Federal Court  Cour fédérale

Date: 20250729

Docket: IMM-6765-24

Citation: 2025 FC 1338

Toronto, Ontario, July 29, 2025

PRESENT: The Honourable Justice Battista

BETWEEN:

OLEKSANDR ZAHREBELNYI
OLENA ZAHREBELNYI
ILIA ZAHREBELNYI
MARIIA ZAHREBELNYI
OLEKSANDRA ZAHREBELNYI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The essential issue in this application is whether the concept of "subversion" can be reasonably interpreted more broadly than "accomplishing change" for the purpose of inadmissibility under paragraph 34(1)(b.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] An officer (Officer) of Immigration, Refugees and Citizenship Canada interpreted "subversion" in a manner that includes maintaining the *status quo*, and for the reasons below, I find that interpretation and other aspects of the decision to be reasonable. As a result, this application is dismissed.

II. Background

[3] The appropriate starting point for the background of this application is the acknowledgment that the Principal Applicant is not alleged to carry personal responsibility for committing acts of subversion or any other bases for inadmissibility to Canada. His inadmissibility results from his admitted service and employment with the Secret Service of Ukraine (SBU) between 1998 and 2011. The Officer who refused his application acknowledged at several points in the decision that there is no evidence that the Principal Applicant personally engaged in acts of subversion or had any knowledge of such acts perpetrated by the SBU.

[4] However, personal involvement in subversion is not required when the alleged ground of inadmissibility is membership in an organization that has engaged in subversion against a democratic government, institution or process as they are understood in Canada (IRPA, s 34(1)(f)). After a detailed analysis, the Officer concluded that the SBU was engaged in political repression, obstruction of the media, and election fraud throughout the period of the Principal Applicant's involvement with the SBU.

[5] As a result, the Applicants' application for permanent residence in Canada on humanitarian and compassionate (H&C) grounds was refused by the Officer on April 10, 2024. The Officer

determined that the Principal Applicant was a member of an organization that there were reasonable grounds to believe engaged in acts described in paragraph 34(1)(b.1) of IRPA:

34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants :
…	[…]
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	**b.1)** se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
…	[…]

[6] The Principal Applicant was forthcoming about his roles in the SBU. After leaving the SBU, he became an entrepreneur in Ukraine, eventually opening a meat processing plant in 2016. As conditions in Ukraine deteriorated, he opened a meat processing plant in North Bay, Ontario with two business partners and obtained a Canadian work permit in the Entrepreneur/Self-employed category. His spouse and three children eventually joined him in Canada.

[7] At the time of the Applicants' permanent residence application in 2020, the Principal Applicant's business employed twenty full time Canadians and permanent residents, with plans for expansion. The Applicants claim that the impact of the delay in addressing his admissibility on their lives and their business constitutes an abuse of process.

III. Issues

[8] This application raises the following issues:

(i) Did the Officer reasonably interpret "subversion" under paragraph 34(1)(b.1) of the IRPA?

(ii) Did the Officer reasonably assess the existence of "acts against a democratic government, institution or process" within the meaning of paragraph 34(1)(b.1) of the IRPA?

(iii) Did the Officer unreasonably fail to assess the SBU's organizational intent to commit subversion?

(iv) Did the Officer unreasonably rely on unavailable or non-credible sources of evidence?

(v) Was there an abuse of process based on the delay in rendering the decision?

[9] The first four issues engage the reasonableness standard of review as described by the Supreme Court of Canada (SCC) in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*) and *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 (*Mason*).

[10] The final issue requires a determination of whether a breach of fairness occurred in the decision-making process and is not amenable to a standard of review analysis (*Vukaj v Canada (Citizenship and Immigration),* 2025 FC 1037 (*Vukaj*) at paras 10-16). The question to be applied

to issues questioning procedural fairness is whether the process was fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Analysis

A. *The role of statutory interpretation in this application*

[11] The first three issues in this application examine the Officer's interpretation and application of a statute, paragraph 34(1)(b.1) of the IRPA. Specifically:

- The first issue asks whether subversion requires an element of "accomplishing change", and whether it was reasonable for the Officer to find that subversion can also include resisting change to preserve the *status quo*;

- The second interpretative issue examines the reasonableness of the Officer's failure to explicitly describe the degree to which a target of subversion is "democratic," as understood in Canada; and

- The third interpretative issue involves the degree to which an organization referred to in paragraph 34(1)(f) must be determined to have a specific intent to engage in subversion described in paragraph 34(1)(b.1).

[12] On judicial review, statutory interpretation issues are assessed using the reasonableness standard of review. Reasonableness review places "reasons first" and requires that an administrative decision maker provide justification for a decision, rather than a reviewing court (*Vavilov* at paras 15, 83; *Mason* at paras 8, 58). This separation of roles is what methodologically

separates reasonableness review from correctness review: the former evaluates the justifications and outcomes in a decision, and the latter empowers courts to provide their own outcomes and justifications (*Vavilov* at paras 12, 54; *Mason* at para 62).

[13] In describing the nature and process of reasonableness review, the SCC has cautioned courts about conducting "disguised correctness" review. The SCC has provided descriptions of "disguised correctness": when a court decides an issue for itself; when a court creates its own "yardstick" and then uses it to measure what the decision maker did; and when a court ascertains a range of possible conclusions that would have been open to a decision maker (*Mason* at para 62).

[14] Reasonableness review of statutory interpretation matters is prone to disguised correctness review because "reviewing courts are accustomed to resolving questions of statutory interpretation in a context in which the issue is before them at first instance or on appeal, and where they are expected to perform their own independent analysis and come to their own conclusions" (*Vavilov* at para 115). The risk is that reviewing courts will use their own statutory interpretation analysis as a starting point—rather than an aid—to evaluate the reasonableness of what the administrative decision maker did or did not do.

[15] Admittedly, there can be a fine line between the use of statutory interpretation as a starting point and the use of statutory interpretation as an aid in assessing reasonableness. In my view, a court appropriately engages in statutory interpretation as an aid when it is used to evaluate a statutory interpretation analysis in the decision, or when a decision contains a conclusion but no analysis regarding the interpretation of a statute. In the absence of analysis, the Court may apply

the principles of statutory interpretation to evaluate the reasonableness of the decision's outcome on the meaning of a provision.

[16] The methodology of applying reasonableness review in statutory interpretation matters can be seen in SCC decisions. In *Vavilov* and *Mason*, the SCC did not embark upon its own statutory interpretation analysis. Rather, it focused on the statutory analyses found in the administrative tribunals' reasons and the parties' submissions. In both cases, unaddressed constraints found in the parties' submissions and in the statute that related to the text, context, and purpose of the provisions rendered the decisions unreasonable.

[17] Recently, the SCC reviewed a decision which failed to contain a statutory interpretation analysis (*Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21 (*Pepa*)). The parties clearly disputed the meaning of the statute, which triggered the requirement that the Immigration Appeal Division (IAD) was alive to the modern principle of statutory interpretation (at paras 62, 85). However, the IAD relied upon inapplicable caselaw and ended its analysis at that point (at paras 66-85). It did, however, reach a conclusion on the meaning of the provision in question. The SCC therefore independently examined the text, context, and purpose of the provision to evaluate the reasonableness of that conclusion.

[18] *Pepa* indicates that once the meaning of a statute requires clarification, a decision maker must show in its reasons or its outcome that it is alive to the text, context and purpose of a statute (at paras 62-63). Another lesson from *Pepa* is that a tribunal's failure to conduct a statutory interpretation analysis to justify its interpretation of a statute is not always fatal to the decision (at para 63). The decision may be reasonable or unreasonable depending on whether its interpretive

outcome accords with the principles of statutory interpretation. In *Pepa*, the outcome reached on the meaning of the disputed provision was unreasonable. As we will see in this application, the Officer's conclusion was reasonable.

[19] In either case, reviewing courts are empowered to conduct their own analysis to verify the reasonableness—or unreasonableness—of the tribunal's interpretation and its decision. Otherwise, the absence of a statutory interpretation analysis would always be fatal to the decision under review, regardless of the reasonableness of the outcome.

[20] In this way, the review of a decision when an administrative decision maker fails to engage in a statutory interpretation analysis is similar to the review of any administrative decision with an outcome but no reasons (*Vavilov* at paras 136-138). In such cases, the reviewing court "must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable" (*Vavilov* at para 138). This is what the SCC did in *Pepa*, where the relevant constraint involved the principles of statutory interpretation.

[21] This practice is, in my view, consistent with reasonableness review and respect for the administrative decision. It also serves the goal of efficiency in administrative decision-making, while still ensuring that the Court plays a meaningful role as the arbiter of legality in administrative law (*Vavilov* at para 140).

[22] As a result, the following guidance can be discerned from the SCC decisions on reasonableness review in statutory interpretation matters:

- a court does not begin with a *de novo* analysis in matters of statutory interpretation, but examines whether the decision contains a statutory interpretation analysis or comes to a conclusion on an interpretive issue. If it does neither, the decision may be unreasonable for lack of responsiveness and the matter may be remitted for redetermination.

- a reviewing court may be able to discern a decision maker's interpretation from the record or outcome and determine whether this interpretation is reasonable (*Vavilov* at para 123). Such an interpretation may be discerned, for example, when a decision applies a legal standard drawn from an interpretation of the legislation or implicitly adopts a particular interpretation of the statute in its reasons (*Howlader v Canada (Citizenship and Immigration)*, 2025 FC 274 (*Howlader*) at para 20; *Telet v Canada (Citizenship and Immigration)*, 2025 FC 186 at paras 27-29; *Ganeshalingam v Canada (Citizenship and Immigration)*, 2024 FC 1437 at paras 32-33; *Freeman v Canada (Citizenship and Immigration)*, 2024 FC 1839 at paras 25-27, 80; *Galindo Camayo v Canada (Citizenship and Immigration)*, 2022 FCA 50 at paras 57, 60).

- in the absence of statutory interpretation analysis in an administrative decision, or in case of omissions in the interpretive exercise, the analytical omissions are not necessarily fatal to the decision, and the Court can use the modern principle of statutory interpretation, examining the statute's meaning in reference to its text, context, and purpose in order to assess the reasonableness of the decision (*Vavilov* at paras 117-120);

- when the court identifies constraints which are determinative of a single interpretation, foreclosing other reasonable interpretations, the court will decline to remit the matter for reconsideration.

[23] In summary, statutory interpretation is a tool—like any other "constraint" described in *Vavilov*—which a reviewing court can use to evaluate the reasonableness of a decision. *Vavilov* did not establish a hierarchy of constraints, such that courts should be more reluctant to utilize some and more freely use others. This approach is what I believe the SCC intended when it held that "whatever form the interpretive exercise takes, the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision" (*Vavilov* at para 120).

[24] The Officer in the present application reached a conclusion on the interpretation of paragraph 34(1)(b.1), specifically, that "subversion" includes resisting change. However, the Officer did not conduct a statutory interpretation analysis, despite the fact that the interpretative issues were in dispute. For this reason, it is necessary in this application to examine the reasonableness of the meaning ascribed to the provision by the Officer by engaging the relevant constraint, namely, the principles of statutory interpretation.

B. *The decision is reasonable*

(1) The Officer reasonably interpreted "subversion" within the meaning of paragraph 34(1)(b.1)

[25] The Applicants argue that the Officer unreasonably stated a definition of "subversion" that

was incoherent, overly broad, and failed to consider the "*mens rea*" and intent of the SBU.

(a) *The Officer's definition was intelligible*

[26] The Applicants correctly point out that aspects of the Officer's reasons are difficult to understand. However, it is possible to follow the analysis of "subversion" undertaken by the Officer overall (*Vavilov* at para 104). That analysis concluded that "subversion" could encompass efforts to maintain the political *status quo*, and was not confined to efforts to accomplish change.

[27] Relying on jurisprudence from this Court and the Federal Court of Appeal (FCA), the Officer determined that three conditions were required for subversion under paragraph 34(1)(b.1): (1) an element of attempting to accomplish change; (2) a clandestine or deceptive element; and (3) an element of undermining from within.

[28] In applying these factors, the Officer found:

- The SBU sought the "status quo" through its actions to keep the current leader in power;
- The SBU's goal was not to perpetuate or enhance the state of democracy in Ukraine, but to undermine it by preventing change and serving the head of state's personal goals;
- The SBU resisted democratic change by playing an active role in subverting the electoral process and other institutions;
- "[E]mploying subversive actions in order to resist change can be equated to accomplishing an alternate or artificial change, namely one of resisting democratic progress and obstructing participation in democratic institutions".

[29] In an apparent attempt to stretch the concept of change to meet the criteria from the jurisprudence, in this final finding the Officer unintelligibly equated resistance to change as accomplishing an “alternate or artificial” change.

[30] However, the meaning of this portion of the Officer’s reasons is clear when viewed in its totality. It conveys the Officer’s views that the SBU’s resistance to political change can fall within the concept of “subversion”. The Officer concludes this portion of the reasons by stating: “In that respect, I am satisfied that the SBU’s preservation of the status quo can be qualified as a form of subversion within the meaning of paragraph 34(1)(b.1) of the IRPA.” The ultimate clarity of the Officer’s interpretive conclusion is demonstrated by the fact that this interpretation forms one of the Applicants’ main bases of attack.

[31] Because the Officer reached a conclusion on the interpretation of paragraph 34(1)(b.1), as discussed above, it is appropriate for the Court to assess the reasonableness of this interpretive outcome by applying the modern principles of statutory interpretation.

(i) It is reasonable to interpret subversion as resistance to democratic change

[32] The Officer determined that the meaning of “subversion” within paragraph 34(1)(b.1) can capture conduct that preserves the *status quo*. According to the Officer, maintaining the *status quo* by subversive means undermines or inhibits democratic change, and as such, the SBU’s preservation of the *status quo* can be subversion within paragraph 34(1)(b.1) of the IRPA.

[33] The modern principle of statutory interpretation can assist the Court to determine whether the Officer's interpretation was reasonable through its accordance with paragraph 34(1)(b.1)'s text, context, and purpose (*Vavilov* at paras 119-120).

(b) *The text of paragraph 34(1)(b.1)*

[34] The ordinary and grammatical meaning of the text in paragraph 34(1)(b.1) does not support an interpretation of subversion that is restricted to "accomplishing change".

[35] The text of paragraph 34(1)(b.1) of the IRPA provides that: "A permanent resident or a foreign national is inadmissible on security grounds for … engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada." There is no definition of "subversion" in the IRPA.

[36] The text is the starting point and the anchor for the statutory interpretation analysis (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 (*CISSS A*) at paras 24, 28). But sometimes that anchor is not firmly tethered to the seabed; a proper textual analysis pays equal attention to the uncertainties and certainties of legislative text.

[37] Textual interpretations are arrived at, when there is no definition in the Act, by looking at a text's ordinary and grammatical meaning, namely, "'the natural meaning' that appears when the provision is simply read through as a whole" (*Telus Communications Inc v Federation of Canadian Municipalities*, 2025 SCC 15 (*Telus*) at para 39; *CISSS A* at para 28 [citations omitted]). This

includes resorting to dictionary definitions, keeping in mind that dictionary meanings should not be used to obscure the provision in its entirety (*Telus* at para 43; *Howlader* at paras 26-27).

[38] There are various definitions of "subversion" in the *Oxford English Dictionary*, including:

> The overturning or abolition of an established or existing practice, belief, rule, etc., or of a set of these; the transformation of a state of things; an instance of this.
>
> The action of overthrowing a nation, government, ruler, etc.; the fact or condition of being overthrown; removal from power, deposition; an instance of this. (*potentially obsolete*)
>
> The action or process of undermining the power and authority of an established system or institution, or of attempting to achieve, esp. by covert action, the weakening or removal of a government, political regime, etc.

[39] *Black's Law Dictionary* (12th ed., 2024) provides the following definition:

> … Today, the term *subversion* designates all illegal activities, whether direct or indirect, overt or covert, conducted under the auspices of a state and designed to overthrow the established government or vitally disrupt the public order of another state. Subversion combines psychological, political, social, and economic actions, as well as active military or paramilitary operations, and it is generally a sustained, long-run, intermeshed, and coordinated process. Consequently, it is usually impossible to place acts of subversion into neat little categorical definitions. Subversion, being a technique of opportunity, is successful mainly in areas where social and political revolution is at least incipient.

[40] These definitions identify subversion as a broad category of more specific activities which undermine or attempt to undermine an established practice, government, system, or institution. The breadth of this category of activities led this Court to find the term "subversion" unconstitutionally vague, although saved by section 1 of the *Canadian Charter of Rights and*

Freedoms, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (*Charter*) (*Al Yamani v Canada (Minister of Citizenship and Immigration* (TD), [2000] 3 FC 433 (*Al Yamani*) at paras 55-71).

[41] The ordinary meaning of subversion, as indicated by the definitions above, therefore plays a less dominant role in the interpretive process because the term is neither precise nor unequivocal, and is capable of supporting more than one reasonable meaning (*Canada (National Revenue) v Shopify Inc*, 2025 FC 968 (*Shopify*) at para 58).

[42] The Applicants rely on *Al Yamani* for the proposition that subversion must include the concept of "undermining from within". However, the Court in *Al Yamani* did not explicitly endorse this concept as a necessary element of subversion; it faulted the decision maker for not being responsive to expert evidence regarding this aspect of the definition (*Al Yamani* at para 85).

[43] Similarly, the Applicants rely heavily upon the FCA's endorsement that "subversion" encompasses "accomplishing change" (*Qu v Canada (Minister of Citizenship and Immigration)* (CA), 2001 FCA 399 (*Qu*)). However, the definition of "subversion" was not the direct issue in *Qu* (see paras 14-15), and while the FCA may not have disputed that "accomplishing change" is part of the term's definition, it does not follow that the term cannot also encompass the concept of resisting change in the appropriate context.

[44] A textual analysis therefore does not support the restrictive interpretation proposed by the Applicants, but it is also not conclusive of whether "subversion" can include efforts to preserve the *status quo*.

(c) *The context of paragraph 34(1)(b.1)*

[45] A contextual examination of the term "subversion" in paragraph 34(1)(b.1) reveals that the term is capable of referring to efforts to resist change or maintain the *status quo*.

[46] Context in statutory interpretation may refer to the legislative context, including the statute book as a whole, related legislation, and legislation enacted in other jurisdiction (Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto: Irwin Law, 2016) at 173). It also includes immediate context, including text within the provision in question, as well as the scheme and objects of the underlying Act (*Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 (*Najafi*) at paras 67-70; *Howlader* at para 41).

[47] The relevant context for the interpretation of the term "subversion" in paragraph 34(1)(b.1) includes: (a) its immediate statutory context; (b) its broader statutory context; and (c) the international legal context. The Applicants suggested the *Charter* as an additional context but as will be seen below the *Charter* does not assist in clarifying the provision's meaning.

[48] The more immediate statutory context of the term "subversion," in my view, supports an interpretation that allows for subversive acts aiming to maintain the *status quo*.

[49] Within the immediate statutory context, a comparison of paragraph 34(1)(b.1) to the other subsections of security-based inadmissibility helps to clarify its meaning. Aside from inadmissibility for engaging in terrorism (s 34(1)(c)), all of the other grounds inadmissibility in

section 34 of the IRPA are described not solely based on an activity but on the impact of the activity. To illustrate:

- Paragraph 34(1)(a): “espionage that is against Canada or that is contrary to Canada’s interests”;

- Paragraph 34(1)(b): “subversion by force of any government”;

- Paragraph 34(1)(d): “danger to the security of Canada”;

- Paragraph 34(1)(e): “acts of violence that would or might endanger the lives or safety of persons in Canada”.

[50] While “engaging in terrorism” does not identify an impact in the text of the provision, the SCC has incorporated its impact into the definition: an “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act” (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 (*Suresh*) at para 98).

[51] Similar to these subsections of section 34, the text of paragraph 34(1)(b.1) does not stop after identifying the activity of subversion. It refers to subversion “against a democratic government, institution or process as they are understood in Canada.” [Emphasis added.] The fact that Parliament could have, but did not, stop at the term “subversion” reveals an intention not to capture subversive activity generally, but only subversion that threatens democracy, the system of

government to which Canada is committed. In calibrating the nature of conduct under paragraph 34(1)(b.1), the provision directs us to the impact on democracy.

[52] Further, section 34 of the IRPA contains two types of inadmissibility resulting from subversion. The first, in paragraph 34(1)(b), identifies a target generally—any government—but narrows the type of subversion to subversion by force. By contrast, paragraph 34(1)(b.1) narrows the targets by their democratic nature, but does not qualify the nature of subversion. Subversion in paragraph 34(1)(b.1) is therefore distinctive through its generality.

[53] Finally, the disjunctive nature of subversion's targets under this provision—democratic governments, institutions, *or* processes—further supports a definition of subversion which can encompass both accomplishing change or resisting change. Activities which support the *status quo* of non-democratic institutions or processes working to threaten democratic governments is captured by the provision. Also captured may be activity preserving non-democratic governments which undermines democratic institutions or processes. Again, the threat to democracy is the focus, rather than the specific nature of subversive activity which creates the threat.

[54] The statutory context surrounding paragraph 34(1)(b.1) and its immediate context therefore reveal that the act of subversion must not be considered in isolation, but rather in light of its direction against a democratic government, institution, or process.

[55] The subparagraph's emphasis on containing threats to democracy is also supported by section 34's overall linkage to the security of Canada (*Mason* at paras 98-99), "bearing in mind

the fact that the security of one country is often dependent on the security of other nations" (*Suresh* at para 90).

[56] Finally, the *Charter* as context does not support the Applicants' proposed restriction of "subversion" to "accomplishing change." The Applicants claim that the Officer's interpretation of subversion as resisting democratic change "effectively equates political dissent, ideological opposition, or skepticism toward democratization with a ground for inadmissibility from Canada".

[57] However, the concern about *Charter* compliance also applies to the restrictive interpretation of subversion advanced by the Applicants. Both definitions risk impingement on *Charter* rights to expression and association and as a result the *Charter* as context provides little support for the Applicants' position.

(d) *The purpose of paragraph 34(1)(b.1)*

[58] The purpose of paragraph 34(1)(b.1) has not been addressed in the jurisprudence. However, the purpose of a provision can be gleaned from legislative description of purpose, other authoritative descriptions of purpose, the text of the provision itself, the legislation's scheme, by way of the mischief to be cured, or from legislative evolution (Sullivan at 189-200).

[59] In my view, the text of paragraph 34(1)(b.1) and its legislative evolution provide the best guidance regarding the purpose of this provision. These sources reveal the provision's purpose as the protection of Canadian democracy by denying admission to those who have posed a threat anywhere to democratic governments, institutions, or processes as they are understood in Canada.

[60] As indicated above, the provision's context reveals its goal as the protection of democratic government, democratic institutions, and democratic processes, rather than the prevention of subversion generally. Parliament has required textual interpretations to be large and liberal such that a provision's object is attained (*Interpretation Act*, RSC 1985, c I-21, s 12). This favours a broader definition of "subversion" than the narrower version proposed by the Applicants, which both requires and is restricted to "accomplishing change."

[61] The legislative evolution of the subversion bar reveals that Parliament's early motivation was to restrict entry for "anarchists" who opposed organized government. Initial legislative attempts to address subversion focused on the removal of those already in Canada, revealing a concern with the threat posed to Canadian government. The term "subversion" first appeared in Canadian immigration legislation in the *Immigration Act*, RSC 1952 (Supp), c 325, and was restricted to violent activities. That uniform requirement for violence was later removed in the IRPA, which expanded the concept of "subversion" to cover non-violent activities as well as activities outside of Canada (Jared Porter, "No Rebels Allowed: The Subversion Bar in Canada's Immigration Legislation" (2018) 81:1 Sask L Rev 25).

[62] Therefore, the legislative expansion of conduct constituting "subversion" indicates a trend toward expanding rather than restricting the nature of conduct posing a threat to democracy. This trend would be stunted by the restricted nature of the definition proposed by the Applicants.

[63] The legislative trend of the provision also indicates an increasing specification of the targets of subversion, namely democratic institutions, or processes as they are understood in

Canada. This demonstrates Parliament's concern to define subversion inadmissibility in this section not by the nature of conduct alone but by reference to the target of the conduct.

[64] Finally, the relevant international instruments to which Canada has subscribed shed light on the parliamentary purpose behind paragraph 34(1)(b.1) (*R v Appulonappa*, 2015 SCC 59 at para 40).

[65] The IRPA makes it clear that the legislation is to be interpreted and applied in a manner that is consistent with international human rights instruments to which Canada is a signatory (s 3(3)(f)). This includes documents signed by Canada which defines access to power as an essential element of democracy.

[66] For example, Canada co-sponsored Resolution 19/36 of the United Nations Human Rights Council which commits states to allow freedom for citizens to support or oppose government, without undue influence or coercion of any kind (UN General Assembly Human Rights Council, *Human Rights, Democracy, and the Rule of Law*, 19 April 2012, A/HRC/RES/19/36). This provides useful international context to guide the interpretation of this provision (*de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at para 87) because it demonstrates Canada's view that access to power is thwarted by regimes that resist democratic change.

[67] These sources—text, legislative evolution, and international sources—indicate that the protection of democracy as understood in Canada is the focus of paragraph 34(1)(b.1). In my view, the provision's purpose can be described as the protection of Canadian democracy by denying

admission to those who have posed a threat anywhere to democratic governments, institutions or processes as they are understood in Canada.

(e) *Conclusion on statutory interpretation of paragraph 34(1)(b.1)*

[68] The Officer's interpretation of subversion as including preservation of the *status quo* is reasonable because it is justified in relation to the relevant legal constraint. The principles of statutory interpretation do not support a requirement that the term be restricted to acts that accomplish change. Rather, examining the provision's text, context, and purpose reveals that the term "subversion" has been broadened in meaning and that the focus of the provision is not on the form of behaviour but whether the acts change or undermine democratic governments, institutions, or processes (see also *Mejia Ramirez v Canada (Citizenship and Immigration)*, 2024 FC 1939 (*Mejia Ramirez*) at para 32).

(2) The Officer reasonably assessed the existence of "acts against a democratic government, institution or process" within the meaning of paragraph 34(1)(b.1) of the IRPA

[69] The Applicants argue that the Officer unreasonably failed to consider or establish that the SBU's targets were democratic entities or processes.

[70] According to the Applicants, FCA guidance in *Qu* (at paras 45-46) required the Officer to establish that the Ukrainian government, opposition parties, journalists, academic groups, democratic NGOS, and foreign diasporas were "government, institutions or processes" that were "democratic in nature" and "established in accordance with democratic principles."

[71] The question before the FCA in *Qu* was whether a Canadian Chinese student's society could qualify as a democratic institution, or whether an institution targeted by subversion needed to exercise governmental or political authority. The FCA determined that democratic institutions were not limited to political institutions (at para 46). The FCA found a democratic institution "consists of a structured group of individuals established in accordance with democratic principles with preset goals and objectives who are engaged in lawful activities in Canada of a political, religious, social or economic nature" (*Qu* at para 50 [emphasis added]). This definition focuses on internal democratic structure rather than democratic function.

[72] The FCA's decision in *Qu* was based on the specific question before it, and I agree with my colleague Justice McVeigh that *Qu* does not require a uniform, mechanical assessment of an entity's status as democratic before finding that they are captured within the meaning of institutions or processes for the purpose of paragraph 34(1)(b.1) (*Canada (Public Safety and Emergency Preparedness) v Leguizamo Melo*, 2025 FC 1195 at paras 30).

[73] Additionally, the Applicants' interpretation of the rigidity of the FCA's guidance in *Qu* would lead to an absurd situation in which a union, media outlet, or social organization that failed to adequately comply with its organizing procedures was excluded from consideration as a target of subversion under this provision. It would also exclude human rights organizations who are highly effective and support democracy but have chosen to appoint rather than elect leadership for reasons of efficiency and effectiveness. In my view, Parliament could not have intended these absurd results.

[74] As described above, the purpose of paragraph 34(1)(b.1) is the protection of Canadian democracy through the denial of admission to those who have posed a threat anywhere to democratic governments, institutions or processes as they are understood in Canada. This goal is served by including organizations which may not be internally democratic but are democratic in function, as understood in Canada.

[75] The Officer relied upon this functional understanding of democratic institutions and processes. They identified SBU's targets as electoral processes, opposition parties, media/press, and democratic NGOs and found that "every one of these groups is essential to the political society and to the democratic institutions and processes in Ukraine." The Officer specifically identified the manner in which each entity or process supported democracy, for example:

- Electoral processes: "Free and fair elections are a significant indicator of democracy within a country and a society. Consequently, undermining an electoral process is also undermining a democratic process";

- Opposition parties: "By themselves, opposition parties represent the people and have the important and legal duty of holding the government accountable in a democratic system";

- Media and press: "The media and free press are a fundamental component of democratic societies".

[76] Given the purpose of paragraph 34(1)(b.1), the Officer was not required to examine the internal functioning of these entities in order to determine that the threats to them posed threats to democracy. It is clear that the Officer considered these institutions and processes in relation to

their support of democracy, rather than in relation to their democratic internal structures. This is not unreasonable.

(3) The Officer did not unreasonably fail to consider the intent of the SBU

[77] The Officer found that the SBU is an organization for which there are reasonable grounds to believe "engages, has engaged or will engage" in subversion.

[78] The Applicants argue that the Officer's failed to address their concerns that the SBU did not have a "*mens rea*" of subversion. In fact, the Officer did discuss the SBU's organizational structure, leadership, and activities in the decision, although it may not have been in the manner the Applicants preferred. The Applicants did not identify evidence indicating that the subversive acts perpetrated by the SBU were the responsibility of rogue members and not reflective of organizational intent, therefore an issue of the Officer's unresponsiveness does not arise. Additionally, for the reasons below there was no onus on the Officer to conduct a formal analysis of organizational intent in the absence of such evidence and submissions.

[79] I disagree that the three decisions advanced by the Applicant placed an obligation on the Officer to assess the intent of the SBU. I note that *mens rea* is a criminal law concept not referred to in the Federal Court cases discussed below, and it is a concept which I believe is inappropriate in the context of paragraph 34(1)(b.1)).

[80] The first decision relates to inadmissibility for membership in an organization engaging in terrorism (*MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 (*MN*)).

Justice Grammond relied upon the SCC's decision in *Suresh* and the agreement of the parties that this provision requires an organization's intent to commit terrorism in reference to "the circumstances in which violent acts resulting in death or serious bodily harm were committed, the internal structure of the organization, the degree of control exercised by the organization's leadership over its members, and the organization's leadership's knowledge of the violent acts and public denunciation or approval of those acts" (at para 12).

[81] The requirement of organizational intention from *MN* was subsequently applied to paragraph 34(1)(b.1) by the IAD (*Udezi-nwokolo v Canada (Public Safety and Emergency Preparedness)*, 2023 CanLII 66391 (CA IRB) (*Udezi-nwokolo*)).

[82] I disagree with the Applicants and the IAD that an assessment of organizational intent is a uniform requirement for paragraph 34(1)(b.1). Justice Grammond's finding in *MN* was made in the context of paragraph 34(1)(a) of the IRPA, following SCC decisions indicating that the act of "terrorism" under the *Criminal Code*, RSC 1985, c C-46 (*Criminal Code*), requires intention as its *mens rea* (at para 10).

[83] By contrast, subversion is the identified activity under paragraph 34(1)(b.1) and there is no corresponding SCC decision defining "subversion" with reference to the *Criminal Code*. In fact, there is no *Criminal Code* offence referring specifically to subversion. The IAD's decision provides no rationale for following Justice Grammond's holding despite the differences in these provisions and Justice Grammond's distinct rationale for requiring organizational intention in terrorism-based inadmissibility cases.

[84] Unlike the engagement in terrorism under paragraph 34(1)(c), inadmissibility under paragraph 34(1)(b.1) focuses on the threat posed to democracy rather than the mere physical act of subversion itself. A decision maker assessing a particular factual context has the responsibility of determining whether the evidentiary threshold is met for organizational involvement within the meaning of paragraph 34(1)(f).

[85] The Court's decision in *Gakumba v Canada (Citizenship and Immigration)*, 2025 FC 1561, also does not assist the Applicants. Justice Strickland found that it was reasonable for the ID to find an express intent to subvert within the meaning of paragraph 34(1)(b.1) (at para 56). She further held, however, that it was not apparent that express intent was necessary, and that "if intent must be established," it can be inferred and not express when the documentary evidence shows subversion attributed to the subject organization (at para 57 [emphasis added].). She did not discuss when intention would be necessary to establish subversion of democratic processes, or hold decision makers to an interpretation of paragraph 34(1)(b.1) that required establishing intention.

[86] I therefore disagree that this provision places a uniform obligation on decision makers to conduct an intention or "*mens rea*" analysis of organizations, although that obligation may arise in specific situations depending on the evidence and the submissions.

(4) The Officer did not rely on unavailable or non-credible sources of evidence

[87] The Applicants submit that the Officer failed to rely on credible, compelling objective evidence to meet the "reasonable grounds to believe" threshold under section 33 of the IRPA for the purposes of the inadmissibility finding. The Applicants point to various articles and evidence

that they claim are not accessible, lack authorial transparency, or are non-authoritative in support of their submission:

- The Officer's use of an inaccessible hyperlink in support of the claims that SBU illegally surveilled and interfered with Ukrainian parliamentarians in the early 2000s;

- The Officer's use of an inaccessible hyperlink to claim that Ukrainian authorities under the Kuchma presidency hired informants to collective information on investigative journalists that threatened the interest of the political and economic elites;

- The Officer's use of documents that are unavailable or containing a disclaimer that it was not a UNHCR publication; and

- The Officer's use of two hyperlinked articles that lack authorship, credibility, and have pop-up ads.

[88] These items were identified in the procedural fairness letter sent to the Applicants prior to the refusal of the application, but the Applicants did not raise a concern about accessibility or reliability in their response. At the hearing, the Respondent raised a justified objection to the Court's consideration of this issue, but I will address the Applicants' concern for completeness.

[89] It is true that in determinations under section 33 of the IRPA, decision makers are not entitled to rely on ambiguous, suspect, or unverifiable information (*Lapaix v Canada (Citizenship and Immigration)*, 2025 FC 111 at para 44). Nevertheless, administrative decision makers are tasked with assigning weight to evidence, rather than reviewing courts (*Vavilov* at paras 125-126).

[90] There are few documents that have no working hyperlink or copy in the Certified Tribunal Record (CTR), and the Applicants have not demonstrated why any of these sources are ambiguous, suspect, or unverifiable information. Otherwise, the Applicants have not provided any evidence or argument that impugns the reasonableness of the Officer's evidentiary choices.

C. *There was no abuse of process*

[91] I agree with the Applicants that the Officer failed to respond to the allegation that the length of time in processing their H&C application resulted in an abuse of process. A decision maker's failure to deal with submissions of the parties can result in an unreasonable decision for its failure to be sufficiently responsive (*Vavilov* at paras 127-128).

[92] However, abuse of process is an issue of procedural fairness, and a reviewing Court is empowered to determine whether an abuse of process occurred even in the absence of a determination of the matter by the decision maker (*Vukaj* at paras 10-16).

[93] Abuse of process involves the following three factors:

- First, the delay must be inordinate, based upon an overall assessment of the context of the proceedings.

- Second, the delay must have directly caused significant prejudice, such as significant psychological harm, stigma attached to the individual's reputation, disruption to family life, loss of work or business opportunities, as well as extended and intrusive media attention.

- Finally, when the first two factors are met, there is a final assessment of whether the delay amounts to an abuse of process. Delay will amount to an abuse of process if it is manifestly unfair to a party or in some other way brings the administration of justice into disrepute.

(*Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 (*Abrametz*) at para 43).

[94] In the present case, there has been no inordinate delay.

[95] It is not clear if the Applicants revealed the Principal Applicant's involvement with the SBU when he arrived in Canada in 2017. They did reveal his affiliation with the SBU when they submitted a H&C application in 2020, and a decision was reached on the application in April 2024. The delay was therefore between four and seven years.

[96] A lengthy delay in itself is not inordinate; it must be examined in context (*Abrametz* at para 59). The immigration and refugee context has given rise to circumstances involving abuse of process *(Ganeswaran v Canada (Citizenship and Immigration)*, 2022 FC 1797; *Aboudlal v Canada (Citizenship and Immigration)*, 2023 FC 689 at paras 48-85; *Vukaj*). In my view, this is because delay in the immigration and refugee context results in "the logical consequence of deepening and broadening the subject's roots in Canada" as well as "reasonable expectations that those roots will not be disrupted" (*Vukaj* at para 45). The Applicants have demonstrated strong roots in Canada through their years of residence and contributions.

[97] However, in my view an appropriate contextual distinction arises between situations involving status seekers and those involving status holders. The former group, which includes the

Applicants, has a weaker reasonable expectation that their roots will not be disrupted due to the fact that they have not acquired their desired status in Canada. Moreover, status seekers have a tool to address delays and potential abuse of process in the form of an application for *mandamus* (*Abrametz*, para 80), which the Applicants did not pursue in this case.

[98] Even if there was inordinate delay, there is insufficient evidence that it was characterized by the disruption to family life, loss of work, business opportunities, or severe psychological harm that would amount to an abuse of process. In the present case, while there is evidence of anxiety caused by the delay, the other consequences are the result of the unfavourable result of the investigation into the Principal Applicant's inadmissibility rather than the delay itself (*Abrametz* at paras 67-68).

V. Conclusion, Certified Question, and Costs

[99] The Officer interpreted "subversion" within paragraph 34(1)(b.1) to include efforts to resist change and maintain the *status quo*. While the Officer did not provide reasons for this interpretation, the relevant constraint—the principles of statutory interpretation—reveals that interpretation to be reasonable. For the reasons described above, the other aspects of the Officer's decision were reasonable.

[100] The Court has sympathy for the Applicants, considering the lack of the Principal Applicant's personal involvement in subversion and his contributions to Canada. However, the legislation is intended to apply in the absence of personal responsibility, and it is hoped that the

Applicants' personal circumstances will be thoroughly considered in any application they make for relief from inadmissibility.

[101] The Applicants propose two questions for certification and the Respondent opposes certification of both questions.

[102] The test for certification involves four components: (1) the question is dispositive; (2) the question has been raised and dealt with in the Court's reasons; (3) the question transcends the interests of the parties; and (4) the question must raise an issue of broad significance or general importance (*Zhu v Canada (Citizenship and Immigration)*, 2025 FC 661 at para 69 [citations omitted]). Further, the certified question must not have previously been settled by the caselaw (*Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28).

[103] The first question is the same question the Court certified in *Mejia Ramirez*:

> Does engaging in an act of "subversion" in s. 34(1)(b.1) of the IRPA include acts that undermine or disrupt democratic governments, institutions, or processes, where such acts have a goal of maintaining a specific portion of the government's power?

[104] I agree with the Applicants that the issue raised by this question is worthy of certification. While the Court has endorsed Justice Manson's interpretation of subversion as accomplishing change or undermining democratic government, institution, or process (*Egharevba v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 1093 at para 29), the FCA has never defined "subversion" in the IRPA on appeal (*Najafi* at para 66). Therefore the reasonableness of

interpreting subversion as maintaining the *status quo* through resisting democratic change is an unresolved issue that transcends the interests of the immediate parties. Given the analysis above, it would also be determinative of the appeal (see *Mejia Ramirez* at para 40).

[105] Further, the question is of broad importance because it relates to "the interpretation of inadmissibility of persons whose presence may constitute a threat to the security and safety of Canada" (*Mejia Ramirez* at para 41). However, the proposed certified question will be modified to the following:

> Can acts of "subversion" within paragraph 34(1)(b.1) of the IRPA reasonably be interpreted to include acts that have a goal of preserving the *status quo*, or resisting democratic change?

[106] The second question proposed for certification is:

> Is the *mens rea* element of subversion of a democratic government, institution, or process under paragraph 34(1)(b.1) of the IRPA the same as the *mens rea* requirement for an organization alleged to have engaged in terrorism under paragraph 34(1)(c) of the IRPA?

[107] This question is not appropriate for certification. I agree with the Respondent that the Applicants have not shown any link between paragraph 34(1)(b.1) and paragraph 34(1)(c) to support the argument that any requirement of intention in the latter is also required in the former. The question is not determinative in an appeal, and more importantly, this question is abstract because it does not arise from the Officer's decision.

[108] The Applicants have also sought costs. However, they have not demonstrated any special reasons that would justify an award of costs in this matter (*Zaeri v Canada (Citizenship and Immigration)*, 2024 FC 638 at paras 20-25).

JUDGMENT in IMM-6765-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without costs.

2. The following question is certified:

> Can acts of "subversion" within paragraph 34(1)(b.1) of the IRPA reasonably be interpreted to include acts that have a goal of preserving the *status quo*, or resisting democratic change?

"Michael Battista"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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