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Date: October 14, 2009

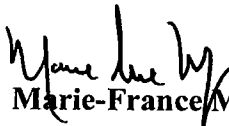
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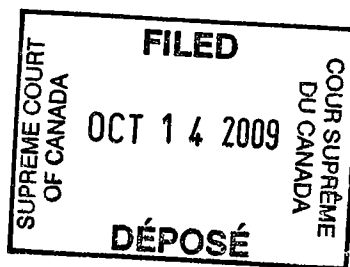
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From: Name: **Marie-France Major**
Extension: **131**
E-Mail: **mmajor@langmichener.ca**

Re: Intervention of Amnesty International in: Minister of Justice for Canada v. Michael Karas (SCC No. 32500)

Message: Please find enclosed Motion for Intervention that we are serving on you today pursuant to the *Rules of the Supreme Court of Canada*.


Marie-France Major



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Re: Intervention of Amnesty International in: Minister of Justice for Canada v. Michael Karas (SCC No. 32500)

Message: Please find enclosed Motion for Intervention that we are serving on you today pursuant to the *Rules of the Supreme Court of Canada*.

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

BETWEEN:

MICHAEL JOSEPH CHARLES KARAS

Appellant

- and -

MINISTER OF JUSTICE FOR CANADA

Respondent

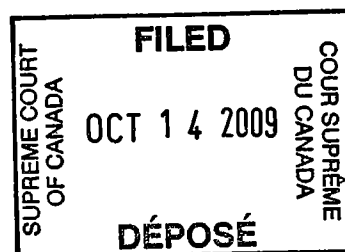
NOTICE OF MOTION TO INTERVENE

(Amnesty International (Canadian Section, English-Speaking Branch))

(Pursuant to Rule 55 of the Rules of the Supreme Court of Canada)

TAKE NOTICE that Amnesty International (“AI”) (Canadian Section, English-Speaking Branch) (“AI Canada”) hereby applies to a judge of this Honourable Court, pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada* for an order granting:

- (a) leave to intervene in this appeal;
- (b) leave to file a factum of no more than 15 pages in accordance with Rules 37 and 42 of the *Rules of the Supreme Court of Canada*;
- (c) leave to make oral argument of no more than 10 minutes at the hearing of the within appeal; and
- (d) such further or other order as the said judge may deem appropriate.



AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

1. AI Canada has an interest in the subject matter arising in this appeal based on its mandate, and can provide useful and different submissions to this Honourable Court;
2. AI is a worldwide voluntary movement founded in 1961 that works to prevent grave violations of fundamental human rights;
3. AI has a strong record as a credible, trustworthy and objective organization that is impartial and independent. In 1977, AI was awarded the Nobel Peace Prize for its work in promoting international human rights, including its work to end the use of the death penalty;
4. The work of AI is coordinated by national sections, of which AI Canada is one;
5. AI is accountable to its membership, which, in Canada, totals approximately 60,000 members of AI Canada;
6. AI Canada shares and implements the mandate of AI, which is to promote international human rights at both the national and international level;
7. The abolition of the death penalty has been a cornerstone of AI's mandate for over 30 years because it violates the most fundamental of human rights: the right to life, and the right to be free from cruel, inhuman or degrading treatment or punishment;
8. AI and AI Canada possess demonstrated expertise specific to the issue of the death penalty and related issues, including assurances. At AI's International Secretariat office, there is a team of AI researchers devoted to research on the death penalty and related issues, including assurances, death row conditions, and country-specific information on these issues. In addition, AI Canada works with two researchers who also have established expertise on the death penalty and related issues;
9. AI Canada has participated in a variety of proceedings, including before this Honourable Court, to which it has contributed an international human rights law perspective;

10. On three prior occasions, this Honourable Court granted leave to intervene to AI Canada in three appeals which each concerned the death penalty and related issues. To each appeal, AI Canada contributed a unique perspective on the death penalty issue and on related international human rights issues;
11. AI monitors the death penalty and the conditions of death row in Thailand, and AI Thailand maintains a website with links to that office's reports relating to the death penalty in Thailand;
12. If granted leave to intervene, AI Canada will provide this Honourable Court with a perspective and submissions that will be useful and different from those of the parties;
13. AI Canada proposes to make submissions regarding the international human rights law aspects of this appeal, which will assist this Honourable Court with determining the *Charter* issues before it;
14. If granted leave to intervene, AI Canada will make every effort to avoid unnecessarily duplicating the submissions of the parties;
15. Granting leave to intervene to AI Canada will not prejudice any party;
16. AI Canada will take the record as it finds it and will abide by any schedule set by this Honourable Court;
17. AI Canada seeks no costs in the proposed intervention and respectfully requests that none be awarded against it;
18. AI Canada proposes to make the submissions that are set out in outline form under the heading "Outline of Proposed Submissions" in the Memorandum of Argument filed in the within motion to intervene;
19. Consistent with the proper role of interveners before this Honourable Court, AI Canada will take no position on the disposition of the appeal;
20. Rules 47 and 55 of the *Rules of the Supreme Court of Canada*; and
21. Such further or other grounds as counsel may see fit and may be permitted.

DATED at Ottawa, this 14th day of October, 2009.

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Ottawa Agent for the Appellant, Michael Karas

NOTICE TO THE RESPONDENT TO THE MOTION:

A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, the case may be.

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

B E T W E E N:

MICHAEL JOSEPH CHARLES KARAS

Appellant

- and -

MINISTER OF JUSTICE FOR CANADA

Respondent

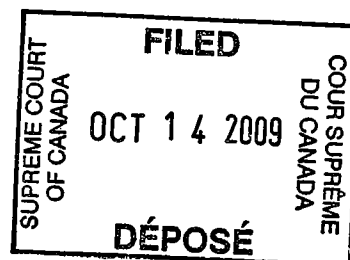
AFFIDAVIT OF ALEX NEVE, O.C.

(Motion to intervene; pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*)

I, ALEX NEVE, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Secretary General of Amnesty International (“AI”) (Canadian Section, English-Speaking Branch) (“AI Canada”), and as such I have personal knowledge of the matters to which I herein depose, except where otherwise indicated. Where facts are based on information obtained from others, I believe that information to be true.

2. I hold a Master of Laws degree in International Human Rights Law, with distinction, from the University of Essex, in the United Kingdom. I joined AI in or about 1985, and have held positions at AI’s International Secretariat in London, U.K. and at AI Canada.



3. Since 2000, I have held the position of Secretary-General of AI Canada. I am responsible for overseeing the implementation of AI's mission in Canada.

4. In 2007, I was appointed an Officer of the Order of Canada for my human rights work in Canada and abroad.

I. BACKGROUND

A. Nature of this Motion

5. I make this affidavit in support of a motion by AI Canada for leave to intervene in the within appeal.

6. This appeal raises issues that are at the core of the mandate of AI and AI Canada. It raises the question of the appropriate circumstances, if any, in which a Canadian citizen may be extradited to face charges in a country (in this case, Thailand), which has not abolished the death penalty as a potential punishment for those charges. It also raises the question of the circumstances in which Canada is required to seek assurances from the requesting state that the death penalty will not be sought as a punishment, or, if imposed, will not be carried out. These are important *Charter* issues and international human rights law questions, which are, in my view, intrinsically interrelated.

7. AI Canada has an interest in this appeal and possesses unique expertise on the issues raised that could assist this Honourable Court in determining the questions before it. AI Canada has a strong record as a credible, trustworthy and objective organization that possesses unique and significant expertise on the death penalty and the international human rights law issues that arise in relation to it.

B. Description of AI and AI Canada

8. AI is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights.

9. In 1977, AI was awarded the Nobel Peace Prize for our work in promoting international human rights, including its work to end the use of the death penalty.

10. AI is impartial and independent of any government, political persuasion or religious creed. AI is financed by subscriptions and donations from its worldwide membership, and receives no government funding.

11. AI (including AI Canada) is accountable to its membership. There are currently close to 2 million members of AI in over 162 countries. There are more than 7,500 AI groups, including local groups, youth or student groups and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories, the work of these groups is coordinated by national sections. AI Canada is one of those sections.

12. The organizational structure of AI Canada includes a board of 12 directors elected across the country. There are specific country and issue coordinators in each region and province.

13. AI Canada has a membership of approximately 60,000 people.

14. AI Canada shares and implements the vision of AI. AI's vision is of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* ("UDHR"), the *International Covenant on Civil and Political Rights* ("ICCPR"), the *Convention Against Torture* ("CAT"), and other international human rights standards. In pursuit of this vision, AI's mandate is to conduct research and take action to prevent and end grave abuses of all human rights, whether civil, political, economic, social or cultural.

15. AI Canada's mandate, like that of AI, is to advance and promote international human rights at both the international and national level. As part of its work to achieve this goal, AI Canada:

- a) monitors and reports on human rights abuses;
- b) participates in relevant judicial proceedings;
- c) participates in national legislative processes and hearings; and
- d) participates in international committee hearings and processes.

16. AI's investigative work is carried out by human rights researchers who receive, cross-check and corroborate information from many sources, including prisoners and their families, lawyers, journalists, refugees, diplomats, religious groups and humanitarian and other human

rights organizations. Researchers also obtain information through newspapers, websites and other media outlets. As well, AI sends about 130 fact-finding missions to some 70 countries each year to directly assess what is happening on the ground.

17. AI's research is recognized around the world as accurate, unbiased, and credible, which is why AI reports are widely consulted by governments, inter-governmental organizations, journalists and scholars.

18. Based on its research, AI publishes reports, briefing papers, newsletters and campaigning materials. Amongst its publications is the annual *Amnesty International Report* on human rights conditions in countries around the world.

19. The research of AI and AI Canada has been used by Canadian courts and has been recognized as a credible source of reliable information. These official reports are often relied on as evidence by immigration review boards and in Canadian courts. For example:

- a) In *Mahjoub v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1503, Justice Tremblay-Lamer found "the [Minister's] delegate's blanket rejection of information from agencies with worldwide reputations for credibility, such as AI and [Human Rights Watch] ... puzzling, especially given the institutional reliance of Canadian courts and tribunals on these very sources. [...] [T]he Minister of Citizenship and Immigration frequently relies on information from these organizations in creating country condition reports, which in turn are used by Immigration and Refugee tribunals, in recognition of their general reputation for credibility";
- b) In *Thang v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 457, the Federal Court allowed a judicial review of a Pre-Removal Risk Assessment ("PRRA") on the basis that the PRRA officer failed to consider a detailed analysis of the applicant's personal circumstances prepared by AI, whom the Court referred to as a "credible source";
- c) In *Shabbir v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 480, and in *Ertuk v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 1118, the Federal Court emphasized the important evidentiary role of AI reports; and
- d) In *Suresh v. Canada (Minister of Citizenship and Immigration, et al)*, [2002] 1 S.C.R. 3, this Honourable Court relied on an AI report concerning Sri Lanka's torture of members of the Liberation Tigers of Tamil Eelam.

C. Expertise of AI and AI Canada

20. In addition to the extensive research and reports, AI Canada has contributed its expertise to several domestic legal proceedings and other international proceedings concerning Canada.

21. AI Canada has been granted leave to intervene by this Honourable Court in at least eight appeals, including three cases (emphasized below in **bold**), which concerned the death penalty and related issues. In these latter appeals, AI Canada provided information to the Court on the international movement towards the abolition of capital punishment, among other issues:

- a) *Prime Minister of Canada et al. v. Omar Khadr*, SCC Case No. 33289;
- b) *Charkaoui v. Canada (Minister of Citizenship and Immigration) No. 2*, [2008] 2 S.C.R. 326 ;
- c) *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9;
- d) *Schreiber v. Canada (Attorney General)*, [2002] 3 S.C.R. 269;
- e) *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3;
- f) ***United States v. Burns***, [2001] 1 S.C.R. 283;
- g) ***Reference Re Ng Extradition (Can.)***, [1991] 2 S.C.R. 858; and
- h) ***Kindler v. Canada (Minister of Justice)***, [1991] 2 S.C.R. 779.

22. In addition to advocacy before this Honourable Court, AI Canada has also appeared as a party or an intervener before lower courts and public inquiries where issues touching upon its mandate arose. Examples include the following:

- a) *Bouzari v. Islamic Republic of Iran* (Court of Appeal for Ontario, Court File C38295, June 30, 2004);
- b) *Ahani v. Her Majesty the Queen, The Attorney General of Canada and the Minister of Citizenship and Immigration* (Court of Appeal for Ontario, Court file C37565, February 8, 2002);
- c) *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v. Canada*, Federal Court of Appeal, 2008 FCA 229;

- d) *Amnesty International Canada and British Columbia Civil Liberties Association v. Chief of the Defence Staff for the Canadian Forces, Minister of National Defence and Attorney General of Canada*, Federal Court of Appeal, 2008 FCA 401;
- e) *Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar*;
- f) *The Ipperwash Inquiry*; and
- g) *Internal Inquiry into the Actions of Canadian officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nurreddin*.

23. In addition, AI Canada has sought to advance international human rights directly through the legislative process. AI Canada has made submissions to House and Senate committees on human rights issues on wide-ranging topics, including:

- a) Oral submissions, regarding the issue of repatriation of Omar Khar, to the Sub-Committee on International Human Rights of the Parliamentary Standing Committee on Foreign Affairs and International Development (May 2008);
- b) Oral submissions to House of Commons and Senate Committees regarding security certificates (November 2006, December 2007, February 2008);
- c) Oral submissions to the House of Commons Defence Committee regarding the transfer by Canadian troops of Afghan detainees in Afghanistan (December 2006);
- d) *Security through Human Rights*: Submissions to the Special Senate Committee on the Anti-Terrorism Act and the House of Commons Sub-Committee on Public Safety and National Security, May 16, 2005; and
- e) Oral submissions to the Senate and House of Commons' Anti-Terrorism Act Review Committees (May and September 2005).

24. AI has also made submissions to various international organizations regarding Canada and international human rights, including:

- a) *Canada: Submission to the UN Universal Periodic Review; Amnesty International's submissions to the first review of Canada's human rights record by the U.N. Human Rights Council* (February 2009);
- b) *Human Rights for All, No Exceptions* (Amnesty International's Submissions to the U.N. Committee on the Elimination of Racial Discrimination on the occasion of

the examination of the 17th and 18th Periodic Reports submitted by Canada) (February 2007); and

- c) *Protection Gap: Strengthening Canada's Compliance with its International Human Rights Obligations* (AI Canada's submissions to the U.N. Human Rights Committee on the occasion of the consideration of the Fifth Periodic Reports of Canada) (2005).

D. Expertise on the death penalty and related issues

25. The international abolition of the death penalty has been a cornerstone of AI's mandate. Consistent with AI's mission, AI seeks the abolition of the death penalty on the grounds that it violates the most fundamental of human rights: the right to life, and the right to be free from cruel, inhuman or degrading treatment or punishment.
26. For over 30 years, AI has advocated for the total abolition of the death penalty in judicial, legislative and international fora around the world.
27. In addition to having intervened before Canadian courts in extradition cases raising death penalty concerns, AI Canada lobbied against the reinstatement of the death penalty in 1987 in Canada, and campaigned for the removal of capital provisions from the *National Defence Act*. AI Canada has also opposed the execution of Canadians facing the death penalty abroad.
28. AI is also a founding member of the World Coalition Against the Death Penalty ("World Coalition"). The World Coalition is a partnership of 40 human rights organizations that have joined together to end the use of the death penalty worldwide. The World Coalition designated October 10 the World Day Against the Death Penalty, in which AI Canada and AI's Thailand office are participants.
29. AI and AI Canada have developed significant and unique expertise on the death penalty. Resources and reports are published on AI's website and include an online library of reports and news releases relating to the death penalty and related issues arising around the world.¹

¹ See, for example: www.amnesty.ca/deathpenalty/news/; <http://web.amnesty.org/pages/deathpenalty-index-eng?openview>; www.amnesty.org/en/death-penalty.

30. AI has tracked and reported on the clear trend towards abolition worldwide. By October 2009, the number of states that have abolished the death penalty in law or in practice has grown to 139: that is, more than two thirds of the countries of the world.² AI reported that this marks an increase from 108 countries in January 2001³ (just prior to the release of this Honourable Court's decision in *Burns*).⁴

31. AI has also tracked and reported on the countries who have voted on the United Nations General Assembly's adoption of a resolution calling for a worldwide moratorium on executions (U.N. Resolution 62/149, December 18, 2007) and its follow-up resolution (U.N. Resolution 63/430, December 18 2008) calling for a moratorium on the use of the death penalty. AI reported that the increased support for the follow-up resolution is further evidence of the worldwide trend towards the abolition of the death penalty. I note from AI's reports that Canada voted in favour of both resolutions, and that Thailand voted against them.⁵

32. Over the past three decades AI has extensively researched the death penalty and the human rights concerns that arise from its use. For example, AI has published numerous reports detailing the systematic failure of American death penalty procedures to comply with international fair trial norms. It has also published reports on capital extradition and the related issue of assurances.⁶

33. At AI's International Secretariat office in London, U.K., there is a team of AI researchers devoted to research on the death penalty, and related issues including assurances, death row conditions, and country-specific information on these issues. In addition, AI Canada works with two researchers who have an established expertise on the death penalty and related issues.

² Amnesty International, *List of Abolitionist and Retentionist Countries*; see: www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries

³ *The Death Penalty: List of Abolitionist and Retentionist Countries (January 1, 2001)*, AI Index ACT 50/003/2001; see www.amnesty.org/en/library/info/ACT50/003/2001/en.

⁴ *United States v. Burns*, 2001 SCC 7.

⁵ Amnesty International, *Moratorium on Executions Now!*; see www.amnesty.org/en/death-penalty/international-law/moratorium.

⁶ Amnesty International, *No Return to Execution: The US Death Penalty as a Barrier to Extradition*; see www.amnesty.org/en/library/info/AMR51/171/2001/en.

34. AI has extensively researched the use of the death penalty and the conditions of death row in Thailand. In 2007, AI Canada published an action against the use of the death penalty in Thailand and Thailand's adoption of the method of lethal injection.⁷

35. AI's Thailand office maintains a website with links to that office's reports on issues relevant to AI's mandate that arise in, or in relation to, Thailand. In 2009, AI's office in Thailand reported that two people who were sentenced to the death penalty for drug-related offences in Thailand were executed in August 2009.⁸

36. In 2002, AI also published a public report on conditions in Thailand's prison system, highlighting the incidence of the use of torture and outlining the inhuman and degrading confinement conditions for prisoners on death row.⁹ The report included a number of recommendations to Thailand's government.

II. THIS MOTION FOR LEAVE TO INTERVENE

37. AI Canada has an interest in this appeal. As stated above, the principal mandate of AI and AI Canada is to advance and promote international human rights at the national and international level. For over 30 years, one part of that mandate has been to support and achieve the abolition of the death penalty worldwide. Arising out of this mandate, AI Canada has a special interest in ensuring that governments do not overlook their obligations in respect of international human rights in the extradition context.

38. AI Canada has an interest in this appeal because it concerns a Canadian citizen who faces extradition to Thailand, a state that has not abolished the death penalty as punishment for the charge he faces. It is part of AI Canada's mandate to ensure that no one, certainly including no Canadian citizen, should face the death penalty or the possibility of facing the death penalty, whether in Canada or abroad, in any circumstance or context because to do so would violate that

⁷ Amnesty International, *Thailand: No Place for Health Professionals in Executions*; see www.amnesty.ca/take_action/actions/thailand_health_prof_executions.php.

⁸ See: Amnesty International, *Thailand carries out first executions in six years*; www.amnesty.org/en/news-and-updates/news/thailand-first-executions-six-years-20090826; see also: *History of Execution in Thai Society*; www.amnesty.or.th/main/Campaigns8.asp.

⁹ Amnesty International, *Thailand: Widespread Use of Torture From Policing to Prisons*, AI Index ASA 30/005/2002 (June 11, 2002); see www.amnesty.org/en/library/asset/ASA39/005/2002/en/a41c0d30-d839-11dd-9df8-936c90684588/asa390052002en.html.

person's fundamental rights to life and to be free from cruel, inhuman or degrading treatment or punishment. It is also part of AI Canada's mandate to ensure that, in complying with its other international obligations, Canada does not breach an individual's rights under the *Charter* and under international human rights law.

39. If granted leave to intervene, AI Canada will make submissions that are different from and/or supplementary to those that will be made by the parties, relying upon AI Canada's unique perspective. AI Canada will focus its submissions on: articulating Canada's international human rights obligations when considering whether to extradite a person to a country which has not abolished the death penalty as a possible punishment with respect to the offences for which that person is charged; the "death row phenomenon"; and the appropriate role and extent of assurances in these circumstances.

40. AI Canada will not make submissions on the issue of the sufficiency of the relationship between the surrender order and the committal decision, an issue that is thoroughly developed by the Appellant in his factum.

41. A more detailed outline of AI Canada's proposed submissions, if granted leave to intervene, is set out in the Memorandum of Argument.

III. SUMMARY

42. As a specialized centre for international human rights research and action, and as an organization with particular expertise on the death penalty and related issues, AI Canada has an interest in this appeal and will present arguments that are different from those of the parties. In my view, therefore, AI Canada can make a contribution to this appeal that will be useful to this Court in determining the questions before it.

43. Granting leave to intervene to AI Canada will not prejudice any party. AI Canada will take the record as it finds it.


44. AI Canada will seek to avoid duplication of submissions, and will abide by any schedule set by the Court.

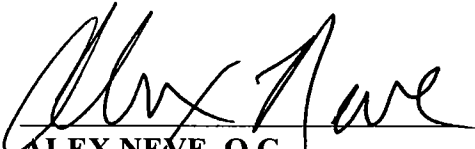
45. AI Canada seeks no costs in the proposed intervention and asks that none be awarded against it.

46. Consistent with the proper role of an intervener before this Court, AI Canada will take no position on the disposition of the appeal.

47. AI Canada respectfully requests that it be granted leave to intervene in the within appeal. It further requests leave to file a factum and to present oral argument at the hearing of this appeal.

48. I swear this affidavit in support of AI Canada's motion for leave to intervene, and for no other or improper purpose.

SWORN before me at the)
City of OTTAWA ,)
in the Province of ONTARIO ,)
this 13th day of October , 2009)
)
)
)
A Commissioner, etc.)


ALEX NEVE, O.C.

Court File No.: 32500

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

B E T W E E N:

MICHAEL JOSEPH CHARLES KARAS

Appellant

- and -

MINISTER OF JUSTICE FOR CANADA

Respondent

AFFIDAVIT OF ALEX NEVE, O.C.

(Motion to intervene; pursuant to Rule 55
of the *Rules of the Supreme Court of Canada*)

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Amnesty International (Canadian Section, English-
speaking Branch)

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

B E T W E E N:

MICHAEL JOSEPH CHARLES KARAS

Appellant

- and -

MINISTER OF JUSTICE FOR CANADA

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MEMORANDUM OF ARGUMENT

(Motion to intervene; pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*)

PART I – FACTS

A. Overview

1. In this motion, Amnesty International (“AI”) (Canadian Section, English-Speaking Branch) (“AI Canada” or “Proposed Intervener”) seeks leave to intervene in this appeal pursuant to Rule 55 of the *Rules of the Supreme Court of Canada*.

2. AI Canada brings a distinct perspective to this appeal. The issue of the death penalty has been a cornerstone issue within AI’s mandate for over three decades. AI Canada meets the test for leave to intervene. AI Canada has an interest in the subject matter arising in this appeal based on its mandate, and can provide useful and different submissions to this Honourable Court.

3. If granted leave to intervene in the appeal, AI Canada will seek to assist the Court regarding the important contribution international law can make to four critical questions arising in this appeal:

a) **FILED** this Honourable Court’s decision in *United States v. Burns* 2001 SCC 7 (“*Burns*”) require that assurances be sought by Canada and given by the

SUPREME COURT OF CANADA	OCT 14 2009	COUR SUPRÊME DU CANADA
DÉPOSÉ		

Requesting State any time that the death penalty is a possible punishment for any offences with which the Person Sought is sought for extradition?;

- b) Does *Burns* require that assurances be sought and given, not only that the death penalty will not be carried out, but also that it will not be imposed?;
- c) Can “informal” assurances, which Canada concluded that the Requesting State in this case had provided, ever be constitutionally sufficient?; and
- d) Can the legal “inability” of the Requesting State to provide assurances constitute “exceptional circumstances” as contemplated in *Burns*?

B. Description and Expertise of the Proposed Intervener

4. AI is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people’s fundamental human rights. In 1977, AI was awarded the Nobel Peace Prize for its work in promoting international human rights, including its work to end the use of the death penalty. AI has a strong record as a credible, trustworthy and objective organization that is impartial and independent. AI is financed by subscriptions and donations from its worldwide membership, and receives no government funding

Affidavit of Alex Neve, sworn October 13, 2009 (“Neve Affidavit”), at paras. 8-10, 17, 19

5. AI is accountable to its membership. There are currently close to 2 million members of AI in over 162 countries. There are more than 7,500 AI groups in more than 90 countries and territories throughout the world. In 55 countries and territories, the work of these groups is coordinated by national sections. AI Canada is one of those sections. The organizational structure of AI Canada includes a board of 12 directors elected across the country. AI Canada has a membership of approximately 60,000 people.

Neve Affidavit, at paras. 11-13

6. AI Canada shares and implements the vision of AI. AI’s vision is of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights*, and other international human rights standards. In pursuit of this vision, AI’s mandate is to conduct research and take action to prevent and end grave abuses of all human rights, and to advance and promote international human rights at both the international and national level.

Neve Affidavit, at paras. 14-15

7. AI's research is recognized around the world as accurate, unbiased, and credible, and has been used by Canadian courts and tribunals. Based on its research, AI publishes reports, briefing papers, newsletters and campaigning materials. Amongst its publications is the annual *Amnesty International Report* on human rights conditions in countries around the world.

Neve Affidavit, at paras. 16-19

8. In addition to the extensive research and reports, AI Canada has contributed its expertise to several domestic legal proceedings and other international proceedings concerning Canada. For example, this Honourable Court has granted leave to intervene to AI Canada at least eight appeals, including three cases which concerned the death penalty and related issues: *Burns, supra*; *Reference Re Ng Extradition (Can.)*, [1991] 2 S.C.R. 858; and *Kindler v. Canada (Minister of Justice)*, [1991] 2 S.C.R. 779.

Neve Affidavit, at paras. 20-24

9. The international abolition of the death penalty has been a cornerstone issue within AI's mandate. Consistent with AI's mission, AI seeks the abolition of the death penalty on the grounds that it violates the most fundamental of human rights: the right to life, and the right to be free from cruel, inhuman or degrading treatment or punishment.

Neve Affidavit, at paras. 25

10. For over 30 years, AI has advocated for the total abolition of the death penalty in judicial, legislative and international fora around the world.

Neve Affidavit, at para. 26

11. AI and AI Canada have developed significant and unique expertise on the death penalty and related issues, including assurances. Resources and reports are published on AI's website and include an online library of reports and news releases relating to the death penalty and related issues arising around the world. At AI's International Secretariat office, there is a team of AI researchers devoted to research on the death penalty and related issues, including assurances, death row conditions, and country-specific information on these issues. In addition, AI Canada works with two researchers who also have established expertise on the death penalty and related issues.

Neve Affidavit, at paras. 27-34

12. AI monitors the death penalty and the conditions of death row in Thailand, where it has an office. AI Thailand maintains a website with links to that office's reports relating to the death penalty in Thailand, among other issues.

Neve Affidavit, at paras. 35-36

PART II – POINTS IN ISSUE

13. The sole issue to be determined in this motion is whether AI Canada should be granted leave to intervene in the within appeal.

PART III – ARGUMENT

A. Test for Leave to Intervene

14. It is submitted that AI Canada meets the test for leave to intervene. It has an interest in the subject matter of this appeal and can provide useful and different submissions to this Honourable Court.

Reference Re Workers' Compensation Act, 1983 (Nfld.) (Application to Intervene), [1989] 2 S.C.R. 355 at 339

R. v. Finta, [1993] 1 S.C.R. 1138 at 1142

15. In *Canadian Council of Churches v. Canada*, Cory J. made the following observations on behalf of the Court:

Public interest organizations are, as they should be, frequently granted intervener status. The views and submissions of interveners on issues of public importance frequently provide great assistance to the courts.

Canadian Council of Churches v. Canada (Minister of Employment and Immigration), [1992] 1 S.C.R. 236 at 256

B. AI Canada's Interest in this Appeal

16. AI Canada relies on the unique contribution it can make as a result of its demonstrated expertise on the death penalty and related issues and the interest that AI Canada has in this appeal based on its mandate to promote compliance with international human rights norms. It is

submitted that this contribution will be useful and different from those of the parties, and will assist this Honourable Court in determining the issues before it.

17. Such assistance would prove valuable in this appeal given that this Honourable Court has, wherever possible, “sought to ensure consistency between its interpretation of the *Charter*, on the one hand, and Canada’s international obligations and the relevant principles of international law, on the other.”

R. v. Hape [2007] 2 S.C.R. 292, at para. 55

18. This Honourable Court has also repeatedly expressed the view that the *Charter* generally should be presumed to provide protections at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified (see, for example, *Hape, supra*, at para. 55). The inter-relationship between international human rights law and the *Charter*, and the obligations of the Canadian government where a Canadian citizen potentially faces the death penalty if extradited, are at the heart of this appeal.

19. If granted leave to intervene, AI Canada intends to rely on its unique perspective and established expertise to make submissions that will be different from, and broader than, those of the parties.

C. Outline of Proposed Submissions

20. If granted leave to intervene, AI Canada proposes to make the following submissions, which are set out below in outline form:

- a) Consistent with Canada’s obligations under international law and the *Charter*, Canada is constitutionally required to seek assurances in all but exceptional cases that the death penalty will not be imposed, following this Honourable Court’s analysis in *Burns, supra*. This is consistent with developments since that case: for example, in 2005, Canada sponsored and voted in favour of a U.N. Human Rights Commission resolution calling on abolitionist states to request assurances “to reserve explicitly the right to refuse extradition in the absence of effective assurances from relevant authorities of the requesting state”;

- b) An assurance must include not only that the death penalty will not be imposed, but also that it will not be sought. Section 7 of the *Charter* protects the right to life *and* the right to be free from cruel, inhuman or degrading treatment or punishment. Section 7 must, therefore, encompass protection against the sentence itself, and not only against the carrying-out of that sentence. Where a person extradited from Canada is sentenced to death and an assurance has been provided by the requesting state that the execution will not be carried out, that individual may still suffer a violation of section 7 due to the “death row phenomenon”, and the uncertainty that the executive of the day will respect and give effect to the assurance;
- c) Developments in Canada since *Burns* affirm Canada’s rejection of the death penalty. For example:
- i. In 2004, Canada implemented the Safe Third Country Agreement with the United States, declaring that no asylum seeker will be refused entry to Canada who has been charged or convicted in the U.S. or third country with an offence that could subject the asylum seeker to the death penalty. The accompanying legislative analysis notes that these provisions “support the long-standing practice not to return persons to a country where they may face the death penalty”;
 - ii. In 2005, Canada ratified the *International Covenant on Civil and Political Rights Second Optional Protocol*, binding Canada to the total abolition of the death penalty;
 - iii. In 2007, Canada adopted U.N. General Assembly resolution calling for a worldwide moratorium on executions;
 - iv. In 2008, Canada adopted the follow-up resolution from the 2007 UN General Assembly resolution on the death penalty;
- d) Declining to request anything short of effective assurances that the death penalty will neither be sought nor imposed is consistent with Canada’s abolitionist

position on the death penalty. “Informal” assurances cannot suffice to protect the rights of a person sought under s. 7 of the *Charter*. An “informal” assurance is unenforceable by Mr. Karas, potentially leaving him without recourse to a change of mind by the executive of the day. In the case at bar, the fact alleged by the Minister that the King has never refused a pardon when clemency was sought by a formal government does not constitute an “informal” assurance in any event; it does not constitute an assurance at all.

- e) It is an impermissible dilution of the protections afforded by section 7 of the *Charter*, as interpreted by *Burns*, to engage in any weighing of the risk of whether the death penalty would be imposed. If a sentence of death is a possible outcome, assurances must be obtained; and
- f) The legal “inability” of a state to provide assurances cannot constitute an “exceptional circumstance” to the general rule that assurances must be obtained from the requesting state where the person sought could face the death penalty. Were Canada to accept the position that a requesting state is legally “unable” to provide assurances, it would promote the fallacy that a state is without the power to change its own laws and would seriously undermine Canada’s continued entrenchment of its abolitionist position.

D. The Role of the Proposed Intervener

21. Consistent with the proper role of an intervener before this Honourable Court, AI Canada will take no position on the disposition of the appeal.

22. Granting leave to intervene to AI Canada will not prejudice any party. AI Canada will take the record as it finds it. AI Canada will seek to avoid duplication of submissions, and will abide by any schedule set by the Court.

PART IV – COSTS

23. AI Canada seeks no costs and respectfully requests that none be awarded against it.

PART V – ORDER REQUESTED

24. For these reasons, AI Canada respectfully requests that it be granted:
- a) leave to intervene in the within appeal;
 - b) leave to file a factum in accordance with Rules 37 and 42 of no more than 15 pages in length;
 - c) leave to make oral argument at the hearing of this appeal; and
 - d) such further or other order as the said judge may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

D A T E D this 14th day of **O c t o b e r**, 2009.


JOHN NORRIS


BRYDIE BETHELL

Of Counsel for the Proposed Intervener,
Amnesty International (Canadian Section, English-
Speaking Branch)

PART VI – TABLE OF AUTHORITIES

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1. *Reference Re Workers' Compensation Act, 1983 (Nfld.) (Application to Intervene)*, [1989] 2 S.C.R. 355 14
2. *R. v. Finta*, [1993] 1 S.C.R. 1138 14
3. *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236 15
4. *R. v. Hape* [2007] 2 S.C.R. 292 17-18

PART VII – STATUTES AND REGULATIONS

Rule 47 and 55 of the *Rules of the Supreme Court of Canada*, SOR/2002-156:

47. (1) Unless otherwise provided in these Rules, all motions shall be made before a judge or the Registrar and consist of the following documents, in the following order:

(a) a notice of motion in accordance with Form 47;

(b) any affidavits;

(c) if considered necessary by the applicant, a memorandum of argument in accordance with paragraph 25(1)(f), with any modifications that the circumstances require;

(d) the documents that the applicant intends to rely on, in chronological order, in accordance with subrule 25(3); and

(e) a draft of the order sought, including costs. SOR/2006-203, s. 22(1).

(1.1) An originating motion shall include, after the notice of motion,

(a) a certificate in Form 25B that

(i) states whether there is a sealing order or ban on the publication of evidence or the names or identity of a party or witness, gives the details of the sealing order or ban, if any, and includes a copy of any written order, and

(ii) states whether there is any confidential information on the file that should not be accessible to the public by virtue of specific legislation and includes a copy of the provision of the legislation; and

(b) if a judge's previous involvement or connection with the case would result in it being inappropriate for that judge to take part in the adjudication on the proceedings in the Court, a certificate in Form 25C setting out the issues. SOR/2006-203, s. 22(2).

(2) Parts I to V of the memorandum of argument shall not exceed 10 pages.

(3) There shall be no oral argument on the motion unless a judge or the Registrar otherwise orders.

[...]

55. Any person interested in an application for leave to appeal, an appeal or a reference may make a motion for intervention to a judge.

47. (1) Sauf disposition contraire des présentes règles, toute requête est présentée à un juge ou au registraire et comporte dans l'ordre suivant :

a) un avis de requête conforme au formulaire 47;

b) tout affidavit;

c) si le requérant le considère nécessaire, un mémoire conforme à l'alinéa 25(1)*f*), avec les adaptations nécessaires;

d) les documents que compte invoquer le requérant, par ordre chronologique, compte tenu du paragraphe 25(3);

e) une ébauche de l'ordonnance demandée, notamment quant aux dépens. DORS/2006-203, art. 22(1).

(1.1) La requête introductive d'instance comporte, à la suite de l'avis de requête :

a) une attestation conforme au formulaire 25B :

(i) indiquant s'il existe une ordonnance de mise sous scellés ou une obligation de non-publication de la preuve ou du nom ou de l'identité d'une partie ou d'un témoin, donnant les détails de l'ordonnance ou de l'obligation et incluant une copie de toute ordonnance écrite,

(ii) indiquant si le dossier comporte des renseignements confidentiels auxquels, aux termes de dispositions législatives particulières, le public ne doit pas avoir accès et incluant une copie des dispositions législatives;

b) dans le cas où il ne serait pas indiqué que le juge prenne part à la décision de la Cour en raison de sa participation antérieure à l'affaire ou de l'existence d'un lien entre lui et celle-ci, une attestation conforme au formulaire 25C énonçant les questions soulevées. DORS/2006-203, art. 22(2).

(2) Les parties I à V du mémoire de la requête comptent au plus dix pages.

(3) Sauf ordonnance contraire d'un juge ou du registraire, aucune plaidoirie orale n'est présentée à l'égard de la requête.

[...]

55. Toute personne ayant un intérêt dans une demande d'autorisation d'appel, un appel ou un renvoi peut, par requête à un juge, demander l'autorisation d'intervenir.