

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

BETWEEN:

**ATTORNEY GENERAL OF QUEBEC**

- and -

**DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS**

**APPELLANTS  
(RESPONDENTS)**

- and -

**9147-0732 QUÉBEC INC**

**RESPONDENT  
(APPELLANT)**

- and -

**ATTORNEY GENERAL OF ONTARIO, ASSOCIATIONS DES AVOCATS DE LA  
DÉFENSE DE MONTRÉAL, BRITISH COLUMBIA CIVIL LIBERTIES  
ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, CANADIAN CIVIL  
LIBERTIES ASSOCIATION AND DIRECTOR OF PUBLIC PROSECUTIONS**

**INTERVENERS**

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

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## PART I: OVERVIEW

1. The protection from cruel and unusual treatment and punishment found in s. 12 of the *Charter*<sup>1</sup> has parallels throughout international human rights law (“IHRL”). Whether such provisions can be invoked by corporations or other legal persons has been considered by international and regional human rights courts. The unanimous answer has been no: the right to be free from cruel, inhuman or degrading treatment or punishment is enjoyed by natural persons only and cannot be invoked by corporations.

2. These international authorities are highly relevant to the question before this Court. Indeed, they are precisely on topic. They are also highly persuasive, both because they represent the considered opinions of human rights jurists from the leading international and regional human rights systems and because they reveal a consensus on the issue.

3. For this Court to reach a different result would put Canada out of step with IHRL on this point. Canada is free to be out of step; this Court is not bound to reach the same result as other leading tribunals and authorities. But their considered decisions merit this Court’s attention.

## PART II: QUESTION IN ISSUE

4. The BCCLA agrees with the appellant’s statement of the question in issue and takes no position on the questions in issue raised by the respondent.

## PART III: ARGUMENT

5. Some *Charter* rights apply to legal persons. Others do not. Assessing whether a particular *Charter* right applies to a legal person such as a corporation is a matter of constitutional interpretation. The question is whether a corporation “has an interest falling within the scope of the guarantee, and one which accords with the purpose of that provision.”<sup>2</sup>

6. The standards and expectations set by IHRL inform this inquiry. As this Court has held, “the values and principles of customary and conventional international law form part of the context

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<sup>1</sup> *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*].

<sup>2</sup> *R. v. CIP Inc.*, [1992] 1 S.C.R. 843 [*CIP Inc.*] at p. 852; see also *R. v. Amway Corp.*, [1989] 1 S.C.R. 21 at p. 40.

in which Canadian laws are enacted.”<sup>3</sup> In keeping with this international context, “this Court has repeatedly endorsed and applied the interpretive presumption that legislation conforms with the state’s international obligations.”<sup>4</sup> Similarly, the *Charter* is “presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified.”<sup>5</sup> Other IRHL sources, such as declarations, customary norms, and instruments that Canada has not ratified, remain “relevant and persuasive” in *Charter* interpretation.<sup>6</sup> IHRL is frequently relied on by this Court when interpreting the *Charter*,<sup>7</sup> including when determining whether a particular *Charter* right applies to legal persons.<sup>8</sup>

7. The world’s leading IHRL instruments all contain an equivalent to s. 12 of the *Charter*. The Anglo-American formulation of the protection from cruel and unusual treatment or punishment is expressed internationally in prohibitions against torture or cruel, inhuman or degrading treatment or punishment. The variations between prohibitions on cruel and unusual punishment (language derived from the English *Bill of Rights* (1689) and found in the eighth amendment to the *United States Constitution*)<sup>9</sup> and “the more common contemporary formulation that ‘no one shall be subjected to torture or to (cruel,) inhuman or degrading treatment or punishment’”<sup>10</sup> are “for the most part...distinctions without a difference.”<sup>11</sup>

<sup>3</sup> *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58 at para. 47 [*B010*]; *R. v. Hape*, 2007 SCC 26 at para. 53.

<sup>4</sup> *B010* at para. 48.

<sup>5</sup> *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at para. 70 [*Health Services*]; *India v. Badesha*, 2017 SCC 44 at para. 38 [*Badesha*]; *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at paras. 22-23 [*Divito*]; *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at para. 59 (per Dickson C.J., dissenting) [*Reference Re Public Service Employee Relations Act*].

<sup>6</sup> *Reference Re Public Service Employee Relations Act* at paras. 57-60 (per Dickson C.J., dissenting); *Divito* at para. 22; Peter Hogg, *Constitutional Law of Canada*, vol. 2, 5th ed. Supp. (Toronto: Thomas Reuters) (loose-leaf updated 2019) at p. 36-42; William A. Schabas, “Twenty-Five Years of Public International Law at the Supreme Court of Canada” (2000) 79 *Can Bar Rev* 174 at p. 186.

<sup>7</sup> See, e.g.: *Badesha*; *Divito*; *Health Services*.

<sup>8</sup> E.g. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at paras. 91, 96-97 (per McLachlin C.J. and Moldaver J., concurring).

<sup>9</sup> Natasha Simonsen, “Prohibition of Torture” in *Max Planck Encyclopedia of Comparative Constitutional Law* by Rainer Grote, Frauke Lachenmann, & Rüdiger Wolfrum (Oxford: Oxford University Press, 2015) at paras. 5-6.

<sup>10</sup> Simonsen at para. 69.

<sup>11</sup> Simonsen at para. 4.

8. In *Reyes v. R* (2002), Lord Bingham of Cornhill for the Privy Council concluded that the Anglo-American and international formulations of this right have a common meaning, and that meaning is the one ascribed to s. 12 of the *Charter* by this Court’s jurisprudence, namely the prohibition of gross disproportionality:

Despite the semantic difference between the expressions “cruel and unusual treatment or punishment” (as in the Canadian Charter and the constitution of Trinidad and Tobago) and “cruel and unusual punishments” (as in the eighth amendment to the United States constitution) and “inhuman or degrading treatment or punishment” (as in the European Convention), it seems clear that the essential thrust of these provisions, however expressed, is the same, and their meaning has been assimilated: see, for example, *Lauriano v Attorney-General* [1995] 3 Bz LR 77 at 85; *Guerra v Baptiste* [1996] AC 397 at 409-410. In *R v Smith (Edward Dewey)* [1987] 1 SCR 1045 at 1072 Lamer J said:

“I would agree with Laskin CJ in *Miller and Cockriell v The Queen* [1977] 2 SCR 680, where he defined the phrase ‘cruel and unusual’ as a ‘compendious expression of a norm’. The criterion which must be applied in order to determine whether a punishment is cruel and unusual within the meaning of section 12 of the *Charter* is, to use the words of Laskin CJ in *Miller and Cockriell*, *supra*, at p. 688, ‘whether the punishment prescribed is so excessive as to outrage standards of decency’. In other words, though the state may impose punishment, the effect of that punishment must not be grossly disproportionate to what would have been appropriate.”<sup>12</sup>

#### A. Article 5 Of The Universal Declaration Of Human Rights 1948

9. Article 5 of the Universal Declaration of Human Rights 1948<sup>13</sup> (“UDHR”) provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Nul ne sera soumis à la torture, ni à des peines ou traitements cruels, inhumains ou dégradants

10. The UDHR is a declaration of the United Nations General Assembly, and many of its provisions are regarded as declaratory of customary international law.<sup>14</sup> This Court has frequently referred to the UDHR when interpreting the *Charter*.<sup>15</sup> While there does not appear to be any judicial authority directly considering whether UDHR art. 5 benefits legal as well as natural

<sup>12</sup> *Reyes v. R (Belize)*, [2002] UKPC 11 at para. 30, see also para. 23.

<sup>13</sup> *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948) [UDHR].

<sup>14</sup> See Richard B Lillich, “The Growing Importance of Customary International Human Rights Law” (1995) 25:Issues 1 & 2 Ga J Intl & Comp L 1.

<sup>15</sup> See e.g.: *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at para. 58; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 at para. 64 [Ktunaxa].



persons, there is strong reason to believe it does not. Commentators have observed that the UDHR as a whole was intended to apply only to human beings.<sup>16</sup> Indeed, “[t]he question of granting human rights to legal persons, let alone corporations, was not debated at all”<sup>17</sup> when the UDHR was drafted. Consistently with this, the UDHR frequently references natural persons in such phrases as the “human family”<sup>18</sup>, “human beings”<sup>19</sup>, and “the dignity and worth of the human person.”<sup>20</sup>

## B. Article 3 Of The European Convention On Human Rights 1950

11. Article 3 of the European Convention on Human Rights 1950<sup>21</sup> (“ECHR”) provides:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.	Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants.
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12. The ECHR is the legal basis of the world’s most developed regional human rights system, given effect by the domestic courts of its 47 states parties and the European Court of Human Rights in Strasbourg, France.<sup>22</sup> While Canada is not a party to the ECHR, this Court has frequently considered its jurisprudence in *Charter* interpretation.<sup>23</sup>

13. Unlike the other international instruments reviewed in this factum, the ECHR “confers a broad protection to corporations in addition to individuals.”<sup>24</sup> Indeed, “ECHR jurisprudence

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<sup>16</sup> Silvia Steininger & Jochen von Bernstorff, “Who Turned Multinational Corporations into Bearers of Human Rights? On the Creation of Corporate ‘Human’ Rights in International Law” (2018) MPIL Research Paper Series No. 2018-25 at p. 5; Stephen G. Wood and Brett G. Scharffs, “Applicability of Human Rights Standards to Private Corporations: An American Perspective” (2002) 50 American J of Comparative Supplement 531 at p. 545.

<sup>17</sup> Steininger & von Bernstorff at p. 5.

<sup>18</sup> UDHR, Preamble.

<sup>19</sup> UDHR, Preamble, art. 1.

<sup>20</sup> UDHR, Preamble, see also arts. 1, 22, 23(3).

<sup>21</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, (1950) 213 UNTS 222 [ECHR].

<sup>22</sup> John Currie, *Public International Law*, 2nd ed (Toronto: Irwin Law, 2008) at p. 433.

<sup>23</sup> See e.g.: *Ktunaxa* at para. 66; *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 71 [*Saskatchewan Federation of Labour*]; *R. v. Clay*, 2003 SCC 75 at para. 32; *United States v. Burns*, 2001 SCC 7 at paras. 53, 137. See also Hogg at p. 36-42.

<sup>24</sup> W. van den Muijsenbergh & Sam Rezai, “Corporations and the European Convention on Human Rights” (2012) 25:1 Pacific McGeorge Global Bus & Development LJ 43 at p. 46; see also Julian G. Ku, “The Limits of Corporate Rights Under International Law” (2012) 12:2 Chicago J Intl L 729 at p. 731.

provides the richest example of corporate protection under international human rights law.”<sup>25</sup> Companies have standing to bring claims of ECHR violations before the European Court of Human Rights,<sup>26</sup> and many substantive ECHR protections apply to companies. These include protections which explicitly reference legal persons (the right to property and freedom of expression)<sup>27</sup> and those that do not (the right to privacy, the freedom of assembly and association, the freedom of religion, and the protection from discrimination).<sup>28</sup> The European Court of Human Rights has even held that companies are entitled to non-pecuniary damages for ECHR violations.<sup>29</sup>

14. Despite this corporate-friendly orientation of the ECHR, art. 3’s prohibition against torture or inhuman or degrading treatment or punishment has been held not to apply to companies.<sup>30</sup> In *Verein*, the European Commission on Human Rights held that art. 3 rights “are by their very nature not susceptible of being exercised by a legal person such as a private association.”<sup>31</sup> More recently, a chamber of the European Court of Human Rights, approving *Verein*, called it “inconceivable” that a legal person could complain of attacks to its physical and mental integrity under art. 3.<sup>32</sup> Consistently with these conclusions, European human rights scholars have noted that the protections from cruelty, like the right to life, “focus on the protection of embodied beings” and “make no conceptual sense without presupposing a vulnerable living body.”<sup>33</sup> Such rights are

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<sup>25</sup> Ku at p. 749.

<sup>26</sup> ECHR, art. 34; Jan Wouters & Anna-Luise Chané, “Multinational Corporations in International Law” (2013) Leuven Centre for Global Governance Studies Working Paper No. 129 at p. 8; van den Muijsenbergh & Rezai at p. 48.

<sup>27</sup> ECHR art. 10, art. 1 of Protocol 1; Ku at pp. 746-748.

<sup>28</sup> ECHR, arts. 8, 9, 11, 14; Ku at p. 748; van den Muijsenbergh & Rezai, pp. 49-50.

<sup>29</sup> Wouters & Chané at p. 9; *Comingersoll S.A. v. Portugal*, No 35382/97, [2000] IV ECHR 160, (2001) 31 EHRR 31 [*Comingersoll S.A.*].

<sup>30</sup> van den Muijsenbergh & Rezai at p. 50; Anat Scolnicov, “Lifelike and Lifeless in Law: Do Corporations Have Human Rights?” (2013) University of Cambridge Legal Studies Research Paper No. 13/2013 at p. 6.

<sup>31</sup> *Verein “Kontakt-Information-Therapie” (KIT) v. Austria* (1988), 57 Eur. Comm’n HR DR 81.

<sup>32</sup> *Identoba And Others v. Georgia*, No. 73235/12 ECHR (12 May 2015) at para. 45; see also *Comingersoll S.A.*

<sup>33</sup> Anna Grear, “Human Rights – Human Bodies? Some Reflections on Corporate Human Rights Distortion, The Legal Subject, Embodiment and Human Rights Theory” (2006) 17 *Law Critique* 171 at p. 195 [*Italics omitted*].

therefore “not relevant” to private legal persons<sup>34</sup> for “the artificial and essentially inhuman nature of corporations impedes their inclusion within the protective confines of these provisions which seek to protect individuals of flesh and blood.”<sup>35</sup>

15. The ECHR is not to be confused with the EU’s Charter of Fundamental Rights 2012.<sup>36</sup> The respondent relies on art. 49(3) of that instrument, but the provision analogous to *Charter* s. 12 is art. 4: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### C. Article 7 Of The International Covenant On Civil And Political Rights 1966

16. Article 7 of the International Covenant on Civil and Political Rights 1966<sup>37</sup> (“ICCPR”) provides:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Nul ne sera soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants. En particulier, il est interdit de soumettre une personne sans son libre consentement à une expérience médicale ou scientifique.

17. Canada is a party to the ICCPR and its Optional Protocol (under which claims brought by individuals against states parties may be heard by the United Nations Human Rights Committee). The ICCPR “covers much of the same ground and, although its provisions are more detailed, uses similar language to the [Canadian] Charter of Rights.”<sup>38</sup> This Court has frequently considered ICCPR provisions in *Charter* interpretation.<sup>39</sup>

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<sup>34</sup> P. van Kempen, “Human Rights and Criminal Justice Applied to Legal Persons. Protection and Liability of Private and Public Juristic Entities under the ICCPR, ECHR, ACHR and AfChHPR” (2010) 14:3 Electronic J Comp L 1 at p. 13.

<sup>35</sup> van den Muijsenbergh & Rezai at p. 50. This is consistent with this Court’s conclusion that the right to life under s. 7 of the *Charter* does not apply to corporations (*Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927 at pp. 1002-1004; *CIP Inc.* at p. 852).

<sup>36</sup> *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02.

<sup>37</sup> *International Covenant on Civil and Political Rights*, Can TS 1976 No 47 [ICCPR].

<sup>38</sup> Hogg at p. 36-39.

<sup>39</sup> See e.g.: *Health Services* at para. 71; *Divito* at paras. 24-26; *Ktunaxa* at paras. 65-67; *Saskatchewan Federation of Labour* at para. 70.

18. Legal persons cannot benefit from ICCPR art. 7. The Human Rights Committee has said that art. 7's purpose "is to protect both the dignity and the physical and mental integrity of the individual"<sup>40</sup> and that it targets acts which cause physical pain and mental suffering.<sup>41</sup>

19. This is in keeping with the ICCPR generally. The Committee has observed that the "beneficiaries of the rights recognized by the Covenant are individuals."<sup>42</sup> The ICCPR's preamble declares that the foundation of human rights is "the inherent dignity of the human person." The drafters intended to exclude legal persons from the scope of the ICCPR's protection.<sup>43</sup> Consistently with this, legal persons do not have standing to bring claims within the ICCPR system.<sup>44</sup>

#### **D. Article 5(2) Of The American Convention On Human Rights 1969**

20. Article 5(2) of the American Convention on Human Rights 1969<sup>45</sup> ("ACHR") provides:

No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Nul ne peut être soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants. Toute personne privée de sa liberté sera traitée avec le respect dû à la dignité inhérente à la personne humaine.

<sup>40</sup> United Nations Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment*, HRI/GEN/1/Rev.9 (Vol. I) (10 March 1992) at para 2 [*General Comment No. 20*].

<sup>41</sup> *General Comment No. 20* at para. 5.

<sup>42</sup> United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13 (26 May 2004) at para 9 [emphasis added]; van Kempen at p. 2.

<sup>43</sup> van Kempen at p. 3.

<sup>44</sup> ICCPR, art. 1 of the Optional Protocol; Ku at p. 750; van Kempen at p. 2; *A newspaper publishing company v. Trinidad and Tobago*, HRC, View of 14 July 1989, Comm. 360/1989 at par. 3.2 (company); *V.S. v. Belarus*, HRC, View of 31 October 2011, Comm. 1749/2008 at para. 7.3 (religious group with separate legal personality).

<sup>45</sup> *American Convention on Human Rights*, 1144 UNTS 123 [ACHR].

21. The ACHR is the basis of the Inter-American human rights system, presided over by the Inter-American Court of Human Rights in San José, Costa Rica.<sup>46</sup> While Canada is not a party to the ACHR, this Court has considered it as well as the jurisprudence of the Inter-American court.<sup>47</sup>

22. In 2016, the Inter-American Court issued an advisory opinion on the rights of legal persons under the ACHR.<sup>48</sup> It concluded that, with narrow exceptions for Indigenous communities and trade unions, legal persons have no substantive rights under the ACHR.<sup>49</sup> The court reasoned that the language of the ACHR, its purpose, and other IHRL instruments demonstrate that the protections of this Convention generally only apply to human beings.<sup>50</sup> The Court acknowledged that some rights (such as freedom of speech) can be exercised by natural persons through legal entities, and that the ACHR could protect the exercise of such rights.<sup>51</sup> However, the right to humane treatment under art. 5 (like the right to life under art. 4) cannot be exercised through legal entities, because these rights are inherent to natural persons<sup>52</sup> and are “directly related to the vital functions of human beings or to the physical or psychological functions of the human body.”<sup>53</sup>

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<sup>46</sup> Currie at p. 435

<sup>47</sup> See e.g. *Ktunaxa* at para. 66; *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62 at para. 129; *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paras. 59-75 [*Suresh*].

<sup>48</sup> Inter-American Court of Human Rights, *The Standing of Legal Entities in the Inter-American Human Rights System* (2016), Advisory Opinion OC-22/16. The Advisory Opinion is currently only available in Spanish. English summaries are found in: Angela B. Cornell, “Inter-American Court Recognizes Elevated Status of Trade Unions, Rejects Standing of Corporations” (2017) 3 International Labor Rights Case Law 39; Diego Mejia-Lemos, “Advisory Opinion OC-22/16” (2017) 111:4 AJIL 827; “Unofficial Summary in English of the Opinion of the IACtHR made by the Human Rights Clinic of the Human Rights Research and Education Centre, University of Ottawa”, *uOttawa Human Rights Research and Education Centre*, online: <[https://cdp-hrc.uottawa.ca/sites/cdp-hrc.uottawa.ca/files/english\\_summary-iacthr\\_advisory\\_opinions\\_legal\\_persons.pdf](https://cdp-hrc.uottawa.ca/sites/cdp-hrc.uottawa.ca/files/english_summary-iacthr_advisory_opinions_legal_persons.pdf)> [Human Rights Clinic].

<sup>49</sup> Cornell at p. 39; Mejia-Lemos at pp. 1000-1001.

<sup>50</sup> Cornell at pp. 40-42; see also definition of “person” in ACHR, art. 1(2).

<sup>51</sup> Mejia-Lemos at p. 1004; Human Rights Clinic at paras. 13, 39-40.

<sup>52</sup> Human Rights Clinic at paras. 13, 40.

<sup>53</sup> Mejia-Lemos at pp. 1003-1004.

### E. Article 16(1) Of The Convention Against Torture 1984

23. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984<sup>54</sup> (“CAT”) imposes a range of obligations on states parties with respect to torture. In addition, art. 16(1) provides that states parties

<p>undertake to prevent in any territory under [their] jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.</p>	<p>s'engage à interdire dans tout territoire sous sa juridiction d'autres actes constitutifs de peines ou traitements cruels, inhumains ou dégradants qui ne sont pas des actes de torture ... lorsque de tels actes sont commis par un agent de la fonction publique ou toute autre personne agissant à titre officiel, ou à son instigation ou avec son consentement exprès ou tacite.</p>
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24. Canada is a party to the CAT, and this Court has considered it in *Charter* interpretation.<sup>55</sup>

25. There appears to be no consideration in the decisions of the Committee Against Torture or elsewhere of whether legal persons come within art. 16(1). Yet the CAT as a whole is clearly intended to protect and benefit individuals alone. The CAT’s preamble references UDHR art. 5 and ICCPR art. 7 (which, as noted, only protect natural persons), and recognizes that human rights “derive from the inherent dignity of the human person.” Torture is defined in relevant part as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.”<sup>56</sup> Other provisions indicate that only an “individual” can suffer a CAT violation.<sup>57</sup>

### F. Conclusion

26. Nothing in the IHRL instruments reviewed above prohibits Canada from extending the protection afforded by s. 12 of the *Charter* to corporations or other legal persons. For this Court to conclude that s. 12 can be invoked by legal persons, as did the majority of the Court of Appeal, would not put Canada in breach of its international human rights obligations.

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<sup>54</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Can TS 1987 No 36 [CAT].

<sup>55</sup> See e.g.: *Badesha* at para. 38; *Suresh* at paras. 59-75.

<sup>56</sup> CAT, art. 1(1).

<sup>57</sup> CAT, arts. 13 and 22(1).

27. Nor is the Court constrained by its own jurisprudence on the relationship between the *Charter* and international human rights law. The Court's approach is to presume that the *Charter* protects human rights at least as well as our international obligations require, while leaving Canada free to do better. IHRL operates as a floor in *Charter* jurisprudence, not a ceiling.

28. Yet the authorities reviewed here reveal an international consensus—informed in part by this Court's own jurisprudence—on the nature and purpose of the right protected by s. 12 and its international analogues. Informed by the concept of human dignity,<sup>58</sup> these provisions aim to protect human beings against grossly disproportionate physical and mental suffering. For this Court to extend s. 12 protection to non-human entities that are incapable of such suffering would put Canada out of step with the international consensus. Such a decision would also be at odds with the historic purpose and contemporary meaning of the human right to be free from cruelty.

#### **PART IV: COSTS**

29. The BCCLA seeks no order as to costs and asks that no costs be made against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: January 8, 2020

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Gib van Ert

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Jessica Magonet

Counsel for the Intervener,  
British Columbia Civil Liberties Association

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<sup>58</sup> UDHR, Preamble and art. 1; ICCPR, Preamble; ACHR art. 5(2); CAT, Preamble.

## PART VII: TABLE OF AUTHORITIES

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