Court File No.: 35990

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

BETWEEN:

JEYAKANNAN KANTHASAMY

APPELLANT
(Respondent)

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION

RESPONDENT
(Appellant)

- and -

CANADIAN ASSOCIATION OF REFUGEE LAWYERS, JUSTICE FOR CHILDREN AND YOUTH, BARBRA SCHLIFER COMMEMORATIVE CLINIC AND CANADIAN CENTRE FOR VICTIMS OF TORTURE, and PARKDALE COMMUNITY LEGAL SERVICES

INTERVENERS

FACTUM OF THE INTERVENER, THE CANADIAN COUNCIL FOR REFUGEES

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

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FACTUM OF THE INTERVENER, THE CANADIAN COUNCIL FOR REFUGEES

PART I – OVERVIEW AND STATEMENT OF FACTS

1. The Canadian Council for Refugees ("CCR") accepts the statement of facts set out in the Factum of the Appellant.

2. The *Immigration and Refugee Protection Act* ("*IRPA*") provides discretion to allow persons to enter or remain in Canada on humanitarian and compassionate grounds, where they cannot under other avenues in the *Act.*[1] At issue in this appeal is the scope of this discretion or the proper interpretation of "humanitarian and compassionate" ("H&C") considerations under section 25(1) of the *IRPA.*

3. Applicants have challenged various immigration criteria and programs as not conforming to procedural fairness principles or the *Charter of Rights and Freedoms* ("*Charter*").[2] In successfully defending such challenges, the government has pointed to H&C assessments under the *IRPA* as a viable alternate remedy that applicants must exhaust prior to raising concerns related to procedural fairness or the *Charter*. Thus, concerns that immigration processes lack procedural fairness or infringe the *Charter* have been dismissed by courts making two judicial assumptions: first, that the H&C assessment is an available alternate remedy that should first be exhausted; and second that the H&C assessment is a broad and meaningful "test". Therefore, it is imperative that the Court ensure these assumptions are true in practice, or else a significant body of jurisprudence will need to be revisited.

PART II – CONCISE OVERVIEW OF INTERVENER'S POSITION

4. The CCR accepts the statement of questions in issue set out in the Factum of the Appellant. The CCR will focus on the second question.

5. The discretion to consider broad H&C factors is available to various decision makers in the immigration system.[3] Recent changes in legislation, however, have limited the ability of

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1 *Immigration and Refugee Protection Act*, SC 2001, c 27, s 25 [*IRPA*].
2 Part I of the *Constitution Act* 1982, being Schedule B to the *Canada Act* , (1982) UK, 1982 c 11 [*Charter*].
3 See for example, *IRPA, supra* note 1 at ss 25 (the Minister), 25.1 (the Minister), 65 (the Immigration Appeal Division), 67 (the Immigration Appeal Division), 68 (the Immigration Appeal Division) and 69 (the Minister). And

certain decision-makers such as independent tribunals to use such discretion for various classes of persons seeking status in Canada, while placing greater discretion in the hands of front-line officers.[4] Many of these changes have resulted in procedures with fewer due process mechanisms, triggering new concerns about infringement of the *Charter* and procedural fairness guarantees.

6. The Federal Court of Appeal in *Kanthasamy*[5] adopted the "unusual and undeserved, or disproportionate hardship" standard under s. 25(1). The CCR respectfully submits that this test is too narrow. Rather, the CCR submits that humanitarian and compassionate considerations in the immigration context should have regard to all relevant factors in order to ensure Canada's compliance with international obligations and the *Charter*. Given the reliance courts place on H&C relief as an alternate remedy, a broad, meaningful and consistent interpretation of the terms "humanitarian and compassionate" under the *IRPA* is imperative.

PART III – STATEMENT OF ARGUMENT

7. The CCR supports the interpretation of the proper scope of the H&C "test" advanced by the Appellants in this matter and respectfully submits that this interpretation conforms with a plethora of jurisprudence that relies on the existence of H&C relief as a basis for dismissing concerns regarding the procedural fairness or the constitutionality of various procedures under the *IRPA.*

A. Humanitarian and Compassionate Consideration as an Alternate Remedy

8. The CCR submits that there are multiple examples of cases in which the courts have upheld existing immigration programs and changes in criteria and procedures, despite concerns

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although H&C discretion is not explicitly set out, s. 44(1) (an officer) and s. 44(2) (the Minister) are granted some discretion in deciding whether to prepare an inadmissibility report, and refer it to the Immigration Division.

4 For example, *IRPA, supra* note 1 at s 65 states: "In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations." Another example is section 64(2) of the *IRPA*, which was amended to set out that those with convictions punished in Canada by a term of imprisonment of at least six months (previously two years) in Canada do not have the right to appeal their removal order to the Immigration Appeal Division

5 *Kanthasamy v Canada (Citizenship and Immigration),* 2014 FCA 113.

of possible *Charter* infringement or violations of procedural fairness, because H&C consideration was seen as an alternate available remedy.

1) H&C consideration as an alternate remedy for those denied refugee or protected person status

9. In cases where a person's request for refugee protection has been denied in the refugee claim or pre-removal risk assessment ("PRRA") process, challenges to a person's denial of such protections under the *Charter* have not been successful due to the view that an H&C application is an alternate procedure or remedy.

10. For example, in the Federal Court of Appeal decision in *Covarrubias*,[6] the applicant unsuccessfully challenged the constitutionality of section 97 of *IRPA*. The court held that all non-constitutional avenues are to be exhausted prior to consideration of any *Charter* issues and considered an H&C application as a non-constitutional avenue:

> …there is an adequate alternative remedy in this case for the appellants, namely the pending H&C application, judicial review of that decision should the appellants be unsuccessful, and an appeal to the discretion of the Minister. In keeping with the reasons of Martineau J. in *Adviento v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1430…at para 54, I find that it is inappropriate for the appellants to turn to the Court for relief under the *Charter* before exhausting their other remedies.[7]

11. Similarly, in a recent case before the Federal Court, an applicant who was denied both refugee protection and protection through a PRRA failed in convincing the court that section 97(1)(b)(iv) of the *IRPA* offended both sections 15(1) and 7 of the *Charter* because, the Court found, the applicant had alternate recourse through an H&C application:

> Further, I accept the submissions of the Respondent that an alternate remedy is available to the Applicant by way of an H & C application pursuant to subsection 25(1) of the Act. This remedy was discussed by the Federal Court of Appeal in *Laidlaw v Canada (Minister of Citizenship and Immigration)* (2012), 440 N.R. 105 (F.C.A.). In that decision, the Court held at paragraph 61 that:

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6 *Covarrubias v. Canada (Citizenship and Immigration)*, 2006 FCA 365, **Intervener CCR's Book of Authorities, Tab 10.**
7 *Ibid* at paras 60-61.

> …it is inappropriate for the appellants to turn to the Court for relief under the *Charter* before exhausting their other remedies.[8]

12. In such cases, a broad approach to evaluating H&C considerations is imperative because the persons involved may be extremely vulnerable yet have been denied access to refugee or PRRA protection. Women fleeing gender-based violence constitute such an example.[9]

2) H&C consideration as an alternate remedy for those excluded under section 117(9)(d) of the *IRPA Regulations*

13. Sections 12(1) and 13(1) in the *IRPA* prescribe the family sponsorship regime that supports the immigration system's goal of family reunification under section 3(1)(d) of the *IRPA*.[10] Only members of the "family class" are eligible to be sponsored by a family member to Canada.[11]

14. Section 117(9)(d) of the *Immigration and Refugee Protection Regulations* (*"Regulations"*) denies previously non-disclosed and non-examined family members from being included in the family class for sponsorship.[12] Once section 117(9)(d) is triggered, the applicant is barred from sponsoring that family member for life. There is no legal basis for appeal.[13]

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8 *Spooner v Canada (Citizenship and Immigration)*, 2014 FC 870 at para 30, **Intervener CCR's Book of Authorities, Tab 26**; see also *Nicolas v Canada (Citizenship and Immigration)*, 2010 FC 452, **Intervener CCR's Book of Authorities, Tab 21**, at para 44 wherein the Court stated: "In this case, therefore, I agree with counsel for the respondents, that it is in fact the applicant who has the option and obligation to make a subsequent application for protection under section 165 of the Regulations, for reconsideration of the alleged risks of returning, or an application on humanitarian and compassionate grounds."; In *Woods v Canada (Citizenship and Immigration)*, 2007 FC 318 at para 17, **Intervener CCR's Book of Authorities, Tab 30**, the Federal Court stated: "The Court notes that the applicant has other recourse, that of applying on humanitarian and compassionate grounds under section 25(1) to stay with her mother until the authorities decide what will happen to her."; In *Razavi v Canada (Citizenship and Immigration)*, [1998] F.C.J. No.224 at para 19, **Intervener CCR's Book of Authorities, Tab 23,** the Federal Court stated that, "Since the applicant has not exhausted his legislative avenues of recourse by making an application for humanitarian and compassionate relief, which may also be based on risk, he has failed to establish that any of his rights under section 7 of the *Charter* have been breached."; see also *Adam v Canada (Citizenship and Immigration)*, [1998] F.C.J. No. 1901 at para 18, **Intervener CCR's Book of Authorities, Tab 1.**

9 See for example *Soimin v Canada (Citizenship and Immigration)*, 2009 FC 218, **Intervener CCR's Book of Authorities, Tab 25**; *I.G. v Canada (Citizenship and Immigration)*, 2013 FC 771**, Intervener CCR's Book of Authorities, Tab 16**; *Barthelemy v Canada (Citizenship and Immigration)*, 2011 FC 1222, **Intervener CCR's Book of Authorities, Tab 4.**

10 *IRPA*, *supra* note 1, ss 3(1)(d), 12(1), 13(1).

11 *Ibid*, s 12(1); see *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 117 [*Regulations*] which outlines who is or is not in the family class.

12 *Regulations*, *ibid*, ss 117(9)(d).

13 Section 65 of the *IRPA* precludes the IAD from considering H&C factors unless the subject of the sponsorship is a "member of the family class". While it is possible to file an application for leave and for judicial review, further to section 72(1) of the *IRPA*, such an application would have no prospect of success if the person being sponsored is

Instead the courts have stated that a sponsorship with an H&C request seeking an exemption from section 117(9)(d) is the alternate procedure or remedy for the harsh effect of the application of that section.

15. The Federal Court of Appeal in *Azizi* dealt with a *Charter* challenge to section 117(9)(d).[14] The court provided this rationale for dismissing the challenge:

> Paragraph 117(9)(d) does not bar family reunification. It simply provides that non-accompanying family members who have not been examined for a reason other than a decision by a visa officer will not be admitted as members of the family class. A humanitarian and compassionate application under section 25 of the IRPA may be made for Mr. Azizi's dependents...[15]

16. Similarly in *De Guzman*, the Federal Court of Appeal stated:

> Nor does paragraph 117(9)(d) preclude other possible bases on which Ms de Guzman's sons may be admitted to Canada. In particular, they could apply to the Minister under section 25 of *IRPA* for a discretionary exemption from paragraph 117(9)(d), or for permanent resident status.[16]

17. The harsh consequence of section 117(9)(d) – a lifetime bar to sponsoring a family member – is especially troubling in cases involving children. The CCR respectfully submits that a broad H&C test is needed to ensure that a true alternate remedy is provided to section

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not, in fact, a member of the family class. Indeed, the importance of keeping the scope of humanitarian and compassionate grounds wide is illustrated in the Federal Court of Appeal case of *Habtenkiel v Canada (Citizenship and Immigration)*, 2014 FCA 180 at para 37, **Intervener CCR's Book of Authorities, Tab 13***:* "The carve-out of humanitarian and compassionate considerations from the IAD's jurisdiction in the case of applicants who are caught by subsection 117(9)(d) of the Regulations leaves the Minister as the ***sole decision-maker*** in those cases. His decisions on the merits of the applicant's humanitarian and compassionate application ***cannot be overruled*** on the merits by the IAD. "[Emphasis added]

14 *Azizi v. Canada (Citizenship and Immigration)* 2005 FCA 406, **Intervener CCR's Book of Authorities, Tab 3.**

15 *Ibid* at para 28; *Thirunavukarasu v Canada (Citizenship and Immigration)*, 2010 FC 339 at para 14, **Intervener CCR's Book of Authorities, Tab 28**: "The IAD made the point that Mr. Thirunavukarasu and his family were not without further recourse and could seek to avail themselves of s. 25 of the *IRPA.*"; *Phan v Canada (Citizenship and Immigration)*, 2005 FC 184 at para 18, **Intervener CCR's Book of Authorities, Tab 22**: "This does not mean that Mr. Phan and his son are left without recourse: as Justice Kelen noted in *De Guzman*, it is open to Mr. Phan and his son to have the son's application for permanent residence considered on humanitarian and compassionate grounds through an application under section 25 of *IRPA.*"; see also *Tariq v Canada (Citizenship and Immigration)*, 2009 FC 789 at para 15, **Intervener CCR's Book of Authorities, Tab 27**: "The Applicant is not without remedy. The Applicant's spouse may apply from outside Canada for permanent resident status based on H&C considerations.

16 *De Guzman v Canada (Citizenship and Immigration)*, 2005 FCA 436 at para 49, **Intervener CCR's Book of Authorities, Tab 11**. At para 52, the Court of Appeal further states: "In these circumstances, I am not persuaded that Ms De Guzman has been deprived of the constitutional rights to liberty and security of the person guaranteed by section 7 of the Charter. Accordingly, it is not necessary to consider whether paragraph 117(9)(d) is either in accordance with the principles of fundamental justice, or saved by section 1."

117(9)(d), and to protect, *inter alia*, *IRPA*'s legislative duty and Canada's international obligation to consider the best interests of the child.[17]

3) H&C consideration as an alternate remedy for persons inadmissible to Canada

18. Persons can be found to be inadmissible to Canada for a variety of reasons pursuant to sections 34-42 of the *IRPA*.[18] These reasons include findings that an applicant committed crimes, has a health condition that would endanger public health or safety or cause excessive demand on health or social services, or has misrepresented a relevant matter.

19. In cases where persons are found to be inadmissible, the availability of H&C relief has protected the inadmissibility criteria and process from *Charter* or procedural fairness scrutiny.[19] For example, in *JP*, the Federal Court of Appeal stated:

> Notwithstanding these provisions [ss 34-42 of the *IRPA*], the responsible Minister may, in certain circumstances, waive the inadmissibility and grant permanent resident status to a foreign national if he is of the opinion that it is justified by humanitarian and compassionate considerations or by public policy considerations: *IRPA*, ss. 25(1), ss. 25.1(1) and ss. 25.2(1).[20]

20. The situation of persons found inadmissible on the grounds of criminality further highlights the importance of a broad and meaningful H&C test. Many of these cases involve persons who are alleged to have had only minor involvement in crimes. They may face risks and/or have counterbalancing circumstances that should be examined, such as the presence of young children. Persons with convictions of six months or more no longer have access to an appeal at the Immigration Appeal Division ("IAD") where H&C grounds could be considered.[21]

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17 *IRPA, supra* note 1, ss 25(1); *Convention on the Rights of the Child*, 20 November 1989, 28 ILM 1448.

18 *IRPA, supra* note 1, ss 34-42; see also s 44, which allows an inadmissibility report to be issued against an applicant. Note that it is no longer possible to obtain a waiver from inadmissibility under ss 34, 35 and 37 of the *IRPA* due to the *Faster Removal of Foreign Criminals from Canada Act*, S.C. 2013, c. 16.

19 While those subject to ss 34, 35 and 37 of the *IRPA* have no recourse to H&C applications anymore, relevant case law pertaining to constitutional and due process challenges regarding these cases also pointed to the H&C as a remedy in the past. See for example *Williams v Canada (Citizenship and Immigration)*, [1997] 2 FC 646 (CA) at para 13, **Intervener CCR's Book of Authorities, Tab 29**, and *Beltran v Canada (Citizenship and Immigration)*, 2011 FC 516 at para 13, **Intervener CCR's Book of Authorities, Tab 5.**

20 *Canada (Public Safety and Emergency Preparedness) v JP*, 2013 FCA 262 at para 16, **Intervener CCR's Book of Authorities, Tab 8.**

21 *IRPA, supra* note 1 at ss 64(2).

21. Thus, the decision whether to write a section 44(1) report leading to a finding of inadmissibility on the grounds of criminality has become extremely important.[22] There is some jurisprudence indicating that the scope of section 44 discretion is narrow because of the existence of an H&C application option.[23] An overly narrow interpretation of the scope of H&C consideration under section 25(1) of the *IRPA* puts into question this jurisprudence about the interpretation of section 44.

B. The Need for a Meaningful H&C Assessment

22. The CCR submits that an interpretation of H&C discretion as "unusual and undeserved, or disproportionate hardship" is not explicitly articulated in the legislation. Should this narrow iteration of the H&C test stand, it calls into question the constitutionality and fairness of many immigration processes.

23. As discussed above, courts point readily to H&C consideration as an acceptable alternate remedy for persons whose immigration or protection applications were denied or who were found to be inadmissible. Thus, but for the possibility of meaningful H&C relief, decisions made pursuant to multiple legislative regimes and procedures may be in violation of the *Charter* and other procedural fairness obligations.

24. There is a need to clarify the scope of the H&C test, given the lack of clarity among the courts on this issue. Indeed while the Federal Court has stated, in reference to the scope of the H&C test, that "the Applicant does not have an absolute right to the application of a particular legal test,"[24] it has also held that the "considerations which come into issue in section 25 of

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22 See for example *Cha v. Canada (Minister of Citizenship and Immigration)*, 2006 FCA 126 at para 22, **Intervener CCR's Book of Authorities, Tab 9**, wherein the Court of Appeal referred to H&C grounds as an alternate remedy, but also that the scope of the discretion of the officer in section 44(1) reports may vary under the circumstances; *Hernandez v Canada (Minister of Citizenship and Immigration)*, 2005 FC 429 at para 79, **Intervener CCR's Book of Authorities, Tab 14**, where Justice Snider states, "it is my view that the officer acting under s. 44(1) and the Minister's delegate acting under s. 44(2) have the discretion to consider facts related to the Applicant beyond the fact of his conviction. I also conclude that the officer did not satisfy the requirements of the duty of fairness that arise in the context of s. 44(1) decisions."

23 See for example *Awed v. Canada (Citizenship and Immigration)*, 2006 FC 469 paragraph 19, **Intervener CCR's Book of Authorities, Tab 2.**

24 *Iamkhong v Canada (Citizenship and Immigration)*, 2011 FC 355 at para 36 [*Iamkhong 2011*], **Intervener CCR's Book of Authorities, Tab 17.**

IRPA ***are very broad***."[25] [Emphasis added] Thus, it is clear that some courts rely on the assumption that the H&C test is broad and therefore provides an adequate alternate remedy to immigration procedures and programs which might otherwise violate the *Charter* or principles of procedural fairness.

25. Given the importance the courts have placed on H&C consideration as an alternate remedy, H&C consideration should be viewed as a truly equitable remedy. As such, H&C decision-makers ought to consider the wider context of an application including, where relevant, lived experiences of gender and racial inequality, power imbalances in relationships and employment, poverty, and family separation not only for the applicant but also for other persons directly affected by the decision. In some cases, it is incumbent upon decision-makers to consider, among the H&C factors put forward, problems in the government's own handling of an application.[26] The H&C test should allow decision makers to exercise equitable discretion in a way that conforms to Canada's human rights and *Charter* obligations.

26. The CCR respectfully submits that a broad and consistent approach to exercising discretion should be applied throughout the immigration system. As the Federal Court has stated, "when Parliament uses 'humanitarian and compassionate grounds' in sections of the very same act, the Court can presume Parliament's intent and purpose is to give these expressions the same meaning, as Parliament's coherence is presumed."[27] The broader application of the available H&C tests would also reflect the remedial nature of s. 25, further to s. 12 of the *Interpretation Act*[28]:

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25 *Segasayo v Canada (Citizenship and Immigration)*, 2010 FC 173 at para 29, **Intervener CCR's Book of Authorities, Tab 24;** See also *De Guzman*, *supra* note 17 which dealt with a *Charter* challenge to section 117(9)(d) of the *Regulations* at para 28 where the Federal Court of Appeal stated: "Discretion may be exercised positively when the Minister is of the opinion that it is justified by humanitarian and compassionate circumstances relating to the applicant, taking into account the best interests of a directly affected child, or by public policy considerations." See also *Huang v Canada (Citizenship and Immigration)*, 2005 FC 1302 at para 17, **Intervener CCR's Book of Authorities, Tab 15**; *Joson v Canada (Citizenship and Immigration)*, 2009 CanLII 79221 (CA IRB) at para 42, **Intervener CCR's Book of Authorities, Tab 19**; *Lai v Canada (Citizenship and Immigration)*, 2011 CanLII 75234 (CA IRB) at para 32, **Intervener CCR's Book of Authorities, Tab 20.**

26 See for example, Nicholas Keung, "Nanny spared deportation with reprieve from immigration minister," 23 February 2015
(online: Toronto Star
<http://www.thestar.com/news/immigration/2014/08/22/nanny_spared_deportation_with_reprieve_from_immigration_minister.html> **Intervener CCR's Book of Authorities, Tab 31.**

27 *Iamkhong 2011*, *supra* note 24 at para 38, **Intervener CCR's Book of Authorities, Tab 17.**

28 R.S.C. 1985, c. I-21

> 12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

27. The CCR agrees with the Appellant that it would be incompatible for decision-makers exercising H&C discretion in the *IRPA* to be tightly circumscribed in some areas but not in others.[29]

28. Finally, a narrow conception of H&C considerations can lead a decision-maker to ignore the harrowing and compelling history of not only an applicant, but also other persons involved, notably children. Thus, the scope of the H&C assessment should be flexible, extending to a wider context of the lived experiences of everyone directly affected by a decision. The potentially grave consequences for applicants should the narrow approach to H&C considerations be adopted include the following: vulnerable persons who fall short of obtaining refugee or PRRA protection will have no recourse; families will face permanent separation; and there will be no meaningful recourse for persons found inadmissible. Should a narrow iteration of H&C consideration be adopted, a critical reexamination of multiple provisions and procedures of the *IRPA* will have to be undertaken against procedural fairness principles and *Charter* rights,

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29 Citizenship and Immigration, Enforcement Manual 5: Writing 44(1) Reports, online: <http://www.cic.gc.ca/English/resources/manuals/enf/enf05-eng.pdf> which states at s. 8.1, "…this discretion gives officers flexibility in managing cases where no removal order will be sought, or where the circumstances are such that the objectives of the Act may or will be achieved without the need to write a formal inadmissibility report under the provisions of A44(1)" **Intervener CCR's Book of Authorities, Tab 32**; See also section 10.1 of Enforcement Manual 2: Evaluating Inadmissibility, online: <http://www.cic.gc.ca/English/resources/manuals/enf/enf02-eng.pdf> states, regarding whether to write a s.44(1) report further to evidence of misrepresentation, "…it is also imperative that the application of the provisions be guided by the use of good judgment to support the objectives of the Act and ensure fair and just decision-making." **Intervener CCR's Book of Authorities, Tab 33**; *Cha*, **Intervener CCR's Book of Authorities, Tab 9** and *Hernandez, supra* note 24, **Intervener CCR's Book of Authorities, Tab 14**; See also *Bradford v Canada (Minister of Citizenship and Immigration)*, 2003 CanLII 67582 (CA IRB) at paras 7-17, **Intervener CCR's Book of Authorities, Tab 6**; *Dhaliwal v Canada (Minister of Citizenship and Immigration)*, 2005 FC 869 at paras 5 and 9, **Intervener CCR's Book of Authorities, Tab 12**; Canada (*Minister of Employment and Immigration) v Burgon*, [1991] 3 FC 44 (CA) at para 15, **Intervener CCR's Book of Authorities, Tab 7.** See also *Jamshedji v Canada (Minister of Citizenship and Immigration)*, 2011 CanLII 93689 (CA IRB) at paras 5 and 7-8**, Intervener CCR's Book of Authorities, Tab 18**, on how the IAD views the scope of H&C; The legislative history of both sections 25(1) and 67(1) do not reveal different legislative intents: Jay Sinha, Margaret Young, "Bill C-11: The Immigration and Refugee Protection Act" (Law and Government Division, Revised 31 January 2002) online, Government of Canada: <http://publications.gc.ca/collections/Collection-R/LoPBdP/LS/371/c11-e.htm#GENERALtxt> **Intervener CCR's Book of Authorities, Tab 34,** and Daphne Keevil Harrold and Sandra Elgersma, "Legislative Summary of Bill C-11: An Act to amend the Immigration and Refugee Protection Act and the Federal Courts Act (Balanced Refugee Reform Act)" (Social Affairs Division, 12 May 2010) online: Library of Parliament: <http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c11&source=library_prb&Parl=40&Ses=3> **Intervener CCR's Book of Authorities, Tab 35.**

given what is at stake for the persons involved, and in light of recent legislative changes restricting access to such considerations, outlined above.

C. Conclusion and Recommendations

29. CCR recommends as follows:

a. Given the importance that courts have placed on H&C relief as an alternate remedy in different contexts where *Charter* concerns and/or procedural fairness concerns have been raised, the test for H&C should be broad and robust.

b. In resolving the different interpretations of H&C present under section 25(1) and section 67 of the *IRPA,* the broader interpretation should be adopted to ensure Canada is conforming to human rights and *Charter* obligations.

c. The scope of H&C should allow decision-makers to examine the wider context of a case and consider discrimination and other adverse consequences that may be experienced not only by the applicant, but also by all individuals directly affected by an application, as well as fully considering the best interests of any child affected.

d. The H&C application is an equitable remedy whose scope should be sufficient to allow a decision-maker to consider factors such as gender or racial inequality, power dynamics in relationships, poverty, and family separation.

PART IV – COSTS

30. The CCR does not seek costs and asks that no costs be awarded against it.

PART V – ORDER SOUGHT

31. The CCR does not take a position on the disposition of the appeal but respectfully requests that it be determined in light of the submissions set out above. The CCR requests leave to be heard in oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30th day of March, 2015.

per.

DAVID MATAS
RICHARD GOLDMAN
JAMIE LIEW
JENNIFER STONE
Counsel for the Intervener,
the Canadian Counsel for Refugees

PART VI – TABLE OF AUTHORITIES

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PART VII – STATUTORY PROVISIONS

***Immigration and Refugee Protection Act* (S.C. 2001, c. 27)**	***Loi sur l'immigration et la protection des réfugiés* (L.C. 2001, ch. 27)**
3. (1) The objectives of this Act with respect to immigration are (*d*) to see that families are reunited in Canada;	**3.** (1) En matière d'immigration, la présente loi a pour objet : *d*) de veiller à la réunification des familles au Canada;
12. (1) A foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident.	**12.** (1) La sélection des étrangers de la catégorie « regroupement familial » se fait en fonction de la relation qu'ils ont avec un citoyen canadien ou un résident permanent, à titre d'époux, de conjoint de fait, d'enfant ou de père ou mère ou à titre d'autre membre de la famille prévu par règlement.
13. (1) A Canadian citizen or permanent resident, or a group of Canadian citizens or permanent residents, a corporation incorporated under a law of Canada or of a province or an unincorporated organization or association under federal or provincial law — or any combination of them — may sponsor a foreign national, subject to the regulations.	**13.** (1) Tout citoyen canadien, résident permanent ou groupe de citoyens canadiens ou de résidents permanents ou toute personne morale ou association de régime fédéral ou provincial — ou tout groupe de telles de ces personnes ou associations — peut, sous réserve des règlements, parrainer un étranger.
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	**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

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.	que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.
(1.01) A designated foreign national may not make a request under subsection (1) o (*a*) if they have made a claim for refugee protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made; o (*b*) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or o (*c*) in any other case, until five years after the day on which they become a designated foreign national.	(1.01) L'étranger désigné ne peut demander l'étude de son cas en vertu du paragraphe (1) que si cinq années se sont écoulées depuis l'un ou l'autre des jours suivants : o *a*) s'il a fait une demande d'asile sans avoir fait de demande de protection, le jour où il a été statué en dernier ressort sur la demande d'asile; o *b*) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande; o *c*) dans les autres cas, le jour où il devient un étranger désigné.
(1.02) The processing of a request under subsection (1) of a foreign national who, after the request is made, becomes a designated foreign national is suspended o (*a*) if the foreign national has made a claim for refugee protection but has not made an application for	(1.02) La procédure d'examen de la demande visée au paragraphe (1) présentée par l'étranger qui devient, à la suite de cette demande, un étranger désigné est suspendue jusqu'à ce que cinq années se soient écoulées depuis l'un ou l'autre des jours suivants : o *a*) si l'étranger désigné a fait une demande d'asile sans avoir fait de demande de

protection, until five years after the day on which a final determination in respect of the claim is made; o (*b*) if the foreign national has made an application for protection, until five years after the day on which a final determination in respect of the application is made; or o (*c*) in any other case, until five years after the day on which they become a designated foreign national.	protection, le jour où il a été statué en dernier ressort sur la demande d'asile; o *b*) s'il a fait une demande de protection, le jour où il a été statué en dernier ressort sur cette demande; o *c*) dans les autres cas, le jour où il devient un étranger désigné.
(1.03) The Minister may refuse to consider a request under subsection (1) if o (*a*) the designated foreign national fails, without reasonable excuse, to comply with any condition imposed on them under subsection 58(4) or section 58.1 or any requirement imposed on them under section 98.1; and o (*b*) less than 12 months have passed since the end of the applicable period referred to in subsection (1.01) or (1.02).	(1.03) Le ministre peut refuser d'examiner la demande visée au paragraphe (1) présentée par l'étranger désigné si : o *a*) d'une part, celui-ci a omis de se conformer, sans excuse valable, à toute condition qui lui a été imposée en vertu du paragraphe 58(4) ou de l'article 58.1 ou à toute obligation qui lui a été imposée en vertu de l'article 98.1; o *b*) d'autre part, moins d'une année s'est écoulée depuis la fin de la période applicable visée aux paragraphes (1.01) ou (1.02). (1.1) Le ministre n'est saisi de la demande faite au titre du paragraphe (1) que si les frais afférents ont été

(1.1) The Minister is seized of a request referred to in subsection (1) only if the applicable fees in respect of that request have been paid. (1.2) The Minister may not examine the request if o (*a*) the foreign national has already made such a request and the request is pending; o (*a.1*) the request is for an exemption from any of the criteria or obligations of Division 0.1; o (*b*) the foreign national has made a claim for refugee protection that is pending before the Refugee Protection Division or the Refugee Appeal Division; or o (*c*) subject to subsection (1.21), less than 12 months have passed since the foreign national's claim for refugee protection was last rejected, determined to be withdrawn after substantive evidence was heard or determined to be abandoned by the Refugee Protection Division or the Refugee Appeal Division.	payés au préalable. (1.2) Le ministre ne peut étudier la demande de l'étranger faite au titre du paragraphe (1) dans les cas suivants : o *a*) l'étranger a déjà présenté une telle demande et celle-ci est toujours pendante; o *a.1*) celle-ci vise à faire lever tout ou partie des critères et obligations visés par la section 0.1; o *b*) il a présenté une demande d'asile qui est pendante devant la Section de la protection des réfugiés ou de la Section d'appel des réfugiés; o *c*) sous réserve du paragraphe (1.21), moins de douze mois se sont écoulés depuis le dernier rejet de la demande d'asile, le dernier prononcé de son retrait après que des éléments de preuve testimoniale de fond aient été entendus ou le dernier prononcé de son désistement par la Section de la protection des réfugiés ou la Section d'appel des réfugiés.
(1.21) Paragraph (1.2)(*c*) does not apply in respect of a foreign national o (*a*) who, in the case of removal, would be	(1.21) L'alinéa (1.2)*c*) ne s'applique pas à l'étranger si l'une ou l'autre des conditions suivantes est remplie : o *a*) pour chaque pays dont

subjected to a risk to their life, caused by the inability of each of their countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, to provide adequate health or medical care; or o (*b*) whose removal would have an adverse effect on the best interests of a child directly affected.	l'étranger a la nationalité — ou, s'il n'a pas de nationalité, pour le pays dans lequel il avait sa résidence habituelle —, il y serait, en cas de renvoi, exposé à des menaces à sa vie résultant de l'incapacité du pays en cause de fournir des soins médicaux ou de santé adéquats; *b*) le renvoi de l'étranger porterait atteinte à l'intérêt supérieur d'un enfant directement touché.
(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national. (2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.	(1.3) Le ministre, dans l'étude de la demande faite au titre du paragraphe (1) d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face. (2) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.
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. (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	**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) 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

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 prescribed by the regulations, in the case of a foreign national. In those cases, the Minister may make a removal order. (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.	circonstances visées par les règlements, d'un étranger; il peut alors prendre une mesure de renvoi. (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.
64. (1) No appeal may be made to the Immigration Appeal Division by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. (2) For the purpose of subsection (1), serious criminality must be with respect to a crime that was punished in Canada by a term of imprisonment of at least six months or that is described in paragraph 36(1)(*b*) or (*c*). (3) No appeal may be made under subsection 63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.	**64.** (1) L'appel ne peut être interjeté par le résident permanent ou l'étranger qui est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux, grande criminalité ou criminalité organisée, ni par dans le cas de l'étranger, son répondant. (2) L'interdiction de territoire pour grande criminalité vise, d'une part, l'infraction punie au Canada par un emprisonnement d'au moins six mois et, d'autre part, les faits visés aux alinéas 36(1)*b*) et *c*). (3) N'est pas susceptible d'appel au titre du paragraphe 63(1) le refus fondé sur l'interdiction de territoire pour fausses déclarations, sauf si l'étranger en cause est l'époux ou le conjoint de fait du répondant ou son enfant.

65. In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.	**65.** Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.
67. (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of, o (*a*) the decision appealed is wrong in law or fact or mixed law and fact; o (*b*) a principle of natural justice has not been observed; or o (*c*) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case. (2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration.	**67.** (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé : o *a*) la décision attaquée est erronée en droit, en fait ou en droit et en fait; o *b*) il y a eu manquement à un principe de justice naturelle; o *c*) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales. (2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant, d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.
68. (1) To stay a removal order, the	**68.** (1) Il est sursis à la mesure de renvoi sur

Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case. (2) Where the Immigration Appeal Division stays the removal order o (*a*) it shall impose any condition that is prescribed and may impose any condition that it considers necessary; o (*b*) all conditions imposed by the Immigration Division are cancelled; o (*c*) it may vary or cancel any non-prescribed condition imposed under paragraph (*a*); and o (*d*) it may cancel the stay, on application or on its own initiative. (3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division. (4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection	preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales. (2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande. (3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section. (4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.

36(1), the stay is cancelled by operation of law and the appeal is terminated.	
69. (1) The Immigration Appeal Division shall dismiss an appeal if it does not allow the appeal or stay the removal order, if any. (2) In the case of an appeal by the Minister respecting a permanent resident or a protected person, other than a person referred to in subsection 64(1), if the Immigration Appeal Division is satisfied that, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case, it may make and may stay the applicable removal order, or dismiss the appeal, despite being satisfied of a matter set out in paragraph 67(1)(*a*) or (*b*).	**69.** (1) L'appel est rejeté s'il n'y est pas fait droit ou si le sursis n'est pas prononcé. (2) L'appel du ministre contre un résident permanent ou une personne protégée non visée par le paragraphe 64(1) peut être rejeté ou la mesure de renvoi applicable, assortie d'un sursis, peut être prise, même si les motifs visés aux alinéas 67(1)*a*) ou*b*) sont établis, sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales. (3) Si elle rejette l'appel formé au titre du paragraphe 63(4), la section prend une mesure de renvoi contre le résident permanent en cause qui se trouve au Canada.
Immigration and Refugee Protection Regulations, SOR/2002-227	***Règlement sur l'immigration et la protection des réfugiés*** (DORS/2002-227)
117. (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is (*a*) the sponsor's spouse, common-law partner or conjugal partner; (*b*) a dependent child of the sponsor; (*c*) the sponsor's mother or father; (*d*) the mother or father of the sponsor's mother or father; (*e*) [Repealed, SOR/2005-61, s. 3] (*f*) a person whose parents are deceased, who is under 18 years of age, who is not a spouse or common-law partner and who is (i) a child of the sponsor's mother or father,	**117.** (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants : *a*) son époux, conjoint de fait ou partenaire conjugal; *b*) ses enfants à charge; *c*) ses parents; *d*) les parents de l'un ou l'autre de ses parents; *e*) [Abrogé, DORS/2005-61, art. 3] *f*) s'ils sont âgés de moins de dix-huit ans, si leurs parents sont décédés et s'ils n'ont pas d'époux ni de conjoint de fait : (i) les enfants de l'un ou l'autre des parents du

(ii) a child of a child of the sponsor's mother or father, or	répondant,
(iii) a child of the sponsor's child;	(ii) les enfants des enfants de l’un ou l’autre de ses parents,
(*g*) a person under 18 years of age whom the sponsor intends to adopt in Canada if	(iii) les enfants de ses enfants;
(i) the adoption is not being entered into primarily for the purpose of acquiring any status or privilege under the Act,	*g*) la personne âgée de moins de dix-huit ans que le répondant veut adopter au Canada, si les conditions suivantes sont réunies :
(ii) where the adoption is an international adoption and the country in which the person resides and their province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have approved the adoption in writing as conforming to that Convention, and	(i) l’adoption ne vise pas principalement l’acquisition d’un statut ou d’un privilège aux termes de la Loi,
(iii) where the adoption is an international adoption and either the country in which the person resides or the person's province of intended destination is not a party to the Hague Convention on Adoption	(ii) s’il s’agit d’une adoption internationale et que le pays où la personne réside et la province de destination sont parties à la Convention sur l’adoption, les autorités compétentes de ce pays et celles de cette province ont déclaré, par écrit, qu’elles estimaient que l’adoption était conforme à cette convention,
(A) the person has been placed for adoption in the country in which they reside or is otherwise legally available in that country for adoption and there is no evidence that the intended adoption is for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption, and	(iii) s’il s’agit d’une adoption internationale et que le pays où la personne réside ou la province de destination n’est pas partie à la Convention sur l’adoption :
(B) the competent authority of the person's province of intended destination has stated in writing that it does not object to the adoption; or	(A) la personne a été placée en vue de son adoption dans ce pays ou peut par ailleurs y être légitimement adoptée et rien n’indique que l’adoption projetée a pour objet la traite de l’enfant ou la réalisation d’un gain indu au sens de cette convention,
(*h*) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or	(B) les autorités compétentes de la province de destination ont déclaré, par écrit, qu’elles ne s’opposaient pas à l’adoption;
	h) tout autre membre de sa parenté, sans égard à son âge, à défaut d’époux, de conjoint de fait, de partenaire conjugal, d’enfant, de parents, de membre de sa famille qui est l’enfant de l’un ou l’autre de ses parents, de membre de sa famille qui est l’enfant d’un enfant de l’un ou l’autre de ses parents, de parents de l’un ou l’autre de ses parents ou de membre de sa famille qui est l’enfant de l’un ou l’autre des

father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father (i) who is a Canadian citizen, Indian or permanent resident, or (ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.	parents de l'un ou l'autre de ses parents, qui est : (i) soit un citoyen canadien, un Indien ou un résident permanent, (ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant.
(2) A foreign national who is the adopted child of a sponsor and whose adoption took place when the child was under the age of 18 shall not be considered a member of the family class by virtue of the adoption unless (*a*) the adoption was in the best interests of the child within the meaning of the Hague Convention on Adoption; and (*b*) the adoption was not entered into primarily for the purpose of acquiring any status or privilege under the Act.	(2) L'étranger qui est l'enfant adoptif du répondant et qui a été adopté alors qu'il était âgé de moins de dix-huit ans n'est pas considéré comme appartenant à la catégorie du regroupement familial du fait de cette relation à moins que : *a*) l'adoption n'ait eu lieu dans l'intérêt supérieur de l'enfant au sens de la Convention sur l'adoption; *b*) l'adoption ne visât pas principalement l'acquisition d'un statut ou d'un privilège sous le régime de la Loi.
(3) The adoption referred to in subsection (2) is considered to be in the best interests of a child if it took place under the following circumstances: (*a*) a competent authority has conducted or approved a home study of the adoptive parents; (*b*) before the adoption, the child's parents gave their free and informed consent to the child's adoption; (*c*) the adoption created a genuine parent-child relationship; (*d*) the adoption was in accordance with the laws of the place where the adoption took place; (*e*) the adoption was in accordance with the laws of the sponsor's place of residence and, if the sponsor resided in Canada at the	(3) L'adoption visée au paragraphe (2) a eu lieu dans l'intérêt supérieur de l'enfant si les conditions suivantes sont réunies : *a*) des autorités compétentes ont fait ou ont approuvé une étude du milieu familial des parents adoptifs; *b*) les parents de l'enfant ont, avant l'adoption, donné un consentement véritable et éclairé à l'adoption de l'enfant; *c*) l'adoption a créé un véritable lien affectif parent-enfant entre l'adopté et l'adoptant; *d*) l'adoption était, au moment où elle a été faite, conforme au droit applicable là où elle a eu lieu; *e*) l'adoption était conforme aux lois du lieu de résidence du répondant et, si celui-ci résidait au

time the adoption took place, the competent authority of the child's province of intended destination has stated in writing that it does not object to the adoption;	Canada au moment de l'adoption, les autorités compétentes de la province de destination ont déclaré par écrit qu'elles ne s'y opposaient pas;
(*f*) if the adoption is an international adoption and the country in which the adoption took place and the child's province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have stated in writing that they approve the adoption as conforming to that Convention; and	*f*) s'il s'agit d'une adoption internationale et que le pays où l'adoption a eu lieu et la province de destination sont parties à la Convention sur l'adoption, les autorités compétentes de ce pays et celles de cette province ont déclaré par écrit qu'elles estimaient que l'adoption était conforme à cette convention;
(*g*) if the adoption is an international adoption and either the country in which the adoption took place or the child's province of intended destination is not a party to the Hague Convention on Adoption, there is no evidence that the adoption is for the purpose of child trafficking or undue gain within the meaning of that Convention.	*g*) s'il s'agit d'une adoption internationale et que le pays où l'adoption a eu lieu ou la province de destination ne sont pas parties à la Convention sur l'adoption, rien n'indique que l'adoption projetée a pour objet la traite de l'enfant ou la réalisation d'un gain indu au sens de cette convention.
(4) A foreign national who is the adopted child of a sponsor and whose adoption took place when the child was 18 years of age or older shall not be considered a member of the family class by virtue of that adoption unless it took place under the following circumstances:	(4) N'est pas considéré comme appartenant à la catégorie du regroupement familial du fait de sa relation avec le répondant l'étranger qui, ayant fait l'objet d'une adoption alors qu'il était âgé de dix-huit ans ou plus, est l'enfant adoptif de ce dernier, à moins que les conditions suivantes ne soient réunies :
(*a*) the adoption was in accordance with the laws of the place where the adoption took place and, if the sponsor resided in Canada at the time of the adoption, the adoption was in accordance with the laws of the province where the sponsor then resided, if any, that applied in respect of the adoption of a child 18 years of age or older;	*a*) l'adoption était, au moment où elle a été faite, conforme au droit applicable là où elle a eu lieu et, si le répondant résidait au Canada à ce moment-là, elle était conforme au droit de la province de résidence de celui-ci applicable à l'adoption d'un enfant de dix-huit ans ou plus;
(*b*) a genuine parent-child relationship existed at the time of the adoption and existed before the child reached the age of 18; and	*b*) un véritable lien affectif parent-enfant entre l'adopté et l'adoptant existait au moment de l'adoption et avant que l'adopté n'ait atteint l'âge de dix-huit ans;
	c) l'adoption ne visait pas principalement

(*c*) the adoption was not entered into primarily for the purpose of acquiring any status or privilege under the Act.	l'acquisition d'un statut ou d'un privilège aux termes de la Loi.
(5) and (6) [Repealed, SOR/2005-61, s. 3]	(5) et (6) [Abrogés, DORS/2005-61, art. 3]
(7) If a statement referred to in clause (1)(*g*)(iii)(B) or paragraph (3)(*e*) or (*f*) has been provided to an officer by the competent authority of the foreign national's province of intended destination, that statement is, except in the case of an adoption that was entered into primarily for the purpose of acquiring any status or privilege under the Act, conclusive evidence that the foreign national meets the following applicable requirements:	(7) Sauf si l'adoption visait principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi, la déclaration visée à la division (1)*g*)(iii)(B) ou aux alinéas (3)*e*) ou *f*) fournie par l'autorité compétente de la province de destination à un agent à l'égard d'un étranger constitue une preuve concluante que ce dernier remplit les conditions suivantes :
(*a*) [Repealed, SOR/2005-61, s. 3]	*a*) [Abrogé, DORS/2005-61, art. 3]
(*b*) in the case of a person referred to in paragraph (1)(*g*), the requirements set out in clause (1)(*g*)(iii)(A); and	*b*) dans le cas de la personne visée à l'alinéa (1)*g*), les conditions prévues à la division (1)*g*)(iii)(A);
(*c*) in the case of a person referred to in paragraph (1)(*b*) who is an adopted child described in subsection (2), the requirements set out in paragraphs (3)(*a*) to (*e*) and (*g*).	*c*) dans le cas de la personne visée à l'alinéa (1)*b*) qui est l'enfant adoptif mentionné au paragraphe (2), les conditions prévues aux alinéas (3)*a*) à *e*) et *g*).
(8) If, after the statement is provided to the officer, the officer receives evidence that the foreign national does not meet the applicable requirements set out in paragraph (7)(*b*) or (*c*) for becoming a member of the family class, the processing of their application shall be suspended until the officer provides that evidence to the competent authority of the province and that authority confirms or revises its statement.	(8) Si, après avoir reçu la déclaration, l'agent reçoit de nouveaux éléments de preuve établissant que l'étranger ne remplit pas les conditions visées aux alinéas (7)*b*) ou *c*), selon le cas, de sorte qu'il n'appartient pas à la catégorie du regroupement familial, l'examen de la demande de ce dernier est suspendu jusqu'à ce que l'agent fournisse ces éléments de preuve à l'autorité compétente de la province et que celle-ci confirme ou modifie sa déclaration.
(9) A foreign national shall not be considered a member of the family class by	(9) Ne sont pas considérées comme appartenant

virtue of their relationship to a sponsor if	à la catégorie du regroupement familial du fait de leur relation avec le répondant les personnes suivantes :
(*a*) the foreign national is the sponsor's spouse, common-law partner or conjugal partner and is under 16 years of age;	*a*) l'époux, le conjoint de fait ou le partenaire conjugal du répondant s'il est âgé de moins de seize ans;
(*b*) the foreign national is the sponsor's spouse, common-law partner or conjugal partner, the sponsor has an existing sponsorship undertaking in respect of a spouse, common-law partner or conjugal partner and the period referred to in subsection 132(1) in respect of that undertaking has not ended;	*b*) l'époux, le conjoint de fait ou le partenaire conjugal du répondant si celui-ci a déjà pris un engagement de parrainage à l'égard d'un époux, d'un conjoint de fait ou d'un partenaire conjugal et que la période prévue au paragraphe 132(1) à l'égard de cet engagement n'a pas pris fin;
(*c*) the foreign national is the sponsor's spouse and	*c*) l'époux du répondant, si, selon le cas :
(i) the sponsor or the foreign national was, at the time of their marriage, the spouse of another person, or	(i) le répondant ou cet époux étaient, au moment de leur mariage, l'époux d'un tiers,
(ii) the sponsor has lived separate and apart from the foreign national for at least one year and	(ii) le répondant a vécu séparément de cet époux pendant au moins un an et, selon le cas :
(A) the sponsor is the common-law partner of another person or the sponsor has a conjugal partner, or	(A) le répondant est le conjoint de fait d'une autre personne ou il a un partenaire conjugal,
(B) the foreign national is the common-law partner of another person or the conjugal partner of another sponsor; or	(B) cet époux est le conjoint de fait d'une autre personne ou le partenaire conjugal d'un autre répondant;
(*d*) subject to subsection (10), the sponsor previously made an application for permanent residence and became a permanent resident and, at the time of that application, the foreign national was a non-accompanying family member of the sponsor and was not examined.	*d*) sous réserve du paragraphe (10), dans le cas où le répondant est devenu résident permanent à la suite d'une demande à cet effet, l'étranger qui, à l'époque où cette demande a été faite, était un membre de la famille du répondant n'accompagnant pas ce dernier et n'a pas fait l'objet d'un contrôle.
(10) Subject to subsection (11), paragraph (9)(*d*) does not apply in respect of a foreign national referred to in that paragraph who was not examined because an officer determined that they were not required by the Act or the former Act, as	(10) Sous réserve du paragraphe (11), l'alinéa (9)*d*) ne s'applique pas à l'étranger qui y est visé et qui n'a pas fait l'objet d'un contrôle parce qu'un agent a décidé que le

applicable, to be examined. (11) Paragraph (9)(*d*) applies in respect of a foreign national referred to in subsection (10) if an officer determines that, at the time of the application referred to in that paragraph, (*a*) the sponsor was informed that the foreign national could be examined and the sponsor was able to make the foreign national available for examination but did not do so or the foreign national did not appear for examination; or (*b*) the foreign national was the sponsor's spouse, was living separate and apart from the sponsor and was not examined. (12) In subsection (10), "former Act" has the same meaning as in section 187 of the Act.	contrôle n'était pas exigé par la Loi ou l'ancienne loi, selon le cas. (11) L'alinéa (9)*d*) s'applique à l'étranger visé au paragraphe (10) si un agent arrive à la conclusion que, à l'époque où la demande visée à cet alinéa a été faite : *a*) ou bien le répondant a été informé que l'étranger pouvait faire l'objet d'un contrôle et il pouvait faire en sorte que ce dernier soit disponible, mais il ne l'a pas fait, ou l'étranger ne s'est pas présenté au contrôle; *b*) ou bien l'étranger était l'époux du répondant, vivait séparément de lui et n'a pas fait l'objet d'un contrôle. (12) Au paragraphe (10), « ancienne loi » s'entend au sens de l'article 187 de la Loi.

Interpretation Act, R.S.C., 1985, c. I-21 **12.** Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.	***Loi d'interprétation,*** L.R.C. (1985), ch. I-21 **12.** Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

Canadian Charter of Rights and Freedoms **PART I OF THE CONSTITUTION ACT, 1982** **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.	***Charte canadienne des droits et libertés*** **PARTIE I DE LA LOI CONSTITUTIONNELLE DE 1982** **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.