Publication Ban

Interdiction de publication

S.C.C. File Nos. 35388, 35677, 35685, 35688

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

Between:

B010, HERNANDEZ, B306, J.P. and G.J.

Appellants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

- and -

ATTORNEY GENERAL OF ONTARIO, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH), DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Interveners

S.C.C. File No. 35958

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

Between:

APPULONAPPA et al

Appellants

- and -

HER MAJESTY THE QUEEN

Respondent

- and -

ATTORNEY GENERAL OF ONTARIO, AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH), BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN CIVIL LIBERTIES ASSOCIATION CANADIAN COUNCIL FOR REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS

Interveners

FACTUM OF THE INTERVENER

CANADIAN ASSOCIATION OF REFUGEE LAWYERS

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

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

-and-

(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

Between:

B010

Appellant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

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

Interveners

And between:

JESUS RODRIGUEZ HERNANDEZ

Appellant

- and –

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Interveners

And between:

B306

Appellant

- and -

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

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UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
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Interveners

And between:

J.P. and G.J.

Appellants

- and -

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And between:

FRANCIS ANTHONIMUTHU APPULONAPPA
HAMALRAJ HANDASAMY
JEYACHANDRAN KANAGARAJAH
VIGNARAJAH THEVARAJAH

Appellants

- and -

HER MAJESTY THE QUEEN

Respondent

- and -

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MEMORANDUM OF ARGUMENT

PART I – FACTS

1. The Canadian Association of Refugee Lawyers (CARL) accepts the facts as set out by the Appellants in these appeals.

PART II – STATEMENT OF POSITION

2. CARL submits that the determination that a refugee claimant is inadmissible for people smuggling[1] engages her right to security of the person under s. 7 of the Canadian *Charter of Rights and Freedoms*[2] and therefore must conform to the principles of fundamental justice. Furthermore, whether or not s. 7 is engaged, criminal law defences including duress and necessity must be considered in criminal inadmissibility determinations that may bar access to refugee protection. Finally, CARL submits that the effects of the *IRPA* provision prohibiting human smuggling[3] are grossly disproportionate to its aim.

PART III – ARGUMENT

A. Section 7 of the Charter is engaged by inadmissibility determinations

3. There are two reasons why the determination that a refugee claimant is inadmissible under s. 37 of the *IRPA* engages her right to security of the person under s. 7 of the Charter: First, inadmissibility findings and their consequences bar inadmissible persons from protection against *refoulement* to persecution and relegate them to a truncated risk review without necessary procedural protections or access to critical rights and remedies.[4] Second, the determination of inadmissibility is a critical stage in an overall deportation scheme for refugee claimants.

A.1 The consequences of an inadmissibility finding engage section 7 of the Charter

4. Upon a finding that a refugee claimant is inadmissible under s. 37 of the *IRPA*, her claim is rendered ineligible for referral to the Refugee Protection Division (RPD),[5] where risk claims are determined following mandatory oral hearings before the independent, quasi-judicial tribunal. Instead, she is given a restricted risk assessment through a paper application

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[1] *Immigration and Refugee Protection Act*, S.C. 2001 c. 27 [*IRPA*], s. 37

[2] *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*]

[3] *IRPA*, s. 117.

[4] *IRPA*, s. 112(3)(a), 113, 114(1)(b) (note that these provisions apply to those who have been found inadmissible on grounds of security, violating human or international rights, organized criminality, and, in certain circumstances only, serious criminality); *Singh v. Canada (Minister of Employment and Immigration)* [1985] 1 SCR 177 [*Singh*].

[5] *IRPA*, s. 101(1)(f).

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to a PRRA officer.

5. The PRRA regime is a truncated risk review procedure designed as a post-RPD fail-safe to ensure *bona fide* refugees are not deported to torture.[6] Consideration of PRRA applications for those who have been found inadmissible is limited to risks of torture, cruel and unusual treatment or punishment, or death – *risk of persecution is explicitly barred from consideration.*[7] As a result, an inadmissibility finding strips refugee claimants of their only protection from *refoulement* to a range of serious harms and human rights violations that meet the definition of persecution but fall outside the ambit of the restricted PRRA. Examples include forced marriage, or cumulative, persecutory denial of the necessities of life.[8] In CARL's submission, this denial of protection from *refoulement* to persecution clearly engages the right to security of the person.

6. Furthermore, PRRA applications are decided without an oral hearing. Where an officer exercises discretion to hear *viva voce* evidence, it is in the form of an interview with no right to counsel, no rules to ensure procedural fairness or guidelines to accommodate vulnerable individuals, and no recording or transcript. [9]

7. Those who are granted protection in this regime have their removal stayed but are barred from becoming permanent residents or sponsoring family members to immigrate to Canada.[10] They are provided neither identity documents nor travel documents, and have no right to vote.[11] Refused PRRA applicants, unlike those refused by the RPD, have no appeal and their judicial review applications do not stay their removal.

8. For all of these reasons, CARL submits that the results of s. 37 inadmissibility determinations engage the right to security of the person of affected refugee claimants. The determination must therefore comply with the principles of fundamental justice. [12]

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[6] *Raza v. Canada (Minister of Citizenship and Immigration)* 2007FCA 385, 370 N.R. 344; *Chen v. Canada (Minister of Citizenship and Immigration)* 2005 FC 1523, at para. 28, 51 Imm. L.R. (3d) 79..
[7] *IRPA*, ss. 96, 97(1), 112(3), 113(d).
[8] James C. Hathaway & Michelle Foster, *The Law of Refugee Status*, 2nd ed. (Cambridge: Cambridge University Press, 2014) at 183, 211, 221-222, 228-229, 282.
[9] *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, para.121, [2002] 1 S.C.R. 3; *Doumbouya v. Canada (Minister of Citizenship and Immigration)* 2007 FC 1187, paras.75-77, 325 F.T.R. 143.
[10] *IRPA*, ss. 25(1), 114(1); *Immigration and Refugee Protection Regulations* SOR/2002-227 s. 130(1).
[11] Canadian Council for Refugees et al, "From liberation to limbo: A Report on the Impact of Immigration Security Inadmissibility Provisions on the Eritrean Communities in Canada, and Recommendations for Reform, submitted to the Ministers of Citizenship and Immigration and Public Safety," April 2010, at 13 http://ccrweb.ca/files/from_liberation_to_limbo.pdf.
[12] CARL agrees with the Appellants that the availability Ministerial Relief in limited circumstances under s. 42.1 of the *IRPA* does not justify a lack of Charter protection at the inadmissibility stage.

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A.2 Section 7 is engaged by the deportation scheme as a whole

9. CARL further submits that inadmissibility determination is properly viewed as one step in a deportation scheme that begins with the issuance of a removal order upon the initiation of a refugee protection claim[13], and ends, in the case of unsuccessful claimants, with the enforcement of that order through deportation.[14] Though an inadmissibility finding does not result in the *immediate* enforcement of the order, it operates to remove significant obstacles to enforcement[15] and, as such, is a critical step in the deportation process.

10. Charter jurisprudence, not only in the immigration and refugee context[16] but also in extradition and regulatory proceedings, makes clear that it is not only the immediate and direct consequences of an administrative decision which must be considered, but rather the scheme as a whole. For example, this Court has determined that s. 7 is engaged at every stage of the three-step extradition process, even though the individual is only subject to removal from Canada at the third and final step.[17] Notably, in rejecting the notion that s. 7 is only engaged at the final stage of the process, the Court found in *Cobb*[18] that the Minister's discretion to refuse surrender of a fugitive for extradition at the end of the process did not mean that s. 7 was not engaged earlier in the process.[19]

11. This Court has likewise found that s. 7 is engaged in regulatory proceedings before a securities commission based upon future potential deprivations of liberty or security of the person.[20]

12. CARL submits that the same reasoning applies to inadmissibility determinations in respect of refugee claimants: by removing several obstacles[21] to the enforcement of the removal order, the inadmissibility determination is a key step in a deportation scheme that

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[13] *IRPA*, ss. 20(1)(a), 41(a).
[14] *IRPA*, s. 49(2).
[15] *IRPA*, ss. 101(1)(f),110(1), 113(d), 114(1)(b), 114(2); Regulations, *supra* note 10, s. 231(1).
[16] *Nguyen v. Canada (Minister of Citizenship and Immigration)* [1993] 1 F.C. 696, [1993] F.C.J. No. 47 (QL); *Charkaoui v. Canada (Minister of Citizenship and Immigration)* 2007 SCC 9, [2007] 1 S.C.R. 350 [Charkaoui].
[17] In *United States of America v. Shulman* [2001] 1 S.C.R. 616; [2001] 1 S.C.R. 616, at para 23, Justice Arbour held that s. 7 of the Charter "permeates the entire extradition process" and must be engaged throughout the process, not merely at the final step of surrender for extradition.
[18] *United States of America v. Cobb* [2001] 1 S.C.R. 587.
[19] *Ibid.*, at paras 29-30.
[20] For example, in *British Columbia Securities Commission v. Branch* [1995] 2 S.C.R. 3, [1995] S.C.J. No. 32 (QL), at para. 33, this Court held that s. 7 was engaged where future criminal charges could be laid against an individual being investigated. The Court found that while no criminal charges had yet been filed, s. 7 rights were engaged because of the *possibility* that the fruits of the Securities Commission's investigation could be used in a criminal proceeding.
[21] *IRPA*, ss. 101(1)(f),110(1), 113(d), 114(1)(b), 114(2); Regulations, *supra* note 10, s. 231(1).

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engages the right to security of the person. It must therefore conform to the principles of fundamental justice. CARL adopts the submissions of the Appellants J.P. and G.J. on the manner in which the inadmissibility regime violates the principles of fundamental justice.

B. Whether or not section 7 of the Charter is engaged, criminal law defences including duress and necessity must be considered whenever refugee status may be denied on the basis of criminality

13. These cases provide an opportunity for this Court to reinforce the need for defences to be considered in the refugee context, as well as to clarify relevant doctrine. CARL submits that: a) defences must be considered whenever access to refugee protection is denied on the basis of alleged involvement in criminality[22]; b) the doctrinal source of the defence must be the same as the doctrinal source for finding *actus reus* and *mens rea*; and c) key elements of duress and necessity must be properly applied in the refugee context.

B1. Defences must be considered whenever access to refugee protection is denied on the basis of alleged involvement in criminal activity

14. A claimant may be denied access to refugee protection due to alleged criminality through a finding either a) that she is inadmissible and thus not entitled to present her refugee claim[23] or b) that she is excluded from refugee protection under Article 1(F) of the *Refugee Convention*.[24] However, few Federal Court refugee decisions on exclusion and inadmissibility address defences and, where they are considered, decision-makers apply inconsistent doctrine derived from inconsistent sources.[25] CARL submits that defences must be considered in all inadmissibility and exclusion cases for four reasons.

15. *Consistency within the refugee system:* In *Ezokola*[26], this Court explicitly recognized the need for defences to be considered in 1F(a) exclusion cases[27]. The criminal conduct considered in *Ezokola* is also captured by inadmissibility provisions,[28] and the logic and integrity of the legislative scheme requires that defences considered under the exclusion scheme also be considered when determining inadmissibility.

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[22] CARL's use of this term encompasses security and human-rights related grounds for denying status.
[23] *IRPA*, ss. 34-37, 101(1)(f)
[24] *IRPA*, s. 98, ref. to Art.1(F), *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 [*Convention*].
[25] A review of Federal Court and Federal Court of Appeal refugee inadmissibility and exclusion decisions found that from 2004-2014, defences were addressed in only 23 cases. For an analysis of these cases and discussion of defences in refugee law generally see: Jennifer Bond, "The Defence of Duress in Canadian Refugee Law" [forthcoming in 2015]. Working Paper Series available at SSRN: http://ssrn.com/abstract=2558869.
[26] *Ezokola v. Canada (CIC)*, 2013 SCC 40, [2013] 2 SCR 678 [*Ezokola*].
[27] *Ibid*., at para 100.
[28] *IRPA*, ss. 34-37.

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16. *Symmetry with criminal law:* Concepts of criminality in inadmissibility and exclusion draw directly on Canadian and international criminal law (ICL), both of which require a prosecutor to prove *actus reus*, *mens rea*, and an absence of defences. This Court has held that "[e]ven before the advent of the Charter, it [was] a basic concern of the criminal law that criminal responsibility be ascribed only to acts that resulted from the choice of a conscious mind and an autonomous will."[29] It would be unprincipled for refugee law to draw on criminal concepts without incorporating key underlying principles, including the need for autonomous will.[30]

17. *Charter requirements:* This Court has held that "it is a principle of fundamental justice that only voluntary conduct…should attract the penalty and stigma of criminal liability."[31] This same principle of fundamental justice applies whenever a section 7 interest is engaged,[32] and CARL submits for reasons above that it is engaged in these provisions. The *Charter* is thus violated if refugee protection is denied on the basis of alleged involvement in criminal activity where the claimant's actions were involuntary.

18. *Defences play a unique and enhanced role in the refugee context:* Key structural and remedial differences between criminal and refugee law must be considered.[33] First, a lack of prosecutorial discretion in exclusion cases and limitations on ministerial discretion in inadmissibility cases means that an important mechanism for limiting unjust criminal proceedings is unavailable in the refugee context.[34] Second, coercion falling short of a criminal defence is often considered as a mitigating factor during sentencing, but no equivalent process exists in refugee cases. Finally, criminality in the refugee context is established on a much lower standard of proof than in criminal law.[35] As a result of these key differences, compelling circumstances that may be taken into account through different mechanisms in the criminal system can, in the refugee context, only be considered during the assessment of defences.

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[29] *R. v Ruzic*, 2001 SCC 24 at para. 34, [2001] 1 SCR 687.
[30] See James Hathaway, *The Law of Refugee Status* (2 ed.) (Cambridge: Cambridge University Press, 2014) at 536; UNHCR, "Background Note on the Application of the Exclusion Clauses: Article 1(F) of the 1951 Convention Relating to the Status of Refugees" (2003) 15 Int'l J Refugee L 502 at para. 66.
[31] *Ruzic*, *supra* note 29, at para. 47, aff'd in *R v. Ryan*, 2013 SCC 3 at para. 23, [2013] 1 S.C.R. 14.
[32] *Charkaoui*, *supra* note 16 at para. 18
[33] See Jennifer Bond, "Principled Exclusions: A Revised Approach to Article 1(F)(A) of the Refugee Convention" (2013) 35:1 Mich J Int'l L 15.
[34] Sections 42.1 and 44 of the *IRPA* provide ministerial discretion for the application of the inadmissibility provisions, but only certain limited factors can be considered.
[35] "Reasonable grounds to believe" for inadmissibility (*IRPA* s. 33) and "serious reasons for considering" for exclusion (*IRPA* s. 98, ref. to Art 1(F)).

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B.2 The doctrinal source of the defence must be the same as the doctrinal source for finding *actus reus* and *mens rea*

19. There is currently a lack of consistency in the sources of law used in the Federal Courts to define defences in the refugee context. Decision-makers rely to varying degrees on ICL, prior refugee cases, and various Canadian criminal law sources to delineate an approach to defences.[36] This creates confusion because the elements of defences are different depending on the source of law. CARL submits that the doctrinal source for the defence must be the same as the doctrinal source for finding *actus reus* and *mens rea*, with one minor addition to ensure compliance with the *Charter*, as below.

20. For inadmissibility or exclusion provisions based on a claimant's actual criminal convictions in Canada, there is no need to re-consider defences.[37] For inadmissibility or exclusion provisions based on whether an individual has committed acts for which he *would be* held personally responsible under in Canadian law *if* the acts had been committed in Canada, *actus reus*, *mens rea*, and defences should be assessed in accordance with Canadian criminal law.[38] For inadmissibility or exclusion provisions that contain undefined terms and no direction regarding underlying sources of law, [39] domestic and/or international law can be used as interpretive aids[40] but relevant Canadian criminal law should be used to determine *actus reus*, *mens rea*, and defences.

21. For inadmissibility or exclusion based on ICL offences, ICL should be the source of law for *actus reus* and *mens rea*, and all defences under both ICL and Canadian criminal law should be available. This is consistent with the approach taken in the *Crimes Against Humanity and War Crimes Act.*[41] CARL submits that strict application of only ICL defences could result in findings of criminality in the absence of voluntary conduct[42] – an approach that has been rejected as inconsistent with the Canadian *Charter* [43] and that runs contrary to this Court's finding in *Ezokola.*[44] Availability of both ICL and Canadian defences protects the doctrinal integrity of the ICL system, while respecting the principle of voluntariness.

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[36] See: Bond, "Defences," *supra* note 25.
[37] See for example ss. 36(1)(a) and 36(2)(a) of the *IRPA.*
[38] See for example ss. 36(1)(b); 36(1)(c); 36(2)(b); 36(2)(c) of the *IRPA.*
[39] Examples include "espionage" [s. 34(1)(a)], "subversion" [ss. 34(1)(b); 34(1)(b.1)], "terrorism" [ss. 34(1)(c); 35(1)(b)], and, as the within cases demonstrate, "people smuggling" [s. 37(1)(b)].
[40] *Suresh, supra* note 11at para. 98.
[41] *Crimes Against Humanity and War Crimes Act* (S.C. 2000, c. 24), s. 11.
[42] In particular, note that Article 31(1)(d) of the *Rome Statute of the International Criminal Court*, UN Doc A/CONF.183/9, 1998 [*Rome Statute*] codified an imminence requirement for the defence of duress.
[43] *Ruzic, supra* note 29, para. 47; aff'd in *Ryan, supra* note 31, at para. 23.
[44] *Ezokola, supra* note **Error! Bookmark not defined.**, at para 86.

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B.3 Key doctrinal elements of duress and necessity must be properly applied in the refugee context

22. Refugee claimants are often fleeing failed or fragile states, conflict zones, or dictatorial regimes where violence, coercion, and an absence of state protection are common. Duress and necessity are thus particularly relevant defences in refugee cases and must be properly applied. The following aspects of these defences are critical in the refugee context, and explicit reinforcement of their import will provide much needed guidance to refugee decision-makers:

23. *Traditional imminence requirements must be narrowly construed.*[45] Many refugee claimants face severe harms that cannot be escaped despite the passage of time. In these cases, a strict temporal requirement imposes an artificial limitation on defences. It is critical that refugee decision-makers focus their inquiry on the availability of an alternative safe avenue of escape rather than on arbitrary temporal limitations.[46]

24. *Implied threats must be recognized.* A claimant may have held a genuine and reasonable belief that a threat of serious harm existed even where it was not explicit. This may be especially relevant in refugee-producing states where pervasive insecurity, an absence of the rule of law, and omnipresent threats may affect both the claimant's understanding of the potential harm and the reasonableness of this apprehension.[47] This Court has held that there is no principled reason to deny the defence where a threat is implied, and refugee decision-makers must apply this finding in relevant cases.[48]

25. *The "modified objective standard" must be carefully applied.*[49] The requirement that "a reasonable person in the same situation as the accused with the same personal characteristics and experience"[50] be considered when assessing the claimant's apprehension of risk and choice of actions is critical in the refugee context. This standard must be fully understood and carefully applied to ensure that the particular experiences, attributes, and vulnerabilities of those fleeing persecution are considered in the assessment of defences.

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[45] Imminence is required for a successful defence based of necessity (see *R v. Latimer*, 2001 SCC 1, [2001] 1 S.C.R. 3).The immediacy requirement in duress was found unconstitutional in *Ruzic*, *supra* note 29.
[46] *Ibid* at para. 47; *Ruzic*, *supra* note 29, at para. 61. For more on the imminence requirement in the specific context of failed and fragile states, see Jennifer Bond and Meghan Fougere, *"Omnipresent Threats: A Comment on the Defence of Duress in International Criminal Law" (2014) 14:3 International Criminal Law Review 471*.
[47] Bond and Fougere, *ibid.*
[48] *Ryan*, *supra* note 31, at para. 57, citing *R v. Mena* (1987), 34 CCC (3d) 304, 20 O.A.C. 50 (Ont CA).
[49] The modified objective standard is considered at various stages of both the duress and necessity analysis. See e.g.: *Ryan*, *supra* note 31, at para. 47; *R v. Latimer*, *supra* note 45, at para. 32.
[50] *Ryan*, *supra* note 31, at para. 65. See also *Ruzic*, *supra* note 29, at para. 61.

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C. Section 117 of the IRPA is contrary to section 7 of the Charter because its effects are grossly disproportionate to its purpose

26. CARL agrees with the Appellants Handasamy, Kanagarajah and Thevarajah, that s. 117 of the *IRPA* is overbroad. However, if this Court determines otherwise, then CARL submits that s. 117 violates the rights to liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice because its effects are grossly disproportionate to its purpose.[51]

C.1 What is the purpose of section 117 of the *IRPA*?

27. CARL agrees with the Appellants' position as to purpose, but submits that s. 117 of the *IRPA* is grossly disproportionate *regardless* of which purpose is identified by this Court because the effects of the law are "so extreme as to be disproportionate to *any* legitimate government interest."[52]

C.2. Does section 117 of the *IRPA* have a grossly disproportionate effect?

28. CARL accepts that a punishment of up to life imprisonment may not be grossly disproportionate when applied to a person who, through organized criminality, exploits and endangers refugees seeking Canada's protection. However, CARL submits that section 117 of the *IRPA* has a grossly disproportionate effect on several other groups including refugee co-claimants, humanitarian workers, and refugee lawyers, all of whom are vulnerable to conviction and imprisonment under the provision.

29. Section 117 has a grossly disproportionate effect on refugee co-claimants including parents and children, spouses or siblings who appear at a port of entry seeking Canada's refugee protection[53], and other refugee co-claimants who offered each other mutual support

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[51] *Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 SCR 110 at paras 120-121 [*Bedford*]. Pursuant to *Bedford* CARL submits that the draconian impact of s. 117 and its object is "entirely outside the norms accepted in our free and democratic society." It is clear that s. 117 of the IRPA, carrying with it a maximum penalty of 10 years imprisonment, engages the liberty interest of those to whom it is applied (*R v. Appulonappa*, 2014 BCCA 163, 25 Imm. L.R. (4th) 1, at para. 51 [*Appulonappa BCCA*]). Accordingly the relevant questions are: what is the purpose of the law and; how does this purpose compare and balance against the negative impact of the law on an individual or group.

[52] *Canada (Attorney General) v. PHS Community Services Society* 2011 SCC 44, [2011] 3 S.C.R. 134 [Insite] (emphasis added). The Appellants argue that the purpose of section 117 is, as the trial judge found (and as stated by the Crown at trial): "to stop human smuggling in accordance with Canada's international obligations." The Respondent, however, maintains that the true purpose of the provision is broader, and is "to prevent individuals from arranging the unlawful entry of others to Canada," as held by the B.C. Court of Appeal. To demonstrate its argument CARL will use the broader purpose proposed by the Respondent. However, CARL submits that the same arguments apply, *a fortiori*, if this Court ultimately accepts the narrower purpose proposed by the Appellants.

[53] *R v. Bello* [2004] O.J. No. 5312.

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during the process of escaping persecution and travelling to Canada.[54]

30. The consequences of conviction under s. 117 of the *IRPA* include up to life imprisonment. Refugee co-claimants are also effectively denied their rights under article 31(1) of the 1951 the *Refugee Convention*[55] and s. 133 of the *IRPA*, which *prohibit* the prosecution of refugee claimants for entering the country using false documents.[56] These individuals also become inadmissible pursuant to sections 36 and 37 of the *IRPA*, denying them access to the refugee determination system – and, thus, Convention refugee protection – in Canada. CARL submits that, cumulatively, these consequences are grossly disproportionate to the objective of preventing individuals from arranging the unlawful entry of others to Canada.

31. CARL further submits that the application of section 117 of the *IRPA* to humanitarian workers and refugee lawyers is unconstitutional. Criminalizing persons who aid refugee claimants for merely providing assistance, legal advice or representation to refugee claimants prior to admission to Canada goes far beyond the threshold of proportionality.[57] It is also significant that the application of section 117 to this group has a chilling effect on such workers. The severe consequences of s. 117 make it much more difficult for refugee claimants to seek assistance from such professionals.[58]

32. A law is grossly disproportionate where it significantly negatively impacts a vulnerable group or where its effects are out of step with basic moral standards.[59] CARL

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[54] In these instances each adult individual would be subject to a deprivation of liberty of up to 10 years under s. 117 on the basis that they aided and abetted one another or a their own child to come into Canada in violation of this provision.

[55] *Convention*, *supra* note 24, art. 31(1)

[56] James C. Hathaway, "Prosecuting a Refugee for 'Smuggling' Himself" (December 1, 2014). U of Michigan Public Law Research Paper No. 429, SSRN: http://ssrn.com/abstract=2536983 at p. 4. As Prof. Hathaway notes, denying this right is contrary to the objectives of the Convention, because it criminalizes incidentally that which cannot be criminalized directly under the Convention: a refugee's own efforts to obtain protection.

[57] *R v. Appulonappa*, 2013 BCSC 31 , at paras. 148, 160; *Appulonappa*, BCCA, *supra* at para 89-92. The example of humanitarian worker Janet Hinshaw Thomas demonstrates, s. 117 applies to those who aid or abet refugee claimants to attend prescheduled appointments with Canadian border officials at a port of entry, prior to actual admission to Canada.

[58] Effectively denying access to humanitarian assistance and legal advice exacerbates the vulnerability of asylum-seekers to exploitation by criminal smugglers, erects a barrier to accessing the refugee protection that Canada undertook to provide pursuant to her ratification of the Convention, and increases the need for asylum seekers to provide each other with mutual support to facilitate their escape and arrival to Canada. It is thus particularly egregious that the provision imposes severe sanctions on co-claimants whose options were to be persecuted; to escape with a criminal smuggler; or to offer mutual support to another refugee seeking protection. Indeed, it may be that the effects of preventing access to refugee protection and increasing the vulnerability of refugees is so egregious that it is disproportionate to any legitimate state purpose: *Insite*, *supra* note 52.

[59] *Ibid.* at para 133; Margot Young, "The Other Section 7" (2013) 62 S.C.L.R. (2d) 3 – 48, para. 70; Alana Klein, "The Arbitrariness in "Arbitrariness" (And Overbreadth and Gross Disproportionality): Principle and Democracy

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submits that incarcerating, stigmatizing, and depriving refugee claimants of access to protection are grossly disproportionate effects for a vulnerable population whose life and health outweigh the government objective. It is also clear[60] that it is deeply offensive to Canadian norms and values for refugee co-claimants, humanitarian workers and refugee lawyers to be exposed to up to life imprisonment for facilitating access to Canada's statutory and constitutionally mandated[61] refugee determination system.

C.3 The law cannot be saved

33. CARL agrees with the Appellants Appulonappa, Handasamy, Kanagarajah and Thevarajah that the unconstitutionality of section 117 of the *IRPA* cannot be cured by the discretion contained in section 117(4) or saved by section 1 of the *Charter*.

D. Conclusion

34. The statutory scheme to combat human and people smuggling violates section 7 of the *Charter* and fails to take proper account of the defenses available in criminal law. In the result, rather than punishing the actions of organized criminals who seek to profit off the vulnerability of refugee claimants, the law harms the very people that the *IRPA* purports to protect: those fleeing persecution in their own countries.

PART IV – *N/A*

PART V – ORDER REQUESTED

35. CARL respectfully requests that it be granted leave to make oral argument at the hearing of these appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 2nd day of February, 2015.

ANDREW BROUWER per **JENNIFER BOND** per **ERIN BOBKIN**

Of Counsel for the Intervener, Canadian Association of Refugee Lawyers

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in Section 7 of the Charter" (2013), 63 S.C.L.R. (2d) 377 – 402. Professor Klein notes at p. 390: "Gross disproportionality analysis has explicitly depended not only on how the facts are appreciated, but also on normative values and assumptions about the harms and benefits of government action."

[60] See for example, the Parliamentary debates reviewed by the Appellant Handasamy in this case.

[61] *Singh supra* note 4.

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PART VI – TABLE OF AUTHORITIES

LEGISLATION	CITED AT PARAGRAPH(S)
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Jennifer Bond, "The Defence of Duress in Canadian Refugee Law" [forthcoming in 2015]. Working Paper Series available at SSRN: http://ssrn.com/abstract=2558869	15, 20
Jennifer Bond, "Principled Exclusions: A Revised Approach to Article 1(F)(A) of the Refugee Convention" (2013) 35:1 Mich J Int'l L 15	19
Jennifer Bond and Meghan Fougere, "Omnipresent Threats: A Comment on the Defence of Duress in International Criminal Law" (2014) 14 Int'l Crim L Rev 471	24, 25
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PART VII – STATUTES AND REGULATIONS

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

20. (1) Every foreign national, other than a foreign national referred to in section 19, who seeks to enter or remain in Canada must establish, *(a)* to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence…	**20.** (1) L'étranger non visé à l'article 19 qui cherche à entrer au Canada ou à y séjourner est tenu de prouver: (a)pour devenir un résident permanent, qu'il détient les visa ou autres documents réglementaires et vient s'y établir en permanence;
25. (1) Subject to subsection (1.2), the Minister must, on request of a foreign national in Canada who applies for permanent resident status and who is inadmissible — other than under section 34, 35 or 37 — or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada — other than a foreign national who is inadmissible under section 34, 35 or 37 — who applies for a permanent resident visa, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.	**25.** (1) Sous réserve du paragraphe (1.2), le ministre doit, sur demande d'un étranger se trouvant au Canada qui demande le statut de résident permanent et qui soit est interdit de territoire — sauf si c'est en raison d'un cas visé aux articles 34, 35 ou 37 —, soit ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada — sauf s'il est interdit de territoire au titre des articles 34, 35 ou 37 — qui demande un visa de résident permanent, étudier le cas de cet étranger; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.	**33.** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.
34. (1) A permanent resident or a foreign national is inadmissible on security grounds for (*a*) engaging in an act of espionage that is	**34**. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants : *a*) être l'auteur de tout acte d'espionnage

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against Canada or that is contrary to Canada's interests;	dirigé contre le Canada ou contraire aux intérêts du Canada;
(*b*) engaging in or instigating the subversion by force of any government;	*b*) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(*b.1*) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	*b.1*) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(*c*) engaging in terrorism;	*c*) se livrer au terrorisme;
(*d*) being a danger to the security of Canada;	*d*) constituer un danger pour la sécurité du Canada;
(*e*) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	*e*) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(*f*) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (*a*), (*b*), (*b.1*) or (*c*).	*f*) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas *a*), *b*), *b.1*) ou *c*).
35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	**35**. (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants:
(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;	*a*) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;
(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*; or	*b*) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;
(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an	*c*) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou

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international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.	le séjour au Canada est limité au titre d'une décision, d'une résolution ou d'une mesure d'une organisation internationale d'États ou une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert avec cette organisation ou association.
36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36.** (1) Emportent interdiction de territoire pour grande criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of 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;	*a)* 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 loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
(b) 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	*b)* 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;
(c) 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.	*c*) 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.
(2) A foreign national is inadmissible on grounds of criminality for	(2) Emportent, sauf pour le résident permanent, interdiction de territoire pour criminalité les faits suivants :
(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament	*a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions à toute loi fédérale qui ne découlent pas des mêmes faits;

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not arising out of a single occurrence; (b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament; (c) 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 indictable offence under an Act of Parliament; or (d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.	*b*) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation ou de deux infractions qui ne découlent pas des mêmes faits et qui, commises au Canada, constitueraient des infractions à des lois fédérales; *c*) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation; *d*) commettre, à son entrée au Canada, une infraction qui constitue une infraction à une loi fédérale précisée par règlement.
37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for (a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern; or (b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering	**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 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	(2) Les faits visés à l'alinéa (1)*a*) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou

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foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.	l'étranger est entré au Canada en ayant recours à une personne qui se livre aux activités qui y sont visées.
41. A person is inadmissible for failing to comply with this Act (a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act…	**41.** S'agissant de l'étranger, emportent interdiction de territoire pour manquement à la présente loi tout fait — acte ou omission — commis contravention avec la présente loi et, s'agissant du résident permanent, le manquement à l'obligation de résidence et aux conditions imposées.
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.
44. (1) An officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare a report setting out the relevant facts, which report shall be transmitted to the Minister.	**44.** (1) S'il estime que le résident permanent ou l'étranger qui se trouve au Canada est interdit de territoire, l'agent peut établir un rapport circonstancié, qu'il transmet au ministre.
(2) If the Minister is of the opinion that the report is well-founded, the Minister may refer the report to the Immigration Division for an admissibility hearing, except in the case of a permanent resident who is inadmissible solely on the grounds that they have failed to comply with the residency obligation under section 28 and except, in the circumstances	(2) S'il estime le rapport bien fondé, le ministre peut déférer l'affaire à la Section de l'immigration pour enquête, sauf s'il s'agit d'un résident permanent interdit de territoire pour le seul motif qu'il n'a pas respecté l'obligation de résidence ou, dans les circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de

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prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order.	renvoi.
(3) An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.	(3) L'agent ou la Section de l'immigration peut imposer les conditions qu'il estime nécessaires, notamment la remise d'une garantie d'exécution, au résident permanent ou à l'étranger qui fait l'objet d'un rapport ou d'une enquête ou, étant au Canada, d'une mesure de renvoi.
49. (2) Despite subsection (1), a removal order made with respect to a refugee protection claimant is conditional and comes into force on the latest of the following dates: (a) the day the claim is determined to be ineligible only under paragraph 101(1)(*e*); (b) in a case other than that set out in paragraph (*a*), seven days after the claim is determined to be ineligible; (c) if the claim is rejected by the Refugee Protection Division, on the expiry of the time limit referred to in subsection 110(2.1) or, if an appeal is made, 15 days after notification by the Refugee Appeal Division that the claim is rejected; (d) 15 days after notification that the claim is declared withdrawn or abandoned; and (e) 15 days after proceedings are terminated as a result of notice under paragraph 104(1)(*c*) or (*d*).	**49**. (2) Toutefois, celle visant le demandeur d'asile est conditionnelle et prend effet : *a*) sur constat d'irrecevabilité au seul titre de l'alinéa 101(1)*e*); *b*) sept jours après le constat, dans les autres cas d'irrecevabilité prévus au paragraphe 101(1); *c*) en cas de rejet de sa demande par la Section de la protection des réfugiés, à l'expiration du délai visé au paragraphe 110(2.1) ou, en cas d'appel, quinze jours après la notification du rejet de sa demande par la Section d'appel des réfugiés; *d*) quinze jours après la notification de la décision prononçant le désistement ou le retrait de sa demande; *e*) quinze jours après le classement de l'affaire au titre de l'avis visé aux alinéas 104(1)*c*) ou *d*).
96. 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, (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or	**96.** 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 : *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; *b)* soit, si elle n'a pas de nationalité et se

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(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.	trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
97. (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	**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 :
(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	*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;
(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
(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,	(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,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and	(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,
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.	(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
(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.	(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.
98. 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	**98.** 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

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protection.	de personne à protéger.
101. (1) A claim is ineligible to be referred to the Refugee Protection Division if…	**101.** (1) La demande est irrecevable dans les cas suivants…
(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).	(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.
110. (1) Subject to subsections (1.1) and (2), a person or the Minister may appeal, in accordance with the rules of the Board, on a question of law, of fact or of mixed law and fact, to the Refugee Appeal Division against a decision of the Refugee Protection Division to allow or reject the person's claim for refugee protection.	**110.** (1) Sous réserve des paragraphes (1.1) et (2), la personne en cause et le ministre peuvent, conformément aux règles de la Commission, porter en appel — relativement à une question de droit, de fait ou mixte — auprès de la Section d'appel des réfugiés la décision de la Section de la protection des réfugiés accordant ou rejetant la demande d'asile.
112. (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).	**112**. (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).
(2) Despite subsection (1), a person may not apply for protection if	(2) Elle n'est pas admise à demander la protection dans les cas suivants :
(a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;	*a*) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la *Loi sur l'extradition*;
(b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;	*b*) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)*e*);
(b.1) subject to subsection (2.1), less than 12 months, or, in the case of a person who is a national of a country that is designated under subsection 109.1(1), less than 36 months, have passed since their claim for refugee protection was last	*b.1*) sous réserve du paragraphe (2.1), moins de douze mois ou, dans le cas d'un ressortissant d'un pays qui fait l'objet de la désignation visée au paragraphe 109.1(1), moins de trente-six mois se sont écoulés depuis le dernier rejet de sa demande d'asile — sauf s'il s'agit d'un rejet prévu au paragraphe 109(3) ou d'un rejet pour un motif prévu à la section E

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rejected — unless it was deemed to be rejected under subsection 109(3) or was rejected on the basis of section E or F of Article 1 of the Refugee Convention — or determined to be withdrawn or abandoned by the Refugee Protection Division or the Refugee Appeal Division; (c) subject to subsection (2.1), less than 12 months, or, in the case of a person who is a national of a country that is designated under subsection 109.1(1), less than 36 months, have passed since their last application for protection was rejected or determined to be withdrawn or abandoned by the Refugee Protection Division or the Minister.	ou F de l'article premier de la Convention — ou le dernier prononcé du désistement ou du retrait de la demande par la Section de la protection des réfugiés ou la Section d'appel des réfugiés; *c*) sous réserve du paragraphe (2.1), moins de douze mois ou, dans le cas d'un ressortissant d'un pays qui fait l'objet de la désignation visée au paragraphe 109.1(1), moins de 36 mois se sont écoulés depuis le rejet de sa dernière demande de protection ou le prononcé du retrait ou du désistement de cette demande par la Section de la protection des réfugiés ou le ministre.
(2.1) The Minister may exempt from the application of paragraph (2)(*b.1*) or (*c*) (a) the nationals — or, in the case of persons who do not have a country of nationality, the former habitual residents — of a country; (b) the nationals or former habitual residents of a country who, before they left the country, lived in a given part of that country; and (c) a class of nationals or former habitual residents of a country.	(2.1) Le ministre peut exempter de l'application des alinéas (2)*b.1*) ou *c*) : *a*) les ressortissants d'un pays ou, dans le cas de personnes qui n'ont pas de nationalité, celles qui y avaient leur résidence habituelle; *b*) ceux de tels ressortissants ou personnes qui, avant leur départ du pays, en habitaient une partie donnée; *c*) toute catégorie de ressortissants ou de personnes visés à l'alinéa *a*).
(2.2) However, an exemption made under subsection (2.1) does not apply to persons in respect of whom, after the day on which the exemption comes into force, a decision is made respecting their claim for refugee protection by the Refugee Protection Division or, if an appeal is made, by the Refugee Appeal Division.	(2.2) Toutefois, l'exemption ne s'applique pas aux personnes dont la demande d'asile a fait l'objet d'une décision par la Section de la protection des réfugiées ou, en cas d'appel, par la Section d'appel des réfugiés après l'entrée en vigueur de l'exemption.
(2.3) The regulations may govern any matter relating to the application of subsection (2.1) or (2.2) and may include provisions establishing the criteria to be considered when an exemption is made.	(2.3) Les règlements régissent l'application des paragraphes (2.1) et (2.2) et prévoient notamment les critères à prendre en compte en vue de l'exemption.

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(3) Refugee protection may not result from an application for protection if the person	(3) L'asile ne peut être conféré au demandeur dans les cas suivants :
(a) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality	*a*) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;
(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;	*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;
(c) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or	*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;
(d) is named in a certificate referred to in subsection 77(1).	*d*) il est nommé au certificat visé au paragraphe 77(1).
113. Consideration of an application for protection shall be as follows:	**113**. Il est disposé de la demande comme il suit :
(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;	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;
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	*b*) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	*c*) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
	d) s'agissant du demandeur visé au

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(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	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 :
(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	(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,
(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	(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;
(e) in the case of the following applicants, consideration shall be on the basis of sections 96 to 98 and subparagraph (*d*)(i) or (ii), as the case may be:	*e*) s'agissant des demandeurs ci-après, sur la base des articles 96 à 98 et, selon le cas, du sous-alinéa *d*)(i) ou (ii) :
(i) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punishable by a maximum term of imprisonment of at least 10 years for which a term of imprisonment of less than two years — or no term of imprisonment — was imposed, and	(i) celui qui 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 et pour laquelle soit un emprisonnement de moins de deux ans a été infligé, soit aucune peine d'emprisonnement n'a été imposée,
(ii) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction 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, unless they are found to be a person referred to in section F of Article 1 of the Refugee Convention.	(ii) celui qui est interdit de territoire pour grande criminalité pour 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, sauf s'il a été conclu qu'il est visé à la section F de l'article premier de la Convention sur les réfugiés.

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114. (1) A decision to allow the application for protection has	**114.** (1) A decision to allow the application for protection has
(a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and	*a*) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and
(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.	*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.
(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**.**	(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.
115. (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.	**115**. (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.
(2) Subsection (1) does not apply in the case of a person (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 (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 acts committed or of danger to the security	(2) Le paragraphe (1) ne s'applique pas à l'interdit de territoire : *a*) pour grande criminalité qui, selon le ministre, constitue un danger pour le public au Canada; *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 du Canada.

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of Canada.	
(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.	(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.
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 of an offence and liable	(2) Quiconque contrevient au paragraphe (1) relativement à moins de dix personnes commet une infraction et est passible, sur déclaration de culpabilité :
(a) on conviction on indictment	a) par mise en accusation :
(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	(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) 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	(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) 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.	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) A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on	(3) Quiconque contrevient au paragraphe (1) relativement à un groupe de dix personnes et plus commet une infraction et est passible,

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conviction by way of indictment to a fine of not more than $1,000,000 or to life imprisonment, or to both.	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) 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	(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) three years, if either	a) trois ans si, selon le cas :
(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	(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)the commission of the offence as for profit, or was for the benefit of, at the direction of or in association with a criminal organization or terrorist group; or	(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) five years, if both	b) cinq ans si, à la fois :
(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	(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) 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.	(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) 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	(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

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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.	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.

2. *Immigration and Refugee Protection Regulations* SOR/2002-227 s. 23.1

130. (1) Subject to subsections (2) and (3), a sponsor, for the purpose of sponsoring a foreign national who makes an application for a permanent resident visa as a member of the family class or an application to remain in Canada as a member of the spouse or common-law partner in Canada class under	**130.** (1) Sous réserve des paragraphes (2) et (3), a qualité de repondant pour le parrainage d'un étranger qui présente une demande de visa résident permanent au titre de la catégorie du regroupement familial ou une demande de séjour au Canada au titre de la catégorie des époux ou conjoints de fait au

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subsection 13(1) of the Act, must be a Canadian citizen or permanent resident who	Canada aux termes de paragraphe 13(1) de la Loi, le citoyen canadien ou résident permanent qui, à la fois :
a) is at least 18 years of age;	*a)* est agé d'au moins dix-huit ans;
b) resides in Canada; and	*b)* réside au Canada;
c) has filed a sponsorship application in respect of a member of the family class or the spouse or common law partner in Canada class in accordance with section 10.	*c)* a déposé une demande de parrainage pour le compte d'une personne appartenant à la catégorie de regroupement familiale ou a celle des époux ou conjoints de fait au Canada conformément a l'article 10.
231. (1) Subject to subsections (2) to (4), a removal order is stayed if the subject of the order makes an application for leave for judicial review in accordance with section 72 of the Act with respect to a decision of the Refugee Appeal Division that rejects, or confirms the rejection of, a claim for refugee protection, and the stay is effective until the earliest of the following:	**231.** (1) Sous réserve des paragraphes (2) à (4), la demande d'autorisation de contrôle judiciaire faite conformément à l'article 72 de la Loi à l'égard d'une décision rendue par la Section d'appel des réfugiés rejetant une demande d'asile ou en confirmant le rejet emporte sursis de la mesure de renvoi jusqu'au premier en date des événements suivants :
a) the application for leave is refused,	*a*) la demande d'autorisation est rejetée;
b) the application for leave is granted, the application for judicial review is refused and no question is certified for the Federal Court of Appeal,	*b*) la demande d'autorisation est accueillie et la demande de contrôle judiciaire est rejetée sans qu'une question soit certifiée pour la Cour fédérale d'appel;
(*c*) if a question is certified by the Federal Court,	*c*) si la Cour fédérale certifie une question :
(i) the appeal is not filed within the time limit, or	(i) soit l'expiration du délai d'appel sans qu'un appel ne soit interjeté,
(ii) the Federal Court of Appeal decides to dismiss the appeal, and the time limit in which an application to the Supreme Court of Canada for leave to appeal from that decision expires without an application being made,	(ii) soit le rejet de la demande par la Cour d'appel fédérale et l'expiration du délai de dépôt d'une demande d'autorisation d'en appeler à la Cour suprême du Canada sans qu'une demande ne soit déposée;
(*d*) if an application for leave to appeal is made to the Supreme Court of Canada from a decision of the Federal Court of Appeal referred to in paragraph (*c*), the application is refused,	*d*) si l'intéressé dépose une demande d'autorisation d'interjeter appel auprès de la Cour suprême du Canada du jugement de la Cour d'appel fédérale

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and (*e*) if the application referred to in paragraph (*d*) is granted, the appeal is not filed within the time limit or the Supreme Court of Canada dismisses the appeal.	visé à l'alinéa *c*), la demande est rejetée; *e*) si la demande d'autorisation visée à l'alinéa *d*) est accueillie, l'expiration du délai d'appel sans qu'un appel ne soit interjeté ou le jugement de la Cour suprême du Canada rejetant l'appel.

3. *Canadian Charter of Rights and Freedoms* **PART I OF THE CONSTITUTION ACT, 1982**

Rights and freedoms in Canada **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. **Life, liberty and security of person** **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.	**Droits et libertés au Canada** **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. **Vie, liberté et sécurité** **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.

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CANADIAN COUNCIL FOR REFUGEES
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DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH)
CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

And between:

J.P. and G.J.

Appellants

- and -

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

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CANADIAN COUNSEL FOR REFUGEES
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DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

And between:

FRANCIS ANTHONIMUTHU APPULONAPPA
HAMALRAJ HANDASAMY
JEYACHANDRAN KANAGARAJAH
VIGNARAJAH THEVARAJAH

Appellants

- and -

HER MAJESTY THE QUEEN

Respondent

- and -

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Interveners

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Interdiction de publication

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

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

-and-

(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

Between:

B010

Appellant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ATTORNEY GENERAL OF ONTARIO
CANADIAN ASSOCIATION OF REFUGEE LAWYERS
CANADIAN COUNCIL FOR REFUGEES
AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH)
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Interveners

And between:

JESUS RODRIGUEZ HERNANDEZ

Appellant

- and –

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ATTORNEY GENERAL OF ONTARIO
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CANADIAN CIVIL LIBERTIES ASSOCIATION
DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS

Interveners

And between:

B306

Appellant

- and -

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

ATTORNEY GENERAL OF ONTARIO

Publication Ban

Interdiction de publication

S.C.C. File Nos. 35388, 35677, 35685, 35688

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

Between:

B010, HERNANDEZ, B306, J.P. and G.J.

Appellants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION and THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

- and -

ATTORNEY GENERAL OF ONTARIO, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, CANADIAN COUNCIL FOR REFUGEES, AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH), DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Interveners

S.C.C. File No. 35958

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

Between:

APPULONAPPA et al

Appellants

- and –

HER MAJESTY THE QUEEN

Respondent

- and -

ATTORNEY GENERAL OF ONTARIO, AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH), BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN CIVIL LIBERTIES ASSOCIATION CANADIAN COUNCIL FOR REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS

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