IN THE SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Appeal and the British Columbia Court of Appeal)

File No. 35958

BETWEEN:

FRANCIS ANTHONIMUTHU APPULONAPPA, HAMALRAJ HANDASAMY, JEYACHANDRAN KANAGARAJAH, and VIGNARAJAH THEV ARAJAH

Appellants

AND

REGINA

Respondent

File No. 35677

BETWEEN:

JESUS RODRIGUEZ HERNANDEZ

Appellant

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

File No. 35685

BETWEEN:

B306

Appellant

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

File No. 35688

BETWEEN:

J.P. and G.J.

Appellants

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

FACTUM OF THE INTERVENER IN ALL 4 APPEALS CANADIAN CIVIL LIBERTIES ASSOCIATION

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

FILE NO. 35958

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE BRITISH COLUMBIA COURT OF APPEAL)

BETWEEN:

**FRANCIS ANTHONIMUTHU APPULONAPPA,
HAMALRAJ HANDASAMY,
JEYACHANDRAN KANAGARAJAH, and
VIGNARAJAH THEV ARAJAH**

APPELLANTS

-and-

REGINA

RESPONDENT

FACTUM OF THE INTERVENER CANADIAN CIVIL LIBERTIES ASSOCIATION
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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FILE NO. 35685

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BETWEEN:

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THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

FACTUM OF THE INTERVENER CANADIAN CIVIL LIBERTIES ASSOCIATION

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FILE NO. 35688

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

J.P. and G.J.

APPELLANTS

-and-

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT

FACTUM OF THE INTERVENER CANADIAN CIVIL LIBERTIES ASSOCIATION
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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FILE NO. 35677

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

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APPELLANT

-and-

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

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FACTUM OF THE INTERVENER CANADIAN CIVIL LIBERTIES ASSOCIATION
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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FACTUM OF THE INTERVENER CANADIAN CIVIL LIBERTIES ASSOCIATION

PART 1: OVERVIEW AND FACTS

Introduction

1. These Appeals raise issues that will have a significant impact on Canadian asylum practices. The legitimate aims of targeting criminal smuggling and trafficking, as prescribed in the ***Immigration and Refugee Protection Act***,[1] cannot vitiate Canada's international and domestic legal commitments to *bona fide* refugees.

2. The Canadian Civil Liberties Association's[2] involvement in these appeals stems from its interest in the development of principled and balanced approaches to reconciling civil liberties and other public interests. The CCLA also has an interest in ensuring that state authority, as reflected in legislation like ***IRPA***, is properly limited and does not exacerbate the harms that it claims to address. The CCLA respectfully submits that the decisions of the courts below have interpreted ***IRPA*** in a fashion which violates constitutional principles of fundamental justice.

3. Section 117 of ***IRPA***, as interpreted by the Court of Appeal for British Columbia, necessarily applies to any conduct intended to aid or assist the entry of undocumented individuals into Canada, regardless of motive, surrounding circumstances, or the nature of the assistance provided. This criminalises, as 'people' or 'human' smuggling, assistance provided *to* bona fide refugee claimants *by* other refugees, close family members and humanitarian workers. This interpretation also renders those providing assistance inadmissible by reason of s. 37(1)(b) because, according to the Federal Court of Appeal, it was reasonable (and indeed, correct) for the Board to interpret s. 37(1)(b) with reference to s. 117.[3]

4. Construed in this manner, ss. 117 and 37(1)(b) are overbroad and arbitrary, and violate s. 7 of the ***Charter***.[4]

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ("*IRPA*")

[2] "CCLA"

[3] *Canada (Public Safety and Emergency Preparedness) v. J.P.*, 2013 FCA 262, 368 D.L.R (4th) 524 at paras. 79-84 ("*J.P.* Appeal").

[4] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ("*Charter*").

5. Canada's legal commitments with respect to criminal smuggling and trafficking should not be so overbroad as to capture *bona fide* refugees and asylum-seekers. This Honourable Court has recognized the serious consequences of denying protection to *bona fide* refugees.

6. Section 117, and by extension, s. 37(1)(b), as interpreted in the Courts below, do not make this distinction. They are overbroad and arbitrary and violate s. 7 of the ***Charter***. Indeed, Raoul Wallenberg could have been subject to prosecution under s. 117, or been barred from advancing his own refugee claim under section 37(1)(b), if he had assisted persecuted Jews coming to Canada today.

7. The CCLA's submissions address two aspects of these Appeals. First, the CCLA submits that s. 117, and by extension, s. 37(1)(b), are arbitrary. This arbitrariness is a manifestation of the overbreadth identified by the Appellants. When applied to those who assist refugees, including persons who are themselves refugees, these provisions are unnecessary to and inconsistent with the objectives of ***IRPA***. Second, in each of the Appeals, the Minister and Crown (as well as the Court of Appeal for British Columbia) rely on ministerial and prosecutorial discretion as a partial answer to the legislation's overbreadth. The CCLA submits that an unconstitutional law cannot be cured by the fact that there is discretion in the manner of its application. Neither the court nor Parliament can delegate to anyone a discretionary power to avoid what would otherwise be a violation of a person's s. 7 rights resulting from an unconstitutional scheme. If the provisions at issue are upheld, it must be for reasons other than the chance a public official *may* rescue a person from the consequences of a constitutional violation enacted by Parliament.

PART II: STATEMENT OF POSITION

8. The CCLA takes no position on the disposition of the Appeals and offers these submissions for the assistance of the court in resolving the constitutional questions stated by the Chief Justice.

PART III: ARGUMENT

9. The CCLA endorses the Appellants' submissions with respect to Canada's international obligations; the realities refugees experience as they flee persecution; the engagement of s. 7 of the ***Charter***; the state interest and societal concerns that the impugned provisions are meant to

reflect; and, the correct interpretation of ss. 37(1)(b) and 117. However, the CCLA's submissions focus on the issues of arbitrariness and ministerial and prosecutorial discretion.

Sections 37(1)(b) and 117 are Arbitrary

10. Like the overbreadth doctrine, the principle that laws must not be arbitrary is a principle of fundamental justice. "The effect of overbreadth is that in some applications the law is arbitrary or disproportionate".[5] In each case, the "root question" is whether the law is "inherently bad because there is *no connection*, in whole or in part, between its effects and its purpose".[6] Accordingly, arbitrariness is not a new issue, but a different aspect of the same constitutional defect the Appellants identify.

11. As this Court has held, a law is arbitrary where it is unnecessary to further the state's objective or where it bears no relationship to, or is inconsistent with, the state interest behind the legislation.[7] Legislation is arbitrary if it creates administrative structures which are manifestly unfair obstacles undermining the legislation's purpose, or are implemented inconsistently and without transparency.[8] Legislation will also be arbitrary if it puts out of reach the benefit it is intended to promote, or exacerbates the very harm it is intended to address.[9] When considering whether a law's application is arbitrary, the first step is to identify the law's objectives. The second step is to identify the relationship between the state interest and the impugned law by examining the challenged provision and the legislative objective that the provision reflects. The law will be arbitrary if there is no connection between the effect and the objective of the law.[10]

12. In *Appulonappa*, the trial judge found that s. 117's objective "is to stop human smuggling and protect victims of human smuggling in accordance with [Canada's] international obligations".[11] In the *JP, B306 and Hernandez* appeals, the Federal Court of Appeal reached a

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[5] *R. v. Heywood*, [1994] 3 S.C.R 761 at 793; *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101, 2013 SCC 72 at para. 112 ("*Bedford*").

[6] *Bedford, supra*, para. 119.

[7] *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 S.C.R. 134, 2011 SCC 44 at para. 132 ("*PHS*").

[8] *R. v. Morgentaler*, [1988] 1 S.C.R. 30 at 69-72, *per* Dickson C.J.C. and Lamer J.

[9] *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35, *per* McLachlin C.J.C. and Major J.

[10] *PHS* at paras. 129-130.

[11] *R. v. Appulonappa*, 2013 BCSC 31, (2013), 358 D.L.R (4th) 666 at para. 138 ("*Appulonappa* Trial Reasons").

similar conclusion, finding that s. 37(1)(b)'s purpose was "refusing admissibility to Canada for foreign nationals who engage in people smuggling in the context of a transnational crime".[12]

13. Parliament has expressly stated that, as it relates to refugees, ***IRPA*** is "in the first instance about saving lives and offering protection to the displaced and persecuted".[13] It is also intended to facilitate family reunification and compliance with Canada's legal obligation to give fair consideration to those who claim persecution, and to offer safe haven to refugees.[14]

14. Measured against these objectives, the impugned provisions are arbitrary in two respects.

15. First, s. 117 criminalises and s. 37(1)(b) imposes severe immigration consequences on those who assist with an act that is itself immune from prosecution under ***IRPA*** and international law. Coming to Canada without documentation to make a legitimate refugee claim is conduct which cannot be unlawful, by reason of Article 31 of the *Convention Relating to the Status of Refugees* (the "***Convention***") Indeed, as the drafters of the ***Convention*** noted, "a refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge."[15] These international obligations are reflected in the protections afforded refugees in s. 133 of ***IRPA***. Yet the impugned provisions criminalise and penalise the assistance of conduct that is immune from prosecution if done without assistance. They apply regardless of the circumstances, in the absence of clandestine entry or danger, even where a refugee asked for and received assistance to save her life - which is one of ***IRPA***'s prime objectives.

16. The CCLA submits that in these circumstances, criminalising the assistance of an act which is itself protected is an arbitrary exercise of legislative power.

17. The crux of these arguments is found in the *Appulonappa* trial judgment. Silverman J. asked, rhetorically, "[i]f the arrival of a legitimate refugee at a port of entry without the required documentation does not attract criminal liability… why is it a crime to assist such a refugee to

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[12] *J.P.* Appeal, *supra*, at para. 114; see paras. 112-115 generally.
[13] *IRPA*, s. 3(2)(a).
[14] *IRPA*, s. 3(2)(b), (c), (d), and (f).
[15] *R. v. Uxbridge Magistrates Court, Ex parte Adimi*, [2001] Q.B. 667 at para. 1.

arrive?"[16]. Justice Silverman asked the right question: why is this distinction between refugees (who are treated as an exception to immigration control and granted a prosecution deferral) and those, including other refugees, who assist them (who receive no such protection) *necessary* to advance the state interest and *consistent* with it? If the integrity of the immigration system is not undermined by an undocumented refugee claimant, then it is not undermined by one who furnishes assistance to that person. The inconsistency of the distinction is noted by Professor Hathaway, who describes the "conceptual incongruity" of exempting refugees but criminalising those that assist them in making the irregular entry that Article 31 and s. 133 of ***IRPA*** permit.[17]

18. Second, by broadly penalizing assistance, s. 117 and s. 37(1)(b) have absurd consequences when applied to refugees. For example, a husband and wife assisting each other in their flight and arrival to Canada could be exposed to criminal liability and rendered inadmissible solely for assisting one another to jointly arrive and make a refugee claim.

19. Refugees often flee as a family unit, one assisting the other, consistent with the realities of escaping persecution and the principle of family unity underpinning the ***Convention*** and ***IRPA***. In the example of a mother who brings her child with her to make a refugee claim as a family unit, deeming her inadmissible would directly contravene the objectives underpinning ***IRPA***. Treating mothers who flee persecution with their children differently than those who leave their children behind exacerbates the harms that ***IRPA*** was intended to address, fosters inequality, and bears no relation to and is inconsistent with the legitimate state interest reflected in ss. 117 and 37(1)(b) of ***IRPA***. The same reasoning applies in the case of a refugee who assists a sibling, a neighbour, or another refugee. Sections 37(1)(b) and 117, as interpreted in the courts below, would prohibit members of a persecuted minority from saving each other, and would also punish refugees who provide each other with mutual assistance by virtue of travelling in a family or group. As such, ss. 37(1)(b) and 117 require members of a family unit to enter Canada alone, *seriatim*, without offering or accepting any assistance to prevent the assistance afforded by one from tainting the refugee claims of all. The application of legislation in this manner creates a perverse, circular feedback loop. It is the epitome of "guilt by association", a concept which this

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[16] *Appulonappa* Trial Reasons at para. 144.

[17] James C. Hathaway, *The Rights of Refugees at International Law* (Cambridge University Press: Cambridge, 2005) at 403.

court has recognized as being inconsistent with fundamental international and criminal law principles.[18]

20. The CCLA submits the scope and application of ss. 37(1)(b) and 117, as illustrated above, are divorced from the goals that underpin them. Indeed, they pose a real risk of frustrating those objectives and the objectives of ***IRPA*** generally. Sanctioning refugees, family members and humanitarian supporters would exacerbate the harms ***IRPA*** is intended to address, and bears no relation to and is inconsistent with the legitimate state interest served by these provisions. For these reasons, the CCLA respectfully submits that ss. 117 and 37(1)(b), if interpreted to apply to assistance provided by refugees, close family members and humanitarian workers, are arbitrary and contrary to the principles of fundamental justice enshrined in s. 7 of the ***Charter***.

Prosecutorial and Ministerial Discretion Cannot Save an Unconstitutional Law

21. The submissions that follow address a specific issue in the s. 7 analysis. In the Appeals, the Minister and the Crown each rely on ministerial and prosecutorial discretion, respectively, as offering some answer to the overbreadth concerns. The CCLA submits that neither ministerial nor prosecutorial discretion perform the saving function contended for. An unconstitutional law cannot be cured by the fact that there is discretion in the manner of its application.

(a) Ministerial Discretion

22. In the *JP* appeal, the Minister relies on the existence of ministerial discretion to exempt a person from inadmissibility as "reinforcing" the constitutional validity of s. 37(1)(b). Relying on decisions of this court in *PHS* and *Suresh*[19], the Minister argues that any potential overbreadth can be remedied by the Ministerial relief provisions in the statutory scheme. Reading the inadmissibility provision in conjunction with the ability to grant a discretionary exemption, says the Minister, "evidences the legislator's intention to allow for a balancing of values".[20]

23. The existence of ministerial discretion to grant an exemption, or prosecutorial discretion not to prosecute, does not rescue a legislative prohibition that otherwise violates s. 7. Neither the

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[18] *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40 at paras. 81-83.

[19] *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 S.C.R. 3.

[20] *J.P.* Appeal, *supra*, Factum of the Respondent at paras. 139-142.

court nor Parliament can delegate to anyone, including a minister of the Crown, a discretionary power to avoid what would otherwise be a violation of a person's s. 7 rights.[21] Where security of the person is at stake, it does not comport with the principles of fundamental justice to subject a decision on whether a person's rights will be violated to ministerial discretion.[22] The vagueness of the discretion does not cure the problem of overbreadth; it exacerbates it.[23]

24. When evaluating the constitutionality of a prohibition of general application, the court must look at it in its statutory context. In *PHS*, the Court found that this included provisions "designed to relieve against unconstitutional or unjust applications of [the] prohibition".[24] Section 42.1, however, is markedly different. The onus is reversed, and each applicant must satisfy the Minister that granting an exemption "is not contrary to the national interest" in their individual case. The Minister "may only take into account national security and public safety considerations". This does not allow the Minister to consider the circumstances most favourable to refugee claimants. If the Minister's argument concerning s. 42.1 were correct, Parliament could freely enact arbitrary and overbroad laws as long as there was some possibility of a discretionary "safety valve". That would represent a significant and troubling departure from this court's s. 7 jurisprudence. In addition, if recourse to section 1 of the *Charter* were available, and the CCLA submits it is not, the Ministerial discretion is too vague to constitute a "reasonable limit prescribed by law for the purposes of the s. 1 analysis".[25]

25. Moreover, since constitutional review is concerned with effects as well as purposes, the ministerial discretion as actually applied must be shown to relieve from the unconstitutional applications of the scheme. Discretionary administrative structures that appear to offer defences may in their application be "practically unavailable" or contain unnecessary rules, rendering them arbitrary, unfair or even illusory.[26] Among the relevant considerations is delay.[27] In the

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[21] *R. v. Parker* (2000), 49 O.R. (3d) 481 (C.A.) at paras. 185-189 (ministerial discretion); *R. v. Smith (Edward Dewey)*, [1987] 1 S.C.R. 1045 at pp. 1078-1079 (prosecutorial discretion); *Committee for the Commonwealth of Canada v. Canada* [1991] 1 S.C.R. 139, 77 D.L.R. (4th) 385 at pp. 214, 225-226 (per L'Heureux-Dube J.) and pp. 246-247 (per McLachlin J. as she then was) (ministerial discretion).

[22] *Parker, supra*, para. 188.

[23] *Committee for Commonwealth of Canada, supra*, pp. 225-226 (per L'Heureux-Dube J.)

[24] *PHS, supra*, para. 109.

[25] *Committee for Commonwealth of Canada*, *supra*, pp. 214-15 (per L'Heureux-Dube J.)

[26] *Parker, supra*, paras. 154-159; *Morgentaler*, *supra*.

case at bar, there appears to be little evidence in the record about how s. 42.1 operates in practice. [28] The Appellant B010 refers to data drawn from *Access to Information Act* requests that were apparently before the Federal Court of Appeal.[29] This evidence demonstrates that between 2001, when ***IRPA*** was enacted, and 2011, when the information was obtained, there were serious delays in processing applications. Notably, not a single application received under s. 37(2) (the predecessor to s. 42.1) had been processed in that time period. It would be cause for some concern if the Minister were entitled to defend the constitutionality of s. 37(1)(b) on the basis of ministerial discretion without demonstrating that it is practically available and offers real and genuine relief against inadmissibility for refugee claimants, without imposing undue burdens or unreasonable delays, bearing in mind the vulnerability and limited resources of many refugees.

(b) Prosecutorial Discretion

26. In *Appulonappa*, the Crown at first instance submitted that it has been the practice of Canada not to charge humanitarian aid workers or family members with offences under s. 117. In the Crown's submission, avoiding the prosecution of such individuals is best fulfilled through the exercise of prosecutorial discretion; "assessed on a case by case, and fact by fact, basis". Indeed, the Crown's submission to the trial judge was that the existence of prosecutorial discretion and the prohibition on prosecution in s. 117(4) without the consent of the Attorney General, is a "complete answer to the overbreadth argument".[30] On appeal, the Crown maintained "that the prosecutorial discretion enacted by s. 117(4) provides a safeguard in the event that cases arise in which charges would not be in the public interest."[31] Writing for the Court of Appeal, Neilson J.A. agreed with this, characterising s. 117(4) as a "continuing policy instrument" that would "filter charges" for, among other factors, motive.[32]

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[27] *Parker, supra*, para. 189; *Morgentaler*, *supra*, at 57-63.

[28] The importance of such evidence was referred to in *Parker, supra*, at paras. 120, 170, 172, 189.

[29] *B010 v. Canada (Citizenship and Immigration)*, 2013 FCA 87, Factum of the Appellant at para. 30; referring to the Appellant's Book of Authorities, Tab 40. The basis on which this material is before the Court on these appeals is not entirely clear to the CCLA.

[30] *Appulonappa* Trial Reasons, *supra*, at paras. 119, 128-131.

[31] *R. v. Appulonappa*, 2014 BCCA 163 at para. 41 ("*Appulonappa* Appeal").

[32] *Appulonappa* Appeal at para. 109.

27. Consistent with its submissions about ministerial discretion, the CCLA submits that prosecutorial discretion is, and must necessarily be, irrelevant to the constitutionality of s. 117.

28. As Lamer J. observed in *Smith*, reliance on prosecutorial discretion as a means to cure otherwise unconstitutional legislation "would be 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".[33]

29. In the *Appulonappa* appeal, Neilson J.A. appears to have misapprehended the effect of the CCLA's submissions, at least, concerning s. 117(4). It is not that centralising charge approval by requiring the Attorney General of Canada's consent to a prosecution renders s. 117 unconstitutional. Nor is it that s. 117(4) reflects Parliament's intention that the Attorney General "enforce, through discretion, a strict prohibition against charging those who assist refugee claimants for altruistic motives".[34] Quite simply, the prosecutorial discretion enshrined in s. 117(4) that might be exercised against approving a prosecution in what Neilson J.A. called "unpalatable" circumstances cannot be offered as a cure for the overbreadth and arbitrariness such circumstances demonstrate. Indeed, acknowledging the use of prosecutorial discretion as a "policy instrument" to "filter" the circumstances in which it is appropriate to apply a broad criminal sanction from those in which it is not is, with respect, a fatal admission of overbreadth.

30. The CCLA submits that it is settled law that prosecutorial discretion cannot save an unconstitutional law, and its existence does not advance the constitutional analysis here. Indeed, as the dissenting member of the British Columbia Court of Appeal held in *Smith*, "the use of prosecutorial discretion is itself the essence of arbitrariness".[35]

PART IV: SUBMISSIONS CONCERNING COSTS

31. The CCLA requests that no order for costs be made against it and seeks no costs.

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[33] *R. v. Smith (Edward Dewey)*, *supra*, at 1078.

[34] *Appulonappa* Appeal at para. 111.

[35] *R. v. Smith* (1984) 11 C.C.C. (3d) 411 at para. 56 (B.C.C.A.), *per* Lambert J.A. (in dissent).

PART V: ORDER SOUGHT AND PERMISSION TO PRESENT ORAL ARGUMENT

32. The CCLA submits that, should ss. 37(1)(b) and 117 of ***IRPA*** be interpreted in the manner advocated for by the Crown Respondents, the constitutional questions stated by the Chief Justice ought to be answered as follows: Sections 37(1)(b) and 117 of ***IRPA*** infringe s. 7 of the ***Charter***, and such infringement is not a reasonable limit prescribed by law as can be justified under s. 1 of the ***Charter***.

33. In addition, the CCLA seeks leave to present ten (10) minutes of oral argument at the hearing of the within appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 27, 2015
Vancouver, British Columbia

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PART VI

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PART VII

RELEVANT LEGISLATIVE PROVISIONS

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
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.	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.

Immigration and Refugee Protection Act, S.C. 2001, c. 27

3(2) The objectives of this Act with respect to refugees are	**3.** (2) S'agissant des réfugiés, la présente loi a pour objet :
(a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;	a) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution;
(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;	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;
(c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada	c) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada;

claiming persecution; (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; (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; (f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada; (g) to protect the health and safety of Canadians and to maintain the security of Canadian society; and (h) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.	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; 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; f) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada; g) de protéger la santé des Canadiens et de garantir leur sécurité; h) de promouvoir, à l'échelle internationale, 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.
37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for (a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or	**37.** (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants : a) 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; b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.	de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.
(2) Paragraph (1)(a) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.	(2) Les faits visés à l'alinéa (1)a) 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 livre aux activités qui y sont visées.
42.1 (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.	**42.1** (1) Le ministre peut, sur demande d'un étranger, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que cela ne serait pas contraire à l'intérêt national.
(2) The Minister may, on the Minister's own initiative, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of a foreign national if the Minister is satisfied that it is not contrary to the national interest.	(2) Le ministre peut, de sa propre initiative, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de tout étranger s'il est convaincu que cela ne serait pas contraire à l'intérêt national.
(3) In determining whether to make a declaration, the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.	(3) Pour décider s'il fait la déclaration, le ministre ne tient compte que de considérations relatives à la sécurité nationale et à la sécurité publique sans toutefois limiter son analyse au fait que l'étranger constitue ou non un danger pour le public ou la sécurité du Canada.
117. (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.	**117.** (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.
(2) A person who contravenes subsection (1) with respect to fewer than 10 persons is guilty	(2) Quiconque contrevient au paragraphe (1)

of an offence and liable (a) on conviction on indictment (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 (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 (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. (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 $1,000,000 or to life imprisonment, or to both. (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 (a) three years, if either (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 (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 (b) five years, if both (i) the person, in committing the offence, endangered the life or safety of, or caused bodily harm or death to, any of the persons	relativement à moins de dix personnes commet une infraction et est passible, sur déclaration de culpabilité : a) par mise en accusation : (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, (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; 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. (3) Quiconque contrevient au paragraphe (1) 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. (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 : a) trois ans si, selon le cas : (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, (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;

with respect to whom the offence was committed, and (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. (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 (a) five years, if either (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 (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 (b) 10 years, if both (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 (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. (4) No proceedings for an offence under this section may be instituted except by or with the consent of the Attorney General of Canada.	b) cinq ans si, à la fois : (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, (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. (3.2) Quiconque est déclaré coupable de l'infraction prévue au paragraphe (3) visant un groupe de cinquante personnes et plus est aussi passible des peines minimales suivantes : a) cinq ans si, selon le cas : (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, (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; b) dix ans si, à la fois : (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, (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. (4) Il n'est engagé aucune poursuite pour une infraction prévue au présent article sans le consentement du procureur général du Canada.

133. A person who has claimed refugee protection, and who came to Canada directly or indirectly from the country in respect of which the claim is made, may not be charged with an offence under section 122, paragraph 124(1)(a) or section 127 of this Act or under section 57, paragraph 340(c) or section 354, 366, 368, 374 or 403 of the Criminal Code, in relation to the coming into Canada of the person, pending disposition of their claim for refugee protection or if refugee protection is conferred.	**133.** L'auteur d'une demande d'asile ne peut, tant qu'il n'est statué sur sa demande, ni une fois que l'asile lui est conféré, être accusé d'une infraction visée à l'article 122, à l'alinéa 124(1)a) ou à l'article 127 de la présente loi et à l'article 57, à l'alinéa 340c) ou aux articles 354, 366, 368, 374 ou 403 du Code criminel, dès lors qu'il est arrivé directement ou indirectement au Canada du pays duquel il cherche à être protégé et à la condition que l'infraction ait été commise à l'égard de son arrivée au Canada.