

File Nos. 35685, 35677, 35688, 35388, 35958

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

**BETWEEN:**

**B306, JESUS RODRIGUEZ HERNANDEZ, J.P. et al, B010**

**APPELLANTS**

**-and-**

**MINISTER OF PUBLIC SAFETY and EMERGENCY PREPAREDNESS and MINISTER OF  
CITIZENSHIP and IMMIGRATION**

**RESPONDENTS**

**-and-**

**CANADIAN COUNCIL FOR REFUGEES, UNITED NATIONS HIGH COMMISSIONER FOR  
REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, AMNESTY  
INTERNATIONAL, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, ATTORNEY  
GENERAL OF ONTARIO**

**INTERVENERS**

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**File No. 35958**

**AND BETWEEN:**

**FRANCIS ANTHONIMUTHU APPULONAPPA ET AL.**

**APPELLANT**

(Respondents in the Court Below)

**-and-**

**HER MAJESTY THE QUEEN**

**RESPONDENT**

(Appellant in the Court Below)

**-and-**

**THE CANADIAN COUNCIL FOR REFUGEES, CANADIAN CIVIL LIBERTIES ASSOCIATION,  
THE BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, THE CANADIAN COUNCIL  
FOR REFUGEES AND THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS**

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**FACTUM OF THE INTERVENER  
THE CANADIAN COUNCIL FOR REFUGEES**

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**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

**BETWEEN:**

**B306**

**APPELLANT**  
(Respondent in the Court Below)

**-and-**

**MINISTER OF PUBLIC SAFETY and EMERGENCY PREPAREDNESS**

**RESPONDENT**  
(Appellant in the Court Below)

**-and-**

**CANADIAN COUNCIL FOR REFUGEES, UNITED NATIONS HIGH COMMISSIONER FOR  
REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, AMNESTY  
INTERNATIONAL, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, ATTORNEY  
GENERAL OF ONTARIO**

**INTERVENERS**

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**File No. 35677**

**AND BETWEEN:**

**JESUS RODRIGUEZ HERNANDEZ**

**APPELLANT**  
(Respondent in the Court Below)

**-and-**

**MINISTER OF PUBLIC SAFETY and EMERGENCY PREPAREDNESS**

**RESPONDENT**  
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**CANADIAN COUNCIL FOR REFUGEES, UNITED NATIONS HIGH COMMISSIONER FOR  
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INTERNATIONAL, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, ATTORNEY  
GENERAL OF ONTARIO**

**INTERVENERS**

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**File No. 35688**

**AND BETWEEN:**

**J.P. et al**

**APPELLANTS**  
(Respondents in the Court Below)

**-and-**

**MINISTER OF PUBLIC SAFETY and EMERGENCY PREPAREDNESS**

**RESPONDENT**  
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**-and-**

**CANADIAN COUNCIL FOR REFUGEES, UNITED NATIONS HIGH COMMISSIONER FOR  
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INTERNATIONAL, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, ATTORNEY  
GENERAL OF ONTARIO**

**INTERVENERS**

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**File No. 35388**

**AND BETWEEN:**

**B010**

**APPELLANT**  
(Appellant in the Court Below)

**-and-**

**MINISTER OF CITIZENSHIP and IMMIGRATION**

**RESPONDENT**  
(Respondent in the Court Below)

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INTERNATIONAL, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, ATTORNEY  
GENERAL OF ONTARIO**

**INTERVENERS**

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**File No. 35958**

**AND BETWEEN:**

**FRANCIS ANTHONIMUTHU APPULONAPPA ET AL.**

**APPELLANT**

(Respondents in the Court Below)

**-and-**

**HER MAJESTY THE QUEEN**

**RESPONDENT**

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FOR REFUGEES AND THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS**

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**FACTUM OF THE INTERVENER  
THE CANADIAN COUNCIL FOR REFUGEES**

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**FACTUM OF THE INTERVENER, THE CANADIAN COUNCIL FOR REFUGEES**

**PART I – OVERVIEW AND STATEMENT OF FACTS**

1. The Canadian Council for Refugees (CCR) relies on the summary of the facts in the various Appellants' Facta.

**PART II—OVERVIEW**

2. In commemoration of Raoul Wallenberg Day, on January 17, 2015, Minister of Multiculturalism Jason Kenney recently noted that:

Raoul Wallenberg was a Swedish diplomat sent to Budapest, Hungary, during the Second World War. At great personal risk, he helped rescue tens of thousands of Hungarian Jews from certain death at the hands of the Nazis and their like-minded allies.<sup>1</sup>

3. What Minister Kenney did not mention in these recent comments is that Wallenberg's acts of heroism in issuing fraudulent passports to Jewish refugees and facilitating their escape from persecution are considered criminal offences under s. 117 of the *Immigration and Refugee Protection Act* (the IRPA).<sup>2</sup> If Wallenberg were still alive (and had he not been the first individual to be granted honorary Canadian citizenship), he also would be considered by the Respondents to be inadmissible to Canada under s. 37 of the IRPA. In other fora, the CCR describes this state of affairs as a moral failure. Before this Honourable Court, the CCR argues that it is also contrary to law.
4. In these appeals, the Canadian Council for Refugees (CCR) starts from the following broad propositions: **1)** those who, for no financial or material benefit, engage in acts that facilitate either their own or another's right to seek asylum do not engage in activity that renders them inadmissible to Canada; **2)** Canadian law cannot criminalize those same individuals (who, for no material benefit, engage in acts that facilitate either their own or another's right to seek asylum); **3)** Canada's anti-smuggling regime can only exclude from Convention Refugee protection those properly excluded under the 1951 *Convention Relating to the Status of*

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<sup>1</sup> Government of Canada Press Release "Minister Kenney issues statement in recognition of Raoul Wallenberg Day", January 16, 2015, accessed online: <http://news.gc.ca/web/article-en.do?nid=922189> [Intervener CCR Book of Authorities (CCRBOA), Tab 8] [Kenney Release]

<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

*Refugees*<sup>3</sup>; and 4) poorly defined and loosely supervised ‘saving’ mechanisms cannot prop up legislation that otherwise violates Canada’s constitutional and international legal obligations.

5. With respect to s. 37 of the IRPA, the CCR submits that, properly construed, the term “smuggling” in s. 37 is consonant with the use of this term in the *Protocol Against The Smuggling Of Migrants By Land, Sea And Air* (Smuggling Protocol) supplementing the *Convention against Transnational Organised Crime* (UNCTOC).<sup>4</sup> As such, smuggling under s. 37 should only apply to those engaged in people smuggling for financial or material benefit.
6. With respect to s. 117 of the IRPA, the CCR submits that, to the extent that it criminalizes humanitarians who, without expectation of financial or material benefit, assist refugee claimants, family members of refugees who assist one another in claiming refugee status and refugees rendering assistance to one another to assert their claims, the provision is overly broad. As such, the trial judge in these matters was correct to declare s. 117(1) of the IRPA of no force and effect, pursuant to s. 52 of the *Constitution Act, 1982*.

### **PART III – ARGUMENT**

#### **A. Common Principles**

7. A coherent approach to Canada’s anti- smuggling laws relies upon an understanding of the common principles underpinning both s. 37 and s. 117 of the IRPA.
8. The first principle is that the affirmative right to seek asylum enshrined in the *Universal Declaration of Human Rights*<sup>5</sup> and elaborated upon in the Refugee Convention is a fundamental tenet of international law. The Refugee Convention has a human rights purpose.<sup>6</sup>

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<sup>3</sup> *Convention Relating to the Status of Refugees*, Can. T.S. 1969 No. 6, entered into force April 22, 1954, entered into force for Canada September 2, 1969 and the *Protocol relating to the Status of Refugees*, 606 U.N.T.S. 267, entered into force October 4, 1967, entered into force in Canada June 4, 1969 [Refugee Convention] [Appellant JPBOA, Tab 71].

<sup>4</sup> *UN General Assembly, Convention Against Transnational Organized Crime*, 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003, accession by Canada 13 May 2002); *UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* 15 November 2000, 2225 UNTS 209 (entered into force 28 January 2004, accession by Canada 13 May 2002) [Smuggling Protocol] [JPBOA, Tabs 73 & 74].

<sup>5</sup> G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), Art. 14(1).

<sup>6</sup> See the Preamble to the Refugee Convention [JPBOA, Tab 71]; *Canada (Attorney General) v. Ward*, [1993] 2 SCR 689 at 733 [CCRBOA, Tab 1]; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982 at para. 46 [JPBOA, Tab 49].

9. Flowing from this, the second principle is that, at international law, it is widely accepted that humanitarian workers in the selfless tradition of Mr. Wallenberg, and refugees who assist one another in their escape from persecution *commit no wrong*. It is for this reason that such individuals – those who assist migrants for no financial or material benefit – were specifically excluded from the ambit of the Smuggling Protocol. As Gallagher and David have noted:

The drafting history of the Protocol confirms that the inclusion of the element of acting “in order to obtain” a “financial or other material benefit” was intended to ensure that the offense excluded the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. The relevant Interpretative Notes to the Protocol affirm that it was not the intention of the Protocol to criminalize the activities of family members or support groups such as religious or nongovernmental organizations.<sup>7</sup>

10. Furthermore, Article 19 of the Smuggling Protocol reinforces that it is not meant to impede refugees from exercising their right to seek asylum under the Refugee Convention:

Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

11. Third, the Refugee Convention prohibits the *refoulement* of refugees to states where they face a well-founded fear of persecution, subject only to the Convention’s exclusion clauses and the provisions dealing with national security and public safety.<sup>8</sup> Removal of refugee claimants beyond the terms of these clauses violates the core purpose of the Refugee Convention. To this extent, signatories to the Refugee Convention explicitly acceded to the principle that state sovereignty is not absolute in relation to decisions about refugees’ admission and removal.
12. Fourth, embedded within the Refugee Convention is a recognition that refugees must frequently engage in ‘irregular migration’ to assert their right to seek asylum from persecution. As such, parties to the Convention are expressly forbidden from imposing penalties on

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<sup>7</sup> Gallagher, Anne T., and Fiona David. *The International Law of Migrant Smuggling*. (New York: Cambridge UP, 2014) at 366. [Consolidated RBOA Vol 3, Tab 145]

<sup>8</sup> Refugee Convention, Articles 1, 32 and 33. [JPBOA, Tab 71]

refugees (and refugee claimants) on account of their illegal entry.<sup>9</sup> Nonetheless, states have frequently and increasingly sought to avoid assuming obligations to refugee populations by asserting their right to limit the arrival of asylum seekers, operationalized through highly sophisticated processes of visa controls and interdiction practices.<sup>10</sup> As a result, asylum seekers must increasingly rely on assistance to exercise their fundamental right to seek asylum from persecution. The potential penalization of humanitarian workers seeking to provide such assistance is likely to have a chilling effect upon them,<sup>11</sup> forcing the persecuted into the hands of exploitative human smugglers in a manner inconsistent with the rule of law.<sup>12</sup>

13. Fifth, international law provides an important interpretive context with which to examine the objectives of domestic legislation. Parliament is presumed to legislate in a manner that is consistent with Canada's international obligations, and the "values and principles" of international law. The presumption is only rebutted by unambiguous evidence of specific legislative intent to depart from Canada's international legal obligations.<sup>13</sup>

14. Taken together, these uncontroversial principles firmly establish that to the extent that Canadian law criminalizes the actions of humanitarian refugee workers or refugees who assist one another in their search for asylum or imposes any form of penalty on refugees on account of their illegal entry, it does so in a manner that is incompatible with international law.

### **B. The Proper Construction of Section 37 of the IRPA**

15. Section 37 of the IRPA relates to "organized criminality". Paragraph 37(1)(b) of that provision renders persons inadmissible for: "engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering." [emphasis added]

16. The impacts of an inadmissibility finding under section 37(1)(b) are profound. Refugee claims of those found inadmissible may not be referred to the Refugee Protection Division.<sup>14</sup> Consideration of their Pre-Removal Risk Assessment shall be only on the basis of section 97

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<sup>9</sup> Refugee Convention, Article 31. [JPBOA, Tab 71]

<sup>10</sup> J. Hathaway, "The Rights of Refugees under International Law" Cambridge University Press at pages 278-302.

<sup>11</sup> *R v. Parker*, [2000] [C.A.] O.J. No 2787 at para. 81. [CCRBOA, Tab 7]

<sup>12</sup> *Hitzig v. Canada*, [2003] O.J. No 3117 at paras. 112-118; leave to appeal denied, [2004] S.C.C.A. No 5. [CCRBOA, Tab 3]

<sup>13</sup> *Nemeth v. Canada (Justice)*, 2010 SCC 56, [2010] 3 S.C.R. 281 at paras 34-35. [JPBOA, Tab 42]

<sup>14</sup> IRPA, s. 101(1)(f).

of the IRPA.<sup>15</sup> The inadmissible person is unable to seek protection under the Refugee Convention and has no corresponding protection against *refoulement* to a country where he or she faces persecution.<sup>16</sup> Persons found to be inadmissible under s. 37 are also prevented from obtaining permanent resident status and being reunited with family members, many of whom may be experiencing similar situations of persecution. Finally, individuals found inadmissible under section 37 also face the very real stigma of being labelled as “organized criminals”.

17. The CCR respectfully submits that refugees do not engage in organized criminality by disobeying migration controls in fleeing persecution and nor do humanitarian workers who aid their flight. The CCR submits therefore that under a correct interpretation of s. 37 humanitarian workers and refugees who facilitate others’ escape from persecution for no financial or material benefit are not captured by s. 37 of the IRPA.
18. The CCR further submits that neither *de minimis* material benefit nor a benefit that is incidental to an individual’s safety and well-being while in transit are captured by s. 37 of the IRPA.<sup>17</sup>
19. The CCR’s interpretation of s. 37 is largely consistent with that of Justice Zinn of the Federal Court in the *Rodriguez Hernandez* matter, namely that a plain reading of s.37 indicates that it is a provision aimed at organized, transnational crime and which identifies specific activities – trafficking in persons, money laundering and people smuggling – all of which share the central defining feature that they are committed *for financial benefit or profit*.
20. The direct reference in s. 37(1)(b) to transnational crime strongly suggests that the provision was meant to adhere to the terms of the UNCTOC and its Smuggling Protocol, to which Canada

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<sup>15</sup> IRPA, s. 113(d).

<sup>16</sup> See IRPA, ss. 101(1)(f), 112 to 115.

<sup>17</sup> *The Interpretive Notes for the Official Records (travaux préparatoires) of the United Nations Convention against Transnational Organized Crimes and the Protocols thereto* [Interpretive Notes] make clear that the term “material benefit” was intended to capture non-financial benefits that may accrue to criminal organizations, for example “crimes in which the predominant motivation may be sexual gratification, such as the receipt or trade of materials by members of child pornography rings, the trading of children by members of paedophile rings or cost sharing among ring members.” The implication is clear: modest benefits gained by asylum seekers in facilitating their own escape were not contemplated under the Smuggling Protocol. [JPBOA, Tab 75]

acceded just prior to the implementation of the IRPA.<sup>18</sup> In the absence of a definition of “people smuggling” in the IRPA, it stands to reason that the UNCTOC and its corresponding Protocols should be the point of reference for all of the sanctioned activities in s.37, including people smuggling.<sup>19</sup> This is consistent with the principle that domestic legislation should be interpreted in concert with international law absent unambiguous language requiring an alternative meaning.

21. Such an interpretation also allows for it to be enforced in a manner that is consistent with the Refugee Convention. The Refugee Convention mandates that the term refugee “shall” apply to “any person”, with the sole exception of those listed in Article 1E and 1F. This Honourable Court recently considered the meaning of the exclusion clause found at Article 1F(b) of the Refugee Convention related to serious non-political crimes, confirming that it only finds application in respect of particularly grave crimes.<sup>20</sup> Under the Refugee Convention, all refugees are protected from *non-refoulement* except those who pose a danger to the security of the host country.<sup>21</sup>
22. As described above, a finding of inadmissibility under s.37 results in an inability to claim protection pursuant to the Refugee Convention, including the resultant risk of *refoulement*. The CCR submits that humanitarian smuggling activities do not constitute crimes, let alone ones of a particularly serious nature. As the Federal Court of Appeal’s interpretation of s. 37 results in the automatic barring from refugee protection of people whom the Refugee Convention neither excludes nor deems a danger to public security, it is inconsistent with international refugee law.
23. Alternatively, if this Honourable Court concludes that as a matter of ordinary statutory interpretation the definition of “people smuggling” under s. 37 does not include a financial or material benefit component, the CCR respectfully submits that s. 37 offends s. 7 of the *Charter of Rights and Freedoms* for the reasons advanced by the various appellants in the s. 37 matters. The CCR specifically submits, however, that a finding of inadmissibility under s. 37 engages s. 7 interests because it immediately and permanently extinguishes refugees’ rights to Convention refugee status determination and their unqualified right to an oral hearing into

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<sup>18</sup> UNCTOC and Smuggling Protocol, *supra* note 4. [JPBOA, Tabs 73 & 74]

<sup>19</sup> *Hernandez v. Minister of Public Safety and Emergency Preparedness (Canada)*, 2012 FC 1417 at para. 72. [JPBOA, Tab 35].

<sup>20</sup> *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68 at para. 62. [Respondent PPSCBOA, Tab 24]

<sup>21</sup> Refugee Convention, Article 1 and 33. [JPBOA, Tab 71]



their assertion of risk.<sup>22</sup>

24. Following a s. 37 inadmissibility finding, the removal process commences and the most a refugee can obtain is a stay of removal that can be cancelled by the Minister.<sup>23</sup> For those at risk of persecution, but whose risk may not be protected under s.97 of the IRPA, the deprivation of their s.7 rights has fully crystallized at the moment of the s.37 finding. The CCR respectfully submits that the burden of ameliorating this violation at some later stage in the removal process should not fall to the refugee claimant who has experienced the deprivation.<sup>24</sup>

### **C. The Overbreadth of Section 117 of the IRPA**

25. The CCR agrees with the arguments of the appellants on the overbreadth of s. 117 of the IRPA. The CCR also agrees with the statutory history analysis of s. 117 provided by the appellant Handasamy and the British Columbia Civil Liberties Association in the court below. The CCR submits that s.117's objective has always been narrowly directed at criminalizing those who financially or materially benefit from organizing, aiding or abetting the entry of undocumented migrants to Canada.

26. The CCR's primary concern with respect to s.117 is that its overbreadth criminalizes the humanitarian actions of virtually all of its constituents. CCR members are routinely asked to assist refugee claimants in navigating the myriad legal and practical steps involved in making a refugee claim in Canada. Where such advice is provided to a refugee claimant who has not yet approached the Canadian border, it can easily be construed as abetting entry in violation of section 117. Criminalization of such advice compromises, rather than furthers, the core objective of Canada's refugee program which, as set out in the IRPA, "is in the first instance about saving lives and offering protection to the displaced and persecuted."<sup>25</sup>

27. The focus of the s. 117 appeals is rightly on the validity of the provision from a criminal law

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<sup>22</sup> See IRPA, ss. 101(1)(f), 112 to 115 and *Singh v. Canada (M.E.I.)*, [1985] 1 S.C.R. 177. [JPBOA, Tab 65] While those who apply for s.97 protection *may* be granted an oral hearing the determination as to when one will be conducted is left to a PRRA officer: see IRPA s. 113(b) and s. 167 of the *Regulations*.

<sup>23</sup> IRPA s.14(1) and (2).

<sup>24</sup> *R. v. Seaboyer*, [1991] 2 S.C.R. 577, paras. 86-88. [CCRBOA, Tab 4]

<sup>25</sup> IRPA, s. 3(2).

perspective. Additionally, however, the CCR notes that a conviction (or potentially even an acquittal) under s. 117 of the IRPA can have grave consequences on a refugee claimant's ability to seek refugee protection in Canada.

28. If this Honourable Court is to uphold the Federal Court of Appeal's interpretation of s.37 of the IRPA, a conviction under s.117 would necessarily result in a finding of inadmissibility under s.37. Even on the narrower view of inadmissibility under s.37, a conviction under s.117 could result in a finding of inadmissibility for serious criminality.<sup>26</sup> Any conviction in Canada for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years now renders an individual ineligible to have their refugee claim heard.<sup>27</sup> As s.117 of the IRPA now provides for a maximum sentence of life imprisonment, anyone convicted under that provision, regardless of mitigating factors, will be barred from asserting a claim for refugee protection under the Refugee Convention.<sup>28</sup> As outlined above in relation to s. 37, because the scope of this bar is wider than the exclusions provided for in the Refugee Convention, s. 117 is also contrary to international refugee law.

#### **D. Consent of the Attorney General and Ministerial Exemptions Insufficient**

29. The CCR further submits that the requirement that the Attorney General consent to prosecution under s. 117 and the theoretical availability of a Ministerial waiver of inadmissibility in respect of s.37 cannot save legislation that is otherwise contrary to international law and the *Charter*.

30. It is an established principle of law that prosecutorial discretion cannot save an unconstitutional provision. To find otherwise would be, in the words of this Honourable Court, to "disregard totally s. 52 of the *Constitution Act, 1982*, which provides that any law which is inconsistent with the Constitution is of no force or effect to the extent of the inconsistency and the courts are duty bound to make that pronouncement, not to delegate the avoidance of a violation to the prosecution *or to anyone else for that matter*."<sup>29</sup>

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<sup>26</sup> IRPA, s. 36

<sup>27</sup> IRPA s.101(2)(a).

<sup>28</sup> IRPA s.112(3)(b).

<sup>29</sup> *R. v. Smith*, [1987] 1 S.C.R. 1045, per Lamer. J. at paras 86-88 (emphasis added). [Appellant Appulonappa Joint BOA, Tab 77] See also *R. v. Zundel*, [1992] 2 S.C.R. 731 per McLachlin J at para 64: "To justify an

31. The CCR submits that the rationale underpinning this Court's approach to prosecutorial discretion and its ability to salvage unconstitutional laws<sup>30</sup> is directly applicable to Ministerial discretion under s.42.1 of the IRPA. Such Ministerial decisions are also subject to significant deference,<sup>31</sup> they are vaguely defined and the Minister may render a decision based on factors unrelated to the legislation's asserted role as a curative to constitutional overbreadth.<sup>32</sup>
32. Moreover, unlike prosecutorial discretion, determinations under s.42.1 are typically made after an inadmissibility determination. Courts have found that delay is an inherent and necessary component of Ministerial determinations<sup>33</sup> and there is no requirement that the s.42.1 decision be made in a timely manner.<sup>34</sup> In fact, ten year delays in rendering such decisions are routine.<sup>35</sup> Removal may occur prior to a s. 42.1 determination, before the risk of persecution can be assessed and without vindication of the individual's *Charter* rights. Finally, the effect of deferring considerations of *Charter* compliance to a distant s. 42.1 determination is to task those whose *Charter* rights will be infringed with the heavy burden of triggering the government's own asserted remedy. This is made all the more problematic when considering the vulnerability of many refugee claimants and the difficulties they face in navigating complex legal issues, often with minimal or no state-based legal aid support. In other contexts, this Honourable Court has firmly rejected this dubious approach to Constitutional compliance.<sup>36</sup> This CCR respectfully submits that it should likewise do so here.

### E. Defining Humanitarian Assistance

33. In both sets of appeals before this Honourable Court, the CCR asserts that Canadian law cannot criminalize or otherwise penalize humanitarians who, without expectation of financial or material benefit, assist refugee claimants. Nor can Canadian law criminalize or otherwise penalize family members of refugees who assist one another in claiming refugee status and

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invasion of a constitutional right on the ground that public authorities can be trusted not to violate it is to undermine the very premise upon which the Charter is predicated." [PPSCBOA, Tab 56]

<sup>30</sup> *R. v. Anderson*, 2014 SCC 41, recently confirming that prosecutorial discretion is only reviewable for abuse of process. [Appellant Appulonappa Joint BOA, Tab 55]

<sup>31</sup> *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2013] 2 S.C.R. 559

<sup>32</sup> See in particular s. 42.1(3) of the IRPA.

<sup>33</sup> *Stables, ibid.*

<sup>34</sup> See *Hassanzadeh v. Canada*, [2005] F.C.J. No 1121 [CCRBOA, Tab 2]; *Suleyman v. Canada*, [2008] F.C.J. No 983. [CCRBOA, Tab 5]

<sup>35</sup> Access to Information Responses dated May, 2011, July 26, 2012 and December 11, 2014 [Appellant B010 BOA, Tab 40]; *Stables v. Canada*, [2011] F.C.J. No 1613 paragraph 18 -21. [Consolidated RBOA, Tab 180]

<sup>36</sup> *Seaboyer, supra* note 23. [CCRBOA, Tab 4]

refugees rendering assistance to one another to assert their claims.

34. In this light, the CCR further submits that differentiating those who have engaged in justifiable acts of refugee assistance from those who have engaged in unlawful human smuggling operations is an accomplishable task.<sup>37</sup> The task would involve the weighing of various evidentiary considerations regarding the smuggling event, including:

- a. whether it was initiated for financial gain or material benefit;
- b. whether the alleged smuggling event involved the actions of refugee claimants mutually assisting one another;
- c. whether the alleged smuggling event involved family members assisting one another in seeking asylum;
- d. whether it was organized in association with a multi-faceted criminal organization;
- e. whether it involved the exploitation or abuse of the migrant;
- f. whether it sought to exercise power or control over the migrant;
- g. whether it resulted in the endangerment of the life or safety of, or causing bodily harm or death to, the migrant.

#### **F. Conclusion**

35. To close, we return to the words of Minister Kenney, who concluded his remarks on Raoul Wallenberg by noting:

As the Minister for Multiculturalism, I encourage all Canadians to reflect on Raoul Wallenberg's legacy. It is my sincere hope that all Canadians will be inspired by his selfless spirit and heroism.<sup>38</sup>

36. The matters that arise in the cases at bar also require this Honourable Court to reflect on Wallenberg's legacy. The CCR's constituency is largely composed of individuals who, through their own selfless spirit, try to assist those who seek shelter from persecution. The CCR does not ask this Court to laud such individuals but it does respectfully request that it recognize the lawfulness of their actions.

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<sup>37</sup> As is done in several countries, see Irish *Illegal Immigrants (Trafficking) Act*, 2000, s. 2(2) and the United Kingdom's *Immigration Act* 1971, c. 77. [Appellant Appulonappa Joint BOA, Tab 10]

<sup>38</sup> Kenney Release, *supra* note 1 [CCRBOA TAB 8]

**PART IV – COSTS**

37. The CCR seeks no costs and respectfully requests that none be awarded against it.

**PART V: ORDER SOUGHT**

38. The CCR takes no position on the disposition of the appeal but respectfully requests that it be determined in light of the submissions set out above. The CCR requests leave to be heard in oral argument.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

DATED this 30<sup>th</sup> day of January, 2015.

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**CATHERINE BRUCE**

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**ANGUS GRANT**

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**LAURA BEST**

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**FADI YACHOUA**

Counsel for the intervener, the Canadian Council for Refugees

**PART VI – TABLE OF AUTHORITIES**

<b>INTERNATIONAL MATERIALS</b>	<b>CITED AT PARAGRAPH(S)</b>
<i>Convention Relating to the Status of Refugees</i> , Can. T.S. 1969 No. 6, entered into force April 22, 1954, entered into force for Canada September 2, 1969 and the Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, entered into force in Canada June 4, 1969	4, 11, 12, 21
<i>UN General Assembly, Convention Against Transnational Organized Crime</i> , 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003, accession by Canada 13 May 2002)	4, 9, 10, 20
<i>UN General Assembly, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime</i> 15 November 2000, 2225 UNTS 209 (entered into force 28 January 2004, accession by Canada 13 May 2002) [Smuggling Protocol]	4, 9, 10, 20
<i>Universal Declaration of Human Rights</i> , G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), Art. 14(1).	8
<i>Irish Illegal Immigrants (Trafficking) Act</i> , 2000, s. 2(2)	34
United Kingdom <i>Immigration Act</i> 1971, c. 77, s. 25A.	34

<b>CANADIAN CASES</b>	<b>CITED AT PARAGRAPH(S)</b>
<i>Canada (Attorney General) v. Ward</i> , [1993] 2 SCR 689	8
<i>Pushpanathan v. Canada (MCI)</i> , [1998] 1 SCR 982	8
<i>R v. Parker</i> , [2000] [C.A] O.J. No 2787	12
<i>Hitzig v. Canada</i> , [2003] O.J. No 3117	12
<i>Nemeth v. Canada (Justice)</i> , 2010 SCC 56	12
<i>R. v. Seaboyer</i> , [1991] 2 S.C.R. 577	24, 32
<i>R. v. Smith</i> , [1987] 1 S.C.R. 1045	30
<i>R. v. Zundel</i> , [1992] 2 S.C.R. 731	30

<i>R. v. Anderson</i> , 2014 SCC 41	31
<i>Agraira v. Canada (Minister of Public Safety and Emergency Preparedness)</i>	31
<i>Stables v. Canada</i> , [2011] F.C.J. No 1613	32
<i>Hassanzadeh v. Canada</i> , [2005] F.C.J. No 1121	32
<i>Suleyman v. Canada</i> , [2008] F.C.J. No 983	32

<b>CASES (FOREIGN AND INTERNATIONAL)</b>	<b>CITED AT PARAGRAPH(S)</b>
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<b>SECONDARY SOURCES</b>	<b>CITED AT PARAGRAPH(S)</b>
Government of Canada Press Release “Minister Kenney issues statement in recognition of Raoul Wallenberg Day”, January 16, 2015, accessed online: <a href="http://news.gc.ca/web/article-en.do?nid=922189">http://news.gc.ca/web/article-en.do?nid=922189</a>	2, 35
Gallagher, Anne T., and Fiona David. <i>The International Law of Migrant Smuggling</i> . (New York: Cambridge UP, 2014) at 366	9
J. Hathaway, “The Rights of Refugees under International Law” Cambridge University Press at pages 278-302.	12

**PART VII – STATUTES AND REGULATIONS**

<i>Immigration and Refugee Protection Act (S.C. 2001, c. 27)</i>	<i>Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)</i>
<p><b>3 (2)</b> The objectives of this Act with respect to refugees are</p> <p>(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;</p> <p>(b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;</p> <p>(c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;</p> <p>(d) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;</p> <p>(e) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;</p> <p>(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;</p> <p>(g) to protect the health and safety of Canadians and to maintain the security of</p>	<p><b>3(2)</b> S'agissant des réfugiés, la présente loi a pour objet :</p> <p>a) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution;</p> <p>b) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d'affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller;</p> <p>c) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada;</p> <p>d) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;</p> <p>e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;</p> <p>f) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada;</p> <p>g) de protéger la santé des Canadiens et de garantir leur sécurité;</p> <p>h) de promouvoir, à l'échelle internationale,</p>



<p>Canadian society; and</p> <p><i>(h)</i> to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.</p> <p>(3) This Act is to be construed and applied in a manner that</p> <p><i>(a)</i> furthers the domestic and international interests of Canada;</p> <p><i>(b)</i> promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;</p> <p><i>(c)</i> facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations;</p> <p><i>(d)</i> ensures that decisions taken under this Act are consistent with the <i>Canadian Charter of Rights and Freedoms</i>, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;</p> <p><i>(e)</i> supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and</p> <p><i>(f)</i> complies with international human rights instruments to which Canada is signatory.</p>	<p>la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.</p> <p>(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :</p> <p><i>a)</i> de promouvoir les intérêts du Canada sur les plans intérieur et international;</p> <p><i>b)</i> d'encourager la responsabilisation et la transparence par une meilleure connaissance des programmes d'immigration et de ceux pour les réfugiés;</p> <p><i>c)</i> de faciliter la coopération entre le gouvernement fédéral, les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux;</p> <p><i>d)</i> d'assurer que les décisions prises en vertu de la présente loi sont conformes à la <i>Charte canadienne des droits et libertés</i>, notamment en ce qui touche les principes, d'une part, d'égalité et de protection contre la discrimination et, d'autre part, d'égalité du français et de l'anglais à titre de langues officielles du Canada;</p> <p><i>e)</i> de soutenir l'engagement du gouvernement du Canada à favoriser l'épanouissement des minorités francophones et anglophones du Canada;</p> <p><i>f)</i> de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.</p>
<p><b>36.</b> (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for</p> <p><i>(a)</i> having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of</p>	<p><b>36.</b> (1) Emportent interdiction de territoire pour grande criminalité les faits suivants:</p> <p><i>a)</i> être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une</p>

<p>imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;</p> <p><i>(b)</i> having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or</p> <p><i>(c)</i> committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.</p>	<p>loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;</p> <p><i>b)</i> être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;</p> <p><i>c)</i> commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.</p>
<p><b>37. (1)</b> A permanent resident or a foreign national is inadmissible on grounds of organized criminality for</p> <p><i>(a)</i> 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</p> <p><i>(b)</i> engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.</p> <p>(2) Paragraph (1)<i>(a)</i> does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign</p>	<p><b>37. (1)</b> Emportent interdiction de territoire pour criminalité organisée les faits suivants :</p> <p><i>a)</i> être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada, constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;</p> <p><i>b)</i> se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.</p> <p>(2) Les faits visés à l'alinéa (1)<i>a)</i> n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se</p>

<p>national entered Canada with the assistance of a person who is involved in organized criminal activity.</p>	<p>livre aux activités qui y sont visées.</p>
<p><b>95.</b> (1) Refugee protection is conferred on a person when</p> <p>(a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;</p> <p>(b) the Board determines the person to be a Convention refugee or a person in need of protection; or</p> <p>(c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.</p> <p>(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).</p>	<p><b>95.</b> (1) L'asile est la protection conférée à toute personne dès lors que, selon le cas :</p> <p>a) sur constat qu'elle est, à la suite d'une demande de visa, un réfugié au sens de la Convention ou une personne en situation semblable, elle devient soit un résident permanent au titre du visa, soit un résident temporaire au titre d'un permis de séjour délivré en vue de sa protection;</p> <p>b) la Commission lui reconnaît la qualité de réfugié au sens de la Convention ou celle de personne à protéger;</p> <p>c) le ministre accorde la demande de protection, sauf si la personne est visée au paragraphe 112(3).</p> <p>(2) Est appelée personne protégée la personne à qui l'asile est conféré et dont la demande n'est pas ensuite réputée rejetée au titre des paragraphes 108(3), 109(3) ou 114(4).</p>
<p><b>96.</b> A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p><b>96.</b> A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>

<p><b>97.</b> (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> <p>(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.</p>	<p>97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</p> <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> <p>(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.</p>
<p><b>98.</b> A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.</p>	<p><b>98.</b> La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.</p>

<p><b>101.</b> (1) A claim is ineligible to be referred to the Refugee Protection Division if</p> <p>(a) refugee protection has been conferred on the claimant under this Act;</p> <p>(b) a claim for refugee protection by the claimant has been rejected by the Board;</p> <p>(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;</p> <p>(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;</p> <p>(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or</p> <p>(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).</p> <p>(2) A claim is not ineligible by reason of serious criminality under paragraph (1)(f) unless</p> <p>(a) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at</p>	<p><b>101.</b> (1) La demande est irrecevable dans les cas suivants :</p> <p>a) l'asile a été conféré au demandeur au titre de la présente loi;</p> <p>b) rejet antérieur de la demande d'asile par la Commission;</p> <p>c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;</p> <p>d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;</p> <p>e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;</p> <p>f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)c) — , grande criminalité ou criminalité organisée.</p> <p>(2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)f) n'emporte irrecevabilité de la demande que si elle a pour objet :</p> <p>a) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;</p> <p>b) une déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada,</p>
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<p>least 10 years; or</p> <p>(b) in the case of inadmissibility by reason of a conviction outside Canada, the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.</p>	<p>constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.</p>
<p><b>112.</b> (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).</p> <p>...</p> <p>(3) Refugee protection may not result from an application for protection if the person</p> <p>(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;</p> <p>(b) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;</p> <p>(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or</p> <p>(d) is named in a certificate referred to in</p>	<p><b>112.</b> (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).</p> <p>...</p> <p>(3) L'asile ne peut être conféré au demandeur dans les cas suivants :</p> <p>a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;</p> <p>b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;</p> <p>c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;</p> <p>d) il est nommé au certificat visé au paragraphe 77(1).</p>

<p>subsection 77(1).</p>	
<p><b>113.</b> Consideration of an application for protection shall be as follows:</p> <p>(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;</p> <p>(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;</p> <p>(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;</p> <p>(d) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (e)(i) or (ii) — consideration shall be on the basis of the factors set out in section 97 and</p> <p>(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or</p> <p>(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada; and</p>	<p><b>113.</b> Il est disposé de la demande comme il suit :</p> <p>a) le demandeur d’asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n’étaient alors pas normalement accessibles ou, s’ils l’étaient, qu’il n’était pas raisonnable, dans les circonstances, de s’attendre à ce qu’il les ait présentés au moment du rejet;</p> <p>b) une audience peut être tenue si le ministre l’estime requis compte tenu des facteurs réglementaires;</p> <p>c) s’agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;</p> <p>d) s’agissant du demandeur visé au paragraphe 112(3) — sauf celui visé au sous-alinéa e)(i) ou (ii) —, sur la base des éléments mentionnés à l’article 97 et, d’autre part :</p> <p>(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,</p> <p>(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu’il constitue pour la sécurité du Canada;</p>
<p><b>114.</b> (1) A decision to allow the application for</p>	<p><b>114.</b> (1) La décision accordant la demande de protection a pour effet de conférer l’asile au</p>

<p>protection has</p> <p>(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and</p> <p>(b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.</p> <p>(2) If the Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the Minister may re-examine, in accordance with paragraph 113(d) and the regulations, the grounds on which the application was allowed and may cancel the stay.</p>	<p>demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.</p> <p>(2) Le ministre peut révoquer le sursis s'il estime, après examen, sur la base de l'alinéa 113d) et conformément aux règlements, des motifs qui l'ont justifié, que les circonstances l'ayant amené ont changé.</p> <p>(3) Le ministre peut annuler la décision ayant accordé la demande de protection s'il estime qu'elle découle de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.</p>
<p><b>115.</b> (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.</p> <p>(2) Subsection (1) does not apply in the case of a person</p> <p>(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or</p> <p>(b) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of</p>	<p><b>115.</b> (1) Ne peut être renvoyée dans un pays où elle risque la persécution du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques, la torture ou des traitements ou peines cruels et inusités, la personne protégée ou la personne dont il est statué que la qualité de réfugié lui a été reconnue par un autre pays vers lequel elle peut être renvoyée.</p> <p>(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire :</p> <p>a) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada;</p> <p>b) pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée si, selon le ministre, il ne devrait pas être présent au Canada en raison soit de la nature et de la gravité de ses actes passés, soit du danger qu'il constitue pour la sécurité</p>



<p>acts committed or of danger to the security of Canada.</p> <p>(3) A person, after a determination under paragraph 101(1)(e) that the person's claim is ineligible, is to be sent to the country from which the person came to Canada, but may be sent to another country if that country is designated under subsection 102(1) or if the country from which the person came to Canada has rejected their claim for refugee protection.</p>	<p>du Canada.</p> <p>(3) Une personne ne peut, après prononcé d'irrecevabilité au titre de l'alinéa 101(1)e), être renvoyée que vers le pays d'où elle est arrivée au Canada sauf si le pays vers lequel elle sera renvoyée a été désigné au titre du paragraphe 102(1) ou que sa demande d'asile a été rejetée dans le pays d'où elle est arrivée au Canada.</p>
<p><b>117.</b> (1) No person shall organize, induce, aid or abet the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act.</p> <p>(2) A person who contravenes subsection (1) with respect to fewer than 10 persons is guilty of an offence and liable</p> <p style="padding-left: 40px;"><b>(a)</b> on conviction on indictment</p> <p style="padding-left: 80px;">(i) for a first offence, to a fine of not more than \$500,000 or to a term of imprisonment of not more than 10 years, or to both, or</p> <p style="padding-left: 80px;">(ii) for a subsequent offence, to a fine of not more than \$1,000,000 or to a term of imprisonment of not more than 14 years, or to both; and</p> <p style="padding-left: 40px;"><b>(b)</b> on summary conviction, to a fine of not more than \$100,000 or to a term of imprisonment of not more than two years, or to both.</p> <p>(3) A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on conviction by way of indictment to a fine of not more than</p>	<p><b>117.</b> (1) Il est interdit à quiconque d'organiser l'entrée au Canada d'une ou de plusieurs personnes ou de les inciter, aider ou encourager à y entrer en sachant que leur entrée est ou serait en contravention avec la présente loi ou en ne se souciant pas de ce fait.</p> <p>(2) Quiconque contrevient au paragraphe (1) relativement à moins de dix personnes commet une infraction et est passible, sur déclaration de culpabilité :</p> <p style="padding-left: 40px;"><b>a)</b> par mise en accusation :</p> <p style="padding-left: 80px;">(i) pour une première infraction, d'une amende maximale de cinq cent mille dollars et d'un emprisonnement maximal de dix ans, ou de l'une de ces peines,</p> <p style="padding-left: 80px;">(ii) en cas de récidive, d'une amende maximale de un million de dollars et d'un emprisonnement maximal de quatorze ans, ou de l'une de ces peines;</p> <p style="padding-left: 40px;"><b>b)</b> par procédure sommaire, d'une amende maximale de cent mille dollars et d'un emprisonnement maximal de deux ans, ou de l'une de ces peines.</p> <p>(3) Quiconque contrevient au paragraphe (1)</p>

<p>\$1,000,000 or to life imprisonment, or to both.</p> <p>(3.1) A person who is convicted on indictment of an offence under subsection (2) or (3) with respect to fewer than 50 persons is also liable to a minimum punishment of imprisonment for a term of</p> <p style="padding-left: 40px;"><b>(a)</b> three years, if either</p> <p style="padding-left: 80px;">(i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons with respect to whom the offence was committed, or</p> <p style="padding-left: 80px;">(ii) the commission of the offence was for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group; or</p> <p style="padding-left: 40px;"><b>(b)</b> five years, if both</p> <p style="padding-left: 80px;">(i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons with respect to whom the offence was committed, and</p> <p style="padding-left: 80px;">(ii) the commission of the offence was for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group.</p> <p>(3.2) A person who is convicted of an offence under subsection (3) with respect to a group of 50 persons or more is also liable to a minimum punishment of imprisonment for a term of</p> <p><b>(a)</b> five years, if either</p>	<p>relativement à un groupe de dix personnes et plus commet une infraction et est passible, sur déclaration de culpabilité par mise en accusation, d'une amende maximale de un million de dollars et de l'emprisonnement à perpétuité, ou de l'une de ces peines.</p> <p>(3.1) Quiconque est déclaré coupable, par mise en accusation, de l'infraction prévue aux paragraphes (2) ou (3) visant moins de cinquante personnes est aussi passible des peines minimales suivantes :</p> <p style="padding-left: 40px;"><b>a)</b> trois ans si, selon le cas :</p> <p style="padding-left: 80px;">(i) l'auteur, en commettant l'infraction, a entraîné la mort de toute personne visée par l'infraction ou des blessures à celle-ci ou a mis en danger sa vie ou sa sécurité,</p> <p style="padding-left: 80px;">(ii) l'infraction a été commise au profit ou sous la direction d'une organisation criminelle ou d'un groupe terroriste ou en association avec l'un ou l'autre de ceux-ci ou en vue de tirer un profit;</p> <p style="padding-left: 40px;"><b>b)</b> cinq ans si, à la fois :</p> <p style="padding-left: 80px;">(i) l'auteur, en commettant l'infraction, a entraîné la mort de toute personne visée par l'infraction ou des blessures à celle-ci ou a mis en danger sa vie ou sa sécurité,</p> <p style="padding-left: 80px;">(ii) l'infraction a été commise au profit ou sous la direction d'une organisation criminelle ou d'un groupe terroriste ou en association avec l'un ou l'autre de ceux-ci ou en vue de tirer un profit.</p> <p>(3.2) Quiconque est déclaré coupable de</p>
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<p>(i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons with respect to whom the offence was committed, or</p> <p>(ii) the commission of the offence was for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group; or</p> <p><b>(b) 10 years, if both</b></p> <p>(i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons with respect to whom the offence was committed, and</p> <p>(ii) the commission of the offence was for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group.</p> <p>(4) No proceedings for an offence under this section may be instituted except by or with the consent of the Attorney General of Canada.</p>	<p>l'infraction prévue au paragraphe (3) visant un groupe de cinquante personnes et plus est aussi passible des peines minimales suivantes :</p> <p><b>a) cinq ans si, selon le cas :</b></p> <p>(i) l'auteur, en commettant l'infraction, a entraîné la mort de toute personne visée par l'infraction ou des blessures à celle-ci ou a mis en danger sa vie ou sa sécurité,</p> <p>(ii) l'infraction a été commise au profit ou sous la direction d'une organisation criminelle ou d'un groupe terroriste ou en association avec l'un ou l'autre de ceux-ci ou en vue de tirer un profit;</p> <p><b>b) dix ans si, à la fois :</b></p> <p>(i) l'auteur, en commettant l'infraction, a entraîné la mort de toute personne visée par l'infraction ou des blessures à celle-ci ou a mis en danger sa vie ou sa sécurité,</p> <p>(ii) l'infraction a été commise au profit ou sous la direction d'une organisation criminelle ou d'un groupe terroriste ou en association avec l'un ou l'autre de ceux-ci ou en vue de tirer un profit.</p> <p>(4) Il n'est engagé aucune poursuite pour une infraction prévue au présent article sans le consentement du procureur général du Canada.</p>
<p><b>SCHEDULE</b></p> <p><b>(Subsection 2(1))</b></p>	<p><b>ANNEXE</b></p> <p><b>(paragraphe 2(1))</b></p>

<p><b>SECTIONS E AND F OF ARTICLE 1 OF THE UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES</b></p> <p>[...]</p> <p>F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:</p> <p>(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;</p> <p>(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.</p>	<p><b>SECTIONS E ET F DE L'ARTICLE PREMIER DE LA CONVENTION DES NATIONS UNIES RELATIVE AU STATUT DES RÉFUGIÉS</b></p> <p>[...]</p> <p>F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :</p> <p>a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;</p> <p>b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;</p> <p>c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.</p>
<p><b><i>Canadian Charter of Rights and Freedoms</i></b> <b>PART I OF THE CONSTITUTION ACT, 1982</b></p> <p><b>Life, liberty and security of person</b></p> <p>7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.</p>	<p><b><i>Charte canadienne des droits et libertés</i></b> <b>PARTIE I DE LA LOI CONSTITUTIONNELLE DE 1982</b></p> <p><b>Vie, liberté et sécurité</b></p> <p>7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p>