



**ID File No. / N° de dossier de la SI :** 0003-B8-00012  
**Client ID No. / N° ID client :** 6359-9359

**Public Hearing – Audience publique**

**Reasons and Decision – Motifs et décision**

<b>Between</b>	The Minister of Public Safety and Emergency Preparedness Le ministre de la Sécurité publique et de la Protection civile	<b>Entre</b>
<b>And</b>		<b>et</b>
<b>Person(s) Concerned</b>	Andre DEAN	<b>Intéressé(e)(s)</b>
<b>Date(s) of Hearing</b>	March 5, 2018 August 20, 2018 October, 2, 18, 23, 24, 2018 November 6, 20, 21, 22, 23, 2018 February 13, 2019 May 10, 2019 July 16, 2019	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Toronto	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	November 26, 2019	<b>Date de la décision</b>
<b>Panel</b>	Jean-Marc McCabe	<b>Tribunal</b>
<b>Counsel for the Minister</b>	A. Rustja	<b>Conseil du ministre</b>
<b>Counsel for the Person(s) Concerned</b>	K. Wiener	<b>Conseil(s) pour l'intéressé(e) / les intéressé(e)(s)</b>

IN THE MATTER OF the *Immigration and Refugee Protection Act* (IRPA) and an Admissibility Hearing concerning Andre DEAN.

## REASONS FOR DECISION

[1] This is a record of reasons for a decision made under the provisions of the IRPA concerning Andre DEAN following an admissibility hearing conducted pursuant to subsection 44(2) of *IRPA*.

### Allegation

[2] In the s. 44(1) report dated February 2, 2017,<sup>1</sup> the Minister alleged that Mr. Dean is inadmissible as there are reasonable grounds to believe that Mr. Dean is a member of the Complex Cryps, an organization envisaged by IRPA section 37(1)(a).

### Positions on the parties

[3] In their submissions, the Minister focused away from Mr. Dean's membership in the Complex Cryps and toward his crimes committed as part of a pattern of crimes committed by a group of people. According to the Minister, this behaviour places him within s. 37(1)(a) of IRPA.

[4] Through his Counsel, Mr. Dean does not dispute that the Complex Cryps exists or that they are an organization that could fit within IRPA s. 37(1)(a). He denies that he is a member of this organization.

[5] Counsel submits that I should not consider any allegations that were not specifically spelled out in the s. 44 report or its attachments. If I do consider such allegations, he submits that the Minister has not established that there are reasonable grounds to believe that an organization for the purposes of IRPA s. 37(1)(a) exist.

## **Ruling**

[6] This case turns on the burden of proof, the reasonable grounds to believe standard of proof and the weight assigned to conflicting evidence. For the reasons that follow, I find that Mr. Dean is not described by IRPA s. 37(1)(a) as alleged in the s. 44 (1) report dated February 2, 2017.

## **Points Conceded and Refuted**

[7] Mr. Dean does not dispute that he is a permanent resident of Canada. He admits that he has engaged in a series of crimes over a number of years. He admits that he has been convicted for some of these crimes and for others, he has not. He also admits that he committed some of these crimes with friends.

[8] He concedes that he has been aware of the existence of the Complex Cryps from some time; but that he has only recently learned the full scope of the criminality of this group.

[9] He disputes that he was ever a member of the Complex Cryps, or that he committed any crimes that are part of the Complex Cryps' pattern of criminal activity. Further, he asserts that any of the crimes that he has committed with others do not fit the definition of the Criminal Organization contained in s. 467.1(1) of the Criminal Code of Canada (CCC) and by extension s. 37(1)(a) of IRPA.

## **Minister's Evidence**

[10] In Exhibit AH-1, the Minister tendered a number of documents including a report from Detective Andrew Hammond of the Toronto Police Service. Detective Hammond was offered as an expert witness due to his experience with street gangs in Toronto. I accepted him as such. In

the report he detailed how he concluded that the Complex Cryps is a criminal organization and that Andre Dean is a member of this organization.

[11] The Minister also submitted the following documents

- Exhibit AH-4 - a number of police occurrence reports;
- Exhibit AH-7 - transcript of a hearing where Dr. Lee was testifying as an expert in another case;
- Exhibit AH-8 - transcript of a detention review where Mr. Dean's girlfriend was being interviewed as a potential bondsperson.

### **Mr. Dean's Evidence**

[12] In Exhibit AH-2, Mr. Dean submits a report from Dr. Jooyong Kim Lee; a scholar who has conducted research in gangs, gun violence and hip-hop music. Mr. Dean applied that this should be considered expert evidence on the subjects of gang culture, youth crime and rap music. I accepted to treat this as expert evidence. In this report, he critiques Detective Hammond's methodology and his conclusions. He also offers an opinion that crimes or "hustles" are not necessarily indications of gang activity, but rather methods for certain youths to get by financially. Dr. Lee also offers his opinion that a rap artist saying they are a gang member, or claiming credit for a crime or string of crimes maybe exaggeration or even fabrication.<sup>2</sup>

[13] Exhibit AH-3 contains evidence that the charges Mr. Dean was facing for the October 14, 2016 incident were withdrawn on August 18, 2018.

[14] Exhibit AH-5 contains a number of police occurrence reports.

[15] Exhibit AH-6 includes two indictments for Mr. Dean and documents concerning his appeal of a conviction for dangerous driving (March 28, 2015 incident).

[16] Exhibit AH-9 (exhibit number assigned in chambers, post hearing) is an affidavit of Mr. Dean's girlfriend addressing some of the issues raised by the Minister from her interview.

[17] **IRPA s. 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;

[18] **IRPA s. 33** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

[19] The following jurisprudence is on point to define reasonable grounds to believe.

In *Chiau v. Canada*,<sup>3</sup> the Federal Court states as follows:

[60] ...“reasonable grounds” as a standard of proof that, while falling short of a balance of probabilities, nonetheless connotes “a *bona fide* belief in a serious possibility based on credible evidence.”

In *Mugesera*,<sup>4</sup> the Supreme Court of Canada considered the “reasonable grounds to believe” standard under IRPA:

[114] ...The FCA has found, and we agree, that the “reasonable grounds to believe” standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities. In essence, **reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information**

[116] When applying the “reasonable grounds to believe” standard, it is important to distinguish between proof of questions of fact and the determination of questions of law. **The “reasonable grounds to believe” standard of proof applies only to questions of fact.** This means that in this appeal the standard applies to whether Mr. Mugesera gave the speech, to the message it conveyed in a factual sense and to the context in which it was delivered. On the other hand, whether these facts meet the requirements of a crime against humanity is a question of law. **Determinations of questions of law are not subject to the “reasonable grounds to believe” standard,** since the legal criteria for a crime against humanity will not be made out where there are merely reasonable grounds to believe that the speech *could* be classified as a crime against humanity. The facts as found on the “reasonable grounds to believe” standard must show that the speech *did* constitute a crime against humanity in law.

[20] The Minister has the burden to establish that there is an “organization” that is believed on reasonable grounds to be or to have been engaged in a pattern of criminal activity as described in IRPA s. 37(1)(a). If the Minister establishes that there is such an organization, they must then establish that either Mr. Dean is a member of this organization, or that he has engaged in the organization’s pattern of criminal activity.

### **Do the Complex Cryps Meet the Definition of an Organization for the Purposes of IRPA Section 37(1)(a)?**

[21] The s. 44(1) report alleges that the organization in question is the “Complex Cryps”. Detective Hammond’s evidence both written and oral testimony spells out that this gang has been in existence for a number of years. It has leaders. It operates within a specific geographical area in the west end of the Greater Toronto Area. Some of their leaders continue to run the organization while incarcerated. Over a number of years, it has engaged in drug trafficking, extortion, robberies and assaults, among other crimes. According to Detective Hammond, they are one of the most feared gangs in Toronto; they are believed to be responsible for at least three homicides.<sup>5</sup> Three of the members have been charged with approximately 60 counts of human trafficking. He does not know if there has been a court finding that the Complex Cryps are a criminal organization.

[22] The Complex Cryps has forms of affiliation with other gangs in the area and rivalries with others. It uses identifiers such as graffiti and tattoos as indications of membership and territory. Detective Hammond offers much evidence that Jerome Bell, Shakeel Bell, Marcus Kamsel, Joshua Hall, Nicholas Rosales, Dylan McMorriss and Shamari Mari are strongly tied to the Complex Cryps. They all appear in rap videos, readily admitting membership and claiming responsibility for gang crimes. Shakeel Bell is their leader, he continues in the role even though he is incarcerated for first degree murder.

[23] Detective Hammond points to a recent trend in street gangs generally and the Complex Cryps specifically away from the traditional pattern of graffiti to mark territory and taunt rivals and toward rap videos on social media where members and leaders will openly sing about their criminal exploits especially those that portray their rivals in a negative light. In these videos, they openly display their tattoos and other paraphernalia such as clothing that stand as proof of their membership in gangs. The lyrics often detail specific crimes.

[24] Mr. Dean offers no arguments to counter the allegation that the Complex Cryps is an organization as contemplated in IRPA s. 37(1)(a).

[25] The Federal Court in *Saif*<sup>6</sup> stated that the term “organization engaged in a pattern of criminal activity” in IRPA s. 37(1)(a) needs to be consistent with the term “Criminal organization” in s. 467.1(1) of the Criminal Code of Canada (CCC).

**CCC s. 467.1** (1) The following definitions apply in this Act.

“criminal organization” means a group, however organized, that

(a) is composed of three or more persons in or outside Canada; and

(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group.

It does not include a group of persons that forms randomly for the immediate commission of a single offence.

[26] The Federal Court of Appeal in *Sittampalam*<sup>7</sup> ruled that:

**“unrestricted and broad” interpretation should be given to the word “organization” as it is used in paragraph 37(1)(a)**

...  
Also:

**“...organizations” within the meaning of paragraph 37(1)(a) of the IRPA need to have “some characteristics of an organization, namely identity, leadership, a loose hierarchy and a basic organizational structure”. As well as other factors, such as an occupied territory or regular meeting locations are helpful when making a determination under paragraph 37(1)(a), but no one of them is essential.**

Also

**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. Such an interpretation of “organization” allows the Board some flexibility in determining whether, in light of the evidence and facts before it, a group may be properly characterized as such for the purposes of paragraph 37(1)(a).

[27] The Federal Court in *Thanaratnam*<sup>8</sup> said:

The *Criminal Code*’s definition does not require any particular formalities or decision-making arrangements. Presumably, to meet the definition, a group must have some form of organizational structure. **The words “however organized” suggest that it must be organized in some fashion, but there are no minimum or mandatory attributes that the group must have.**

## Finding

[28] Based on this, I find that there are reasonable grounds to believe that the Complex Cryps is an organization 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.

### **Is Mr. Dean a Member of the Complex Cryps?**

[29] For the reasons that follow, I find that the Minister has not met their burden to prove this point.

[30] The Minister's chief evidence is from Detective Hammond.

[31] I have considered the opinions of Detective Hammond, as I qualified him as an expert to offer his opinion on issues surrounding street gangs in the Toronto area, generally, and on the Complex Cryps, specifically.

[32] In his report and his testimony, he concludes that Mr. Dean is a member of the Complex Cryps. In arriving at this conclusion, he focusses on two things, Mr. Dean's tattoo and instances where Mr. Dean is associating with, and committing crimes with, other "known members" of the Complex Cryps.

[33] Mr. Dean has a tattoo of a three-pointed crown over the letters CG on the back of his left hand.

[34] Detective Hammond testified that the three-pointed crown is an international symbol depicting the Cryps, a gang whose roots trace back decades ago to Los Angeles. The "CG" tattoo is an identifier of the Complex Cryps gang; a specific gang within the Cryps. Such a tattoo, worn in a prominent place such as the hand is a way of identifying the bearer as a member. Detective Hammond reports<sup>9</sup> getting a tattoo of this type requires acceptance by the gang. No evidence was offered to support that such acceptance by the Complex Cryps occurred for Mr. Dean.

[35] Detective Hammond speaks<sup>10</sup> of appearing in rap videos, displaying these tattoos, wearing certain specific clothing and flashing gang signs are strong indicators of membership in a gang. This is due to the fact that doing so frivolously would lead to being called out as a phony, to violence or at least being made to stop these practices if it were known.

[36] Professor Lee opines that such acts (sporting tattoos, flashing signs, and bragging about membership) are not necessarily indicators of actual membership in a gang or even of participation in crimes, but rather a way to bolster the performer's reputation.

[37] Mr. Dean testified that he chose this tattoo on the suggestion of a friend, Jerry Lewis. It was inspired by rap artists they were fans of.<sup>11</sup> He knew that Jerry Lewis had some sort of connection to some of the performers in Complex Cryps rap videos.<sup>12</sup> Mr. Dean was aware the CG stood for Complex Gang or Cryps Gang when he got the tattoo, but he testified to the effect that the meaning of this did not go beyond the tough persona of the rap artists sporting the tattoos in the YouTube videos.

[38] He testified that he was not "called out" over his tattoo until years later when he was incarcerated. He was placed on a range based on his perceived gang allegiance. Other inmates told him of the perceived allegiance to a gang based on that tattoo. That wearing that tattoo without allegiance to the gang was not acceptable.<sup>13</sup>

[39] On the subject of the significance of tattoos generally, Dr. Lee offers that gang membership is not necessarily lifelong.<sup>14</sup>

[40] There is no mention of any other membership procedures (initiations, pledges, dues, etc) to accepted by the Complex Cryps. There is no indication of how Mr. Dean's life changed in anyway after he got this tattoo. He did not gain any benefit, financial or otherwise, from his tattoo or the membership this tattoo tends to indicate. The only "calling out" he endured was when incarcerated years later.

[41] Mr. Dean testified credibly when he tied his decision to get this tattoo with the popularity of the artists appearing in the Complex Cryps music videos.<sup>15</sup>

“Even the hallways and stuff like those who have their phones ...like wants to play music and stuff... you hear randomly Asian guy over there like you think he does not know about rap music... Like everyone is listening to it.”

“In 2014 around these times if you did not know about these guys music you will be thinking you are living under a rock or something.”

“yeah I was a superfan.”

[42] He also testified that he felt “cooler” for hanging around with Jerry Lewis since Jerry bragged that he had ties to some of the stars in these videos.<sup>16</sup>

[43] He testified that he has met Jerome Bell (one of the performers in the videos) on a few occasions. He has not met Nick Rosales, Joshua Halls or Markus Kamsel.

[44] I recall specifically that his testimony had a particular ring of truth when he was speaking of the music with a sense of wonder. He spoke of the pride of being identified with a famous person (Jerome Bell), yet being cautious to not appear overly eager. He spoke credibly about how embarrassing it would have been for him to make the wrong impression with Jerome Bell.

[45] Surrounding the tattoo, it is impossible to get inside Mr. Dean’s mind to know what he thought and when. I note that by the time he got this tattoo he had been friends with Jerry Lewis for some time. He was just turning 18. I have difficulty whole heartedly believing that Mr. Dean, a young man in the 21<sup>st</sup> century, living in a major urban center, did not know that that particular tattoo meant something more sinister than being a fan of a rap group. It is hard to imagine how one could deny some allegiance to an organization if one permanently marks themselves with that organization’s symbol. For this reason, this bit of evidence tends to strongly point toward membership in the Complex Cryps. However, in this case, based on the totality of the evidence on the record, this tattoo, in and of itself, is not sufficient to prove reasonable grounds to believe membership in the Complex Cryps.

## Membership Indicators Beyond the Tattoo

[46] Detective Hammond wrote in his report and testified under oath by direct, cross and re-direct examination. Along with the tattoo just discussed, he anchors his conclusion that Mr. Dean is a member of the Complex Cryps on a number of incidents. He also, obliquely, testified that the crimes in question are part of the Complex Cryps patterns of criminality. Detective Hammond maintained his opinion that Mr. Dean is a member of the Complex Cryps, even after certain gaps in his evidence were conceded.

[47] In Exhibit AH-1, at pages 85 to 91, Detective Hammond offers his interpretation of the significance of Mr. Dean's alleged involvement in certain incidents.

### Chronologically:

[48] **October 26 2016, drug trafficking.** According to Detective Hammond's report, Mr. Dean was arrested in an apartment and he was selling crack cocaine and marijuana. According to the report, this is an indication of involvement with the Complex Cryps as the apartment was within the gang's "turf" and trafficking in drugs is one of the ways this gang makes money.

[49] Under cross examination, Detective Hammond concedes that there is no evidence that Mr. Dean was, in fact, selling drugs; only that he was in an apartment where drugs were allegedly sold. Mr. Dean was not named in the warrant. He has not been charged with any drug related offence stemming from this arrest.

[50] The warrant was for Charlotte Turnbull and Tanya Zachar the report does not mention if either of them had known ties to the Complex Cryps. Upon re-direct, after consulting colleagues, he testified that as of fall 2017, Charlotte has ties to the Complex Cryps. He does not say how strong those ties are or how long they have existed. He could not conclusively say that either of the people named in the warrant had ties to the Complex Cryps at the time the report was written.

[51] Mr. Dean testified that he had been living at that address for a relatively short time and that he was not involved in drug sales.

[52] **October 14 2016, armed robbery.** Mr. Dean and two “known gang members” committed armed robberies in two convenience stores. According to the report, this indicates Mr. Dean’s continuous involvement with other known gang members. Further, committing crimes such as these, is a means for members to build the credibility within the gang, and a means to provide income for the gangs.

[53] Mr. Dean testified about his involvement in this crime. He admits that he committed these crimes with Vijay Alexander and Lamar Cyrus. He described the circumstances as needing to raise money to contribute towards rent, when he and his co-accused first tried to raise the money by riffling through cars looking for valuables, but were unsuccessful this time. It was at that point that they opted to hold up two convenience stores. He testified that there was no pre-planning, only a spontaneous consensus to commit these crimes.

[54] There is no information from either party as to the Complex Cryps’ involvement or enrichment in these crimes as suggested by the report.

[55] The charges against Mr. Dean for this incident have since been withdrawn<sup>17</sup>.

[56] **October 12, 2016, armed robbery.** In a drug deal gone bad, six people with their faces covered, robbed some people at gun point who had been expecting to buy Marijuana. Mr. Dean is a suspect in this crime, so are Lamar Cyrus, Raphael Bannon, Joshua Hutchens, Noah Marchand and Vejay Alexander; all “known gang members”.

[57] The report states that this is evidence of his ongoing involvement with other gang members and his engaging in gang related crimes. Moreover, this is the sort of crime that builds members’ credibility within the gang. Lastly, that robberies are a source of income for the gangs.

[58] On cross examination, Detective Hammond admits that he does not know how York Regional Police concluded that Mr. Dean is a suspect in this robbery. He testified that the mention of association in his report was based on Mr. Dean's being co-accused.

[59] Mr. Dean says he did not participate in this robbery. He does admit that he used a credit card that Lamar Cyrus gratuitously gave him to buy food.

[60] **August 22, 2016, carjacking.** At least two people, used a gun to steal money, a phone and a car from a victim. The car was recovered one week later. The victim was a member of a rival gang. The crime lab found several sets of prints and/or DNA. Mr. Dean's DNA was on a cigarette butt in the front seat. The DNA and/or fingerprint(s) of Lamar Cyrus a "known gang member" were also found in or on the car.

[61] The report offers that it is common for gang members to steal cars to commit other crimes. Further, it is common to commit crimes against rival gang members in order to increase their credibility within their own gang. The report offers that the DNA evidence demonstrates continuous involvement with Lamar Cyrus.

[62] On cross examination,<sup>18</sup> Detective Hammond admits that the evidence only shows that Mr. Dean's cigarette got into this stolen car during the eleven days between its theft and recovery. He maintains his opinion that this DNA evidence is still evidence of ongoing association with Complex Cryps gang members.<sup>19</sup>

[63] He concedes that if there was no evidence that Mr. Dean participated in this robbery against a gang rival "it would be a whole different story", that is it would not support a conclusion that this incident is indicative of membership in the Complex Cryps.<sup>20</sup>

[64] **July 4, 2016, car theft.** Mr. Dean's DNA/fingerprints were found inside a stolen car. The other people's prints/DNA was of "known gang members" Jerry Lewis and Marvin Hernandez.<sup>21</sup>

[65] Detective Hammond admits that the only evidence tying Mr. Dean to this event is a water bottle with his DNA. He concedes that the only sound conclusion is that Mr. Dean as well as others, were in the car, either together or separately, at some point between its theft and its recovery.<sup>22</sup> Notwithstanding this, he offers that his DNA being found in the car, in and of itself, is evidence of ongoing association with known members of the Complex Crips.

[66] Mr. Dean admits that he often rode in cars with Mr. Hernandez and Mr. Lewis and even committed crimes with them. He admits that he knew the cars were stolen as neither of them had the means to buy a car. He denies being involved in this car theft.

[67] **June 1, 2016, car theft.** The crime lab found Mr. Dean's fingerprint or DNA and that of Jerry Lewis, a "known gang member", in a stolen car.

[68] Report says "Andre Dean fingerprint on front driver side window".

[69] On cross examination,<sup>23</sup> while reviewing Exhibit AH-5, page 48, Detective Hammond states the evidence was Mr. Dean's DNA on a water bottle, no mention of fingerprints tracing to Mr. Dean.

[70] **April 30, 2016, car theft.** Mr. Dean's fingerprints/DNA were found on a stolen car. Fingerprints/DNA belonging to Jerry Lewis, Marvin Hernandez and Darren Charles all "known members" of the Complex Crips and to Terrel Garner "known member" of another gang in the Toronto area. According to the report this evidence indicates ongoing association with known gang members and involvement in gang related crimes.<sup>24</sup> 18 other fingerprints were on or in the car, none of them are discussed. The report is silent as to what evidence was found where.

[71] On cross examination Detective Hammond conceded six weeks lapsed between the theft of the car and its recovery. He also conceded that the fingerprint/DNA evidence recovered from the car only shows people who had been in or around the car it does not prove that they were in

the car at the same time or in any way associating with one and other. The evidence also does not indicate who was involved in stealing the car.

[72] After reviewing other evidence during cross examination Detective Hammond testified that that Mr. Dean's fingerprint was on the **outside** of the driver's side window.<sup>25</sup>

[73] Mr. Dean testified that he may recall hanging out with Marvin Hernandez, but has no association with Darren Charles or Terrell Gartner.<sup>26</sup>

[74] **March 28, 2015, car theft and car chase.**<sup>27</sup> Mr. Dean and three others were involved in a collision where a police officer was seriously injured. The car they were in was stolen. The co-accused, Jerry Lewis, Shaquan Mathurin and Dion Velinor, were "known gang members". One other co-accused Samatar Issa has no known gang ties. According to the report, this indicates Mr. Dean's ongoing association with "known gang members" and participation in their crimes. Gangs steal cars to conceal their identity while they commit other crimes.

[75] Mr. Dean pled guilty to being the driver of the car when the incident occurred. His guilty plea and the subsequent conviction have since been overturned on appeal. The case is being re-tried.

[76] Detective Hammond testified that this incident is evidence of Mr. Dean's ongoing association with known gang members.

[77] Mr. Dean testified that he was in the car with these people, but not driving. During his testimony, there was some discrepancy in recalling the details of this incident from one day of testimony to the next. This discrepancy will be dealt within the discussion of his overall credibility.



[78] **October 24, 2014 armed robbery.**<sup>28</sup> Mr. Dean and four others robbed two victims in a McDonald's parking lot at gun point. The other participants were Carlos Rivera-Gabbidon, Lamar Cyrus, and Vijay Alexander. Cyrus and Alexander are "known gang members". The report states that this is evidence of Mr. Dean's continuous association with known gang members and his participation in gang crimes.

[79] Mr. Dean was found guilty for his role in this crime.

[80] Mr. Dean testified that he only joined in this robbery once it was already in progress. When Mr. Dean saw what his two of his friends were up to, he stood by as a lookout and to assure that the victim could not escape.<sup>29</sup> He testified that he did not get a share of the proceeds of the robbery as he did not "stack the cake".<sup>30</sup> His version of events is supported by evidence in the criminal case.<sup>31</sup>

[81] He testified that there was no preplanning of this crime. He also testified that he had only met the two people who instigated the robbery a few months prior to the incident.

[82] **September 24 2014, assault and robbery.**<sup>32</sup> Mr. Dean and two others assaulted and robbed someone on the street. The conspirators were Jerry Lewis a "known member" of the Complex Cryps and Tashane Johnson who has no known gang affiliation. According to the report, this crime was a gang related crime as street robberies are way of building credibility. Also, this particular crime was sophisticated and organized. Further, this incident shows an ongoing association with Jerry Lewis, a known gang member.

[83] Mr. Dean does not deny his part in this crime or his association with his friend, Jerry Lewis. He testified that the victim in this incident was a marijuana dealer who had "shorted" them a few moments prior on a small quantity of marijuana. When the dealer refused the refund, they resorted to violence to get their money back. According to his testimony, this plan was spontaneously developed and executed by the three people who were directly involved.

[84] Mr. Dean was convicted for his role in this robbery

[85] **June 26, 2014, attempted fraud/forged document.**<sup>33</sup> Mr. Dean and eight others were charged as they were attempting to cash fraudulent cheques. One of the co-accused Ricardo Scott-Wilson, is a “known member” of another street gang.

[86] Mr. Dean’s testimony on this point was that he took instructions from some unnamed person through a Blackberry message to cash cheques as a way to make some immediate money.

[87] Counsel points out that there is no evidence that Mr. Dean had any dealings with this particular individual. Further, there is no allegation, let alone evidence that this person and Mr. Dean had any dealings with each other before or since this incident.

### **Are Conspirators and Associates of Mr. Dean Members of the Complex Cryps?**

[88] According to Detective Hammond, there are several things he looks at in arriving at a conclusion that someone is a member of a gang.<sup>34</sup> He considers confidential information, self-admittance, court findings, tattoos and symbolic identifiers. He reviews records of criminality including intelligence, charges and convictions. He considers tattoos and associations to specific neighborhoods and YouTube videos. He testified that after considering the totality of the information, he considers someone to be a member of a gang if he has more than mere suspicion that this is so.

[89] According to Detective Hammond, association with known members is an important factor in assessing membership.<sup>35</sup> He testified in general terms about how he concludes someone is a member of a gang. In his report and in his testimony, when he discusses Mr. Dean, he gives significant weight to his associations with other “known members”. Specifically, he testified that DNA and fingerprints of two individuals on or in the same car is enough for him to conclude an association.<sup>36</sup>

[90] Although Detective Hammond's expert opinion merits considerable deference, since Mr. Dean's membership is a determination to be made by me, his methods at arriving at his conclusions require scrutiny.

[91] This approach is consistent with the Federal Court decision in *Demaria*.<sup>37</sup> At paragraph 122, the Federal Court says:

“as a matter of principle, I do not believe that the Member could simply rely upon bald, or unsubstantiated opinions, even when they come from experienced police officers. And, the problem is that the Member does not assess the police source evidence behind those opinions.

[92] At Paragraph 149, the Court concludes:

Reading this decision as a whole, it seems to me that the Member's conclusion that there is “no doubt in the panel's mind that Mr. DeMaria is a member of ‘Ndrangheta’” is very much tied to the personal convictions of the three police officers who provided reports and evidence, but the Member fails to provide any real analysis of the reliability of the evidence provided to support police convictions. The Member appears to assume that because experienced officers and police forces believe the Applicant is a member of ‘Ndrangheta’ then this, in itself, is reasonable grounds that he is. Yet, as the Applicant has shown, there are significant problems with that evidence that the Member should have addressed before accepting the conclusions of the police.

[93] In *Odosashvili*<sup>38</sup>, the Federal Court discusses how the ID dealt with information from a police detective in a case where there was alleged organised criminality.

At paragraph 57, the court discussed how Detective Turner had specific knowledge of the crimes attributed to that PC. Those alleged to be involved in the crimes were subsequently seen together, posting sureties for one and other, and retrieving an impounded car together. “The cumulative evidence acquired over time caused the police to believe B&E's were committed by various actors who were criminally associated”. At paragraph 58, the court notes how the intelligence report extensively details the many sources of information and analysis that was conducted to come to the conclusion that there was an organised group committing the crimes”. Including surveillance videos and social media.

[94] At paragraph 59, the Court refers to the officer having made personal observations of the person concerned, as well a comprehensive understanding of the investigations into a rash of B&E.

[95] At paragraph 60, the Court stated:

“the legislation only requires that the ID have reasonable grounds to believe that there is a criminal organisation and that the applicant is or was a member of it. In this application, I am charged with determining if the ID acted reasonably in making that determination”.

[96] From this, notwithstanding my having qualified Detective Hammond as an expert, I see that it is still incumbent on me to consider the credible facts that lead to the detective’s opinion.

[97] There is a certain potential circularity to the logic employed by Detective Hammond in concluding that someone is a member of a group. One of the factors in concluding that A is a member is his association with B and C. To accept this, I would need to accept that B and C are members. Otherwise A is member by association to B and C; B is a member as he is associated with A and C and C is a member as he is associated to A and B.

[98] His conclusion that certain, specific, people are members or even leaders of the complex Cryps is well substantiated. As noted above, he describes how he concludes that Jerome Bell, Shakeel Bell, Marcus Kamsel, Joshua Hall, Nicholas Rosales, Dylan McMorriss and Shamari Mari are strongly tied to the Complex Cryps. They all appear in rap videos, readily admit membership and claim responsibility for gang crimes. To my mind, it is logical to conclude that someone is a member when they overtly state this in public and detail what it is they do that qualifies them as members. Further, according to the report and Detective Hammond’s testimony, this specific activity is a strong indicator of membership as the perpetrators would face dire, violent consequences if they were not. They take the actions at the risk of personal harm if they are found to be phony.

[99] Dr. Lee offers another opinion on this particular point, that this behavior may be just the performers exaggerating or even making up their gang credentials, simply to increase their credibility and reputation.<sup>39</sup>

[100] While I can see Dr. Lee's point, based on the evidence presented, strictly for the purposes of this hearing, I am satisfied that there are reasonable grounds to believe that these individuals are members of the Complex Cryps.

[101] If it were established that Mr. Dean had associations with any of these individuals, that may tend to support a conclusion of his membership.

[102] Mr. Dean testified that soon after he started hanging around with Jerry Lewis, he was introduced to Jerome Bell. He met him at a party when Jerome stopped by for 10 or 15 minutes. He did not speak to him, but he did brag, mostly to girls, afterward that they hung together and smoked etc.<sup>40</sup>

[103] The next time Mr. Dean met Jerome was at a BBQ at Jerome's mother's hair salon. He attended that party with Lamar Cyrus. They did not know Jerome was going to be there. He thought that Lamar knew Jerome. The only interaction Mr. Dean had with Jerome was when Jerome offered him food.<sup>41</sup>

[104] He also met Jerome Bell on two other occasions at friends' apartments.<sup>42</sup>

[105] Mr. Dean credibly testified as to his reluctance to engage in conversation with Jerome<sup>43</sup>:

"I really do not talk unless you are like, someone tries to speak to me and stuff".

[106] Mr. Dean did not show Jerome his tattoo. He feared that showing him the tattoo may jeopardize a possible friendship with him.<sup>44</sup>

"...me showing, look at me like, this guy is like... you know, I felt I was degrading to myself.

"... you would not want him to know how much of a friend, you are just like some kind of kookoo for him or something."

[107] He never saw Jerome Bell commit a crime other than smoking cannabis. Jerome Bell never asked him to commit any crime. No one ever asked him to commit a crime stating that the

instructions were from Jerome Bell. The same goes for Shakeel Bell, Marcus Kamsel, Joshua Hall, Nicholas Rosales Dylan McMorris and Shamari Mari (all people named in Detective Hammonds report as known members on the Complex Cryps with details).<sup>45</sup>

[108] What is lacking in the evidence from Detective Hammond is the sort of indicators of membership described above concerning many of the people he alleges are somehow associated to Mr. Dean. He describes them as “known members”. The only evidence of their membership is his opinion. There are no criminal records for these people, no details of intelligence to support his conclusions, no reports of self-admission of membership, no appearance in rap videos.

[109] I have qualified him as an expert on the subject of street gangs in the GTA. With that said I must significantly reduce the weight I ascribe to his opinion evidence based on flaws I have found in his methodology. Here I refer to concluding an association with people based on nothing more than their DNA or fingerprints being on or in a car over several days or weeks. While this might point toward the possibility of some sort of connection between the people in question, to my mind, it does not lead to reasonable grounds to believe a meaningful association.

[110] The weight I assign to Detective Hammond’s evidence is also negatively affected by some material errors and unsupported conclusions in the report. The report spoke of Mr. Dean’s fingerprints being in a stolen car, when in fact a single print was on the car. Elsewhere, the report alleged that Mr. Dean “was trafficking” whereas the evidence speaks only of his being in the same apartment as the drugs. The report also conclusively states that he “participated” in the October 12, 2017 robbery<sup>46</sup> whereas under cross examination he concedes that he is not aware how the detectives who have carriage of that case included him as a suspect; that the only tie he knows of is the fact that Mr. Dean used a debit card that was stolen in that robbery. The report also states that Mr. Dean was involved in certain crimes, such as car thefts, where the evidence only supports a reasonable conclusion that he was in or around the car in question at some point between the time it was stolen and recovered. These are four examples where Detective Hammond is less than thorough when relating facts.

[111] These instances also show a certain propensity for jumping to conclusions and making definitive findings as opposed to suggesting conclusions. He makes assertions like: “was trafficking”, “involved in crimes with”, and “participated” in a robbery, as opposed to reasonably nuanced conclusions that this evidence tends to point in a certain direction.

[112] The weight I ascribe to many of Detective Hammond’s conclusions surrounding membership of several individuals is further eroded by the fact that, during testimony on his evidence, he maintains his overall conclusion when these lapses are brought to his attention. He did not lessen his degree of certainty even when faced with facts that fell far short of supporting his initial conclusion (such as finger print on a car as opposed to in a car or such as trafficking drugs as opposed to being in the same place as drugs were found).<sup>47</sup>

[113] For his part, Mr. Dean’s testimony was generally consistent in all material matters over the course of the hearing. His testimony was given under far from ideal circumstances in a maximum-security jail; there are bad acoustics, frequent interruptions and distractions. The testimony lasted a number of hours over five sittings that spanned over more than two weeks.

[114] That said, I agree with the Minister that there are some inconsistencies surrounding the March 25, 2015 car theft incident as to who was driving the stolen car and when. I qualify these as rather microscopic in the circumstances. The incident referred to by the Minister did occur three and one half years prior to the testimony. He testified that, as part of a plea agreement, he took the blame for that crime and conceded that he was driving that car in that incident. In this hearing, he denied that he was driving the car in question. I do not see some confusion as to who was actually driving as being so serious as to impugn his overall credibility.

[115] There are also some discrepancies as to when and how he came to learn certain facts about the Complex Crips from the internet. He testified that he asked his girlfriend to look it up<sup>48</sup>; she did not recall this during an interview as a potential bondsperson.<sup>49</sup> In her affidavit,<sup>50</sup> she elaborates that she misspoke at the detention review on the matter of research generally. She goes on to say that she does not recall researching this particular item.

[116] Some lapses in memory are to be expected. Certain incidents may be conflated in one's memory, such as asking his girlfriend to look up information on the Complex Cryps on the internet as opposed to the number of other conversations they likely had during his time in prison. The conversations in question were from a year prior and did not, to my mind, necessarily merit photographic recall. Within her affidavit, the girlfriend admits that she was then aware of what Mr. Dean had said and the discrepancy between his testimony and hers. In the affidavit, she was still honest in saying she did not recall specifically looking up information on the Complex Cryps. This tends to bolster her credibility as she made no attempt to tailor her affidavit to more closely align with Mr. Dean's testimony.

[117] I agree with Counsel that Mr. Dean did testify credibly about incidents that tended to put him in a negative light such as a beating to resolve a drug dispute and a pair of armed robberies. Mr. Dean does not try to paint himself as a wholly innocent man in many wrong places at many wrong times. He readily admits to the crimes he has committed regardless of whether or not he has been convicted.

[118] He also testified about one incident that was mentioned in the Minister's evidence, but not referenced in Detective Hammond's report; the theft of a car on September 27, 2014. Mr. Dean testified Jerry Lewis was involved with him in the theft of the car, but was not there three days later when the police arrest Mr. Dean and Tashane Johnson. Counsel submits, and I agree, that this forthright testimony of involvement with Jerry Lewis in the commission of a crime, where the Minister has no evidence tends to bolster his overall credibility.

[119] The charges against Mr. Dean concerning the October 14, 2016 robberies, were withdrawn prior to his testimony. He testified readily as to his involvement in these two armed robberies. This bolsters his credibility as he did not minimize or deny his involvement; he paints himself as a willing participant in the robberies.



[120] There are some issues that tend to negatively affect Mr. Dean's credibility. He did tell a criminal court he was driving during the March 25, 2016, incident but he has since recanted that. He is an admitted habitual criminal. He testified that in some cases he denied guilt where he was guilty, and in others, he admitted guilt when he was innocent.<sup>51</sup> These circumstances merit his testimony be considered with caution.

[121] Based on the totality of this, I give considerable weight to Mr. Dean's testimony under oath.

[122] After accounting for the weight I assign to the evidence, I make the following findings of fact on a reasonable grounds to believe basis concerning the events described by Detective Hammond:

[123] October 26, 2016

- Mr. Dean was in an apartment where drugs and other prohibited items were found;
- I do not find that Mr. Dean had an involvement with the drugs found;
- I do not find that Mr. Dean was trafficking as specifically alleged in the report;
- I do not find that the alleged drug dealing at that location was with the concurrence of the Complex Cryps.

[124] October 14, 2016

- Mr. Dean was involved in two armed robberies of convenience stores;
- His conspirators were Vijay Alexander and Lamar Cyrus;
- I do not find that Vijay Alexander and Lamar Cyrus are members of the Complex Cryps;
- I do not find that these robberies were sanctioned by, or for the benefit of, the Complex Cryps;
- I do not find that there was meaningful planning and organizing in these incidents. One store clerk was not at the counter when they robbed it. In one robbery, they left with only a used cell phone some cigarettes and a RedBull. There is no basis to refute Mr. Dean's

testimony to the effect that the crimes were spontaneously planned and executed by the perpetrators.

[125] October 12, 2016

- Mr. Dean fraudulently used a credit card;
- I do not find that he was involved in the robbery where the credit card was stolen;
- I do not find that his use of a stolen credit card was tied to the Complex Cryps. The only credible link is his testimony that his friend, Lamar Cyrus, charitably gave it to him;
- I do not find that Lamar Cyrus is a member of the Complex Cryps.

[126] August 22, 2016

- Mr. Dean rode in a stolen car (a cigarette butt with his DNA was in the car);
- Other people were in the car at some point in the eleven days between its theft and its recovery;
- I do not find that these other people are members of the Complex Cryps or of any other gang.

[127] June 1, 2016.

- Mr. Dean touched the outside of a stolen car at some time between the car's theft and its recovery;
- Any of the other people whose DNA or fingerprints were in or on the car were not necessarily in the car at the same time as Mr. Dean;
- I do not find that any of the other people who also touched the car in this period were members of the Complex Cryps.

[128] April 30, 2016

- Mr. Dean was in a car with two friends at some point in the forty days between the car's theft and its recovery;
- I do not find that these two friends are members of the Complex Cryps.

[129] March 28, 2016

- Mr. Dean was in a car with three people;
- Mr. Dean has had other dealing with one of the occupants, Jerry Lewis;
- I do not find that the other occupants of the car are members of the Complex Cryps;
- I do not find that Mr. Dean had any other involvement with the other people in the car, namely, Samatar Issa, Shaquan Mathurin and Dion Velinor.

[130] October 24, 2014

- Mr. Dean was involved in some capacity in an armed robbery, he has pled guilty and has been sentenced;
- Four others were involved;
- I do not find that any of the co-accused are members of the Complex Cryps;
- I do not find that this crime was sanctioned by or for the benefit of the Complex Cryps or any other gang;
- I do not find that this crime involved any planning other than spontaneous logistics.

[131] September 24, 2014

- Mr. Dean and two others assaulted and robbed someone;
- This was tied to an illicit drug transaction, an activity often attributed to organized crime;
- I do not find that the conspirators are members of the Complex Cryps;
- I do not find that this incident was sanctioned by or for the benefit of the Complex Cryps.

[132] June 26, 2014

- Mr. Dean committed an act of fraud;
- This crime was orchestrated by someone other than Mr. Dean. (there were eight co-accused and eighteen other suspects;
- I do not find that one of the co accused Ricardo Scott-Wilson is a member of the Complex Cryps;

- I do not find that Mr. Dean and Ricardo Scott-Wilson had any dealings with one another let alone acting in concert in this incident;
- I do not find that this incident was sanctioned by or for the benefit of the Complex Cryps or any other gang.

[133] I respect Detective Hammond's and the police service's opinions as to their belief that someone is a known member of an organization. I understand that their determinations may be adequate for their investigative purposes. It is up to me to make determinations of membership for the purposes of this process.

[134] In *Chiau*,<sup>52</sup> the Federal Court stated that the term "membership" should be broadly understood. The term can be equated to "belonging to". The Court also stated that there is no requirement to PROVE formal membership or active participation in unlawful acts; only that there are reasonable grounds to believe that the person is or has been a member.

[135] I agree with the Minister that the Federal Court decision in *Poshteh*<sup>53</sup> is on point. The term "member" is not defined and should be given a broad and unrestricted interpretation. Applying this interpretation to facts that proven on a reasonable ground to believe basis does not, to my mind, lead to a conclusion that Mr. Dean is a member.

[136] The Federal Court in *Tran*<sup>54</sup> is also on point. IRPA s. 33 and s. 37 do not require proof that Mr. Dean is in fact a member, only that there are reasonable grounds to believe that he is. Again, the evidence presented leads only to a suspicion that he is a member.

[137] The dearth of compelling and credible information about how Detective Hammond concluded that certain individuals are "known members" leaves no objective basis to for me to believe they are members. By extension, I find no objective basis to conclude that Mr. Dean's association with these individuals signifies his membership in the Complex Cryps. Similarly, I find no objective basis to conclude that any of the crimes attributed to Mr. Dean can reasonably be attributed to the Complex Cryps.

[138] The evidence, even Detective Hammond's expert evidence, leads me to conclude that there is only a mere suspicion that Mr. Dean may be a member of the Complex Cryps.

[139] From all of this, I conclude that there are no reasonable grounds to believe that Mr. Dean is, was, or maybe, a member of the Complex Cryps. Or that he has engaged in activity that is part of the Complex Cryps pattern of criminal activity.

### **On Issues Beyond Membership in the Complex Cryps**

[140] The Minister's submissions focus on Mr. Dean's participation in certain crimes, and how this participation fits within IRPA s. 37(1)(a).

[141] Within his submissions, Mr. Dean objects to the Minister's submission surrounding allegations that Mr. Dean has engaged in criminality that is part of the Complex Cryps' pattern as opposed to membership in the Complex Cryps. He argues that this was not clearly mentioned within the s. 44 report considered by the Minister's delegate and referred to the ID for an admissibility hearing.

[142] The basis for his objection is a breach of procedural fairness (paragraph 15 of the submissions) in that he was not given an opportunity to know the case he had to make.

[143] He asserts that it is unfair for the Minister to go from a very specific allegation in the s. 44 report (membership in the Complex Cryps) then to offer an allegation in the submissions, after all evidence has been adduced, that is beyond the scope of the s. 44 report.

[144] Mr. Dean argues that had he known that participation in the Complex Cryps pattern of criminality was part of the case to be met, he would have prepared rebuttal evidence accordingly.

[145] The Minister responds to this by pointing to the section of the Act that speaks of membership in an organization or participating in the organizations pattern of criminal activity.

## **Analysis**

[146] The IRPA s. 37(1)(a) pertains to membership and/or participation. The Federal Court of Appeal has ruled that membership in a gang and engaging in gang-related activities are discreet, but overlapping grounds.<sup>55</sup>

[147] While it is true that the bulk of the voluminous documents initially tendered by the Minister focused on **membership** in the Complex Cryps, I note at page 21 of Exhibit AH-1, that the officer who authored the report, states that “Mr. Dean **engaged** in numerous criminal activities as part of the Complex Cryps”.

[148] At page 23 of Exhibit AH-1, the Minister’s delegate speaks of Mr. Dean being “involved in organized crime in Canada”. While this statement maybe ambiguous as to the Minister’s delegate referring to membership or participation, neither ground is excluded.

[149] This document was served on Mr. Dean in accordance with the rules at the beginning of the process, the allegation of engaging in the Complex Cryps’ pattern of criminal activity was mentioned.

[150] Based on this, I find that Mr. Dean’s right to procedural fairness was not breached. This hearing can consider evidence and arguments concerning membership, and or participation, as related to the Complex Cryps.

**Did Mr. Dean Participate in the Complex Cryps' Pattern of Criminal activity?**

[151] According to Detective Hammond, the Complex Cryps criminal activity includes drug dealing robberies, shooting and firearms offences.<sup>56</sup> He also points out that other crimes such as car thefts are part of their criminal activities.

[152] There is no denying that Mr. Dean was involved in a number of car thefts. He was also involved in three robberies, one assault to settle a drug grievance, one instance of attempted fraud, and at least one incidence of unlawful use a credit card.

[153] On the surface these appear to be the sort of crimes that may fit within the Complex Cryps' pattern. However, there is no sound basis to conclude that these acts were at the behest of the Complex Cryps or, of any of their (accepted by me) known members or leaders.

[154] Mr. Dean testified that on some occasions he stole cars to sleep in them.<sup>57</sup>

[155] There is no evidence to conclude that anyone other than the perpetrators of the offences shared in the benefit of the offence.

[156] Mr. Dean denies he was ever instructed or even incited to commit any crimes by any of the people who I have found are members of the Complex Cryps.

[157] This case is distinguished from *Thanaratnam*,<sup>58</sup> where Mr. Thanaratnam was tied to a large number of attacks including shootings; he was either a suspect in the commission, or an apparent target for retaliation. In this case, most of the crimes in question do not have obvious indicators of gang activity such as violence and retaliation for violence against other known gangs. The only incident that has such an aura of gang violence is a carjacking where the victim is allegedly a member of a rival gang. The only evidence that links Mr. Dean to that incident is his DNA or fingerprints in a car that was unaccounted for a number of days.

[158] Based on the totality of the evidence, I find there are no reasonable grounds to believe that Mr. Dean has engaged in a pattern of criminal activity attributable to the Complex Cryps.

**Concerning the Objection to Arguments Alleging Membership and or Participation in a Group Distinct from the Complex Cryps**

[159] Along with his objection to considering participation in the Complex Cryps pattern of criminal activity, Mr. Dean also objects to the Minister pointing to membership in, or criminality within, a group not overtly associated to the Complex Cryps as these were not alleged in the report. The basis for this objection is also a breach of procedural fairness.

[160] Mr. Dean's position is that he is learning the case to be met only after the evidence has been tendered and examined. The allegation argued by the Minister in his submissions is not the same allegation that was before the Minister's delegate who referred the report for an admissibility hearing. Because of this, Mr. Dean did not have an opportunity to tailor representations to the Minister's delegate before the case was referred for a hearing.

[161] Further Mr. Dean did not have an opportunity to tailor his defence strategy within the admissibility hearing.

[162] He distinguishes this case from *Uppal*<sup>59</sup> and *Clare*<sup>60</sup> as in both of those cases the persons concerned knew the case to be made prior to the commencement of the hearing and they agreed to proceed.

[163] He argues that *Mahapatra*<sup>61</sup> is on point as the Immigration Division had decided it would not consider an equivalency not listed in the s. 44(1) report.

[164] Mr. Dean's understanding throughout the evidence portion of the hearing was that he was addressing membership in the Complex Cryps only. Had he known of allegations of engaging in criminality within the Complex Cryps or any other group, he would have called witnesses to



refute this. He might have called some of the alleged other members of the criminal groups to address the allegation that they are organized for the purposes of IRPA.

[165] The Minister's position focusses on the fact that the report and its supporting documents speak both of membership and participation within the Complex Cryps. Within their submission, the Minister does not specifically address the objection surrounding allegations membership and or participation in a group distinct from the Complex Cryps.

[166] I distinguish this case from *Uthman*.<sup>62</sup> That case dealt with membership versus participation within a specific group mentioned in the s. 44 report. The Court ruled that the issue was one of procedural fairness as opposed to jurisdiction. In this case, the objection is that alleging membership/participation in a group that may be distinct from the group mentioned in the report is procedurally unfair. In *Uthman*, "the accompanying Case Review and Recommendation includes the allegations of the Applicant's own criminal activity and thus puts the Applicant on notice of this issue."

[167] In this case, criminality within a group distinct from the Complex Cryps is not alluded to, let alone alleged, within the s. 44 report or its attachments.

[168] I agree with Mr. Dean that because he did not know, in a timely manner, of this specific allegation he did not have an opportunity to prepare a response to it. He could have led evidence to refute that a particular group fits within s. 37(1)(a).

[169] Mr. Dean is correct in his contention that an allegation of membership in, or criminality within, another group, even if that group were to be seen as fitting within s. 37(1)(a) of IRPA should not be considered unless there is a clear link between that group and the Complex Cryps.

## Ruling

[170] For these reasons, only membership in or participation with the Complex Cryps or a group somehow tied to the Complex Cryps should be considered in this case.

[171] In the alternative, I find that there are no reasonable grounds to believe that Mr. Dean was a member of any organization that engaged or engages in a pattern of criminal activity or that he engaged or engages in criminal activity that would form part of such an organization's pattern of criminality.

[172] I based this finding on the following:

[173] Mr. Dean admits to being friends with Jerry Lewis. He also admits casual acquaintances with some of the people named in the evidence. He admits to committing a number of crimes with these friends and acquaintances.

[174] There is no disputing that Mr. Dean engaged in the following:

- Metro robbery on September 25, 2014 with Tashane Johnson and Jerry Lewis;
- McDonalds robbery on October 25, 2014 with Vijay Alexander, Lamar Cyrus, Carlos Rivera-Gabbodon;
- 6 or 7 car thefts,<sup>63</sup> one with Tashane Johnson and three with Jerry Lewis. There is no basis to counter his description of these as spontaneous crimes. There is no evidence that the cars were resold or traded, there is no evidence that these cars were used in any other crimes. There is no basis to conclude that these car thefts were for the benefit of or at the behest of anyone not directly implicated in their commission. There is no basis to infer that these crimes were planned and organized in any meaningful manner;
- Two Macs Milk robberies on October 14, 2016 with Vijay Alexander and Lamar Cyrus. No basis to refute Mr. Dean's description of these robberies as spontaneously planned and executed by the three conspirators;

- On March 28, 2015, Mr. Dean was in a stolen car with Samatar Issa, Jerry Lewis, Shaquan Mathurin and Dion Velinor.

[175] If groups that are distinct from the Complex Cryps are considered, the groups just listed lack indicia of an organization, no territory, no identification, no leaders or followers. While Detective Hammond alleges gang membership of some of the people named in the evidence, there is no corroborating evidence of their membership.

[176] There is one group that has some of the criteria that satisfies s. 467 of the CCC. Mr. Dean, Vijay Alexander, and Lamar Cyrus. There is no dispute that they committed three serious crimes: one McDonalds robbery in 2014 and two Mac's robberies in 2016. This group is comprised of three or more people. It appears that this group's purpose was at least in part, the commission of armed robberies (serious crimes). Further, these offences would logically result in a material benefit by the members of that group. There was an agreement as to who should share in the proceeds, "sharing the cake if they stack the cake". The only question that needs to be asked is: Is this a group that formed randomly for the immediate commission of a single offence?

[177] I am cognizant of the fact that it is suspicious coincidence that Mr. Dean had only two dealings with these two people and got caught both times. Although it is possible that there are other crimes committed within this group, I see no objective basis to believe that this is so.

[178] I must concur with Counsel that, absent other information, these incidents two years apart do not establish a pattern of criminal activity. Nor are there any indications of planning or organizing beyond that necessary to immediately commit the crimes. I find no basis to refute Mr. Dean's testimony under oath that all three of these crimes were spontaneously planned and executed.

[179] At paragraph 65 of the *Odoshavili*<sup>64</sup> decision, the Court comments on the ID's reference to the Supreme Court of Canada decision in *Venneri*.<sup>65</sup> In *Venneri*, the Supreme Court ruled that the definition of a criminal organization encompasses many forms of criminal organization, but

that here must be some degree of formal organization, including continuity and structure. Any other definition would encompass merely a series of crimes committed by three or more persons for a material benefit, which would be indistinguishable from conspiracy aiding and abetting and the “common intention” of the CCC.

[180] In this case, while it is possible that Mr. Dean and his two conspirators had dealings beyond these three thefts committed on two occasions two years apart, I do not see any evidence that this is so. They have not been surveilled together, they have not been charged with any other offences, and there is no evidence of continuity.

[181] At paragraph 69 of *Odosashvili*, the Federal Court comments that the ID noted that the fact that planning required for the B&E does not mean that a criminal organization is involved, there could be a conspiracy or a group of persons that randomly form for one-off offences even if it happens more than once.

[182] Mr. Dean’s contention that these three individuals, admittedly all habitual, serial criminals are not organized beyond that necessary to collude and conspire for the immediate commission of crimes.

[183] At paragraph 74 of *Odosashvili*, the Federal Court comments on the ID being persuaded by the fact that a high volume of crimes, serially committed by a group of men, in pairs or in threes, who all seems to know each other and have the same national origin.

[184] In this case, I do not see a high volume of crimes attributable to this group.

[185] At paragraph 76 of *Odosashvili*, the Federal Court noted how the ID had correctly focused away from guilt or innocence of offences and toward the likelihood that the offences were committed and Mr. Odosashvili’s links to other members of the organization to conclude that there were reasonable grounds to believe that he was a member himself.

[186] Mr. Dean does not dispute his guilt for the three-armed robberies. He does dispute that these three individuals make up an organization and that these crimes are linked to any organization

[187] At paragraph 27 of the *Venerri* decision, the Supreme Court of Canada states:

“Others, properly in my view, have held that whole the definition must be applied “flexibly”, structure and continuity are still important features that differentiate criminal organizations from other groups of offenders who sometimes act in concert”

[188] Then at paragraph 29:

“... by insisting that the criminal group be “organized”, Parliament has made it plain that some form of structure and degree of continuity are required to engage the organized crime provisions that are part of the exceptional regime it has established under the code.”

[189] And at paragraph 35:

“stripped of the features of continuity and structure, “organized crime” simply becomes all serious crime committed by a group of three or more persons for material benefit. The increased penalties and stigma associated with organized crime regime distinguish it from these offences.”

[190] And at paragraph 47

“the dealings between Venneri and Dauphin were autonomous transactions between like-minded criminals, each guided by their own self-interest. He (Venneri) played no role within the organization (Dauphin’s). The trial judge erred in law in concluding, on the facts as he found them, that Venneri was a member of Dauphin’s organization.”

[191] From this, I conclude that Mr. Dean’s association with Lamar Cyrus and Vijay Alexander, and his admitted crimes committed with them, does not fit the definition of a Criminal Organization according to the CCC and by extension is not described by IRPA s. 37(1)(a).

[192] The only other indication of association is evidence that Mr. Dean was in, or around, a number of stolen cars. He testified that while he did not recall many of the cars in question, he often was involved in car thefts, and he rode in stolen cars, knowing they were stolen. There is

no pattern that links any of these suspects to each other beyond their fingerprints or DNA being on the cars. He was not observed in these cars with these persons. There is no evidence that these cars tie him to other crimes. There is no evidence that any of these crimes were connected to or for the benefit of an “organization.”

[193] The only evidence of a long-term string of criminality with anyone is Mr. Dean’s admission to committing a number of crimes including car thefts with Jerry Lewis. There is no evidence of any one third person that could be seen as part of this group. There is no evidence that these crimes were linked to other persons. Therefore, this association, even a criminal association, falls outside of the “three or more” provision of the CCC.

[194] Other than the Complex Cryps, I can see no organization that has any of the *Sitampalam*<sup>66</sup> characteristic. Based on the facts that have been found on a reasonable grounds basis to have occurred, I fail to see a group or organization that fits within IRPA s. 37(1)(a). Having found no group, participation and or membership in that group is moot.

## **Conclusion**

[195] For the reasons that preceded, I concluded that the facts established on a reasonable grounds to believe basis do not add up to reasonable grounds to believe that Mr. Dean is a member of the Complex Cryps. I find no reasonable grounds to believe that he participated in the Complex Cryps’ pattern of criminal activity. I also find that there are no reasonable grounds to believe that he is a member of or participated with a criminal organization other than the Complex Cryps.

[196] A Favourable Decision, reflecting this finding, is appended to these reasons.

(signed)

**“Jean-Marc McCabe”**

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**Jean-Marc McCabe**

**November 26, 2019**

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**Date**

Right to Appeal – Under section 63 of the *Immigration and Refugee Protection Act*, you may appeal to the Appeal Division. You may wish to get advice from counsel as soon as possible, since there are time limits for this application.

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<sup>1</sup> Exhibit AH-1 pp. 12-13.

<sup>2</sup> Exhibit AH-2, pp. 2, 3 & 4.

<sup>3</sup> *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.).

<sup>4</sup> *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100; 2005 SCC 40.

<sup>5</sup> Transcript, October 2, 2018, p. 26.

<sup>6</sup> *Saif* 2016 FC 437.

<sup>7</sup> *Sittampalam* 2006 FC 326.

<sup>8</sup> *Thanaratnam* 2004 FC 301.

<sup>9</sup> Exhibit AH-1, p. 82.

<sup>10</sup> Transcript, October 18, 2018, p. 88.

<sup>11</sup> Transcript, November 21, 2018 pages 19 to 22.

<sup>12</sup> Transcript, November 21, 2018, p. 21, and Nov 22 page 9

<sup>13</sup> Transcript, November 20 2018 page 15.

<sup>14</sup> Exhibit AH2 page 4

<sup>15</sup> Transcript, November 21, 2018, pp. 19 to 23.

<sup>16</sup> Transcript, November 21, 2018, p. 21.

<sup>17</sup> Exhibit AH-3

<sup>18</sup> Transcript, October 22, 2018, p. 9.

<sup>19</sup> Transcript, October 24, 2018 p. 11.

<sup>20</sup> Transcript, October 24, 2018, p. 7.

<sup>21</sup> Exhibit AH-1, p. 87 and Transcript, October 18, 2017, p. 27.

<sup>22</sup> Transcript, October 24, 2018, p. 10.

<sup>23</sup> Transcript, October 24, 2018, p. 5.

<sup>24</sup> Exhibit AH-1, p. 87.

- <sup>25</sup> Transcript, October 24, 2018, pp. 2 to 4.  
<sup>26</sup> Transcript, November 22, 2018, pp. 23-25.  
<sup>27</sup> Exhibit AH-1, p. 89.  
<sup>28</sup> Exhibit AH-1, p. 90.  
<sup>29</sup> Transcript, November 21, 2018, p. 45.  
<sup>30</sup> Transcript, November 22, 2018, p. 6.  
<sup>31</sup> Exhibit AH-5, p. 35.  
<sup>32</sup> Exhibit AH-1, p. 89.  
<sup>33</sup> Exhibit AH-1, p. 91.  
<sup>34</sup> Transcript, October 2, 2018, pp. 18 to 25.  
<sup>35</sup> Transcript, October 2, 2018, p. 22.  
<sup>36</sup> Transcript, October 24, 2018, p. 5.  
<sup>37</sup> *Demaria* 2019 FC 489.  
<sup>38</sup> *Odosashvili* 2017 FC 958.  
<sup>39</sup> Exhibit AH-2, p. 2  
<sup>40</sup> Transcript, November 18, 2018, p. 22.  
<sup>41</sup> Transcript, November 18, 2018, p. 25.  
<sup>42</sup> Transcript, November 21, 2018, p. 25.  
<sup>43</sup> Transcript, November 18, 2018, p. 26.  
<sup>44</sup> Transcript, November 18, 2018, p. 27.  
<sup>45</sup> Transcript, November 18, 2018 pp. 28 and 29.  
<sup>46</sup> Exhibit AH-02, p. 86.  
<sup>47</sup> Transcript, October 23, 2018, pp. 36 to 40.  
<sup>48</sup> Transcript, November 20, 2018, p. 52.  
<sup>49</sup> Exhibit AH-8.  
<sup>50</sup> Exhibit AH-9.  
<sup>51</sup> Transcript, November 22, 2018, p. 37.  
<sup>52</sup> *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.).  
<sup>53</sup> 2005 FCJ 381.  
<sup>54</sup> *Canada v. Tran* 2016 FC 760.  
<sup>55</sup> *Thanaratnam v. Canada (Minister of Citizenship and Immigration)*, [2006] 1 F.C.R. 474 (F.C.A.); 2005 FCA 122.  
<sup>56</sup> Exhibit AH-1, p. 67.  
<sup>57</sup> Transcript, November 21, 2018, p. 39.  
<sup>58</sup> *Thanaratnam* 2004 FC 349 and 2005 FCA 122.  
<sup>59</sup> 2006 FC 338.  
<sup>60</sup> 2016 FC 545.  
<sup>61</sup> 2013 CanLii 97274.  
<sup>62</sup> *Uthman* 2018 FC 582.  
<sup>63</sup> Transcript, November 6, 2019.  
<sup>64</sup> *Odosashvili* 2017 FC 958.  
<sup>65</sup> *R. v. Venneri*, 2012 SCC 33, [2012] 1 S.C.R.211.  
<sup>66</sup> *Sittampalam* 2006 FC 326.