Federal Courts Reports

Recueil des décisions des Cours fédérales

IMM-3379-19

2020 FC 751

Adrian Edmond Pascal (*Applicant*)

v.

Minister of Citizenship and Immigration (*Respondent*)

INDEXED AS: PASCAL V. CANADA (CITIZENSHIP AND IMMIGRATION)

Federal Court, McHaffie J.—Toronto, November 14, 2019; Ottawa, July 9, 2020.

Citizenship and Immigration — Exclusion and Removal — Inadmissible Persons — Judicial review of Immigration and Refugee Board, Immigration Division (ID) decision concluding that there were reasonable grounds to believe that applicant member of "Galloway Boys," Scarborough-based criminal organization — ID also finding there were reasonable grounds to believe that applicant's activities part of pattern of planned, organized criminal activities — Therefore concluding that applicant inadmissible under Immigration and Refugee Protection Act, s. 37(1)(a) — ID's organized criminality finding having serious consequences for applicant; preventing him from bringing appeal to Immigration Appeal Division (IAD) — Applicant arguing in particular that ID placing unreasonable reliance on some information (police reports, evidence of police officer, true crime book); that some of ID's findings unreasonable — Whether ID erring (1) in its assessment of evidence by relying on truth of contents of police reports; relying on evidence of police officer called as lay witness; relying on "true crime" book, newspaper reports; relying on court judgments that referred to Galloway Boys; and/or discounting applicant's evidence on grounds of credibility; (2) in concluding there were reasonable grounds to believe that Galloway Boys existed as criminal organization during relevant period; (3) in concluding there were reasonable grounds to believe that applicant member of Galloway Boys — While ID's discussion and analysis of reasons for accepting police reports could have been more detailed in places, not so lacking as to make it unreasonable — Therefore ID's conclusion that elements of police reports credible, trustworthy in circumstances, ID's reliance on those reports reasonable — ID's conclusion that police officer with Toronto Police Services who testified, made report was credible, trustworthy was based on ID's findings that police officer's evidence forthright, unembellished, non-contradictory — Thus, ID's weighing of evidence not unreasonable — Regarding book Bad Seeds which ID finding to be credible, trustworthy evidence, inferences ID making in assessing existence, nature of Galloway Boys part of ID's mandate of determining whether reasonable grounds to believe applicant member thereof — Not unreasonable for ID to use Bad Seeds book for this purpose — As for ID's reliance on court judgments referring to Galloway Boys, nature of those proceedings, limited use ID making of them showing ID's reliance on court decisions reasonable — Concerning applicant's evidence, ID's reliance on various sources of evidence, acceptance of that evidence over applicant's evidence consistent with Court's case law regarding such findings; ID acting reasonably in doing so — Applicant failing to establish that ID's finding that Galloway Boys exist, are criminal organization falling within scope of Act, s. 37(1)(a), unreasonable — With respect to ID's finding that applicant member of Galloway Boys, ID analyzing applicant's conduct, activities — Drawing associations, making comparisons between applicant, organized crime in general or as member of gang, but this unreasonable — However, although

comparisons unreasonable, not rendering ID's conclusion on applicant's membership in criminal organization unreasonable — ID also concluding that applicant engaged in activity that was part of pattern of organized criminality — Such finding constituting separate ground for inadmissibility under Act, s. 37(1)(a) that did not depend on finding that applicant member of Galloway Boys — While areas existing in which ID's reasons could have been more detailed, more than adequately meeting reasonableness requirements of transparency, justification, intelligibility — Application dismissed.

This was an application for judicial review of a decision of the Immigration Division (ID) of the Immigration and Refugee Board concluding that there were reasonable grounds to believe that the applicant is a member of the "Galloway Boys," a Scarborough-based criminal organization. The ID also found there were reasonable grounds to believe that the applicant's activities were part of a pattern of planned and organized criminal activities, i.e., that he had engaged in organized criminality. It therefore concluded that the applicant was inadmissible under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*.

Although the applicant conceded that he was also inadmissible on the basis of the ID's finding of serious criminality under paragraph 36(1)(a) of the Act, the organized criminality finding had serious consequences for the applicant. In particular, it prevented him from bringing an appeal to the Immigration Appeal Division, which could otherwise have considered humanitarian and compassionate grounds under the Act. The applicant argued that in reaching its organized criminality finding, the ID placed unreasonable reliance on certain sources of information, notably the contents of police reports, the evidence of a police officer who had no prior experience with him, and a "true crime" book by the *Toronto Star* reporter Betsy Powell entitled *Bad Seeds: The True Story of Toronto's Galloway Boys Street Gang* [Bad Seeds]. He also asserted that the ID's finding that the Galloway Boys are a criminal organization and its finding that the applicant was a member of that organization were unreasonable. Subsequent to the ID's Act, section 37 finding, the applicant applied for a pre-removal risk assessment (PRRA) but that application was rejected. On judicial review of the PRRA rejection decision, the application was dismissed.

The issues were (1) whether the ID erred in its assessment of the evidence by relying on truth of the contents of police reports; relying on the evidence of a police officer who was called as a lay witness; relying on a "true crime" book and newspaper reports; relying on court judgments that referred to the Galloway Boys; and/or discounting the applicant's evidence on grounds of credibility; (2) whether the ID erred in concluding that there were reasonable grounds to believe that the Galloway Boys existed as a criminal organization during the relevant period and; (3) whether the ID erred in concluding that there were reasonable grounds to believe that the applicant was a member of the Galloway Boys.

Held, the application should be dismissed.

In reaching its conclusions, the ID accepted as credible and relied on a number of sources of information. The ID's conclusion of organized criminality was based in substantial part on findings relating to numerous instances of "interactions" between the applicant and the police. Some of these resulted in criminal convictions. However, the ID also relied on many incidents that did not result in convictions or even criminal charges. With respect to these, the ID relied on the facts described in police reports that were filed in evidence. The applicant argued that the Court has held that police reports are not inherently reliable for the truth of their contents and referenced several decisions but the applicant overstated the conclusions of these cases and understated the ID's analysis. In the present case, the ID concluded that the police reports in question were credible and trustworthy "for the purpose of understanding what occurred at particular places and times." It expressly confirmed that it was not relying on the criminal charges themselves and did not simply accept the police reports in their entirety without analysis. While the ID's discussion and analysis of its reasons for accepting the police reports could have been more detailed in places, it was not so lacking as to make it unreasonable. Therefore the ID's conclusion that elements of the police reports were credible and trustworthy in the circumstances, and the ID's reliance on the contents of those reports, was reasonable.

The report that the police officer with the Toronto Police Service (TPS) was tasked to prepare about the applicant was filed with and relied on by the ID. It included background on the Galloway Boys, summaries of information contained in police databases involving the applicant and other information relating to indicia used by TPS to assess whether an individual is a gang member. The report concluded with the constable in question giving his "opinion" that the applicant is a member of the Galloway Boys. The ID relied on the constable's report and testimony, concluding that he was "a credible and trustworthy witness" and giving his testimony "significant weight". The ID indicated that its findings regarding the Galloway Boys and the applicant were not based primarily on the constable's beliefs or report and that they formed a small portion of the credible evidence. The ID did not "merely repeat and adopt" the constable's evidence as the applicant contended. It gave detailed consideration of the nature of his report and the basis for it; his extent or lack of knowledge with respect to the Galloway area, the Galloway Boys and the applicant in particular. The ID's conclusion that the constable in question was credible and trustworthy was based on its findings that his evidence was forthright, unembellished and non-contradictory. Thus, the ID's weighing of the evidence was not unreasonable, and absent such unreasonableness, the Court was not to undertake its own reweighing on judicial review.

With respect to the book Bad Seeds, the ID found that book to be a source of credible and trustworthy evidence, giving it "full weight". The ID did not adopt the Bad Seeds book without analysis but rather gave its reasons for its reliance on the facts set out in the book in its decision. The ID relied on the book in assessing the existence and nature of the Galloway Boys based on pre-trial and trial evidence and the author's other sources. The ID concluded that the Galloway Boys had not ceased to exist just because police arrested 17 people believed to be linked to the group. This type of factual inference based on the evidence was part of the ID's mandate of determining whether there were reasonable grounds to believe. It was not unreasonable for the ID to use the Bad Seeds book for this purpose.

The ID did not err in referring to conclusions from other court decisions that refer to the Galloway Boys. The case law does not create an absolute bar to referring to, or relying on, the facts as found in prior proceedings. In the present case, there was no issue of either admissibility or of fairness given that the earlier decisions were filed on consent and the applicant had the opportunity to address them as necessary. Although the prior decisions did not involve the applicant, the nature of those proceedings and the limited use the ID made of them showed that the ID's reliance on the decisions was reasonable.

Concerning the applicant's evidence, the ID gave a number of reasons for finding it not to be credible on various points. This included internal inconsistencies, changed stories, misrepresentations to the court, and the applicant's own self-interest, in addition to the convictions. These were reasonable grounds to consider in making a credibility determination. Moreover, there was no indication that the ID came to the matter with a closed mind. The fact that a witness is not believed does not mean that the decision maker was closed to their evidence or their credibility. In conclusion, the ID's reliance on the various sources of evidence, and its acceptance of that evidence over the applicant's evidence, was consistent with the case law of the Court regarding such findings, and was reasonable.

In concluding that the Galloway Boys are a criminal organization under paragraph 37(1)(a) of the Act, the ID concluded that the evidence regarding the Galloway Boys would be assessed using a flexible approach, and that the definition of an organization and organized criminality would be considered in broad and unrestricted terms with the *Criminal Code* in mind. The reliance of the ID on the applicant's own criminal activities as part of its assessment of the ongoing existence of the Galloway Boys did not amount to circular reasoning as the applicant argued. Its reasoning was thus not unreasonable on this point. Determinations of membership in a criminal organization may well overlap with determinations of the existence of a criminal organization, as the organization and its activities in essence consist of the cumulative activities of its members. Thus, the applicant did not establish that the ID's finding that the Galloway Boys exists and is a criminal organization falling within the scope of paragraph 37(1)(a) of the Act was unreasonable.

With respect to the ID's finding that the applicant was a member of the Galloway Boys, the ID made an analysis of the applicant's actions. It noted that the applicant's conduct and activities were indicative that the applicant was a member of a criminal organization and a member of the Galloway Boys in particular. The fact that both the applicant and the Galloway Boys engaged in certain activities could not alone establish reasonable grounds to believe that the applicant was a member of a criminal organization or of the Galloway Boys in particular. However, given the rationale provided by the ID and its consideration of the evidence, it was reasonable for the ID to consider that ongoing involvement in such conduct in association with other people was a factor, among others, suggesting membership in a criminal organization. Similarly, the ID's further connection of such conduct with the Galloway Boys, in particular, was reasonable in the context of the additional grounds for this conclusion cited by the ID. Nevertheless, the ID went further in a number of places, noting that the use of nicknames was common practice among members of criminal gangs, including the Galloway Boys, and that the applicant's denial of living off the avails of prostitution was "similar to a Galloway Boys member who also denied being his girlfriend's pimp". This was unreasonable. To draw any association at all between an individual and organized crime, either in general or as a member of a particular gang, based on the use of nicknames or the denial of a crime goes beyond acceptable reasoning. Although these specific comparisons were unreasonable, they did not render the ID's conclusion on the applicant's membership in a criminal organization unreasonable. These observations by the ID were not central to either the main conclusion that the applicant was a member of the Galloway Boys or the principal facts for which they were referenced. Finally, in addition to finding that the applicant was a member of the Galloway Boys, the ID also concluded that the applicant engaged in activity that was part of a pattern of organized criminality. This finding constituted a separate ground for inadmissibility under paragraph 37(1)(a) of the Act that did not depend on a finding that the applicant was a member of the Galloway Boys.

In conclusion, the ID's reasons were thorough, lengthy and detailed. The ID explained the legal and factual basis for its conclusions and the reasons that it accepted or rejected the evidence. While there were areas in which the reasons could have been more detailed, they more than adequately met the reasonableness requirements of transparency, justification and intelligibility.

STATUTES AND REGULATIONS CITED

Canada Evidence Act, R.S.C., 1985, c. C-5, s. 5.

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], s. 13.

Criminal Code, R.S.C., 1985, c. C-46, ss. 2 "criminal organization", 467.1(1).

Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 33, 36, 37, 64(1),(2), 67(1)(c), 173, 175.

CASES CITED

APPLIED:

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, 441 D.L.R. (4th) 1; *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326, [2007] 3 F.C.R. 198; *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 122, [2006] 1 F.C.R. 474, revg 2004 FC 349, [2004] 3 F.C.R. 301; *Thuraisingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 607, 40 Imm. L.R. (3d) 145; *British Columbia (Attorney General) v. Malik*, 2011 SCC 18, [2011] 1 S.C.R. 657.

DISTINGUISHED:

Ayele v. Canada (Citizenship and Immigration), 2007 FC 126, 60 Imm. L.R. (3d) 197; *Kamtasingh v. Canada (Citizenship and Immigration)*, 2010 FC 45, 87 Imm. L.R. (3d) 118.

CONSIDERED:

Demaria v. Canada (Citizenship and Immigration), 2019 FC 489, 67 Imm. L.R. (4th) 56; *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 44 Imm. L.R. (2d) 309, 1998 CanLII 8281 (F.C.T.D.); *Chiau v Canada (Minister of Citizenship and Immigration)*, [1998] 2 F.C. 642, (1998), 141 F.T.R. 81 (T.D.), affd [2001] 2 F.C. 297, (2001) 195 D.L.R. (4th) 422 (C.A.); *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100; *Veerasingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1661; *Rajagopal v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 523; *Younis v. Canada (Citizenship and Immigration)*, 2008 FC 944, 74 Imm. L.R. (3d) 115; *Moffat v. Canada (Citizenship and Immigration)*, 2019 FC 896, [2019] 4 F.C.R. 331; *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2003 FC 1225, [2004] 3 F.C.R. 523; *Odulate v. Canada (Public Safety and Emergency Preparedness)*, 2017 CanLII 49129 (I.R.B.); *R. v. Reeves*, 2009 ONCJ 99; *Bruzzese v. Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230, [2015] 2 F.C.R. 693; *Smith v. Canada (Citizenship and Immigration)*, 2009 FC 1194, [2011] 1 F.C.R. 36; *Pathmanathan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 885, [2010] 3 F.C.R. 440; *Shahzada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1176; *Badal v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 311, 231 F.T.R. 26; *Kovacs v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1473, [2006] 2 F.C.R. 456; *Pacificador v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1462, 243 F.T.R. 126; *Aissa v. Canada (Citizenship and Immigration)*, 2014 FC 1156; *R. v. Riley* (2009), 246 C.C.C. (3d) 552, 2009 CanLII 15451 (Ont. Sup. Ct.); *R. v. Abbey* (2011), 82 C.R. (6th) 385, 2011 ONSC 1260 (CanLII); *Abdi v. Canada (Public Safety and Emergency Preparedness)*, 2017 FC 950, [2018] 3 F.C.R. 328.

REFERRED TO:

Pascal v. Canada (Citizenship and Immigration), 2020 FC 752; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Pajazitaj v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 540; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121; *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 705; *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, [2005] 3 F.C.R. 487; *Muneeswarakumar v. Canada (Citizenship and Immigration)*, 2013 FC 80, 425 F.T.R. 296; *Balathavarajan v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 340, 56 Imm. L.R. (3d) 1; *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 1998 CanLII 8667 (F.C.T.D.); *Huang v. Canada (Minister of Employment and Immigration)* (1992), 166 N.R. 308, [1992] F.C.J. No. 472 (QL) (C.A.); *Riley v. Canada (Attorney General)*, 2011 FC 1226, 403 F.T.R. 75; *Walters v. Ontario*, 2015 ONSC 4855 (CanLII); *Burton v. Canada (Citizenship and Immigration)*, 2013 FC 549; *R. v. Corbett*, [1988] 1 S.C.R. 670, (1988), 28 B.C.L.R. (2d) 145; *Orozco Tovar v. Canada (Citizenship and Immigration)*, 2009 FC 600, 80 Imm. L.R. (3d) 266; *Mkrtchytan v. Canada (Public Safety and Emergency Preparedness)*, 2011 FC 921; *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458; *R. v. Munoz* (2006), 86 O.R. (3d) 134, 2006 CanLII 3269 (Sup. Ct.).

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APPLICATION for judicial review of an Immigration and Refugee Board, Immigration Division decision (2019 CanLII 90444) concluding that there were reasonable grounds to believe that the applicant is a member of the “Galloway Boys,” a Scarborough-based

criminal organization. Application dismissed.

APPEARANCES

Daniel Kingwell for applicant.

Gregory George and *Daniel Engel* for respondent.

SOLICITORS OF RECORD

Mamann, Sandaluk and Kingwell LLP, Toronto, for applicant.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment and judgment rendered in English by

McHAFFIE J.:

I. Overview

[1] The Immigration Division (ID) of the Immigration and Refugee Board concluded that there were reasonable grounds to believe that Adrian Pascal is a member of the "Galloway Boys," a Scarborough-based criminal organization, and is therefore inadmissible for organized criminality under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA). Although Mr. Pascal concedes that he is also inadmissible on the basis of the ID's finding of serious criminality under paragraph 36(1)(a) of the IRPA, the organized criminality finding has serious consequences for Mr. Pascal. In particular, it prevented him from bringing an appeal to the Immigration Appeal Division (IAD), which could otherwise have considered humanitarian and compassionate grounds: IRPA, subsections 64(1),(2), paragraph 67(1)(c).

[2] Mr. Pascal argues that in reaching its organized criminality finding, the ID placed unreasonable reliance on certain sources of information, notably the contents of police reports, the evidence of a police officer who had no prior experience with Mr. Pascal, and a "true crime" book by the Toronto Star reporter Betsy Powell entitled *Bad Seeds: The True Story of Toronto's Galloway Boys Street Gang* (Mississauga, Ont.: John Wiley & Sons Canada, 2010) [Bad Seeds]. He also asserts that the ID's finding that the Galloway Boys are a criminal organization, and its finding that Mr. Pascal is a member of that organization, were unreasonable, challenging a large number of the ID's factual findings.

[3] I conclude that the ID's decision was reasonable. The ID was entitled to rely on sources of information that might not be admissible evidence in a court proceeding, provided that it explained why the information was credible or trustworthy. The ID did so, setting out its explanation for accepting information such as the police reports, the officer's evidence, and the information in Bad Seeds in a clear, understandable and rational manner. The ID's factual determinations were similarly reasonable, and its resulting conclusions that there were reasonable grounds to believe that the Galloway Boys continued to be a criminal organization of which Mr. Pascal was a member, were justified on the evidence it identified as credible. While there is one aspect of the factual conclusions that I consider unreasonable, namely certain comparisons the ID drew

between Mr. Pascal's conduct and the Galloway Boys, this does not render the decision as a whole unreasonable. In any case, regardless of the membership determination, the ID also found Mr. Pascal to have engaged in organized criminal activity, which constitutes an independent ground for inadmissibility under paragraph 37(1)(a).

[4] This application for judicial review is therefore dismissed. Subsequent to the ID's section 37 finding, Mr. Pascal applied for a pre-removal risk assessment (PRRA). That PRRA application was rejected. Mr. Pascal's application for judicial review of the PRRA decision was heard concurrently with this application. Separate reasons for dismissing that application are being released concurrently as 2020 FC 752.

II. Issues and Standard of Review

[5] Mr. Pascal raises the following issues on this application:

A. Did the ID err in its assessment of the evidence by:

(1) relying on truth of the contents of police reports;

(2) relying on the evidence of a police officer who was called as a lay witness;

(3) relying on a "true crime" book and newspaper reports;

(4) relying on court judgments that referred to the Galloway Boys; and/or

(5) discounting Mr. Pascal's evidence on grounds of credibility?

B. Did the ID err in concluding that there were reasonable grounds to believe that the Galloway Boys existed as a criminal organization during the relevant period?

C. Did the ID err in concluding that there were reasonable grounds to believe that Mr. Pascal was a member of the Galloway Boys?

[6] The first of these issues goes to the ID's assessment of the evidence before it, the determination of whether and to what extent to rely on it, and the weight to be given to it. The latter two issues challenge the particular "reasonable grounds" findings of the ID that were central to the organized criminality determination. Each of these issues is reviewable on the reasonableness standard: *Demaria v. Canada (Citizenship and Immigration)*, 2019 FC 489, 67 Imm. L.R. (4th) 56, at paragraphs 34–36. While the Supreme Court of Canada's decision in *Vavilov* was decided after the hearing of this case, that decision simply confirms that the reasonableness standard applies: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, 441 D.L.R. (4th) 1, at paragraphs 16–17, 23–25.

[7] In conducting reasonableness review, the Court is to assess whether the decision is justified, transparent and intelligible, focusing on the decision that the tribunal made rather than the conclusion the Court would have reached: *Vavilov*, at paragraphs 15, 82–87; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at paragraph 59. It is not the role of the reviewing court to make its own determinations of fact, substitute its view of the evidence or the appropriate outcome, or reweigh the evidence. It is solely to assess whether the tribunal's determinations and reasoning are reasonable: *Khosa*, at paragraphs 59, 61; *Pajazitaj v. Canada (Public Safety and Emergency Preparedness)*, 2019 FC 540, at paragraph 26.

[8] Two of Mr. Pascal's challenges raise fairness issues, namely the ID's reliance on Bad Seeds and its reliance on facts associated with charges laid in 2018. Such questions are reviewed on a "fairness" standard akin to correctness, in which the Court determines whether the procedure was fair in all the circumstances: *Khosa*, at paragraph 43; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121, at paragraph 54.

III. Analysis

A. *The Immigration Division's Reliance on the Evidence was Reasonable*

[9] The IRPA defines three important aspects of an organized criminality determination: what must be established, the standard to which it must be established, and the evidence that may establish it. What must be established is set out in paragraph 37(1)(a) of the IRPA:

> **Organized criminality**
>
> **37 (1)** A permanent resident or a foreign national is inadmissible on grounds of organized criminality for
>
> **(a)** being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment … or engaging in activity that is part of such a pattern; or [Emphasis added.]

[10] The expression "activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an [indictable] offence" is abbreviated, in both the IRPA and the cases, to "organized criminal activity": IRPA, subsection 37(2); *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 122, [2006] 1 F.C.R. 474 [*Thanaratnam (FCA)*], at paragraph 7; *Sittampalam v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326, [2007] 3 F.C.R. 198, at paragraph 47. The Federal Court of Appeal has confirmed that paragraph 37(1)(a) sets out two "discrete, but overlapping grounds" for inadmissibility. The first is "membership" in an organization believed on reasonable grounds to be or to have been engaged in organized criminal activity (i.e., a criminal organization). The second is engaging in organized criminal activity, which does not require "membership" in a criminal organization: *Thanaratnam (FCA)*, at paragraphs 5–8, 30.

[11] While the term "criminal organization" is used as a shorthand for an organization described in paragraph 37(1)(a), the IRPA does not use the term in this section, and adopts the *Criminal Code* definition of "criminal organization" only in respect of other IRPA provisions: IRPA, subsection 121.1(1); *Criminal Code*, R.S.C., 1985, c. C-46, section 2 ("criminal organization"), subsection 467.1(1). In *Sittampalam*, the [Federal] Court of Appeal concluded that the decision not to adopt the *Criminal Code* definition suggests that criminal jurisprudence is not directly applicable in the immigration context: *Sittampalam*, at paragraph 40. Rather, an "unrestricted and broad" interpretation applies, consistent with the IRPA's intent to prioritize the security of Canadians: *Sittampalam*, at paragraphs 36, 55.

[12] At the same time, the Supreme Court of Canada more recently noted that the apparent similarity between section 37 [of the IRPA] and the *Criminal Code* concept is "no coincidence" and supports a harmonious interpretation: *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, [2015] 3 S.C.R. 705, at paragraphs 37, 41–46; *Pajazitaj*, at paragraphs 30–33. A "criminal organization" for section 37 purposes shares with the *Criminal Code* definition at least the fact that the "organization" must be organized in some fashion—i.e., have some form of organizational structure—but need not be formally organized: *Sittampalam*, at paragraphs 38–39, 55; *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 349, [2004] 3 F.C.R. 301, at paragraphs 29–31, revd on other grounds 2005 FCA 122, [2006] 1 F.C.R. 474.

[13] Being a "member" in a criminal organization is also a matter of "unrestricted and broad" interpretation: *Canada (Minister of Citizenship and Immigration) v. Singh* (1998), 44 Imm. L.R. (2d) 309, 1998 CanLII 8281 (F.C.T.D.), at paragraph 52; *Sittampalam*, at paragraph 35. Membership can include "belonging to" an organization, and need not require formalities: *Poshteh v. Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85, [2005] 3 F.C.R. 487, at paragraphs 27–32; *Chiau v. Canada (Minister of Citizenship and Immigration)*, [1998] 2 F.C. 642, (1998), 141 F.T.R. 81 (T.D.) [*Chiau (FC)*], at paragraph 34, affd [2001] 2 F.C. 297, (2001) 195 D.L.R. (4th) 422 (C.A.) [*Chiau (FCA)*], at paragraphs 55–57.

[14] The Minister bears the onus of establishing these elements: *Demaria*, at paragraph 65. The standard to which they must be established is described in section 33 of the IRPA. That section states that the facts that constitute inadmissibility for organized criminality include facts "for which there are reasonable grounds to believe that they have occurred" (emphasis added). This "'reasonable grounds'" standard has been described as establishing a standard of proof that is "more than a flimsy suspicion, but less than the civil test of balance of probabilities.… It is a *bona fide* belief in a serious possibility based on credible evidence" [footnote omitted]: *Chiau (FC)*, at paragraph 27, affd *Chiau (FCA)*, at paragraph 60; *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100, at paragraph 114. To similar effect, the Supreme Court of Canada has said that reasonable grounds exist where there is "an objective basis for the belief which is based on compelling and credible information": *Mugesera*, at paragraph 114.

[15] The need for "credible" information raises the third relevant question: what evidence may establish the elements of organized criminality. Section 173 of the IRPA states that the ID is "not bound by any legal or technical rules of evidence" but rather "may receive and base a decision on evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances." This evidentiary flexibility allows the ID to consider evidence from sources that may not be acceptable in a court. It also expressly leaves to the ID the discretion to make determinations of credibility and trustworthiness: it is what "it considers" credible in the circumstances that matters. Nonetheless, this discretion is not "unbridled". As with any statutory discretion, it must be exercised reasonably: *Demaria*, at paragraph 121.

[16] Although it predates *Mugesera* and *Sittampalam*, I agree with Mr. Pascal that Justice O'Reilly's statement at paragraph 21 of *Thanaratnam (FC)* remains a relevant description of the standard and evidentiary threshold applicable under section 37:

> Still, there is an important balance to be struck. On the one hand, Parliament has

> established a fairly low evidentiary threshold in this area and has given the decision maker a good deal of freedom to receive any evidence it considers reliable, whether or not it would normally be admissible in a court. Clearly, Parliament wanted the Board to have a maximum amount of flexibility. Further, it did not want to impose a burdensome evidentiary threshold on the Minister. Yet, the other side of this equation must be emphasized. The reasonable grounds standard operates as a protection against arbitrary, capricious or ill-founded state action. … It is an important and meaningful threshold. It requires an objective assessment and can be satisfied only where it is supported by credible evidence. [Emphasis added.]

[17] The ID set out the foregoing principles in its reasons, which are reported as *Pascal v. Canada (Citizenship and Immigration)*, 2019 CanLII 90444 (I.R.B.), at paragraphs 7–12, 15–19, 22–29, 68–73. Mr. Pascal takes no issue with the ID's statement of the law on these general principles. Rather, his challenge is to the manner in which they were applied in his particular case to the evidence that was before the ID.

[18] The ID concluded that there were reasonable grounds to believe the Galloway Boys were a criminal organization within the meaning of section 37, that they continued to exist, and that Mr. Pascal was and is a member of the Galloway Boys: *Pascal*, at paragraphs 12, 67, 90, 163, 165, 171, 182–184. The ID also found there were reasonable grounds to believe that Mr. Pascal's activities were part of a pattern of planned and organized criminal activities, i.e., that he had engaged in organized criminality: *Pascal*, at paragraphs 114, 185. It therefore concluded that Mr. Pascal was inadmissible under paragraph 37(1)(a).

[19] In reaching these conclusions, the ID accepted as credible and relied on a number of sources of information. Mr. Pascal argues that the ID erred in determining what constituted "credible and trustworthy evidence," even within the broader approach to evidence set out in section 173 of the IRPA. For the reasons set out below, I conclude that the ID's reliance on this information was reasonable.

(1) The Immigration Division's reliance on police reports

[20] The ID's conclusion of organized criminality was based in substantial part on findings related to numerous instances of "interactions" between Mr. Pascal and the police. Some of these resulted in criminal convictions. These included a robbery conviction when Mr. Pascal was a minor, later convictions for uttering death threats, and the 2014 conviction for assault with a weapon that resulted in the serious criminality finding under section 36 of the IRPA: *Pascal*, at paragraphs 5, 127, 155, 158, 161, 164. However, the ID also relied on many incidents that did not result in convictions or even criminal charges. With respect to these, the ID relied on the facts described in police reports that were filed in evidence.

[21] The ID described the basis for relying on these facts at paragraph 84 of its reasons:

> I find the police reports and associated documents to be credible and trustworthy for the purpose of understanding what occurred at particular places and times. The criminal charges themselves do not form the basis for my findings. Rather, the underlying details (i.e. statements, observances, items seized) that I find credible or trustworthy have been considered, along with other credible evidence, on which I base my findings.[66] [Footnote in original.]

[22] The ID's footnote in the above passage is to the decision of *Thuraisingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 607, 40 Imm. L.R. (3d) 145. In that case, Justice Mactavish, then of this Court, distinguished between relying on the fact that someone has been charged with a criminal offence and reliance on the evidence that underlies the charge: *Thuraisingam*, at paragraph 35. She noted that the charge "proves nothing", but that the evidence underlying the charge "may indeed be sufficient to provide the foundation for a good-faith opinion" regarding the allegations at issue. In *Sittampalam*, the [Federal] Court of Appeal adopted this reasoning. Referencing *Thuraisingam*, the Court noted that charges cannot be used "in and of themselves" as evidence of criminality, but that "evidence surrounding withdrawn or dismissed charges can be taken into consideration": *Sittampalam*, at paragraph 50.

[23] Mr. Pascal argues that this Court has held that police reports are not inherently reliable for the truth of their contents, pointing to the decisions in *Veerasingam v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1661; *Rajagopal v. Canada (Public Safety and Emergency Preparedness)*, 2007 FC 523; *Younis v. Canada (Citizenship and Immigration)*, 2008 FC 944, 74 Imm. L.R. (3d) 115; and *Demaria*. He further says that the ID's reliance on the police reports (or the facts underlying them) amounted to a "credulous and wholesale acceptance of the reports for the truth of their contents, without analysis."

[24] In my view, Mr. Pascal overstates the conclusions of these cases, and understates the ID's analysis. Each of the identified cases effectively applied the approach described in *Thuraisingam* and *Sittampalam*. That approach recognizes that the mere fact of a charge cannot be relied on, but that the evidence underlying it, which can include police reports, can be relied on if the reason for doing so is explained.

[25] In *Veerasingam*, for example, Justice Snider concluded that the police reports in that case could not be reasonably considered reliable and credible evidence of a kidnapping event. However, she did not reach this conclusion simply because the evidence was in a police report or because the officer who prepared it did not testify. She reviewed the report itself and found it was based on an interview of a witness who was "far from certain" that the alleged victim was forced, and provided conflicting descriptions: *Veerasingam*, at paragraph 11. Notably, Justice Snider recognized that even in such circumstances, the IAD could have preferred the evidence of the police report to that of the applicant, if they had explained why and weighed the evidence. However, no such weighing was done: *Veerasingam*, at paragraph 12.

[26] The same concern was at the heart of Justice Mosley's decision in *Rajagopal*. There, the IAD adopted the contents of a police report because the applicant had pled guilty to the charges in it. Since the police report consisted of allegations as recorded upon investigation, not the findings of the court upon conviction, it was inappropriate to simply make that assumption: *Rajagopal*, at paragraphs 40–43. Notably, Justice Mosley confirmed, as had Justice Snider, that it was open to the IAD to make the finding that it preferred the reports to the testimony of the applicant, but that it had not done so: *Rajagopal*, at paragraph 43.

[27] In *Younis*, Justice Russell referred to each of *Thuraisingam*, *Rajagopal* and *Veerasingam*. He concluded that the IAD had fallen into error both for relying on the charge itself and for failing to assess the reliability and credibility of a report to Crown counsel. On the former, Justice Russell held that the IAD had "failed to make the

necessary distinction between the fact that the proposed charges were mere allegations and that the Applicant had not been convicted of the offences": *Younis*, at paragraph 55. On the latter, Justice Russell found that the IAD's decision was "void of any discussion regarding the reliability and credibility" of the report, suggesting that the IAD had "failed to turn its mind" to that issue: *Younis*, at paragraph 56.

[28] Justice Russell's conclusions in *Younis* are similar to his conclusions a decade later in *Demaria*. In that case, the ID's conclusion on organized criminality was tied to "personal convictions of the three police officers who provided reports and evidence," and it failed to provide "any real analysis of the reliability of the evidence provided to support" those convictions: *Demaria,* at paragraph 149. Justice Russell also expressed concern that the ID had simply relied on the conclusions of the officers rather than assessing specific facts that related to membership in a criminal organization: *Demaria*, at paragraph 128.

[29] Thus the import of each of these cases is that the decision maker must assess and reach a conclusion that the contents of a police report are "credible or trustworthy," rather than ignoring the question or simply making an assumption to that effect. If such an assessment is made, this Court and the [Federal] Court of Appeal have accepted that it may be reasonable to rely on police reports, even where the facts described in them are not separately corroborated by testimony of officers or witnesses: *Sittampalam*, at paragraphs 52–53; *Veerasingam*, at paragraph 12; *Rajagopal*, at paragraph 43; see also *Muneeswarakumar v. Canada (Citizenship and Immigration)*, 2013 FC 80, 425 F.T.R. 296, at paragraphs 20–26.

[30] In the present case, the ID concluded that the police reports were credible and trustworthy "for the purpose of understanding what occurred at particular places and times." It expressly confirmed that it was not relying on the criminal charges themselves, which is consistent with *Sittampalam*. I do not agree with Mr. Pascal that the ID simply accepted the police reports in their entirety without analysis. To the contrary, the ID stated that it was only relying on "the underlying details (i.e. statements, observances, items seized) that I find credible or trustworthy" (emphasis added), which were considered together with other credible evidence: *Pascal*, at paragraph 84. I read this to mean that it was only those portions of the police reports that were found to be credible or trustworthy that were accepted, a view that is reinforced by the ID's later reference to its assessment addressing "underlying evidence that I find to be credible or trustworthy": *Pascal,* at paragraph 91. Elsewhere, the ID made specific reference to information in those reports, and the reasons it was found credible and trustworthy: *Pascal,* at paragraphs 100, 140–141. It also referred to Mr. Pascal's evidence in respect of the incidents described in the reports, noting points of difference and explaining why Mr. Pascal's evidence was not accepted: *Pascal*, at paragraphs 102–108, 116, 118–128, 130–141, 151–154.

[31] *Veerasingam*, *Rajagopal*, *Younis* and *Demaria* each describe circumstances in which there was effectively no consideration or analysis of whether police reports were credible or trustworthy. Beyond these cases, there is little discussion in the jurisprudence of how much analysis is necessary to justify the acceptance of police reports as "credible or trustworthy." At paragraph 53 of *Sittampalam*, the [Federal] Court of Appeal made the following observations without significant discussion of the extent of the ID's analysis:

> In this regard, I find that the Board considered the police source evidence credible and trustworthy in the circumstances of the case, and such a decision is entirely within its discretion. The Board is uniquely situated to assess credibility of evidence in an inadmissibility hearing; credibility determinations are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence.… [Emphasis added; citation omitted.]

The [Federal] Court of Appeal's conclusions at paragraphs 12 and 13 of *Balathavarajan v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 340, 56 Imm. L.R. (3d) 1, addressing the same language in section 175 of the IRPA, are to similar effect.

[32] Consistent with the language of section 173, the "circumstances" of a case will be relevant to whether a determination that evidence is credible or trustworthy is reasonable. However, provided that the decision maker has turned their mind to whether the evidence is "credible and trustworthy in all the circumstances," and provides a determination on that issue that is reasonable and based in the evidence, i.e. that meets the requirements of justification, transparency and intelligibility, this Court ought not to intervene.

[33] Notably, while Mr. Pascal asserts that his evidence contradicted that in the police reports, this typically came in the form of explanations for the stated facts, rather than assertions that the reports did not accurately record statements, or that the identified facts did not occur. In some cases, Mr. Pascal's evidence largely confirmed that in the police reports. For example, the police reports related to an incident that took place at a party in Aurora on July 1, 2016 indicated that people had been shot, that witnesses had observed Mr. Pascal and others get into a white Porsche, that a "high risk take down of the vehicle was conducted," that Mr. Pascal and four others were arrested, that shell casings were observed in the car and that various evidence was seized including various large sums of cash. Mr. Pascal's testimony confirmed that shots were fired, and that he got into a white Porsche and they "took off down the highway, tried to get away," but were pulled over and arrested. While he also gave evidence that he only saw the others for the first time in the car, and that he hopped into the car because he could not find his uncle with whom he had arrived, none of this evidence contradicted the facts as set out in the police reports. Nor did Mr. Pascal state that anything in the police reports was incorrect.

[34] While the ID's discussion and analysis of its reasons for accepting the police reports could have been more detailed in places, I cannot find that it was so lacking as to make it unreasonable. I therefore find that the ID's conclusion that elements of the police reports were credible and trustworthy in the circumstances, and its reliance on the contents of those reports, was reasonable.

[35] Mr. Pascal makes two further arguments regarding the ID's treatment of the police reports. He argues that the ID was "unconcerned with the disposition of charges," and that this was unreasonable because the fact that the charges did not result in convictions is relevant. In my view, this is not a fair characterization of the ID's decision. The passage Mr. Pascal points to is at the outset of a lengthy discussion of "Police Interaction and Indicia of Membership," in which the ID reviews the evidence of Mr. Pascal's interactions with the police in an effort to assess whether he was a member of a criminal organization: *Pascal*, at paragraph 89. The ID stated the following:

> In my assessment of the evidence of Mr. Pascal's interactions with police, I have not

> focused on the criminal charges laid or the courts' dispositions. The police and the courts have their own particular criteria, evidentiary rules and legal standard when coming to their conclusions. They are different from how the Immigration Division assesses evidence under s. 37(1)(a) of the Act. [Emphasis added.]

[36] In my view, this statement is entirely consistent with the approach to the evidence and information underlying criminal charges that is described in cases such as *Sittampalam*. Deciding not to "focus on" the particular charges laid or the dispositions does not equate to a lack of concern or recognition that charges have not resulted in convictions. Indeed, the ID referred to the resolution, withdrawal or stay of charges on a number of occasions, and made no mistaken assumptions about Mr. Pascal being convicted. Rather, the ID assessed the underlying facts in determining whether there were reasonable grounds to believe that Mr. Pascal was a member of a criminal organization. The [Federal] Court of Appeal has confirmed this is reasonable: *Sittampalam*, at paragraph 50.

[37] Mr. Pascal also takes issue with the ID's statement that it found a police report related to a 2006 stabbing incident in London was "credible and trustworthy, as I have no credible evidence to view it otherwise": *Pascal*, at paragraph 140. He argues that this amounts to a finding that the reports themselves established an evidentiary burden to refute. I believe this argument takes a sentence out of context in an effort to ascribe to it an unreasonable interpretation. The statement was part of a detailed consideration of the 2006 incident, that included references to Mr. Pascal's own testimony, to the inconsistencies in his evidence, and to statements that were reported as having been made to the London police. The ID found Mr. Pascal's testimony not to be credible or trustworthy given the inconsistencies, and preferred the evidence as set out in the police report, noting also that there was "no evidence that London police viewed these three men any differently from other people in the city." In other words, the ID did not conclude that the police report was credible simply because there was no credible evidence to the contrary. It considered the evidence and explained why it preferred the evidence in the police report over that of Mr. Pascal. This is precisely the type of analysis that is described as reasonable in *Veerasingam* and *Rajagopal*.

(2) Evidence of Officer Petersen

[38] The only witness put forward by the Minister before the ID was a constable with the Toronto Police Service (TPS), Kris Petersen. The Guns and Gangs Unit of TPS tasked Officer Petersen to prepare a report about Mr. Pascal, which is described as both a statement of his anticipated evidence and as a "Purposed Expert Report." That report, filed with and relied on by the ID, includes background on the Galloway Boys, summaries of information contained in police databases involving Mr. Pascal, and other information relating to indicia used by TPS to assess whether an individual is a gang member. The report concludes with Officer Petersen giving his "opinion" that Mr. Pascal is a member of the Galloway Boys (or Galloway Boyz).

[39] Officer Petersen was not qualified as an expert witness. He gave evidence as a lay witness regarding the contents of his report, including the indicia used by police to assess gang membership, and his conclusions.

[40] The ID relied on Officer Petersen's report and testimony, concluding that he was "a credible and trustworthy witness" and giving his testimony "significant weight":

Pascal, at paragraph 74. The ID indicated that its findings regarding the Galloway Boys and Mr. Pascal were “not based primarily on Officer Petersen’s beliefs or report” and that they “form a small portion of the credible evidence”: *Pascal*, at paragraph 83. Mr. Pascal questions this characterization, noting the numerous references to Officer Petersen’s evidence to argue that the ID “relied heavily” on his evidence. While I do not believe it affects the outcome, I believe that a fair assessment falls between these two descriptions. The ID certainly refers to and relies on Officer Petersen’s evidence frequently in its reasons. Overall the evidentiary references in the ID’s decision are drawn largely from a combination of Officer Petersen’s report (part of Exhibit AH-1) and his testimony; the Bad Seeds book (Exhibit AH-24); the police reports (Exhibits AH-3, AH-8, AH-15 and AH-17); news articles; and Mr. Pascal’s testimony.

[41] Mr. Pascal argues that there are a number of reasons to question Officer Petersen’s reliability, essentially repeating his submissions to the ID on the issue. In my view, none of these issues renders the ID’s reliance on Officer Petersen’s evidence unreasonable. Rather, they amount to Mr. Pascal asking this Court to substitute its assessment of credibility for that of the ID, which is not this Court’s role on judicial review.

[42] As noted, Officer Petersen was not called or qualified as an expert witness. Mr. Pascal argues that this meant that the ID had to provide “detailed reasons” for accepting his lay evidence. Mr. Pascal put forward no authority for the proposition that the ID was required to provide any greater or more detailed assessment of a police officer’s lay evidence than that of any other witness, other than Justice Annis’s recent discussion of the dangers of misusing expert evidence in the context of a psychological expert report: *Moffat v. Canada (Citizenship and Immigration)*, 2019 FC 896, [2019] 4 F.C.R. 331, at paragraphs 26–28.

[43] In any case, the ID did not “merely repeat and adopt” Officer Petersen’s evidence, as Mr. Pascal contends. It gave detailed consideration of the nature of his report and the basis for it; his extent or lack of knowledge with respect to the Galloway area, the Galloway Boys and Mr. Pascal; and the criticisms of his evidence raised by Mr. Pascal. The ID’s conclusion that Officer Petersen was credible and trustworthy was based on its findings that his evidence was forthright, unembellished, non-contradictory, unchanged on cross-examination, unbiased, straightforward, neutral and professional: *Pascal*, at paragraphs 74–82. The ID also noted that Officer Petersen had issued reports in the past that did not reach a conclusion of gang membership, and found that his lack of personal interactions with Mr. Pascal increased his objectivity and neutrality. It is difficult to see how this can be described as failing to assess Officer Petersen’s credibility, trustworthiness or evidence or amounted to “adopting blindly” his assessment: *Canada (Minister of Citizenship and Immigration) v. Thanabalasingham*, 2003 FC 1225, [2004] 3 F.C.R. 523, at paragraphs 105–107.

[44] Mr. Pascal’s reference to the rejection of police evidence in *Demaria*, *Thanabalasingham* and *Odulate v. Canada (Public Safety and Emergency Preparedness)*, 2017 CanLII 49129 (I.R.B.) is of little assistance. In the first case, Justice Russell found the ID’s reliance on the police officers’ evidence unreasonable based on the nature of both the evidence and the ID’s reliance on it. In the latter two cases, the ID decided not to accept the evidence of police officers based on its assessment of that evidence. Neither can nor should predetermine the outcome of the

ID's assessment of Officer Petersen's evidence in this case, nor does the rejection of evidence in other cases make the acceptance of it in this case unreasonable. This is so even if that evidence shares some of the qualities or limitations cited by other decision makers.

[45] I also do not accept Mr. Pascal's argument that problems with Officer Petersen's evidence were effectively adopted by the ID through its reference to his report, even though the ID did not rely on those aspects of the evidence. Mr. Pascal cites, for example, a concern about the analytical framework for gang membership used by Officer Petersen, as well as reliance on three of the indicia used by the police in that assessment. Mr. Pascal notes that the expert he called at the hearing criticized that framework, and points to alleged deficiencies in Officer Petersen's analysis based on the framework.

[46] However, the ID did not adopt Officer Petersen's analysis on these points. To the contrary, the ID stated that the police criteria were credible, but that it undertook an independent determination about whether Mr. Pascal's interactions with police and his personal associations met the interpretation of "membership" under paragraph 37(1)(a) set out by this Court: *Pascal*, at paragraph 87. The ID also referred expressly to the expert report filed by Mr. Pascal in recognizing that there is no standard definition of a gang and no exhaustive list of criteria of gang membership: *Pascal*, at paragraphs 79, 85. While Mr. Pascal criticizes Officer Petersen for relying on a card written by a police officer as "physical evidence", the ID did not rely on this, stating instead that "Mr. Pascal has not been found to have in his possession any physical indicia of the Galloway Boys": *Pascal*, at paragraph 169. The Court's role is to review the reasonableness of the ID's decision, not the reasonableness of aspects of Officer Petersen's evidence that were not relied on by the ID. Nor do I agree that it was incumbent on the ID to refer to these issues in assessing Officer Petersen's evidence. The ID was not obliged to refer to every piece of evidence or every argument raised by Mr. Pascal: *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)* (1998), 157 F.T.R. 35, 1998 CanLII 8667 (F.C.T.D.), [[1999] 1 F.C. D-53 (Digest)], at paragraph 16.

[47] I similarly do not intend to address each argument raised by Mr. Pascal in criticism of Officer Petersen's testimony, except to note that I do not find them, individually or cumulatively, to demonstrate that Officer Petersen was "demonstrably unreliable" or that it was unreasonable for the ID to rely on his evidence. I will, however, address two further arguments on which Mr. Pascal puts particular weight.

[48] First, Mr. Pascal identifies what he says is a fundamental concern, namely that Officer Petersen did not know Mr. Pascal either professionally or personally. He was not involved in any of Mr. Pascal's interactions with police, had not prepared any of the police reports, and had never met him. I agree with Mr. Pascal that this means that Officer Petersen's evidence, as it related to Mr. Pascal's actions, was necessarily second hand. Rather, it was based on his review of reports that were either also filed with the ID, or in some cases had been reviewed by him separately. Officer Petersen also indicated that his information with respect to the Galloway Boys came from both his own experience and from other sources, including other officers, intelligence reports, and information from wiretaps.

[49] I agree that this absence of personal experience with Mr. Pascal is something that could, and should, be considered by the ID in its assessment of the officer's

evidence and whether it was reliable or trustworthy. The ID did so, noting that in its view, it did not undermine the reliability, credibility or trustworthiness of Officer Petersen's evidence, and in fact increased his objectivity: *Pascal*, at paragraph 81. This type of assessment is within the discretion of the ID and was reasonable. There is no requirement that a police officer have had direct involvement in one or more arrests of an individual before their evidence is admitted and given weight in an immigration proceeding. Such a requirement would be contrary to both section 173 of the *IRPA* and the Federal Court of Appeal's recognition that "credible [or] trustworthy [evidence]" can at times be "tenuous" and can include evidence from undisclosed police informants or even double hearsay: *Balathavarajan*, at paragraph 12; *Huang v. Canada (Minister of Employment and Immigration)* (1992), 166 N.R. 308, [1992] F.C.J. No. 472 (QL) (C.A.).

[50] Second, Mr. Pascal points to the decision of the Ontario Court of Justice in *R. v. Reeves*, 2009 ONCJ 99. In that criminal matter, the Court found Officer Petersen's testimony to be "erroneous, exaggerated, inconsistent or patently contradicted" by other reliable evidence, and was left with "grave concerns" about his credibility. The Court found that Officer Petersen conducted an illegal search and "was prepared to conceal his illegal conduct by omitting crucial information from his notes and his evidence": *Reeves*, at paragraphs 55–58, 81. These are serious findings that can be argued to undermine the credibility and trustworthiness of Officer Petersen's evidence in other cases. Mr. Pascal did make that argument, and it was considered but not accepted by the ID. The ID found that the Court's findings, in the context of 17 years of policing and testifying in court, did not negatively impact the credibility and trustworthiness of Officer Petersen's report and his testimony: *Pascal*, at paragraph 82. It is not this Court's role to reassess that credibility determination based on how it might view the earlier findings, nor to substitute its own assessment on Officer Petersen's credibility.

[51] I also do not agree that the ID's conclusions on this issue showed an unreasonable inconsistency in the ID's approach to credibility findings. Mr. Pascal argues that the ID was prepared to overlook the serious conclusions in *Reeves* while at the same time finding Mr. Pascal not credible based on "minor concerns", notably misrepresentations to the court at a sentencing hearing and his breaches of recognizance orders. Again, I do not find this criticism justifies interfering with the ID's credibility assessment. Credibility determinations are necessarily context-dependent, and attempting to equate the reasons given for different credibility assessments risks stripping them of that context. In the present case, in addition to the grounds related to misrepresentations and breaches of court orders, the ID made other credibility findings with respect to Mr. Pascal's testimony, including as to his claim that he had not seen his friends at a party in Aurora before leaving the party, the reasons he gave for owning and using a bulletproof vest, his inconsistent evidence about the London stabbing incident, and his self-serving evidence regarding an alleged assault of his girlfriend in 2010: *Pascal*, at paragraphs 104–106, 120–124, 130–135, 154. These findings were open to the ID on the evidence. The fact that the ID made these findings while accepting Officer Petersen as credible notwithstanding the statements in *Reeves* does not make its decision unreasonable.

[52] Ultimately, Mr. Pascal concedes that Officer Petersen's testimony was admissible. His argument is that it should not have been given weight, or as much weight, given identified concerns with his experience and history. The ID's weighing of

the evidence was not unreasonable, and absent such unreasonableness, this Court is not to undertake its own reweighing on judicial review.

(3) Reliance on Bad Seeds

[53] Bad Seeds is a book about the arrest and conviction of three men for a murder and an attempted murder in 2004. One of those convictions was set aside on appeal, but the convictions of two other men, Tyshan Riley and Philip Atkins, remained in force at the time of the ID's hearing. Bad Seeds was written as a "true crime" story by a *Toronto Star* journalist, Betsy Powell. The book covers the details of the arrest and trial, but also discusses more broadly the context of gangs in Toronto and the Galloway Boys in particular. Riley was accused of being the leader of the Galloway Boys, and Atkins a senior gang member. Riley and Atkins were convicted of murder, attempted murder and commission of an offence for a criminal organization.

[54] The ID found Bad Seeds to be a source of credible and trustworthy evidence, giving it "full weight": *Pascal*, at paragraphs 31–32. The ID made fairly extensive use of Bad Seeds, citing it some 38 times in footnotes in support of various factual conclusions. As Mr. Pascal notes, these references pertain to both the nature and existence of the "Galloway Boys", and to conclusions that Mr. Pascal's conduct paralleled those of members described in the book.

[55] Mr. Pascal criticizes the ID's reliance on Bad Seeds for reasons similar to those raised in respect of the police reports, saying that it was adopted in its entirety, without analysis. He submits that this Court has criticized the adoption of news articles without explanation: *Thuraisingam*, at paragraph 39; *Demaria*, at paragraphs 143–145.

[56] This Court has recognized that the ID may rely on news articles in appropriate cases even though they may not be admissible in a court proceeding: *Bruzzese v. Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230, [2015] 2 F.C.R. 693, at paragraphs 57–58. At paragraph 57 of *Bruzzese*, Justice de Montigny, then of this Court, recognized both the concerns associated with news articles and their admissibility in immigration proceedings:

> It is no doubt true that news articles could not be considered as evidence of specific facts about specific incidents in a court of law, that the author of an article is not available for cross-examination, and that news reports are sometimes inaccurate, unreliable and based on hearsay. That being said, the article of the *Toronto Star* is well documented and quotes from Italian authorities and Italian decisions. The applicant has not seen fit to refute the information reported and has not pointed to any factual error save on a tangential point. He was contacted by the journalist for an interview but declined to respond. In those circumstances, the ID members could reliably use this media article to make a finding of association. [Emphasis added.]

[57] Justice Russell cited this passage in *Demaria*, concluding that "[t]he weight that can be given to newspaper articles depends very much upon context and general indicia of reliability": *Demaria*, at paragraphs 142–143. Justice Russell concluded in that case that the ID had not addressed what indicia of reliability it was relying on and, having reviewed the articles, concluded that they did not provide any factual basis to support reasonable grounds to believe: *Demaria*, at paragraphs 114, 144–145.

[58] Again, I disagree that the ID adopted the Bad Seeds book "without analysis". Rather, the ID gave the following reasons for its reliance on the facts set out in the book at paragraph 32 of its decision:

> While *Bad Seeds* is written in the style of a novel, the information is of the same quality found in the news articles and criminal court documents in evidence. The author is a veteran crime journalist who covered the preliminary hearing and murder trial of Tyshan Riley, Phillip Atkins and [the third individual]. The author sifted through hundreds of hours of evidence, from wiretaps to police interviews with suspects and witnesses. The book is filled with quotes and information from researchers, community leaders, police, the criminal court, and Galloway Boys members themselves. I find this book was written using journalistic standards of checking sources, researching details and quoting accurately. The book provides a history of Toronto street gangs, as well as insight into a distinct group of people from southeast Scarborough. [Emphasis added; footnote omitted.]

[59] In considering particular information contained within the book, the ID referred to additional indicia of credibility. In referring to the evidence of a witness at the trial of Riley and Atkins, the ID noted that he was found to be a credible witness at the preliminary hearing and had extensive association with the accused: *Pascal*, at paragraph 45. The ID referred to this individual's trial evidence, as reported in Bad Seeds, on a number of occasions: *Pascal*, at paragraphs 34, 36, 42, 45, 162.

[60] In my view, these are reasonable grounds to assess the credibility and trustworthiness of the book as a source of information, and take the ID's decision outside the circumstances described in *Demaria*. It is also worth noting that, as in *Bruzzese*, Mr. Pascal does not point to any evidence contradicting the aspects of Bad Seeds on which the ID relied.

[61] Mr. Pascal also argues that Bad Seeds was of limited relevance, since it only described events and the existence of the Galloway Boys leading up to 2004, when Riley, Atkins and many others identified as being Galloway Boys members were arrested. While this is largely true, it is consistent with the use the ID made of the book. The ID relied on the book in assessing the existence and nature of the Galloway Boys based on pre-trial and trial evidence and the author's other sources. It also considered the impact of the arrests and the evidence relating to the post-2004 time frame, referencing evidence that quoted both those who believed in the continued existence of the gang and those who believed that subsequent criminal activity was more individualistic than gang-related. The ID concluded "I do not find that the Galloway Boys ceased to exist just because police arrested 17 people believed to be linked to the group" [footnote omitted]: *Pascal*, at paragraphs 59–62. This type of factual inference based on the evidence is part of the ID's mandate of determining whether there are reasonable grounds to believe. I do not find it unreasonable for the ID to use the Bad Seeds book for this purpose.

[62] Mr. Pascal also argues that it was unfair for the ID to place substantial reliance on Bad Seeds given the way in which the book was introduced into evidence. The Minister initially disclosed excerpts from the book as part of its initial disclosure, filed on the first day of the hearing. In response, Mr. Pascal filed other excerpts from the book as part of his disclosure, also filed on the first day of the hearing. At the tail end of the hearing, the Minister filed the entirety of the book, without objection from Mr. Pascal, and referred to a number of passages in it in closing argument. In written closing submissions, Mr. Pascal noted that he had not had the opportunity to respond to one

aspect of the book, namely the significance of behaviour such as names wrapped in a vegetable in a refrigerator (to which the ID made no reference). However, he raised no argument regarding the fairness of admitting the book into evidence. Having consented to its admission into evidence, Mr. Pascal cannot argue that it was unfair for the ID to rely on the book to a greater degree than he expected. The ID was not limited in its ability to rely on those parts of the evidence it found reliable or trustworthy. While the extent of the ID's reliance on this evidence may have surprised Mr. Pascal, this does not render it unfair in the circumstances.

[63] Finally, as with his arguments about Bad Seeds, Mr. Pascal criticizes the ID's reliance on other news articles, again asserting that the ID provided no analysis of its reasons for finding the articles trustworthy. I cannot accept this argument. The ID's reasons for relying on the news articles are certainly less clear than they were for Bad Seeds. Indeed, the reference to the quality of information in the news articles found in the passage about Bad Seeds reproduced at paragraph 0 above is the only location in which the reliability of the articles is directly addressed. However, this is likely due to the fact that both parties filed a number of news articles with the ID, and Mr. Pascal did not argue that the news articles filed by either him or the Minister should not be relied upon. To the contrary, Mr. Pascal made arguments referring to and relying on the contents of the articles. Indeed, the articles referenced by the ID in its reasons included those filed by Mr. Pascal. The result is that Mr. Pascal is now at least in part arguing that it was unreasonable for the ID to rely on the very evidence he put forward and argued should be relied on. In such circumstances, I cannot find the ID's limited assessment of the reliability of the news articles unreasonable.

(4) Judgments that refer to the Galloway Boys

[64] Mr. Pascal criticizes the ID's reliance on other court judgments that refer to the Galloway Boys, arguing that it is an error to adopt factual findings of other courts, and that the judgments made no findings that the Galloway Boys were a criminal organization. Mr. Pascal refers to decisions of this Court that caution against lifting factual findings from other courts or tribunals: *Smith v. Canada (Citizenship and Immigration)*, 2009 FC 1194, [2011] 1 F.C.R. 36, at paragraph 61; *Pathmanathan v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 885, [2010] 3 F.C.R. 440, at paragraph 43; *Shahzada v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1176, at paragraph 6.

[65] I am not persuaded that the ID erred in referring to conclusions from other court decisions. The jurisprudence does not create an absolute bar to referring to, or relying on, the facts as found in prior proceedings. I note that the decisions in *Smith*, *Pathmanathan* and *Shahzada* each pertained to evidence of "country conditions" in the refugee context, and in particular issues such as state protection and the risk of persecution: *Smith*, at paragraphs 54–61; *Pathmanathan*, at paragraphs 35–43; *Shahzada*, at paragraphs 5–6. As Justice de Montigny stated in *Smith*, "[i]t has been held time and again that it cannot be conclusively determined, on the basis of previous findings of state protection (or lack thereof) pertaining to a particular case, that state protection exists or does not exist in a particular country": *Smith*, at paragraph 61. Even in that context, though, the Court noted that a board can rely on the fact-finding of another panel to a certain extent, but such reliance must be "'limited, careful and

justified'": *Shahzada*, at paragraph 6, citing *Badal v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 311, 231 F.T.R. 26, at paragraph 25.

[66] A finding that a particular event occurred on a particular day, or that an organization exists, is of a different nature than a finding that, for example, state protection is available in a given country. While still relevant, the cautions in *Smith*, *Pathmanathan*, *Shahzada* and *Badal* may not be as directly applicable in the context of specific factual findings referenced in other judgments.

[67] The Minister pointed to other cases in which this Court has held that other court or tribunal decisions regarding the same individuals may be "relevant and important evidence" that should be considered, even if it is not binding: *Kovacs v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1473, [2006] 2 F.C.R. 456, at paragraphs 9–10; *Pacificador v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1462, 243 F.T.R. 126, at paragraph 83; see also *Aissa v. Canada (Citizenship and Immigration)*, 2014 FC 1156, at paragraph 73. Those cases involve findings in prior court or tribunal decisions that relate to the applicants themselves, and are thus also not directly parallel to the current situation.

[68] A prior decision involving the same party was also at issue in *Malik*, in which the Supreme Court of Canada considered use of earlier decisions more broadly: *British Columbia (Attorney General) v. Malik*, 2011 SCC 18, [2011] 1 S.C.R. 657. After considering principles of litigation efficiency and fairness, Justice Binnie for the Court concluded that whether a prior decision is admissible is not a matter of "rigid rules", but will depend on the purpose for which it is put forward, and the use sought to be made of its findings and conclusions: *Malik*, at paragraphs 37, 44–46. The weight to be given to such findings will then "depend on the circumstances of each case", considering matters such as the identity of the participants, the similarity of the issues, the nature of the earlier proceedings, and the opportunity given to the prejudiced party to contest it: *Malik*, at paragraphs 47–48.

[69] In my view, the *Malik* factors provide a useful framework for considering the ID's reliance on prior decisions. The concern about litigation efficiency, the avoidance of "rigid rules", and consideration of the "circumstances of the case" echo the principles reflected in section 173 of the IRPA. The identity of the participants, the similarity of the issues, and the nature of the earlier proceedings are all relevant to the question of whether the information is credible and trustworthy. And in the administrative law context, the relevance of an opportunity to address the prior findings is an issue of procedural fairness, a concern raised in both *Smith* (paragraphs 57–60) and *Pathmanathan* (paragraphs 37–41).

[70] In the present case, there was no issue of either admissibility or of fairness, as the earlier decisions were filed on consent and Mr. Pascal had the opportunity to address them as necessary. In my view, although the prior decisions did not involve Mr. Pascal, the nature of those proceedings and the limited use the ID made of them lead to the conclusion that the ID's reliance on the decisions was reasonable.

[71] I agree with the Minister that Mr. Pascal overstates the case in saying that the ID "relied extensively on perceived findings in other court judgments." The ID included a two paragraph section entitled "Court Findings Re: the Galloway Boys" at the conclusion of a lengthy discussion of the evidence related to whether the Galloway Boys exist as a

criminal organization: *Pascal*, at paragraphs 65–66. In those paragraphs, the ID referred to the 2009 convictions of Tyshan Riley and Philip Atkins for murder, attempted murder and commission of an offence for a criminal organization, namely the Galloway Boys; and to a guilty plea by the girlfriend of one of the men to conspiracy to intimidate a witness for the benefit of a criminal organization. The ID also referred to statements of Justice Dambrot—who conducted the trial at which Riley and Atkins were convicted—in a pre-trial application to exclude evidence: *R. v. Riley* (2009), 246 C.C.C. (3d) 552, 2009 CanLII 15451 (Ont. Sup. Ct.). There, Justice Dambrot referred to evidence of a 2004 attempted robbery in Pickering, which occurred after Riley and Atkins were arrested, as being "strong evidence" in support of the criminal organization charge: *Riley*, at paragraphs 161–162.

[72] While the judgments of the Ontario Superior Court on those convictions were not in the record, information confirming the existence of the convictions appeared in the Bad Seeds book, as well as in a decision of this Court, *Riley v. Canada (Attorney General)*, 2011 FC 1226, 403 F.T.R. 75, at paragraph 5. In my view, the existence of the conviction of Riley and Atkins, including their conviction on criminal organization charges for being members of the Galloway Boys, is relevant to the issue of the existence of the Galloway Boys. It would be contrary to the intention shown in sections 33 and 173 of the IRPA to effectively require a retrial of this criminal case before it could be considered as part of the overall evidence regarding the existence of the Galloway Boys. There is no indication that the ID relied on either the convictions or the information regarding the robbery as conclusive of the existence of the Galloway Boys as a criminal organization. I agree with the Minister that it is relevant information in the circumstances, and that it was reasonable for the ID to consider.

[73] I similarly find that the ID's reference to *R. v. Abbey* (2011), 82 C.R. (6th) 385, 2011 ONSC 1260 (CanLII) as a case in which the Court accepted (on the basis of an agreed statement of facts, and as part of an evidentiary ruling) that the "Galloway Boys are a criminal street gang operating out of southeast Scarborough" [footnote omitted] is not unreasonable: *Pascal*, at paragraph 66. While Mr. Pascal is right that the issue in *Abbey* was not whether the Galloway Boys were a criminal organization, the ID did not suggest that it was. Rather, it was simply one of a number of indicia of the existence of the organization. While the passing references to the Galloway Boys in other cases (such as *Walters v. Ontario*, 2015 ONSC 4855 (CanLII) or *Burton v. Canada (Citizenship and Immigration)*, 2013 FC 549) may be of less value, I do not find that referencing them in a footnote renders either the conclusion that courts have accepted the existence of the Galloway Boys as a gang, or the ID's decision as a whole, unreasonable.

[74] Mr. Pascal raises other references to court decisions in the ID's decision. However, there are few of these, and none that I find unreasonable or material. For example, Mr. Pascal complains of the ID's footnote reference to police evidence in *Abbey* as one of three references cited for the proposition that there is "no exhaustive list of criteria" [footnote omitted] for membership in a gang: *Abbey*, at paragraph 33; *Pascal*, at paragraph 85. The reference appears simply to have been intended to show the TPS's approach to the criteria. In any event, the conclusion that there are "no exhaustive list of criteria" appears consistent with the evidence of Mr. Pascal's expert, who noted that "various criteria" have been used, and that agreement on criteria has not been established.

(5) Mr. Pascal's evidence

[75] Mr. Pascal juxtaposes the treatment of the foregoing sources of evidence against the treatment of his own evidence, which he says was "categorically dismissed" except where it served the ID's conclusions. He also asserts that it was unreasonable and unfair for the ID to find him not to be a reliable witness based on his criminal record and the fact that he had previously breached legal conditions. I disagree.

[76] Prior convictions may in appropriate circumstances reasonably be considered as part of a credibility determination. This is true in the criminal context (*R. v. Corbett*, [1988] 1 S.C.R. 670, (1988), 28 B.C.L.R. (2d) 145, at paragraphs 15, 22–25), and it is true in the immigration context (*Orozco Tovar v. Canada (Citizenship and Immigration)*, 2009 FC 600, 80 Imm. L.R. (3d) 266, at paragraph 39). As noted above, the ID gave a number of reasons for finding Mr. Pascal's evidence not to be credible on various points. This included internal inconsistencies, changed stories, misrepresentations to the court, and his own self-interest, in addition to the convictions. These are reasonable grounds to consider in making a credibility determination.

[77] In any event, contrary to Mr. Pascal's arguments, the ID did not simply refer to Mr. Pascal's prior breach of surety as a general indication of a lack of credibility. It raised the issue in considering the evidence of events at a party in Aurora on July 1, 2016. After a shooting at the party, Mr. Pascal was arrested in a car along with others, one of whom was a friend who Mr. Pascal was to avoid as a term of his recognizance. Mr. Pascal claimed that he came to the party with his uncle (his surety) and did not know the friend was at the party until seeing him in the car. The ID rejected this story, finding that it was not coincidence that they were at the same party: *Pascal*, at paragraphs 102–104. The ID also noted that leaving his surety and breaching his recognizance was consistent with his conduct on a prior occasion, and that this history diminished his trustworthiness: *Pascal*, at paragraph 106. It is reasonable to refer to the prior breach of recognizance, and to consider it as going to credibility, in such circumstances.

[78] Contrary to Mr. Pascal's submissions, there is no indication that the ID came to the matter with a closed mind. The fact that a witness is not believed does not mean that the decision maker was closed to their evidence or their credibility. In this regard, this case is in no way similar to the cases cited by Mr. Pascal, *Ayele v. Canada (Citizenship and Immigration)*, 2007 FC 126, 60 Imm. L.R. (3d) 197 and *Kamtasingh v. Canada (Citizenship and Immigration)*, 2010 FC 45, 87 Imm. L.R. (3d) 118. In those cases, the Court found that it was unfair to prevent or discourage an applicant from calling corroborative evidence and then make an adverse credibility determination. Nothing of the sort occurred here.

[79] In sum, I conclude that the ID's reliance on the various sources of evidence, and its acceptance of that evidence over the evidence of Mr. Pascal, to be consistent with the jurisprudence of this Court regarding such findings, and to be reasonable.

B. *The Immigration Division's Criminal Organization Finding Was Reasonable*

[80] The ID concluded that the Galloway Boys are a criminal organization under paragraph 37(1)(a) of the IRPA: *Pascal*, at paragraph 67. It set out the relevant law regarding the scope of the paragraph, and concluded that "the evidence regarding the

Galloway Boys will be assessed using a flexible approach, and shall consider the definition of an organization and organized criminality in broad and unrestricted terms with the [*Criminal Code*] in mind": *Pascal*, at paragraphs 23–30. As noted above, Mr. Pascal does not challenge the ID's statement of the applicable law. Rather, Mr. Pascal challenges the factual findings of the ID that led it to the conclusion that the Galloway Boys are a criminal organization.

[81] The ID structured its reasons on the issue to consider six questions: the territory of the Galloway Boys; their structure; their criminal and profit-oriented activities; their leadership and symbols; their existence since the Tyshan Riley era; and finally the court findings about the Galloway Boys discussed at paragraphs 64 to 74 above. Mr. Pascal challenges the ID's factual findings in each of these areas, raising at least 17 separate findings of the ID. These findings include that the Galloway Boys have an established territory, that they have a structure that included connected subgroups, that drug trafficking is lucrative, that Galloway Boys members were charged with criminal offences in 2013, that the Galloway Boys have had indicia of membership, that the Galloway Boys continue to exist, and that courts have found the Galloway Boys to be a criminal organization.

[82] In my view, the strongest of Mr. Pascal's challenges is to the ID's reliance on Mr. Pascal's own criminal activities as part of its assessment of the ongoing existence of the Galloway Boys: *Pascal*, at paragraphs 49, 51, 54. This, argues Mr. Pascal, amounts to circular reasoning, as it assumes that Mr. Pascal is a member of the Galloway Boys in order to attribute his actions to the Galloway Boys and thereby confirm their existence. While I agree that this is a potential concern, I conclude that the ID's reasoning is not circular or unreasonable. Determinations of membership in a criminal organization may well overlap with determinations of the existence of a criminal organization, as the organization and its activities in essence consist of the cumulative activities of its members. The findings are therefore not necessarily discrete. It is true that Mr. Pascal's ongoing activities are only evidence of the existence of the Galloway Boys if Mr. Pascal is a member of that group. However, this does not preclude the possibility that those activities do indeed demonstrate the ongoing existence of the organization if the conclusion can be reasonably drawn from the evidence that he did them as a member of the organization.

[83] If the only evidence of the ongoing existence of the Galloway Boys were Mr. Pascal's activities, or if the only evidence of his membership were his involvement in those same activities, this might create unreasonable circularity, with each conclusion being based on the other and nothing else. I agree with the Minister that read as a whole, the ID's reasons show reliance on various other evidence and factors to establish both the ongoing existence of the Galloway Boys (including violent incidents after the arrest of Riley and Atkins, and statements from police regarding ongoing battles for leadership of the gang), and Mr. Pascal's membership in it (including the nature and timing of his 2004 robbery, his history and criminal associations, and the location of a number of the incidents in which he was involved). In this context, I conclude that the ID's consideration of Mr. Pascal's actions as being supportive of a combined determination that the Galloway Boys exist and that Mr. Pascal is a member is not unreasonable.

[84] Mr. Pascal's other challenges to the ID's findings on the existence of the Galloway Boys are less persuasive. Many of these are based on the ID's reliance on evidence from Officer Petersen, Bad Seeds, police reports regarding incidents that did not lead to convictions, and/or court judgments. For the reasons set out above with respect to these sources of evidence, these arguments are not accepted.

[85] Some of Mr. Pascal's challenges are based on the information in Bad Seeds or the court judgments being "dated," in that they date from before Mr. Pascal's later interactions with police. Leaving aside the 2004 robbery for which Mr. Pascal was convicted as a young offender, which occurred prior to the arrests of Riley, Atkins and others, the various interactions that the ID relied on do post-date most of the facts described in Bad Seeds. However, the ID's line of reasoning, which considered the existence and characteristics of the Galloway Boys in the Tyshan Riley era (when Mr. Pascal's activities began), and then considered whether the organization continued to exist after the arrests, was reasonable. Similarly, using available information from the earlier time frame to assess the nature of the organization at that time, before then assessing its continued existence, was reasonable.

[86] In some cases, Mr. Pascal seeks to undermine the particular evidence the ID relied on. For example, on the question of the organizational structure of the Galloway Boys, he notes that Officer Petersen was unable to explain "the evolution" and history of the Galloway Boys' territory, or to clearly define the structure of the organization. This amounts to a request that the Court reassess the evidence to give more weight to the weaknesses or limitations in Officer Petersen's testimony than the ID was prepared to give. Again, this is not the role of the Court on judicial review.

[87] Notably, the ID's findings on the structure of the organization were made in the context of the cases interpreting paragraph 37(1)(a). These have noted that criminal organizations usually do not have formal structures but are "loosely and informally structured," so a "flexible approach" is needed to assess them: *Sittampalam*, at paragraph 39. The inability of Officer Petersen to clearly define the structure of the group (or, as Mr. Pascal argued in his submissions to the ID that he referenced in this Court, to provide an "organizational chart") does not render the finding that the Galloway Boys were "organized" unreasonable. As with Mr. Pascal's criticisms of Officer Petersen's inability to provide information on the "evolution" or origins of the boundaries of the Galloway Boys' territory, Mr. Pascal's arguments appear to assume that the attributes of a criminal organization have to be defined with precision, either for a witness to be able to reasonably speak to them, or for the ID to have reasonable grounds to believe that the group is a criminal organization for purposes of paragraph 37(1)(a). Neither is correct.

[88] In some cases, Mr. Pascal's arguments are simply trivial. For example, he challenges the ID's statement that "[d]rug trafficking is a lucrative business, as demonstrated by the almost $5800 seized in the Aurora incident and Mr. Pascal's ability to afford Balenciaga shoes" [footnote omitted]: *Pascal*, at paragraph 49. He asserts that the ID erred in making this statement not only because it relied on police reports (addressed as a broader matter above), but because there was no evidence of the value of the shoes. Leaving aside whether the ID may be able to take into account its knowledge of the cost of certain shoes, the ID's passing reference to the value of a shoe line, made in the context of a statement regarding drug trafficking as lucrative,

does not render the finding unreasonable, let alone affect the reasonableness of the decision as a whole.

[89] In other cases, Mr. Pascal's arguments misstate the evidence and the ID's reasons. For example, Mr. Pascal criticizes the ID's conclusion that the Galloway Boys' name came from police and was then adopted by its members: *Pascal*, at paragraph 36. He claims the ID "selectively ignored" evidence from the same source suggesting the Galloway Boys ceased to exist after the arrest of Riley and Atkins. The ID made the finding regarding the Galloway Boys' name based on a September 11, 2012 CBC news article ["Notorious Galloway Boys street gang undergoing renewal"] that quotes Dr. Anthony Hutchinson, identified as a "court-certified gang expert." As it happens, Mr. Pascal originally intended to call Dr. Hutchinson as an expert on Toronto street gangs but ultimately did not. Contrary to Mr. Pascal's argument, Dr. Hutchinson does not suggest in the same article that the Galloway Boys had ceased to exist. The article actually cites Dr. Hutchinson as saying that "it is likely that there will be competing groups vying for control of the organization." This suggests the organization still existed, not that it had ceased to. Mr. Pascal filed another CBC news article published the following day ["Critics say current 'gangs' younger, less organized"], which quoted Dr. Hutchinson as saying that the violence in 2012 was not part of a new gang turf war rivalry, but something "much more disorganized and more reckless." The ID cited and considered Dr. Hutchinson's words in this second article in assessing the continued existence of the Galloway Boys: *Pascal,* at paragraph 63. The assessment of these competing viewpoints regarding the ongoing existence of the Galloway Boys, and the inferences to be drawn from the evidence, are the domain of the ID. The ID's assessment of these issues, and its reliance on the different sources of evidence, is explained and logical and shows no signs of selectively ignoring contrary statements.

[90] Mr. Pascal also challenges the ID's later reference to a "court-certified gang expert" who spoke to the involvement of the Galloway Boys in criminal enterprises: *Pascal*, at paragraph 53. Mr. Pascal claims that the ID was referring to Officer Petersen, who was not qualified as an expert, on the basis that the footnote in the paragraph refers to Officer Petersen's report. However, the same footnote also references the September 11, 2012 CBC news article identified above, which describes Dr. Hutchinson as a "court-certified gang expert." While I agree with Mr. Pascal that not identifying Dr. Hutchinson makes it more difficult to assess the reference, particularly in a footnote with multiple evidentiary citations, I cannot conclude that the ID was referring to Officer Petersen or unreasonably attributed expert status to him.

[91] I therefore conclude that Mr. Pascal has not established that the ID's finding that the Galloway Boys exist and are a criminal organization falling within the scope of paragraph 37(1)(a) was unreasonable.

C. *The Immigration Division's Membership Finding Was Reasonable*

[92] The ID found that Mr. Pascal was a member of the Galloway Boys based on an "independent determination as to whether the credible evidence underlying Mr. Pascal's interactions with police, and about his personal associations, meet the broad and unrestricted interpretation of membership set out by the Federal Court": *Pascal*, at paragraph 87. Mr. Pascal alleges that this is not true, since the ID relied on Officer Petersen's evidence uncritically. He also takes issue with over 40 other statements and

findings of the ID, claiming them to be contrary to the evidence, based on evidence that should not have been given weight, or speculative.

[93] Again, many of Mr. Pascal's challenges to these findings are based on the ID's reliance on Officer Petersen's evidence, Bad Seeds or the contents of police reports. Other arguments are based on the ID having found Mr. Pascal not credible and rejecting his versions of events. Each of these arguments is answered by the discussion above regarding these sources of evidence.

[94] Of the remaining arguments, there is one that shows the ID to have engaged in unreasonable analysis. In a number of places, the ID drew associations between Mr. Pascal and the Galloway Boys by noting that his actions were consistent with, or typical of, those ascribed to the Galloway Boys: *Pascal*, at paragraphs 49–51, 142, 146, 152, 157. While similarities in criminal conduct may not alone establish a connection, I accept that it may be relevant as part of the overall assessment to note that an individual's conduct conforms with that associated with criminal organizations generally or the specific criminal organization. However, such comparisons have limits. The more generalized or common the conduct being described, the less such conduct can be taken as any indicator of association.

[95] The ID noted that Mr. Pascal's conduct in engaging in drug trafficking, living off the avails of prostitution, and possession of firearms, were consistent with activities of the Galloway Boys, and indicative that he was a member of a criminal organization, and the Galloway Boys in particular: *Pascal*, at paragraphs 49–51, 146, 157. Drug trafficking, living off the avails and firearms possession are clearly not exclusive to either criminal organizations or to the Galloway Boys. I therefore agree that the fact that both Mr. Pascal and the Galloway Boys engaged in them could not alone establish reasonable grounds to believe that Mr. Pascal was a member of a criminal organization, or of the Galloway Boys in particular: *Mkrtchytan v. Canada (Public Safety and Emergency Preparedness)*, 2011 FC 921, at paragraphs 16–19. However, given the rationale provided by the ID and its consideration of the evidence, I find that it was reasonable for the ID to consider that ongoing involvement in such conduct in association with other people was a factor, among others, suggesting membership in a criminal organization. Similarly, I accept that the ID's further connection of such conduct with the Galloway Boys in particular—in other words, that the criminal organization in question was the Galloway Boys—was reasonable in the context of the additional grounds for this conclusion cited by the ID.

[96] However, the ID went further in a number of places, noting that the use of nicknames was common practice among members of criminal gangs, including the Galloway Boys, and that Mr. Pascal's denial of living off the avails of prostitution was "similar to a Galloway Boys member who also denied being his girlfriend's pimp" [footnote omitted]: *Pascal*, at paragraphs 142, 152. In my view, this is unreasonable. To draw any association at all between an individual and organized crime, either in general or as a member of a particular gang, based on the use of nicknames or the denial of a crime goes beyond acceptable reasoning.

[97] Although these specific comparisons were unreasonable, I do not find that they render the ID's conclusion on Mr. Pascal's membership in a criminal organization unreasonable. These observations by the ID were not central to either the main conclusion that Mr. Pascal was a member of the Galloway Boys, or the principal facts

for which they were referenced, namely the circumstances surrounding Mr. Pascal's involvement in the London stabbing incident in the former case, and whether Mr. Pascal was living off the avails of prostitution in the latter. Unlike the situation in *Demaria*, I conclude that it is possible to ascertain, and indeed clear in these circumstances, that the ID would have reached the same conclusion with or without these relatively minor comparisons: *Demaria*, at paragraphs 146–148; see also *Abdi v. Canada (Public Safety and Emergency Preparedness)*, 2017 FC 950, [2018] 3 F.C.R. 328, at paragraph 40. Conversely, to invalidate the ID's decision on the basis of this minor error would be to engage in the "'line-by-line treasure hunt for error'" that the Supreme Court has cautioned against: *Vavilov*, at paragraph 102, citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, [2013] 2 S.C.R. 458, at paragraph 54.

[98] The other grounds raised by Mr. Pascal do not show the ID to have been unreasonable. Again, I do not propose to address every allegation that the ID erred in reaching a factual conclusion. However, I will address four other arguments raised by Mr. Pascal.

[99] First, Mr. Pascal criticizes the ID for identifying 15 incidents that cumulatively established his membership in the Galloway Boys, but then only reviewing six of those incidents in detail: *Pascal*, at paragraph 90. I agree with Mr. Pascal that this statement by the ID creates the impression that the remaining nine incidents remain unanalyzed. However, when the reasons are viewed as a whole, one sees that the remaining incidents are referred to in other sections of the decision in a manner that shows how the incident relates to the ID's conclusions. Thus, for example, the 2004 convenience store robbery of which Mr. Pascal was convicted is not discussed as one of the six incidents reviewed in detail, yet its role in Mr. Pascal's involvement with the Galloway Boys is reviewed in several other parts of the decision: *Pascal*, at paragraphs 127, 158, 161, 164, 182. While I agree that the ID could have been clearer or more detailed as to how certain incidents were relied on or considered relevant, such as the 2006 incident in which Mr. Pascal was identified as having demanded money with a gun, I do not consider that the lack of detail or analysis with respect to such incidents renders the ID's membership conclusion unreasonable in the context of its overall reasons.

[100] Second, Mr. Pascal asserts that the ID unreasonably relied on the mere existence of police interactions and equated such interactions with criminality. He argues, with reference to the decision of Justice Southcott in *Abdi*, that police interactions are not evidence of criminality, organized or otherwise: *Abdi*, at paragraphs 38–40. Unlike the situation in *Abdi*, however, the ID in this case did not simply rely on a total number of charges or incidents in reaching its conclusion. Rather, it referred to the facts underlying the various incidents as relevant evidence supporting a finding of membership in a criminal organization. As Justice Southcott recognized in *Abdi*, this is different from simply counting interactions, and *Sittampalam* recognized such consideration as appropriate: *Abdi*, at paragraphs 36–38; *Sittampalam*, at paragraph 50. Notably, while Mr. Pascal suggests that his numerous interactions with police are equally consistent with having grown up in a marginalized community and being the "'usual suspect'", this does not account for the nature of those interactions, which include specifically identifying Mr. Pascal not only as having been stopped or arrested, but as having been directly involved in specific events constituting criminal conduct: *Pascal,* at paragraphs 166–167.

[101] Third, Mr. Pascal contends that the ID engaged in speculation in making conclusions about certain events based on the facts as set out in the police reports. In particular, Mr. Pascal argues that the ID's conclusions regarding two events in 2015 and 2016 being indicative of organized activity to engage in drug trafficking were mere speculation exceeding the facts set out in the reports. The Minister, on the other hand, suggests that the ID simply made reasonable inferences from the evidence. The Minister noted that the Federal Court of Appeal upheld similar inferences that events were "gang related", noting that the fact that other inferences might be drawn does not make them unreasonable: *Thanaratnam (FCA)*, at paragraphs 19, 34–36.

[102] The line between drawing justifiable inferences based on evidence and engaging in speculation can be notoriously difficult to draw: *R. v. Munoz* (2006), 86 O.R. (3d) 134, 2006 CanLII 3269 (Sup. Ct.), at paragraphs 23–31. In the present case, I am satisfied that the ID did not go beyond reasonable inference into the realm of speculation. The language of paragraph 37 of *Thanaratnam (FCA)* appears applicable:

> It is possible, of course, as his counsel said, that Mr. Thanaratnam merely "hung out" with VVT members and was simply unlucky enough to be in the wrong place at the wrong time. However, as I have already indicated, the fact that a more benign explanation may exist does not render the opposite conclusion patently unreasonable, particularly when account is taken of the large number of "interactions" between the police and Mr. Thanaratnam before his detention in 2001.

[103] Here, the ID took account of the various facts that underlay the numerous incidents in which Mr. Pascal was apparently involved with guns, drugs, prostitution and threats, and did not accept the "more benign explanation" that Mr. Pascal was consistently and frequently in the wrong place at the wrong time, or that he was acting on his own. I cannot conclude this was unreasonable.

[104] Fourth, Mr. Pascal alleges that it was unfair for the ID to have relied on the events leading to his arrest in early 2018 on numerous drug and firearm charges: *Pascal*, at paragraphs 91–101. These charges arose after the commencement of the inadmissibility hearing, but before Mr. Pascal gave his evidence. Officer Petersen addressed the charges in his evidence. At the outset of his testimony, Mr. Pascal objected to answering questions on these outstanding charges, particularly prior to Crown disclosure, on the ground that his answers may tend to incriminate him, and as a matter of procedural fairness: *Canada Evidence Act*, R.S.C., 1985, c. C-5, section 5; *Canadian Charter of Rights and Freedoms*, section 13. The ID ruled that as a matter of fairness, the Minister could not question Mr. Pascal on the outstanding charges until the disclosure was issued. On the final day scheduled for the hearing, prior to the Minister's submissions, Mr. Pascal's counsel advised that the disclosure had been received. Neither party sought to question Mr. Pascal on the 2018 charges, and the matter proceeded directly to submissions. In his submissions, Mr. Pascal argued that it would be unfair to consider the 2018 charges as he did not have an opportunity to respond to them.

[105] The ID concluded that there was no unfairness in relying on these charges. It noted that counsel could have recalled Mr. Pascal to give evidence if this was desired, and that "[i]f Mr. Pascal wanted the opportunity to respond to the January 2018 charges, I would have expected his counsel to notify me of this at the time he discharged his undertaking [to advise when disclosure was received]": *Pascal*, at paragraph 176. I

agree. Having not sought to give evidence with respect to the January 2018 charges, Mr. Pascal cannot complain that he was not given an opportunity to do so. While it may have been preferable for the ID to raise the question, Mr. Pascal was in possession of the information regarding the disclosure before the ID was, and had the opportunity to seek to call evidence. There was no unfairness in relying on the information underlying the 2018 charges in such circumstances. I note that, in any event, the ID stated that its conclusion that Mr. Pascal is a member of the Galloway Boys would have remained the same even without considering this information.

[106] Mr. Pascal also notes that the ID stated that it had no information on the disposition of the 2018 charges other than that they had "been resolved": *Pascal*, at paragraph 91. It appears that counsel wrote to the ID twice after submissions had been completed. The first letter advised in April 2019 that the criminal charges had "been resolved", and asked for the ID to render its decision. The second, written on May 8, 2019, advised that the charges had been dismissed and stayed, and again asked for a decision to be rendered. The ID's decision was rendered on May 30, 2019 with reasons dated June 7, 2019. It appears that paragraph 91 of the decision may have been written either before receipt of the May 8, 2019 letter or without taking it into account. Nonetheless, given the ID's approach to the charges and the underlying facts, its analysis that it found the underlying evidence credible or trustworthy as well as its indication that the result would have been the same without considering the information, I do not see any unreasonableness flowing from the ID's statement that the charges were resolved but that it did not have information on the disposition: *Pascal*, at paragraphs 91, 100, 177.

[107] With respect to the remainder of Mr. Pascal's arguments, I simply note that I agree with the Minister's assessment that in many cases, Mr. Pascal is seeking to have the Court reassess or reweigh evidence, or make credibility findings different from those made by the ID. In other cases, Mr. Pascal's arguments overstate the conclusions of the ID, or accuse the ID of ignoring or not engaging with his argument or aspects of the evidence, when the ID clearly considered and addressed the arguments and evidence in question. None of these arguments satisfies me that the ID's conclusion that there were reasonable grounds to believe that Mr. Pascal is a member of the Galloway Boys was an unreasonable one.

[108] Finally, I note that in addition to finding that Mr. Pascal was a member of the Galloway Boys, the ID also concluded that Mr. Pascal engaged in activity that was part of a pattern of organized criminality: *Pascal*, at paragraphs 14, 68–69, 114, 159, 163, 165, 185. This finding constitutes a separate ground for inadmissibility under paragraph 37(1)(a) that does not depend on a finding that Mr. Pascal was a member of the Galloway Boys: *Thanaratnam (FCA)*, at paragraph 30; *Mkrtchytan*, at paragraphs 6–7.

IV. Conclusion

[109] The ID's reasons were thorough, lengthy and detailed. It explained the legal and factual basis for its conclusions, and the reasons that it accepted or rejected the evidence. While there were areas in which the reasons could have been more detailed, they more than adequately met the reasonableness requirements of transparency, justification and intelligibility. Mr. Pascal clearly disagreed with the ID's assessment of the evidence, its reliance on certain sources that would not be permissible in other legal settings, and its conclusion that there were reasonable grounds to believe Mr. Pascal to

be a member of the Galloway Boys. However, such disagreement does not constitute unreasonableness. The ID had to determine whether Mr. Pascal was inadmissible for organized criminality, based on evidence that it found to be credible and trustworthy. It did so and explained why in a reasoned fashion.

[110] The application for judicial review is therefore dismissed. Neither party proposed a question for certification and I agree that none arises in the matter.

Judgment in IMM-3379-19

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.