

## SECTION 37 - 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 in furtherance of the commission of an offence outside Canada that, if*

*committed in Canada, would constitute such an offence, or **engaging in activity that is part of such a pattern**; or*  
*(b) engaging, in the context of **transnational crime**, in activities such as **people smuggling, trafficking in persons or money laundering**.*

## Translation

- 37(1)(a) Being a member of an organization that is/was engaged in a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence, or engaging in activity that is part of such a pattern;
- 37(1)(b) Involved in such crimes as human smuggling, trafficking in persons or money laundering, in a transnational context.

## Elements of Subsection 37(1)(a)

### **Member - Membership**

Jurisprudence dictates that the term member – membership is to be given a broad and unrestricted meaning.

Anyone who was, is or will be (past, present or future) knowingly linked to the organization and benefits from this association; not only those intending to commit crimes in Canada, but also those whose presence in Canada may be used to strengthen a criminal organization or to advance its purposes.

A member of a terrorist or subversive or criminal organization does not have to personally commit acts or be involved in the management of the organization; it is only required that (s)he has knowledge of the essential nature of the organization and that there is an objective manifestation of the agreement to participate in the conduct of the affairs of the organization.

Many factors can be taken into consideration when deciding whether a person is a member of a particular group or organization (the following list is not exhaustive). These factors must be considered in their entirety, and may not be sufficient in isolation to support a finding of membership.

- Acknowledgement of membership by the organization, by other members or by the applicant;
- Worked to further the organization's goals;
- Occupied a position of trust in the organization;
- Receiving financial support from the organization, i.e. scholarship, pension, salary;
- Contributing money to the organization;

- Determined to be a member by a competent court;
- Frequent association with other members;
- Participation in the organization's activities, even if lawful;
- Attendance at meetings;
- Distribution of the organization's literature;
- Voluntarily displaying symbols of the organization;
- Receiving benefits and awards given by the organization;
- Recruiting members for the organization;
- Training members or having received training from members of the organization;
- Etc.

In addition, the Citizenship and Immigration Enforcement Manual 2 (ENF 2), Section 4.5, describes membership as follows:

Member: The meaning of "member – membership" includes anyone who is knowingly linked to an organized crime group and benefits from this association; this may include:

- persons who devote themselves full time or almost full time to the organization;
- persons who are associated with members of the organization, especially over the course of a lengthy period of time;
- persons who do not personally commit acts, provided that they are connected to the criminal organization;
- persons who are directly, indirectly, or peripherally involved with the organization;
- persons who are not involved in the management of the organization but derive an economic benefit from their association with the organization;
- persons working for a legitimate company while knowing it is controlled by organized crime; and
- persons who do not have formal membership as long as they belong (or belonged) to the criminal organization. Belonging to an organization is assumed where persons join voluntarily and remain in the group for the common purpose of actively adding their personal efforts to the group's cause.

Membership does not include persons who had no knowledge of the criminal purpose or acts of the organization.

### **Organization**

The word "organization" includes any partnership, corporation, association or other legal entity and any union or group of individuals associated in fact, although not a legal entity.

The Federal Court of Appeal in *Sittampalam* (2006 FCA 326) found that the term “organization” must be given a broad and unrestricted interpretation. It further indicated that, “Looseness and informality in the structure of a group should not thwart the purpose of *IRPA*. It is, therefore, necessary to adopt a rather flexible approach in assessing whether the attributes of a particular group meet the requirements of the *IRPA* given their varied, changing and clandestine character. It is, therefore, important to evaluate the various factors applied by O’Reilly J, and other similar factors that may assist to determine whether the essential attributes of an organization are present in the circumstances.”

Factors that can be considered when determining the presence of an organization include whether there is an identity, leadership, a loose hierarchy and a basic organizational structure, an occupied territory or regular meeting locations as well as any other factors that could be relevant.

### **Pattern of criminal activity**

A pattern of criminal activity entails a common scheme, plan or motive with multiple interrelated transactions or episodes pertaining to a continuous threat and not simply a series of disconnected acts.

## **Elements of Subsection 37(1)(b)**

### **Human Smuggling**

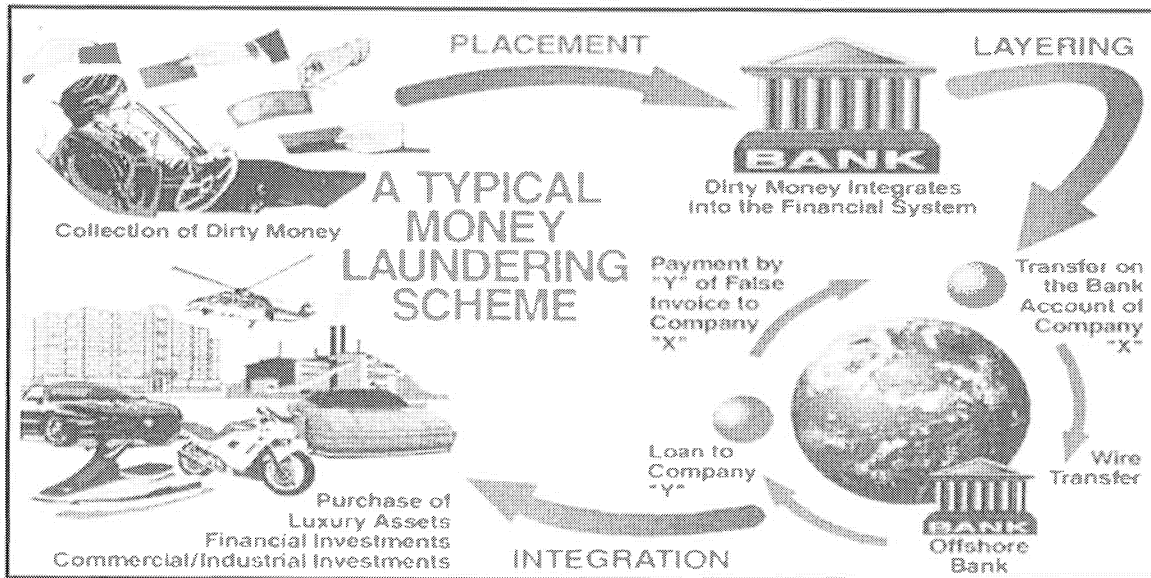
The organization and/or facilitation of the illegal entry of a person into a state of which they are not a national or permanent resident, for financial or other material benefit.

### **Human Trafficking**

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force . . . for the purpose of exploitation. Exploitation shall include . . . the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (*United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons . . .*, 2000, Article 3(a))

### **Money Laundering**

“The conversion of illicit cash to another asset, the concealment of the true source of ownership of the illegally acquired proceeds and the creation of the perception of legitimacy of source and ownership” (*UN Convention Against Illicit Traffic in Narcotics and Drugs, 1988*). Simply put – converting proceeds of illicit activities into legitimate uses.



### Prominent Case Law Regarding Section 37(1)

Membership - "being a member" is not required to be described as inadmissible under s. 37(1)(a)

*Thanaratnam* (FCA, <http://decisions.fca-caf.gc.ca/en/2005/2005fca122/2005fca122.html>)

Membership - knowing association and significant benefit is sufficient to define Membership

- no obligation to provide confidential information relied upon by the visa officer to render a person inadmissible

*Chiau* (FCTD, <http://reports.fja.gc.ca/eng/1998/1998fc21943.html/1998fc21943.html.html>)  
*Chiau* (FCA, [http://decisions.fca-caf.gc.ca/en/2000/a-75-98\\_5947/a-75-98.html](http://decisions.fca-caf.gc.ca/en/2000/a-75-98_5947/a-75-98.html))

Membership - general

*Saridag* (FCTD, <http://recueil.cmf.gc.ca/eng/1994/1995fca1484.html/1995fca1484.html.html>)  
*Shakarabi*, FCTD, [http://decisions.fct-cf.gc.ca/en/1998/imm-1371-97\\_540/imm-1371-97.html](http://decisions.fct-cf.gc.ca/en/1998/imm-1371-97_540/imm-1371-97.html))

*Suresh* (FCTD, <http://decisions.fct-cf.gc.ca/fct/1997/des-3-95.shtml>)

*Chor Shan Chong* (FCTD, <http://decisions.fct-cf.gc.ca/en/2001/2001fct1335/2001fct1335.html>)

*Thanaratnam* (FCTD, <http://decisions.fct-cf.gc.ca/en/2004/2004fc349/2004fc349.html>)

*Sittampalam* (FCTD, <http://decisions.fct-cf.gc.ca/en/2005/2005fc1211/2005fc1211.html>)

*Sittampalam* (FCA, <http://decisions.fca-caf.gc.ca/en/2006/2006fca326/2006fca326.html>)

Organization – has a broad meaning in the immigration context

*Sittampalam* (FCA, <http://decisions.fca-caf.gc.ca/en/2006/2006fca326/2006fca326.html>)

Mens rea of membership

*Amaya* (FC, <http://decisions.fct-cf.gc.ca/en/2007/2007fc549/2007fc549.html>)

Constitutionality

*Yuen, Kwong Yau* (FCA, [http://decisions.fca-caf.gc.ca/en/2000/a-152-99\\_1219/a-152-99.html](http://decisions.fca-caf.gc.ca/en/2000/a-152-99_1219/a-152-99.html))

Exemption clause

*Chor Shan Chong* (FCTD, <http://decisions.fct-cf.gc.ca/en/2001/2001fct1335/2001fct1335.html>)

Triads as brutal, single-purpose organizations

*Chor Shan Chong* (FCTD, <http://decisions.fct-cf.gc.ca/en/2001/2001fct1335/2001fct1335.html>)

Criminal organization

*Thanaratnam* (FCTD, <http://decisions.fct-cf.gc.ca/en/2004/2004fc349/2004fc349.html>)

*Thanaratnam* (FCA, <http://decisions.fca-caf.gc.ca/en/2005/2005fca122/2005fca122.html>)

*Sittampalam* (FCTD, <http://decisions.fct-cf.gc.ca/en/2005/2005fc1211/2005fc1211.html>)

*Sittampalam* (FCA, <http://decisions.fca-caf.gc.ca/en/2006/2006fca326/2006fca326.html>)

*Thaneswaran* (FCTD, <http://decisions.fct-cf.gc.ca/en/2007/2007fc189/2007fc189.html>)

*Amaya*, (FC, <http://decisions.fct-cf.gc.ca/en/2007/2007fc549/2007fc549.html>)

Engaging in activity that is part of a pattern of criminal activity

*Thanaratnam* (FCA, <http://decisions.fca-caf.gc.ca/en/2005/2005fca122/2005fca122.html>)

*Thaneswaran* (FCTD, <http://decisions.fct-cf.gc.ca/en/2007/2007fc189/2007fc189.html>)

Protection of information and procedure

*Wu, Yu Ming* (FCTD, <http://decisions.fct-cf.gc.ca/en/2004/2004fc345/2004fc345.html>)

*Aguillar* (FCTD, <http://decisions.fct-cf.gc.ca/en/2005/2005fc152/2005fc152.html>)

*Ayalogu* (FCTD, <http://decisions.fct-cf.gc.ca/en/2005/2005fc436/2005fc436.html>)