision falls within a range of possible acceptable outcomes which are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190, and *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59, [2009] 1 S.C.R. 339.

VII. The Statutory Regime

[34] Because this case turns on the interplay between sections 55 and 58 of *IRPA*, it is necessary to have regard to the entirety of the statutory regime governing arrest and detention under Canada's immigration legislation.

[35] The relevant portions of *IRPA* provide that:

55. (1) An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2).	**55**. (1) L'agent peut lancer un mandat pour l'arrestation et la détention du résident permanent ou de l'étranger dont il a des motifs raisonnables de croire qu'il est interdit de territoire et qu'il constitue un danger pour la sécurité publique ou se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2)
(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,	(2) L'agent peut, sans mandat, arrêter et détenir l'étranger qui n'est pas une personne protégée dans les cas suivants
(a) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); or	*a)* il a des motifs raisonnables de croire que celui-ci est interdit de territoire et constitue un danger pour la sécurité publique ou se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);
(b) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.	*b)* l'identité de celui-ci ne lui a pas été prouvée dans le cadre d'une procédure prévue par la présente loi

(3) A permanent resident or a foreign national may, on entry into Canada, be detained if an officer

(3) L'agent peut détenir le résident permanent ou l'étranger, à son entrée au Canada, dans les cas suivants

(a) considers it necessary to do so in order for the examination to be completed; or

a) il l'estime nécessaire afin que soit complété le contrôle;

(b) has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality.

b) il a des motifs raisonnables de soupçonner que celui-ci est interdit de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour grande criminalité, criminalité ou criminalité organisée.

[…]

[…]

(4) If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division

(4) L'agent avise sans délai la section de la mise en détention d'un résident permanent ou d'un étranger

57. (1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.

57. (1) La section contrôle les motifs justifiant le maintien en détention dans les quarante-huit heures suivant le début de celle-ci, ou dans les meilleurs délais par la suite.

(2) At least once during the seven days following the review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention

(2) Par la suite, il y a un nouveau contrôle de ces motifs au moins une fois dans les sept jours suivant le premier contrôle, puis au moins tous les trente jours suivant le contrôle précédent.

(3) In a review under subsection (1) or (2), an officer shall bring the permanent resident or the foreign national before the Immigration Division or to a place specified by it.

(3) L'agent amène le résident permanent ou l'étranger devant la section ou au lieu précisé par celle-ci.

[…]

[…]

58. (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

58. (1) La section prononce la mise en liberté du résident permanent ou de l'étranger, sauf sur preuve, compte tenu des critères réglementaires, de tel des faits suivants :

(a) they are a danger to the public;

a) le résident permanent ou l'étranger constitue un danger pour la sécurité publique;

(b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);

b) le résident permanent ou l'étranger se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);

(c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality;

c) le ministre prend les mesures voulues pour enquêter sur les motifs raisonnables de soupçonner que le résident permanent ou l'étranger est interdit de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour grande criminalité, criminalité ou criminalité organisée;

(d) the Minister is of the opinion that the identity of the foreign national — other than a designated foreign national who was 16 years of age or older on the day of the arrival that is the subject of the designation in question — has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity; or

d) dans le cas où le ministre estime que l'identité de l'étranger — autre qu'un étranger désigné qui était âgé de seize ans ou plus à la date de l'arrivée visée par la désignation en cause — n'a pas été prouvée mais peut l'être, soit l'étranger n'a pas raisonnablement coopéré en fournissant au ministre des renseignements utiles à cette fin, soit ce dernier fait des efforts valables pour établir l'identité de l'étranger;

[…]

[…]

(2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.

(2) La section peut ordonner la mise en détention du résident permanent ou de l'étranger sur preuve qu'il fait l'objet d'un contrôle, d'une enquête ou d'une mesure de renvoi et soit qu'il constitue un danger pour la sécurité publique, soit qu'il se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi.

(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.	(3) Lorsqu'elle ordonne la mise en liberté d'un résident permanent ou d'un étranger, la section peut imposer les conditions qu'elle estime nécessaires, notamment la remise d'une garantie d'exécution.

VIII. Analysis

[36] The question for determination is thus whether the Immigration Division's interpretation of the detention and release provisions of Part 1, Division 6 of *IRPA* was reasonable. In answering this question, it is first necessary to have regard to the relevant principles of statutory interpretation.

[37] Both parties have referred to the Supreme Court of Canada's decision in *Celgene Corp. v. Canada (Attorney General)*, 2011 SCC 1, [2011] 1 S.C.R. 3 in this regard. In *Celgene*, the Supreme Court referred to its earlier decision in *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, which confirmed that statutory interpretation involves a consideration of the ordinary meaning of the words used, and the statutory context in which they are found: *Celgene* at para. 21.

[38] More recently, in *R v. Summers*, 2014 SCC 26 at para. 59, [2014] S.C.J. No. 26, the Supreme Court observed that in interpreting legislation, Courts should be mindful that "the legislature is presumed to have created a coherent, consistent and harmonious statutory scheme".

[39] In *Canada Trustco*, the Supreme Court noted that "[t]he interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole": at para. 10. In *Medovarski v. Canada (Minister of Citizenship and Immigration*, 2005 SCC 51, [2005] 2 S.C.R. 539, the Supreme Court made it clear that these principles apply with equal force to *IRPA*: at para. 8.

[40] The Supreme Court went on in *Canada Trustco* to note that "[w]hen the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process". However, "where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role". In such cases, "[t]he relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole": all quotes from *Canada Trustco* at para. 10.

[41] As a result, the words of a statute "if clear, will dominate; if not, they yield to an interpretation that best meets the overriding purpose of the statute": *Celgene* at para. 21.

[42] In my view, the text of subsection 58(1) of *IRPA* is clear. Parliament has instructed the Immigration Division that it is to order the release of permanent residents or foreign nationals (other than "designated foreign nationals") unless it is satisfied that the individual in question fits within one of four categories:

- they are a danger to the public (paragraph 58(1)(a));
- they are a flight risk (paragraph 58(1)(b));

- their identity has not been established (paragraph 58(1)(d));or

- "the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality" (paragraph 58(1)(c)).

[43] There is nothing in subsection 58(1) of *IRPA* that ties the ability of the Immigration Division to continue to detain an individual under that provision to the original grounds of detention under section 55 of the Act. This lack of a linkage between the two sections is consistent with the scheme of the Act and the respective roles of "officers" operating under section 55 of the Act and the Immigration Division in applying section 58 of *IRPA*.

[44] Section 55 of *IRPA* confers the power on officers to arrest and detain certain classes of individuals, with or without a warrant, in certain specified circumstances. The standard that must be satisfied to justify arrest and detention may vary, depending on the grounds involved.

[45] For example, "reasonable grounds to believe" are required to detain an individual as a flight risk under subsection 55(2) of the Act, whereas detention is permitted on a lower standard in cases where there are "reasonable grounds to suspect" that the individual is inadmissible on security grounds or for violating human or international rights, serious criminality, criminality or organized criminality.

[46] Subsection 58(1) of *IRPA* contemplates that the Immigration Division is to determine whether the continued detention of the individual has been justified. The provision requires that

it do so "taking into account prescribed factors" or in the French version, « compte tenu des critères réglementaires »".

[47] Section 248 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the *IRPA Regulations*) sets out the "prescribed factors" that the Immigration Division must take into account in reaching a decision in a detention review: *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at para. 109, [2007] 1 S.C.R. 350; *Canada (Minister of Citizenship and Immigration) v. B046*, 2011 FC 877 at para. 15, [2013] 2 F.C.R. 3. One of these factors is the reason for the detention.

[48] The Immigration Division is thus required to consider the reason for the original detention in deciding whether or not an individual should be released from detention. Section 58 of the Act does not, however, confer jurisdiction on the Immigration Division to review the original detention of the individual, in order to ascertain whether or not it was carried out in accordance with the provisions of section 55 of *IRPA*. Rather, it is the task of the Immigration Division to determine whether the *continued* detention of the individual has been justified by the Minister.

[49] The forward-looking nature of this analysis is confirmed by reference to section 57 of the Act, which provides that within specified periods of time, the Immigration Division is to review the reasons "*for the continued detention*" of the individual in question [my emphasis].

[50] However, instead of considering whether grounds still existed for Mr. Ismail's continued detention, the Immigration Division focused its analysis in this case almost exclusively on the reasons why Mr. Ismail was originally detained.

[51] While the Immigration Division is required to consider the reason for the original detention in deciding whether or not an individual should be released, there is nothing in section 248 of the *IRPA Regulations* to indicate that detention can *only* be continued for the same reason that originally led the individual to be detained.

[52] It is thus apparent on the face of the legislation that an individual may originally be detained by an officer for one reason, on the basis of one standard, but may later be denied release by the Immigration Division on a different ground, and on the basis of a different standard.

[53] Mr. Ismail suggests that such an interpretation would give rise to an absurdity, in that a person might originally be detained on the higher "reasonable grounds to believe" standard, but later have his or her continued detention be permitted on the lesser "reasonable grounds to suspect" standard, as the Minister's case weakens.

[54] I do not accept that this is an absurd result. Rather it is a result that is specifically contemplated by the express wording of the legislation. Indeed, I am satisfied that it is Mr. Ismail's interpretation of the legislation that could lead to the absurd result, and as the Supreme Court stated in *Rizzo & Rizzo Shoes Ltd*., [1998] 1 S.C.R. 27, [1998] S.C.J. No. 2, "[i]t is a well established principle of statutory interpretation that the legislature does not intend to produce absurd results": at para. 27.

[55] According to Mr. Ismail (and the Immigration Division), detention can only be continued under paragraph 58(1)(c) where the original detention order was made under subsection 55(3) of the Act.

[56] That is, in accordance with their interpretation of the legislation, it would be open to an officer to arrest and detain an individual under paragraph 55(2)(b) of *IRPA* because the officer is not satisfied as to the identity of the individual. If the identity of the individual is later ascertained, however, and it is subsequently discovered that the individual may have been involved in matters giving rise to a security concern, the Minister would then be unable to continue to detain the individual under paragraph 58(1)(c) of the Act, so as to permit the taking of reasonable steps to inquire into that suspicion.

[57] Such an interpretation of paragraph 58(1)(c) of the Act would require the reading in of a limiting provision into that section that Parliament has not seen fit to include. As such it is unreasonable.

[58] Mr. Ismail has urged me to interpret paragraph 58(1)(c) of *IRPA* in a manner that takes into account "Charter values", in particular, his liberty interest. While Courts are required to resolve any ambiguity in legislation in a manner that would allow for the legislation to be Charter-compliant, this interpretive principle only has application in cases where the legislation is ambiguous. I have found no such ambiguity here.

[59] Indeed, as the Supreme Court observed in *R. v. Rodgers*, 2006 SCC 15, [2006] S.C.J. No. 15, "where the legislation permits two different, yet equally plausible, interpretations, each of which is equally consistent with the apparent purpose of the statute, it is appropriate to prefer the interpretation that accords with Charter principles. *However, where a statute is not ambiguous, the court must give effect to the clearly expressed legislative intent and not use the Charter to achieve a different result*": at para. 18 [my emphasis].

[60] Mr. Ismail has also identified concerns with respect to the use of the "reasonable grounds to suspect" standard as a basis for ongoing detention, and the fact that alternatives to detention may not be considered in relation to a detention that has been continued under paragraph 58(1)(d) of the Act. Mr. Ismail's concerns are ones that may properly be addressed through a Charter challenge to the legislation. In the absence of such a challenge, however, adherence to "Charter values" does not permit the reinterpretation of otherwise clear legislation.

[61] I would conclude by noting that my interpretation of paragraph 58(1)(d) of *IRPA* also accords with one of the central objectives of the legislation, whereas the interpretation given to the legislation proposed by Mr. Ismail and the Immigration Division does not.

[62] Section 3 of *IRPA* identifies a wide range of objects of the legislation. Amongst others, these include family reunification, and establishing fair and efficient procedures that maintain the integrity of the Canadian refugee protection system, while still upholding Canada's respect for human rights.

[63] However, section 3 of the Act also identifies as an object of the legislation the need "to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks".

[64] Another key objective of *IRPA* identified in section 3 of the Act is "to protect public health and safety and to maintain the security of Canadian society". In this regard, the Supreme Court observed in *Medovarski*, above, that "[t]he objectives as expressed in the *IRPA* indicate an intent to *prioritize security*": at para. 10 [my emphasis].

[65] To interpret paragraph 58(1)(c) of *IRPA* so as to permit the detention of an individual in order to allow the Minister to take necessary steps to inquire into a reasonable suspicion that the individual is inadmissible on grounds of security, when that suspicion only arises after the person has entered Canada, accords with the priority that the legislation ascribes to security. The interpretation of paragraph 58(1)(c) advocated by Mr. Ismail and the Immigration Division does not.

IX. Conclusion

[66] For these reasons, I am satisfied that the Minister's application for judicial review should be granted.

[67] Given that the Immigration Division's March 25, 2014 decision has been superseded by the April 1, 2014 order directing Mr. Ismail's continued detention, and the fact that he will be facing a further detention review in a matter of days, nothing is to be gained by quashing the decision under review or by remitting the matter for re-determination.

X. Certification

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

> Is section 58(1)(c) of the *Immigration and Refugee Protection Act* only available as a ground for continued detention where it follows a detention under section 55(3) of the *IRPA*?

[69] Counsel for Mr. Ismail opposes certification, arguing that should I dismiss the Minister's application for judicial review, the law on this point would be settled by the decision of the Immigration Division, the *Chairperson's Guidelines* and my decision.

[70] Not only have I not dismissed the Minister's application, it appears that this case raises a question of first impression as neither side was able to direct me to any judicial authority directly on point. I am, moreover, satisfied that the question proposed by the Minister is a serious question of general importance. As a consequence, the question will be certified.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is granted; and

2. The following question is certified:

   Is paragraph 58(1)(c) of the *Immigration and Refugee Protection Act* only available as a ground for continued detention where it follows a detention under subsection 55(3) of the *IRPA*?

"Anne L. Mactavish"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1934-14
STYLE OF CAUSE:	MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v AHMED ABDI ISMAIL
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	APRIL 16, 2014
REASONS FOR JUDGMENT AND JUDGMENT:	MACTAVISH J.
DATED:	APRIL 25, 2014

APPEARANCES:

Mr. Alexander Menticoglou Mr. Brendan Friesen	FOR THE APPLICANT
Mr. Anthony Navaneelan	FOR THE RESPONDENT
Mr. David Matas Law Firm of David Matas	FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney Deputy Attorney General of Canada Winnipeg, Manitoba	FOR THE APPLICANT
Mamann, Sandaluk & Kingwell LLP Barristers and Solicitors Toronto, Ontario	FOR THE RESPONDENT