

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JENNIFER TANUDJAJA, JANICE ARSENAULT, ANSAR MAHMOOD,
BRIAN DUBOURDIEU, CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

Applicants

- and -

ATTORNEY GENERAL OF CANADA and
ATTORNEY GENERAL OF ONTARIO

Respondents

APPLICATION UNDER Rule 14.05(3)(g.1) of the *Rules of
Civil Procedure*, R.R.O. 1990, O. Reg. 194 and under the
Canadian Charter of Rights and Freedoms

**FACTUM OF THE INTERVENOR, AMNESTY CANADA/ESCR-NET COALITION
(RESPONDENTS' MOTION TO DISMISS THE APPLICATION)**

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PART I - OVERVIEW

1. Amnesty International Canada (“Amnesty Canada”) and the International Network for Economic, Social & Cultural Rights (“ESCR-Net”) (collectively, “the Coalition”) have been granted leave to intervene in the Respondents’ motions to strike the Amended Notice of Application and dismiss the application.
2. The Coalition is intervening solely with respect to the relevance of international human rights law to the interpretation of sections 7 and 15 of the *Charter*. The impact of Canada’s international human rights commitments on the scope of the *Charter* provisions at issue is relevant to the Court’s determination of whether it is plain and obvious that this application cannot succeed.
3. In brief, the Coalition’s submissions proceed as follows. First, two general principles of international law must inform the Court’s analysis of *Charter* rights in this case – 1) interpretive consistency, the robust obligation to interpret domestic statutes consistently with international law, and 2) indivisibility, the recognition that all human rights have equal status, and that denying one right invariably compromises the enjoyment of other right. Second, the right to adequate housing is protected by many international treaties that Canada has ratified. Under these instruments, Canada is obliged to both ensure the progressive realization of this right, and guarantee access to effective remedies when violations occur. United Nations sources have both recognized the role of the courts in ensuring the realization of all human rights and criticized Canada’s compliance with its international obligations to ensure effective remedies for those who are homeless or inadequately housed. Third, the approach adopted in other common law jurisdictions is relevant to assessing the justiciability of the Applicant’s claims.
4. International human rights law and jurisprudence support the justiciability of the matters raised in the application. Looking beyond the Applicants’ and other intervenors’ submissions with respect to the domestic jurisprudence relevant to the motions to dismiss the application, Canada’s international obligations to ensure access to effective remedies for violations of all human rights are relevant to the consideration of the scope of the *Charter* protections in the present case and require a complete evidentiary and legal record before a final disposition can be fairly made. The courts’ role in ensuring access to justice for all members of society, a

prominent responsibility both in Canada and at the international level, requires in this case that the application proceed to a full hearing on the merits.

PART II - FACTS

The application

5. The Applicants seek a declaration that the federal and provincial governments have violated their constitutional obligations to effectively address homelessness and inadequate housing in Canada and Ontario. The Applicants seek an order requiring the governments to develop strategies to reduce and eventually eliminate homelessness and inadequate housing.

Amended Notice of Application (“NOA”), paras. a-e, Motion Record of the Applicants (“Record”), Tab I

6. The application refers to Canada’s obligations under international human rights law as an important indication of the scope and content of *Charter* rights and values. The Applicants have not asked the Court to adjudicate whether a free-standing right to adequate housing under international human rights law has been infringed, but whether state actions in respect of housing programs and strategies violate sections 7 and 15 of the *Charter*.

NOA, paras. 6, 34-37, Record, Tab I

The Respondents’ motions

7. The Respondents have both brought motions to strike out the Amended Notice of Application and dismiss the application on the basis that it does not disclose a reasonable cause of action. The Respondents characterize the application as an improper attempt to “constitutionalize a right to housing and income supports for housing.”

Factum of the Attorney General of Canada (“AGC Factum”),
December 5, 2012, paras. 2-39

Factum of the Attorney General of Ontario (“AGO Factum”),
January 16, 2013, paras. 2-57, pp. 72-92

8. The Attorney General of Canada accepts that international law may be a relevant and persuasive source for interpreting the *Charter*, but asserts that international law cannot be used to rewrite the text of the constitution to add new rights. Similarly, the Attorney General of

Ontario accepts that international human rights instruments may be used by courts to interpret *Charter* rights, but contests that such documents can impose positive obligations on governments unless they are explicitly incorporated into domestic legislation.

AGC Factum, para. 40

AGO Factum, para. 49

PART III – ISSUE AND ANALYSIS

Issue

9. The issue to be determined on these motions is whether the application should be dismissed on the basis that it discloses no reasonable cause of action. The Amnesty/ESCR-Net Coalition adopts, and will not repeat, the Applicants' submissions with respect to the test for striking out a pleading pursuant to Rule 21.01(1)(b).

Applicants' Factum, April 8, 2013, paras. 34-38

10. In these submissions, the Coalition seeks to assist the Court by demonstrating how international human rights norms and treaties inform the scope of the rights guaranteed by sections 7 and 15 of the *Charter*. The question before the Court on these motions is not whether a right to adequate housing is justiciable in and of itself, but whether it is plain and obvious that the *Charter* cannot be interpreted to protect against the violations alleged in the notice of application. Canada's international treaty obligations to ensure both the progressive realization of human rights and access to effective remedies for violations support the justiciability of the Applicants' claims.¹

11. The Coalition will address the following issues:

- (a) Relevant international human rights law principles. The principles of interpretive consistency and indivisibility are relevant to the Court's determination of the scope of rights protected by the *Charter* and the justiciability of the Applicants' claims.

¹ The Coalition adopts the definition of justiciability set out in Justice Lederer's April 3, 2013 reasons on the motions for leave to intervene: "subject to trial in a court of law."

- (b) Canada's obligations under international human rights law with respect to the right to adequate housing. The right to adequate housing is protected under international human rights treaties that Canada has ratified. Canada is obliged to ensure the progressive realization of this right, and to ensure access to effective remedies for violations thereof. The courts play a critical role in ensuring Canada's compliance with its international human rights commitments and affording vulnerable groups access to justice; and
- (c) Relevant international jurisprudence and comparative law. Canadian courts have recognized the importance of interpreting international treaties consistently with other signatory nations. The approach taken by foreign courts to the justiciability of social and economic rights pursuant to domestic constitutional protections is relevant to this Court's determination of the Respondents' motions.

12. On the basis of these international human rights norms and sources, the Coalition submits that the application is justiciable, and that the Respondents' motions to strike the claim should therefore be dismissed.

General international human rights law principles and the interpretation of the *Charter*

13. Two general principles of international human rights law are imperative to an understanding of the impact of Canada's international human rights obligations on the Court's interpretation of the scope of *Charter* rights and the justiciability of the Applicants' claims. The principle of interpretive consistency and the principle of indivisibility of all human rights are relevant to the Court's determination of whether it can be plain and obvious that the application discloses no reasonable cause of action. These principles are discussed in turn below.

The principle of interpretive consistency

14. As outlined in the Applicants' factum, the Supreme Court of Canada has established that *Charter* rights must be interpreted consistently with Canada's international human rights obligations. This principle of interpretive consistency is also required under international law. *The Vienna Convention on the Law of Treaties* declares that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

Applicants' Factum, paras. 77-78

Vienna Convention on the Law of Treaties, 14 October 1970, 1155
U.N.T.S. 331, Article 26 (entered into force 27 January 1980),
Coalition Book of Authorities (“BOA”), Tab 1

15. The Committee on Economic, Social and Cultural Rights (CESCR) – a body of independent experts that monitors states’ implementation of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* – has issued guidance on what this principle requires in practice. When a court is faced with a choice between an interpretation of domestic law that would place the State in breach of the Covenant and one that would enable the State to comply with the Covenant, international law requires the choice of the latter. The CESCR requires that domestic guarantees of equality and non-discrimination be interpreted, to the greatest extent possible, to facilitate the full protection of all human rights, rather than to facilitate an unwarranted distinction between civil/political and socio-economic rights, a matter which is further discussed below.

UN Economic and Social Council, *Comment 9: The Domestic Application of the Covenant*, UN Doc. E/C.12/1998/24 (1998),
para. 15 [*CESCR Comment 9*], BOA, Tab 2

16. Courts bear a responsibility to interpret statutes and develop the common law in a manner that complies with the State’s obligations under the *ICESCR*. The CESCR cautions that “neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.” Canadian courts are responsible for ensuring that the *Charter’s* recognition of the rule of law as a founding principle is respected.

UN Economic and Social Council, *Comment 9: The Domestic Application of the Covenant*, UN Doc. E/C.12/1998/24 (1998),
para. 14 [*CESCR Comment 9*], BOA, Tab 2

Canadian Charter of Rights and Freedoms, Constitution Act,
1982, 1982, c. 11 (U.K.), Schedule B, Part I, [*Charter*], Schedule
A

17. The Supreme Court’s application of the interpretive consistency principle has been no less robust. The Court has characterized the *Charter* as the primary vehicle through which international human rights achieve domestic effect, and affirmed the presumption that its provisions provide at least the same level of protection as Canada’s international human rights

commitments. Former Chief Justice Lamer described the *Charter* as the domestic analogue to international human rights treaties and indicated that it should therefore be interpreted in a way that conforms to Canada's international obligations. Thus, a court charged with determining a case involving *Charter* rights and values should consider whether its interpretation of the provisions at issue is consistent with the international human rights treaties to which Canada is a signatory.

R. v. Ewanchuk, [1999] 1 SCR 330, para. 73, BOA, Tab 3

Re Public Service Employee Relations Act [1987] 1 SCR 313 at para. 59, BOA, Tab 4

Rt. Hon. Antonio Lamer, "Enforcing International Human Rights Law: The Treaty System in the 21st Century", in A.F. Bayefsky, ed., *The UN Human Rights Treaty System in the 21st Century* (London: Kluwer, 2000) pp. 305, 311, BOA, Tab 46

18. In *Slaight Communications*, the Supreme Court considered the right to work, an entitlement protected under the *ICESCR* but not explicitly guaranteed by the *Charter*. The majority ruled that many diverse values deserve protection in Canadian society, only some of which are expressly provided for in the *Charter*. The inherent dignity of the person and a commitment to social justice and equality are among the essential values underlying the *Charter* as a whole. The Supreme Court held that Canada's ratification of the *ICESCR* and commitment to protect the rights therein demonstrated that social and economic rights are very important objectives to be considered in *Charter* interpretation. The Court confirmed that Canada's human rights obligations are important indicia of the scope of *Charter* protection. Subsequently, in *Keegstra*, Chief Justice Dickson declared that Canada's international human rights obligations generally reflect the values and principles that underlie the *Charter* itself.

Slaight Communications v. Davidson, [1989] 1 SCR 1038, pp. 1056-7, BOA, Tab 5

R. v. Keegstra, [1990] 3 S.C.R. 697 at p. 750, BOA, Tab 6

19. Similarly, in *Baker*, the Supreme Court considered the relevance of the *Convention on the Rights of the Child (CRC)* to assessing the reasonableness of an immigration officer's discretionary decision. The statute to be interpreted, the *Immigration Act*, did not expressly incorporate the language of Canada's international obligations under the *CRC*, such as the

requirement to consider the best interests of the child in making decisions under the *Act*. Justice L'Heureux-Dubé affirmed for the majority that the values reflected in international human rights law may help inform a court's contextual approach to statutory interpretation. Indeed, the Court recognized that international human rights law is "a critical influence on the interpretation of the scope of the rights included in the *Charter*." The Court found, based on a review of international instruments among other sources, that the interests and needs of children are central humanitarian values in Canadian society, thus they should be considered in reaching decisions under the *Act* even though not explicitly required in the legislation.

Baker v. Canada (Minister of Citizenship and Immigration), [1999]
2 SCR 817, [*Baker*], paras. 67, 70, BOA, Tab 7

20. The Canadian government has repeatedly proclaimed its acceptance of the principle of interpretive consistency to the international community, and confirmed that the *Charter* is Canada's tool for protecting the rights guaranteed by the *ICESCR*. These representations are relevant to the Court's determination of the Respondents' motions to dismiss the application. For example, in a housing rights case before the British Columbia Supreme Court, the court cited the government's public affirmations at length:

[98] The federal government has expressed the view that s. 7 of the Charter must be interpreted in a manner consistent with Canada's obligations under the Covenant to not deprive persons of the basic necessities of life, in its response to a question from the Committee on Economic, Social, and Cultural Rights:
Summary Record of the 5th Meeting, ESC, 8th Sess., 5th Mtg., U.N. Doc. E/C.12/1993/SR.5 (25 May 1993). The question arose from the report submitted to the Committee by Canada in 1993, pursuant to its Covenant obligations. The federal government assured the Committee at para. 21 that:

While the guarantee of security of the person under section 7 of the Charter might not lead to a right to a certain type of social assistance, it ensured that persons were not deprived of the basic necessities of life.

[99] This position was again asserted in 1998: Government of Canada "Federal Responses", Review of Canada's Third Report on the Implementation of the International Covenant on Economic, Social, and Cultural Rights (November 1998) online: Canadian Heritage, Human Rights Program, <http://www.pch.gc.ca/progs/pdp-hrp/docs/cesc/responses/fd_e.cfm>. The Committee asked whether the answer given in 1993 was still the position of all Canadian governments. In reply, the federal government gave the following answer at Question 53:

The Supreme Court of Canada has stated that section 7 of the Charter may be interpreted to include the rights protected under the Covenant (see decision of *Slaight Communications v. Davidson* 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038). The Supreme Court has also held section 7 as guaranteeing that people are not to be deprived of basic necessities (see decision of *Irwin Toy v. A.-G. Québec*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927). The Government of Canada is bound by these interpretations of section 7 of the Charter. [Emphasis added]

Victoria (City) v. Adams, 2008 BCSC 1363 at paras. 98-99, 161-162, BOA, Tab 8

21. The claims advanced in the Respondents' motions to dismiss the application are inconsistent with Supreme Court precedent and the Federal Government's representations to the international community with respect to interpretive consistency. At the international level, Canada has accepted that the scope of *Charter* protection may extend to economic, social and cultural rights. Some aspects of this application raise novel claims regarding the scope of sections 7 and 15. However, the potential novelty of the application does not diminish the relevance of the recognition by the Supreme Court and the Federal Government that the *Charter* must be interpreted consistently with international obligations generally and *ICESCR* rights specifically. On the contrary, a court faced with a potentially novel *Charter* claim should be even more conscious of its duty to interpret domestic laws consistently with Canada's international obligations.

The principle of the indivisibility of all human rights

22. In 1948, Canada played a central role in drafting the *Universal Declaration of Human Rights (UDHR)*, which was the first global, comprehensive declaration on the fundamental rights to which every human being is entitled. The *UDHR* made no distinctions between the body of rights known as economic, social and cultural entitlements (such as the right to adequate housing) and those classified as civil and political (such as the right to life). The *UDHR* embodies the principle of indivisibility: that all human rights are equal and intrinsically interconnected. Violations of economic and social rights can lead to denials of other fundamental rights, and vice versa. For example, as the Office of the United Nations High Commissioner for Human Rights (OHCHR) observed, failing to protect a woman's right to adequate housing can

exacerbate her vulnerability to domestic violence, since she will be faced with a choice between remaining in an abusive relationship or becoming homeless.

OHCHR, *Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights*, [OHCHR Fact Sheet], p. 4, BOA, Tab 9

23. In the decades following the proclamation of the *UDHR*, in the context of the Cold War, a perceived division between the two sets of rights emerged. The free market economies of the West prioritized civil and political rights, while the Eastern bloc's centrally planned economies placed a greater emphasis on economic, social and cultural rights. In 1966, at the height of the Cold War, two covenants were negotiated and adopted, each focused on the protection of certain rights: the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*.

OHCHR Fact Sheet, p. 9, BOA, Tab 9

24. One commonly advanced argument for distinguishing social and economic rights from civil and political rights was that the former require high levels of state investment ("positive obligations"), while the latter are characterized as simply obliging the state to refrain from interfering with individual freedoms ("negative obligations"). This is a false dichotomy. For instance, the right to a fair trial has enormous resource implications for the state (such as establishing and maintaining effective law enforcement and judicial systems, and providing adequate legal aid), whereas the right to seek work of one's choice merely requires that the state refrain from interference in this realm. All human rights require freedom from state action as well as freedom through positive state action, depending on the particular circumstances in which the rights are engaged.

OHCHR Fact Sheet, pp. 2, 9, BOA, Tab 9

25. Over the past few decades, the inflexible, Cold War-era dichotomy has been discredited. As expressed by the OHCHR, "there has been a return to the original architecture of the *Universal Declaration [of Human Rights]*." Likewise, the 1993 World Conference on Human Rights in Vienna declared: "all human rights are universal, indivisible and interdependent and interrelated" and "the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."

OHCHR Fact Sheet, pp. 7, 9, BOA, Tab 9

26. Former Supreme Court Justice and UN High Commissioner on Human Rights Louise Arbour has noted that even in the world's most prosperous countries, poverty and gross inequalities contribute to conditions that amount to a denial of economic, social, civil, political and cultural human rights for many individuals and groups. Social and economic inequalities affect access to public life and access to justice, and a human being's fundamental freedoms cannot be arbitrarily divided into those that are justiciable and those that cannot be protected by the courts. Justice Arbour has stated that it is essential that legal processes permit individuals to pursue their human rights entitlements so that human rights have meaning for those most at the margins. The role of the courts has long included extending access to justice for members of marginalized communities; the indivisibility of human rights does not support curtailing the role of the judiciary in ensuring domestic realization of one category of human rights.

OHCHR Fact Sheet, p. 5, quoting Louise Arbour, UN High Commissioner for Human Rights, Geneva, January 14, 2005, BOA, Tab 9

Louise Arbour, UN High Commissioner for Human Rights, "LaFontaine-Baldwin Lecture: Freedom from Want – From Charity to Entitlement," March 3, 2005, BOA, Tab 10

27. The CESCR has also highlighted that the indivisibility of human rights extends to the obligation to provide access to effective remedies for violations. It is widely accepted, in Canada and internationally, that domestic judicial remedies for violations of civil and political rights are essential. The CESCR has warned against any division of rights which puts economic, social and cultural rights, by definition, beyond the reach of the courts. Such a distinction would be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society. The CESCR has specifically addressed the suggestion that matters involving the allocation of resources should be left to political authorities rather than courts. It clarified that "while the general approach of each legal system needs to be taken into account, there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions...while the respective competences of the various branches of government must be respected, it is

appropriate to acknowledge that courts are generally already involved in a considerable range of matters which have important resource implications.”

CESCR Comment 9, para. 10, BOA, Tab 2

28. Courts must consider the interdependency and indivisibility of all fundamental human rights when interpreting the scope of *Charter* provisions. As explained above, violations of economic and social rights can lead directly to violations of other fundamental entitlements. In *Lyons*, Justice La Forest considered the indivisibility of *Charter* protections to be a “rather obvious point” and affirmed that these rights and freedoms “are not insular and discrete [but rather] a complex of interacting values.” Justice La Forest cautioned against overlooking “the importance of appreciating the manner in which the amplification of the content of each enunciated right and freedom imbues and informs our understanding of the value structure sought to be protected by the *Charter* as a whole...” In light of the need for government action and inaction in order to ensure the realization of any human right, courts should be wary of assertions of non-justiciability that are dependent upon classifying certain categories of government responsibilities as positive obligations, and others as negative obligations.

R. v. Lyons, [1987] 2 SCR 309, p. 326, BOA, Tab 11

29. This Court is required – by Canadian and international legal principles – to remain mindful of the values reflected in the international commitments made by the other branches of government when considering the scope of the *Charter*’s protections of the right to life and freedom from discrimination. This domestic recognition of international norms and principles militates against a finding that the application raises no reasonable cause of action. The interpretive principles discussed above demonstrate that it is far from plain and obvious, when considering both domestic jurisprudence and international human rights law, that the Applicants’ *Charter* claims could not succeed.

Canada’s obligations under international human rights law with respect to the right to adequate housing

30. The *Universal Declaration of Human Rights* affirms that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,

including...housing...” Furthermore, at least six international human rights treaties ratified by Canada contain guarantees related to the right to adequate housing:

- (a) The *International Covenant on Economic, Social and Cultural Rights (ICESCR)* requires governments to “take appropriate steps to ensure the realization” of “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”
- (b) The *Convention on the Elimination of Racial Discrimination* recognizes the right of everyone, without distinction as to race, colour, or national or ethnic origin, to enjoy, inter alia, the right to housing, and the right to social security and social services.
- (c) The *Convention on the Rights of Persons with Disabilities* not only guarantees a general right to non-discrimination, including the right to reasonable accommodation of disabilities, but also guarantees the right to an adequate standard of living, to adequate housing and to measures of social protection, as stand-alone economic and social rights of persons with disabilities.
- (d) The *Convention on the Rights of the Child* obligates States to “recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”
- (e) The *Convention on the Elimination of All Forms of Discrimination Against Women* imposes the obligation to ensure that women in rural areas “enjoy adequate living conditions, particularly in relation to housing.”
- (f) The *International Covenant on Civil and Political Rights (ICCPR)* guarantees the right to life. In 1982, the UN Human Rights Committee (which oversees the implementation of the ICCPR) clarified that the right to life is too often narrowly interpreted. The Committee has affirmed that protecting the right to life can require the State to adopt positive measures to alleviate poverty and homelessness.

Universal Declaration of Human Rights, UNGA Res. 217(III) (1948), Article 25, [“*Universal Declaration of Human Rights*”], BOA, Tab 12

International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 (entered into force 3 January 1976), [ICESCR], Article 11(1), BOA, Tab 13

Convention for the Elimination of All Forms of Racial Discrimination, 660 UNTS 195 (entered into force 4 January 1969), Article 5(e)(iii), BOA, Tab 14

Convention on the Rights of the Child, 1577 UNTS 3 (entered into force 2 September 1990), Article 27, BOA, Tab 15

Convention on the Rights of Persons with Disabilities, UNGA Res. 61/106 (2007), Article 28, BOA, Tab 16

Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13 (entered into force 3 September 1981), Article 14(2)(h), BOA, Tab 17

International Covenant on Civil and Political Rights, 999 UNTS 171 (entered into force 23 March 1976), Article 6, BOA, Tab 18

UN Human Rights Committee, *CCPR General Comment 6: The right to life* (30 April 1982), para. 5, BOA, Tab 19

UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/79/Add.105 (7 April 1999), para. 12, [UNHRC: *Conclusions on Canada*], BOA, Tab 20

31. Internationally, the *ICESCR* is the most significant and longstanding instrument for the protection of the right to adequate housing; Canada ratified the *Covenant* in 1976. The *CESCR* has provided a comprehensive definition of the right to adequate housing:

In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. [Emphasis added]

This definition highlights the indivisibility of social and economic rights from other fundamental rights, as discussed above. In light of this definition, homelessness should be understood, as the Special Rapporteur on Adequate Housing affirmed, as “perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing.”

UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, UN Doc. E/1992/23 (13 December 1991), para. 7, [“CESCR Comment 4”], BOA, Tab 21

UN Special Rapporteur on Adequate Housing, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, U.N. Doc. E/CN.4/2005/48 (2005), p. 2, BOA, Tab 22

Canada must ensure the progressive realization of all human rights

32. As a signatory, Canada is obliged to ensure the progressive realization of the rights protected by the *International Covenant on Economic, Social and Cultural Rights*. Article 2(1) requires governments to take steps, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the *Covenant*.

ICESCR, Article 2(1), BOA, Tab 13

33. In its assessment of the nature of the duties set out in this provision, the CESCR recognizes that although the full realization of the Covenant’s rights does not have to be achieved instantaneously, the State *is* required to take immediate, concrete, and deliberate steps towards reaching the goal of complete realization. States are granted some flexibility in discharging this duty, in order to reflect the realities and difficulties associated with implementing full protection of these rights. However, this flexibility must be seen in light of the *raison d’être* of the *ICESCR*, which is to establish clear obligations for States parties to fully realize economic, social and cultural rights.

Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties Obligations (Art. 2, par.1)*, 5th Session (12/14/1990), paras. 2, 9, [“CESCR Comment 3”], BOA, Tab 23

34. In respect of the right to adequate housing, the CESCR has stated that the *ICESCR* “clearly requires that each State party take whatever steps are necessary” and that this “will almost invariably require the adoption of a national housing strategy.” In their development of such a strategy, States are also required to encourage the participation of groups affected by inadequate housing.

CESCR Comment 4, para. 12, BOA, Tab 21

35. The CESCR has stated that even where a State's available resources are demonstrably inadequate, it is nonetheless obliged to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. States must in all circumstances monitor the extent of the realization or non-realization of economic, social and cultural rights, and devise strategies and programs for their promotion, regardless of resource constraints. The CESCR also advises that deliberately retrogressive measures must be fully justified in the context of the full use of a State's maximum available resources – otherwise, they will amount to a violation. According to the CESCR, a State in which any significant number of individuals is deprived of adequate housing is *prima facie* failing to discharge its obligations under the *ICESCR*.

CESCR Comment 3, paras. 9-11, BOA, Tab 23

Canada must ensure access to effective remedies for human rights violations

36. An integral part of Canada's international law obligations to monitor and enforce human rights is to ensure access to effective remedies when violations take place. The obligation to provide access to effective remedies applies to all human rights – civil, political, social, economic and cultural.

Universal Declaration of Human Rights, Article 8, BOA, Tab 12

37. The judicial system is integral to ensuring that the means of ensuring governmental accountability required by international human rights standards are in place and available to those whose rights are infringed. Although the obligations under the *ICESCR* may in some cases be satisfied by adopting legislative measures, the CESCR emphasizes that "all appropriate means" must be considered, including the provision of judicial remedies for the violation of economic, social or cultural rights. Some examples of domestic legal remedies envisioned by the CESCR include legal actions seeking to prevent eviction or to provide compensation following an illegal eviction; challenges to any form of discrimination in the allocation and availability of access to housing; and class action suits regarding significantly increased levels of homelessness.

CESCR Comment 3, paras. 4-5, BOA, Tab 23

CESCR Comment 4, para. 17, BOA, Tab 21

38. Domestic courts play a particularly important role in ensuring that appropriate means of redress for violations of ratified international human rights are available to members of groups that are vulnerable to discrimination and marginalized from the democratic process. The CESCR has specifically encouraged Canadian courts to continue to adopt a broad and purposive approach to the interpretation of the *Charter* so as to provide appropriate remedies for violations of *ICESCR* entitlements in Canada.

CESCR Comment 9, paras. 2, 4, 10, BOA, Tab 2

Committee on Economic, Social and Cultural Rights, *Concluding Observations: Canada*, U.N. Doc. E/C.12/1993/5 (1993), para. 30, BOA, Tab 24

UN Special Rapporteur on Adequate Housing, *Mission to Canada*, U.N. Doc. A/HRC/10/7/Add.3 (2009), para. 29, [*UN Special Rapporteur on Adequate Housing: Canada*], BOA, Tab 25

39. The Supreme Court of Canada has affirmed that the requirement to provide and oversee the implementation of effective remedies is also recognized in domestic Canadian law. Section 24 of the *Charter* explicitly protects this right. The importance of the role of the judiciary in granting and overseeing remedies for human rights violations cannot be overstated. As the Supreme Court of Canada held:

If the ‘political branches’ are to be the ‘final arbitrator’ of compliance with the *Charter* of their ‘policy initiatives’, it would seem the enactment of the *Charter* affords no real protection at all to the rights holders the *Charter*, according to its text, was intended to benefit. *Charter* rights and freedoms, on this reading, would offer rights without a remedy by denying effective remedies.

Charter, s. 24(1), Schedule A

Newfoundland (Treasury Board) v. N.A.P.E., 2004 SCC 66, para. 111, BOA, Tab 26

40. More recently, the Federal Court of Canada confirmed that “international human rights law requires Canada to monitor and enforce individual human rights domestically, and to provide effective remedies where these rights are violated.”

Canada (Human Rights Commission) v. Canada (Attorney General), 2012 FC 445, para. 155, BOA, Tab 27

United Nations sources have raised concerns regarding Canada's compliance with its ICESCR obligations

41. According to CESCR reports, Canada is not in full compliance with its *ICESCR* obligations. As the main treaty body responsible for monitoring the implementation of social, economic and cultural rights, the CESCR periodically reviews Canada's performance. One subject of critique has been Canada's national and provincial governments' practice of the "urging upon their courts an interpretation of the *Canadian Charter of Rights and Freedoms* denying protection of [*ICESCR*] rights."

CESCR, *Concluding Observations: Canada*, E/C.12/CAN/CO/4-5 (22 May 2006), para. 11(b), [*CESCR: Canada*], BOA, Tab 28

42. Moreover, the Human Rights Committee, which oversees the implementation of the *International Covenant on Civil and Political Rights*, has criticized Canada for its inaction on homelessness. In its 1999 report on Canada's compliance with the *ICCPR*, the Committee recommended that Canada take positive measures required by article 6 (the right to life), to address the serious problem of homelessness, which has led to serious health problems and death.

UNHRC: Conclusions on Canada, para. 12, BOA, Tab 21

43. Another subject of criticism by the CESCR has been the absence of a national housing strategy. The CESCR first expressed serious concerns about the emerging problem of homelessness and inadequate housing in its 1993 review of Canada, noting the prevalence of homelessness and inadequate living conditions and evidence of families being forced to relinquish their children to foster care because of their inability to provide adequate housing. At its next periodic review in 1998, the CESCR expressed alarm that "such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's 10 largest cities have now declared homelessness a national disaster." The Committee urged Canada to adopt a strategy to address homelessness with measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards." The CESCR expressed frustration, in its subsequent review eight years later, with

Canada's failure to respond constructively to its reports and reiterated its recommendation with respect to the adoption of a housing strategy

CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, UN Doc E/C.12/1993/5 (3 June 1993), BOA, Tab 29

CESCR: Canada, paras. 24, 62, BOA, Tab 28

44. In response to these ongoing concerns from UN treaty monitoring bodies, the UN Special Rapporteur on Adequate Housing conducted a special fact-finding mission to Canada in 2007. In his 2009 report, the Special Rapporteur noted that Canada is one of the few countries in the world without a national housing strategy. The report urged the government to adopt a comprehensive and coordinated national housing policy based on the indivisibility of human rights and the protection of vulnerable groups, including measurable goals, timetables, consultation with stakeholders, complaints procedures, and transparent accountability mechanisms. The Special Rapporteur also pointed to the vital role that the *Charter* must play in protecting the right to adequate housing. The report emphasized that denying this right to marginalized groups "clearly assaults fundamental rights in the *Canadian Charter of Rights and Freedoms*, even if the *Charter* does not explicitly refer to the right to adequate housing."

UN Special Rapporteur on Adequate Housing: Canada, paras. 29, 90, BOA, Tab 25

45. As discussed above, the courts play a critical role in facilitating Canada's compliance with its international obligations, in large part by upholding the presumption that domestic law is intended to be consistent with international human rights commitments and continuing to apply an expansive approach to matters of *Charter* interpretation. Canadian courts have long accepted their duty to interpret the constitution in harmony with international law and to develop the common law in light of international human rights values and principles. Further, the Supreme Court has affirmed the role of courts as the last line of defence for citizens where governments, despite having sufficient time and recommendations for reform, have refused to develop strategies to address urgent social problems.

Gib Van Ert, *Using International Law in Canadian Courts*, 2nd ed., 2008 (Toronto: Irwin Law), pp. 132-133, [Van Ert], BOA, Tab

30, citing *R. v. Zingre*, [1981] 2 SCR 392, and *R. v. Hape*, 2007 SCC 26

Chaoulli v. Quebec (Attorney General), 2005 SCC 35, para. 96, BOA, Tab 31

Relevant international jurisprudence

46. In addition to the requirement to interpret the *Charter* in a manner consistent with international human rights treaties, Canadian courts must be mindful of the importance of consistency *across jurisdictions* in the interpretation of multilateral instruments. In the context of this application, the interpretation of international covenants recognizing the right to adequate housing in other common law countries can assist the Court in deciding the issues raised by the Respondents with respect to the justiciability of the Applicants' claims and judicial competence to order the remedies sought.

47. The Supreme Court of Canada has recognized the importance of interpreting the effect of international treaties on domestic law consistently with other international jurisprudence. Although international tribunal and foreign court decisions are not binding on Canadian courts, their treatment of international legal issues should not be disregarded by domestic courts charged with determining similar issues and interpreting the same treaties. Similarly, a Canadian court's interpretation of international law "bears some force internationally."

Mugasera v. Canada (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 100, para. 126, BOA, Tab 32

Baker, para. 70, BOA, Tab 7

Van Ert, pp. 280-281, BOA, Tab 30

R. v. Finta, [1994] 1 S.C.R. 701, pp. 761-762, BOA, Tab 33

48. Trial and appellate courts across Canada have affirmed the relevance of foreign judgments in interpreting the effect of multilateral treaties on domestic law. International treaties are negotiated by the signatory nations and intended to establish a consistent set of values for all jurisdictions. As Justice Molloy articulated in *Connaught Laboratories*, "this objective of having uniform regulations... would be seriously weakened if the courts of every country interpreted the Convention without any regard to how it was being interpreted and applied elsewhere." A court tasked with determining an area of domestic law with international aspects, such as the scope of

Charter protection for internationally-recognized human rights, may find that “decisions of foreign courts on that subject are of paramount importance and should be followed wherever possible.”

Connaught Laboratories Ltd. v. British Airways (2002), 61 OR (3d) 204 (SCJ), para. 46, BOA, Tab 34, aff’d (2005), 77 OR (3d) 34 (CA)

Plourde c. Service aérien FBO inc. (Skyservice), 2007 QCCA 739, BOA, Tab 35

NV Bocimar SA v. Century Insurance Co. of Canada, [1981] FCJ No. 1033 (TD), paras. 50-52, BOA, Tab 36

49. The sections that follow contain a selection of decisions from only some of the courts in common law jurisdictions that have considered the right to adequate housing guaranteed by the international covenants described above when interpreting the scope of domestic constitutional protections.

South Africa

50. The Supreme Court of Canada has noted that the Constitutional Court of South Africa’s “constitutional values” approach to the development of the common law echoes the Canadian “*Charter* values” doctrine. In *Grant*, the SCC noted in detail the South African courts’ approach to constitutional interpretation, demonstrating the assistance that Canadian courts can draw from foreign judgments involving similar constitutional questions.

Grant v. Torstar, [2009] 3 S.C.R. 640, paras. 68, 82-84, BOA, Tab 37

51. South Africa has constitutionalized an obligation for the government to achieve the progressive realization of the right to adequate housing and other social and economic rights. However, this obligation has been interpreted and applied by courts operating within a parliamentary tradition of separation of powers similar to Canada’s and the two countries’ highest courts have ascribed similar definitions to their roles within that system. The South African view of the respective role of courts and parliament is also very similar to the Supreme Court of Canada’s approach to interpreting and applying section 1 of the *Charter*.

Government of the Republic of South Africa v. Grootboom, [2000] ZACC 19, paras. 18-19, [*Grootboom*], BOA, Tab 38

52. In the opening paragraph of its *Grootboom* decision, the South African Constitutional Court notes that access to housing engages the founding values of the South African constitutional democracy: “human dignity, the achievement of equality and the advancement of human rights and freedoms.” The Court mandated a comprehensive housing program in which each level of government was responsible for the implementation of particular parts of the program, but which held the federal government responsible for ensuring that the collection of laws, policies, programs and strategies were adequate to meet the State’s constitutional obligations. The Court clearly stated that the precise measures to be implemented were matters for the legislature and the executive. However the government had to ensure that the measures were reasonable and directed toward a progressive realization of the right of access to adequate housing within the state’s available means.

Grootboom, para. 1, 34, 38, 40-42, BOA, Tab 38

53. With regard to concerns about judicial interference with the legislature’s budgetary allocations, the South African Constitutional Court noted that many civil and political rights also give rise to budgetary implications, but that resource constraints do not compromise the justiciability of those rights. The fact that social and economic rights give rise to budgetary implications is no bar to their justiciability.

Grootboom, para. 78, BOA, Tab 38

India

54. In *McKinney*, Justice Wilson considered authority from several foreign jurisdictions in her consideration of the equality rights guaranteed by the Canadian constitution. In particular, Justice Wilson noted with interest the Supreme Court of India’s approach to a matter of constitutional interpretation similar to the issue before the Supreme Court of Canada in that case.

McKinney v. University of Guelph, [1990] 3 S.C.R. 229, pp. 406-407, BOA, Tab 39

55. The Indian constitution does not explicitly guarantee a right to adequate housing, but Indian courts have nonetheless recognized that the State has an obligation to provide adequate housing to its residents. Under the framework of the constitutional right to life, this line of jurisprudence began in 1981 with *Mullin*, in which the Supreme Court affirmed the necessity of

interpreting the right to life in a broad and expansive spirit, with the aim of affirming the dignity and worth of the human person. Likewise, in *Shantistar Builders* the Supreme Court recognized that the right to accommodation is a fundamental human need, indispensable to the fulfillment of other constitutional imperatives. More recently, the Indian Supreme Court held in *Singh* that the rights enshrined in the *Universal Declaration of Human Rights*, international conventions and under the domestic constitution, cannot be exercised when people are denied their basic human rights to food, water, decent environment, education, medical care and shelter.

Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors, 1981 SCC (1) 608, p. 528, BOA, Tab 40

Shantistar Builders v. Narayan Khimalal Totame, (1990) 1 SCC 520 (Sup. Ct. India), paras. 9, 13, BOA, Tab 41

Singh v. State of Uttar Pradesh, 1996 AIR 1051 (Sup. Ct. India), para. 8, BOA, Tab 42

56. The Indian Supreme Court has also articulated the importance of international human rights treaties and norms to the interpretation of constitutional guarantees of equality and human dignity. The Court held that any international convention consistent with those fundamental rights and harmonious with underlying constitutional values should be used to promote the meaning and content of constitutionally-guaranteed rights and freedoms.

Vishaka v. State of Rajasthan (1997), 6 SCC 241 at para. 7, BOA, Tab 43

United Kingdom

57. In the United Kingdom, which like India and Canada has not constitutionalized the right to adequate housing, the courts have found a breach of the civil and political right to be free from torture when the State failed to meet the housing needs of destitute failed asylum-seekers. In *Adam*, the House of Lords affirmed the intrinsic link between civil rights and economic and social rights. The court recognized that an imminent prospect of suffering caused or aggravated by inadequate shelter, food or the most basic necessities of life could trigger positive obligations on the government in order to respect the human rights of the applicant.

Adam, R (on the application of) v. Secretary of State for the Home Department, [2005] UKHL 66, paras. 4-8, BOA, Tab 44

Australia

58. Finally, in Australia, which has no federal human rights legislation, courts have found that the ratification of international human rights instruments imposes an obligation to construe domestic legislation and the common law consistently with the country's international obligations. In *Teoh*, the High Court of Australia affirmed that the ratification of a convention is a positive statement by the government that it will act accordingly. Echoing the Supreme Court of Canada's approach in *Baker*, the Court held that Australia's ratification of the *CRC* founded a legitimate expectation that, absent statutory or executive indications to the contrary, administrative decision-makers would give primary consideration to the best interests of children in refugee proceedings.

Minister for Immigration and Ethnic Affairs v. Teoh (1995), 128 ALR 353 (H.C.A.) at paras. 26-27, 34, 39, BOA, Tab 45

Conclusion: International Law Supports the Justiciability of the Applicants' Claims

59. The Amnesty Canada/ESCR-Net Coalition submits that Canada's international legal obligations to ensure the realization of all human rights and provide domestic remedies for their infringement require that the Court dismiss the Respondents' motions. The collection of treaty obligations, domestic case law, international law principles, and foreign jurisprudence discussed above demonstrate that it is not plain and obvious that the Applicants' claims cannot succeed.

60. The Court must consider Canada's international human rights commitments when deciding the motions to dismiss the application. In determining how those obligations inform the scope of *Charter* rights raised in the application, the Court may take guidance from the interpretive principles discussed above, the reports of international human rights treaty bodies, and the approach adopted in other common law jurisdictions. It cannot be demonstrated, having proper regard for the applicable principles of international law, that the application does not disclose a reasonable cause of action. A consistent interpretation of Canada's human rights obligations favours the justiciability of the Applicants' claims. The determination of the scope of *Charter* rights asserted in the application ought to be made on the basis of a complete evidentiary record and a full hearing on the merits.

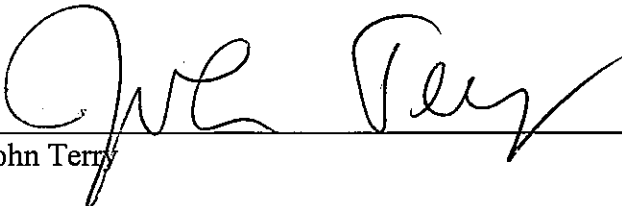
61. The Coalition submits that accepting the Respondents' articulation of the relevance of international law to *Charter* interpretation would lead to an unconscionable denial of access to justice. As set out above, both domestic and international jurisprudence support the justiciability of the Applicants' claims under sections 7 and 15 of the *Charter*. Whether the application will ultimately succeed is a matter for evidence and legal argument. However, it would be inconsistent with Canada's international human rights obligations for the Court to accept a view of the scope of *Charter* protections which shields an entire field of government action from judicial scrutiny and denies access to justice for litigants on the basis of outdated articulations of the justiciability of certain human rights. In this case, the Court must assess the Applicants' claims on their merits.

PART IV – ORDER SOUGHT


62. The Amnesty Canada/ESCR-Net Coalition requests that the Court dismiss the Respondents' motions.

63. The Coalition does not seek costs and requests that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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SCHEDULE A

1. *Vienna Convention on the Law of Treaties*, 14 October 1970, 1155 U.N.T.S. 331, (entered into force 27 January 1980)
2. UN Economic and Social Council, *Comment 9: The Domestic Application of the Covenant*, UN Doc. E/C.12/1998/24 (1998)
3. *R. v. Ewanchuk*, [1999] 1 SCR 330
4. *Re Public Service Employee Relations Act* [1987] 1 SCR 313
5. *Slaight Communications v. Davidson*, [1989] 1 SCR 1038
6. *R. v. Keegstra*, [1990] 3 S.C.R. 697
7. *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817
8. *Victoria (City) v. Adams*, 2008 BCSC 1363
9. OHCHR, *Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights*
10. Louise Arbour, UN High Commissioner for Human Rights, “LaFontaine-Baldwin Lecture: Freedom from Want – From Charity to Entitlement,” March 3, 2005
11. *R. v. Lyons*, [1987] 2 SCR 309
12. *Universal Declaration of Human Rights*, UNGA Res. 217(III) (1948)
13. *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (entered into force 3 January 1976), [ICESCR]
14. *Convention for the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195 (entered into force 4 January 1969)
15. *Convention on the Rights of the Child*, 1577 UNTS 3 (entered into force 2 September 1990)
16. *Convention on the Rights of Persons with Disabilities*, UNGA Res. 61/106 (2007)
17. *Convention on the Elimination of All Forms of Discrimination Against Women*, 1249 UNTS 13 (entered into force 3 September 1981)
18. *International Covenant on Civil and Political Rights*, 999 UNTS 171 (entered into force 23 March 1976)

19. UN Human Rights Committee, *CCPR General Comment 6: The right to life* (30 April 1982)
20. UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Canada*, CCPR/C/79/Add.105 (7 April 1999)
21. UN Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing*, UN Doc. E/1992/23 (13 December 1991)
22. UN Special Rapporteur on Adequate Housing, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, U.N. Doc. E/CN.4/2005/48 (2005)
23. Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties Obligations (Art. 2, par.1)*, 5th Session (12/14/1990)
24. Committee on Economic, Social and Cultural Rights, *Concluding Observations: Canada*, U.N. Doc. E/C.12/1993/5 (1993)
25. UN Special Rapporteur on Adequate Housing, *Mission to Canada*, U.N. Doc. A/HRC/10/7/Add.3 (2009)
26. *Newfoundland (Treasury Board) v. N.A.P.E.*, 2004 SCC 66
27. *Canada (Human Rights Commission) v. Canada (Attorney General)*, 2012 FC 445
28. CESCR, *Concluding Observations: Canada*, E/C.12/CAN/CO/4-5 (22 May 2006)
29. CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UN Doc E/C.12/1993/5
30. Gib Van Ert, *Using International Law in Canadian Courts*, 2nd ed., 2008 (Toronto: Irwin Law)
31. *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35
32. *Mugasera v. Canada* (Minister of Citizenship and Immigration), [2005] 2 S.C.R. 100
33. *R. v. Finta*, [1994] 1 S.C.R. 701
34. *Connaught Laboratories Ltd. v. British Airways* (2002), 61 OR (3d) 204 (SCJ), aff'd (2005), 77 OR (3d) 34 (CA)
35. *Plourde c. Service aérien FBO inc. (Skyservice)*, 2007 QCCA 739
36. *NV Bocimar SA v. Century Insurance Co. of Canada*, [1981] FCJ No. 1033 (TD)

37. *Grant v. Torstar*, [2009] 3 S.C.R. 640
38. *Government of the Republic of South Africa v. Grootboom*, [2000] ZACC 19
39. *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229
40. *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors*, 1981 SCC (1) 608
41. *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520 (Sup. Ct. India)
42. *Singh v. State of Uttar Pradesh*, 1996 AIR 1051 (Sup. Ct. India)
43. *Vishaka v. State of Rajasthan* (1997), 6 SCC 241
44. *Adam, R (on the application of) v. Secretary of State for the Home Department*, [2005] UKHL 66
45. *Minister for Immigration and Ethnic Affairs v. Teoh* (1995), 128 ALR 353 (H.C.A.)
46. Rt. Hon. Antonio Lamer, "Enforcing International Human Rights Law: The Treaty System in the 21st Century", in A.F. Bayefsky, ed., *The UN Human Rights Treaty System in the 21st Century* (London: Kluwer, 2000)

SCHEDULE B

Canadian Charter of Rights and Freedoms, Constitution Act, 1982, 1982, c. 11 (U.K.), Schedule B, Part I, s. 24(1)

CONSTITUTION ACT, 1982 ⁽⁸⁰⁾

1982, c. 11 (U.K.), Schedule B

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

JENNIFER TANUDJAJA et al. v. ATTORNEY GENERAL OF CANADA et al.
Applicants Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**FACTUM
(RESPONDENTS' MOTION TO DISMISS
THE APPLICATION)**

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