

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

Between:

**LUIS ALBERTO HERNANDEZ FEBLES**

APPELLANT

— and —

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

RESPONDENT

— and —

**AMNESTY INTERNATIONAL**

PROPOSED INTERVENER

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**MOTION FOR LEAVE TO INTERVENE  
OF AMNESTY INTERNATIONAL**

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Court File No. 35215

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Amnesty International*

**TAKE NOTICE** that Amnesty International Canada (English Branch) (“Amnesty International”) hereby applies to a Judge of this Court, pursuant to Rules 55 to 57 of the *Rules of the Supreme Court of Canada* for an order:

- (a) granting Amnesty International leave to intervene in this appeal;
- (b) permitting Amnesty International to file a factum of ten (10) pages in length;
- (c) permitting Amnesty International to make oral submissions not exceeding ten (10) minutes at the hearing of this appeal; and
- (d) granting any further relief as the said Judge may deem appropriate.

**AND FURTHER TAKE NOTICE** that the Affidavit of Alex Neve, sworn December 17<sup>th</sup>, 2013, and such further or other material as counsel may advise, will be referred to in support of the present motion.

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

1. Amnesty International seeks leave to intervene in this appeal with respect to the appropriate interpretation of Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees* (“*Refugee Convention*”), as incorporated into section 98 of the *Immigration and Refugee Protection Act* (“*IRPA*”).
2. If granted leave to intervene, Amnesty International will propose guiding principles to ensure that Canadian decision-makers are interpreting and applying Article 1F(b) of the *Refugee Convention* in compliance with Canada’s international human rights obligations.
3. Amnesty International is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations of people’s fundamental human rights.
4. Amnesty International has a significant interest in this Court’s interpretation of Article 1F(b) of the *Refugee Convention*. Amnesty International has an interest in ensuring both that individuals with a well-founded fear of persecution can obtain refugee protection, and that the refugee system does not allow individuals to evade criminal responsibility for serious crimes.

5. Amnesty International has a unique expertise in international human rights law and international refugee law. Amnesty International regularly intervenes in judicial proceedings, including before this Court, to provide assistance with respect to the appropriate interpretation of international norms and treaties.

6. Amnesty International recently intervened before this Court in *Ezokola v Minister of Citizenship and Immigration*, 2013 SCC 40. Similarly to Amnesty International's proposed intervention in this case, in *Ezokola* Amnesty International proposed guiding principles to help ensure that the application of Article 1F(a) of the *Refugee Convention* was consistent with Canada's international legal obligations.

7. Amnesty International has also provided guidance to this Court on the international legal norms relevant to Canada's immigration and refugee system in several other cases, including: *Minister of Citizenship and Immigration and Minister of Safety and Emergency Preparedness v Harkat*, *Gavrila v Canada (Justice)*, *Charkaoui v Canada (Citizenship and Immigration) No. 2*, *Charkaoui v Canada (Citizenship and Immigration)*, *Canada (Prime Minister) v Khadr*, and *Suresh v Canada (Citizenship and Immigration)*.

8. If granted leave to intervene, Amnesty International would argue that in, applying the exclusion provisions of the *Refugee Convention*, Canadian decision-makers must endeavour to maximize the human rights protection that is the Convention's main intent, and must ensure that they do not put people at risk of serious human rights violations such as torture. In particular, Amnesty International would propose the following principles to guide the interpretation of Article 1F(b):

- a. Given that they act as exceptions to human rights guarantees, the exclusion provisions must be restrictively construed;
- b. The dominant purpose of Article 1F(b) is to ensure that serious criminals cannot misuse the *Refugee Convention* to avoid extradition and prosecution, and it must be interpreted in light of this purpose;
- c. International human rights instruments and state practice favour taking the fact that a person has served a sentence into account in an Article 1F(b) assessment;

- d. The Court's approach to Article 1F(b) cannot contravene Canada's obligations under the *Convention Against Torture*.

All of which is respectfully submitted on this 18<sup>th</sup> day of December of 2013.

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**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, as the case may be.



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**RESPONDENT**

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**AFFIDAVIT OF ALEX NEVE**  
**(In support of the application for intervention of Amnesty International**  
**(Canadian Section, English Branch))**

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I, **ALEX NEVE**, of the City of Ottawa, in the Province of Ontario, make oath and state as follows:

I am the Secretary General of Amnesty International Canada (English branch) ("Amnesty Canada") and, as such, have knowledge of the matters contained in this affidavit.

1. I was hired as Secretary General of Amnesty Canada in January 2000. Prior to assuming this position I had been an active member of Amnesty International for 15 years, during which time I was employed by Amnesty Canada and by Amnesty International's International Secretariat in London, England for 3 years. My activities with Amnesty International have included numerous research missions to monitor and report on human rights abuses, preparing

international and national reports on issues of concern to Amnesty International, and participating in Amnesty International national and international meetings.

2. In addition to my experience with Amnesty International, I hold a Master of Laws degree in International Human Rights Law, with distinction, from the University of Essex in the United Kingdom.

3. As Secretary General for Amnesty Canada, I am responsible for overseeing the implementation of Amnesty International's mission in Canada. This includes supervising staff and ensuring that there is a national network of volunteers to carry out Amnesty International's work in Canada. My responsibilities also include ensuring that Amnesty International's expertise is available to decision-making bodies and the general public, communicating and cooperating with others who are interested in advancing international human rights issues, and educating the public on human rights.

#### **Amnesty International and Amnesty Canada: The Organizations**

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

5. Amnesty International is impartial and independent of any government, political persuasion or religious creed. Amnesty International and Amnesty Canada are financed by subscriptions and donations from their membership, and receive no government funding.

6. There are currently close to 3 million members of Amnesty International in over 150 countries. There are more than 7,500 Amnesty International 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 like Amnesty Canada.

7. Amnesty Canada is the English-Canadian branch of the global Amnesty International movement.

8. The organizational structure of Amnesty Canada includes a board of 10 directors elected across the country. There are specific country and issue-coordinators in each region and province. Amnesty Canada has a staff of about 50 employees and membership of approximately 60,000 people (hereinafter, Amnesty Canada and Amnesty International shall be jointly referred to as “Amnesty International”).

### **Overview of Amnesty International’s Proposed Intervention**

9. Amnesty International seeks leave to intervene in order to assist the Court in interpreting Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees* (“*Refugee Convention*”). Article 1F(b) is incorporated into Canadian law through section 98 of the *Immigration and Refugee Protection Act*. Amnesty International proposes to focus its submissions on ensuring that this provision is interpreted in a manner consistent with Canada’s international legal obligations.

10. Amnesty International takes the position that, in applying the exclusion provisions of the *Refugee Convention*, Canadian decision-makers must endeavour to maximize the human rights protection that is the Convention’s main intent and must ensure that they do not put people at risk of serious human rights violations such as torture. If granted leave to intervene, Amnesty International will propose the following principles to guide the interpretation of Article 1F(b):

- (a) First, given that they act as exceptions to human rights guarantees, the exclusion provisions must be restrictively construed;
- (b) Second, the dominant purpose of Article 1F(b) is to ensure that serious criminals cannot misuse the *Refugee Convention* to avoid extradition and prosecution, and it must be interpreted in light of this purpose;
- (c) Third, international human rights instruments and state practice favour taking the fact that a person has served a sentence into account in an Article 1F(b) assessment;
- (d) Finally, the Court’s approach to Article 1F(b) must not contravene Canada’s obligations under the *Convention Against Torture*.

11. Amnesty International does not propose to take a position on the facts particular to Mr. Febles himself.

12. Amnesty International has a unique expertise in international law and regularly assists Canadian courts with the interpretation and application of international instruments and principles. Amnesty International recently intervened before this Court, in *Ezokola v Minister of Citizenship and Immigration*, 2013 SCC 40, to present submissions with respect to the proper interpretation of another exclusion clause under the *Refugee Convention*, namely Article 1F(a).

13. Amnesty International monitors the application and interpretation of the *Refugee Convention* and related human rights instruments in jurisprudence worldwide. Moreover, Amnesty International's legal expertise is paired with an appreciation, gained through its research and fact-finding activities, of the human rights reality faced by refugees and asylum-seekers on the ground.

14. Amnesty International has a significant interest in this appeal. Amnesty International has an interest in ensuring that individuals with a well-founded fear of persecution obtain refugee protection, and that serious criminals do not misuse the refugee system in order to escape criminal responsibility. Moreover, the international scope of its human rights mandate gives the proposed intervener a further interest in this appeal, since this Court's interpretation of Article 1F(b) will form an important part of the international jurisprudence on exclusion.

#### **The Vision and Work of Amnesty International**

15. In its work, Amnesty International pursues its vision of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* and other international instruments.

16. In pursuit of this vision, Amnesty International's mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, economic, social and cultural.

17. In 1977, Amnesty International was awarded the Nobel Peace Prize for its work in promoting international human rights.

18. Amnesty International seeks to advance and promote international human rights at both the international and national levels. The rights of refugees and migrants are a particular focus of Amnesty International. As part of its work, the organization:

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

***Monitoring and Reporting on Human Rights Abuses***

19. Amnesty International'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, web-sites and other media outlets. As well, Amnesty International sends about 130 fact-finding missions to some 70 countries each year to directly assess what is happening on the ground.

20. Amnesty International's research is recognized around the world as accurate, unbiased, and credible, which is why Amnesty International reports are widely consulted by governments, intergovernmental organizations, journalists and scholars.

21. Canadian courts have recognized the role played by Amnesty International's research and factual reporting in the operation of Canada's refugee and immigration system. The courts, as well as immigration review boards, often rely on Amnesty International's official reports as evidence, and have highlighted their credibility. For example:

- (a) In *Mahjoub (Re)*, [2010] FCJ No 900, 2010 FC 787, Justice Blanchard of the Federal Court affirmed that reports by Amnesty International are "well known, credible and heavily relied upon internationally. These are the same reports regularly relied on by the Minister of Citizenship and Immigration under the [*Immigration and Refugee Protection*

*Act*] in refugee cases before the Immigration and Refugee Board and this Court” (at para. 131).

- (b) 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 Amnesty International [...] puzzling, especially given the institutional reliance of Canadian courts and tribunals on these very sources.” Further, Justice Tremblay-Lamer pointed out that “the 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” (at para. 72).
- (c) 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 Amnesty International, which the Court referred to as a “credible source” (at para 8).
- (d) The Federal Court has also emphasized the important evidentiary role of Amnesty International reports in *Shabbir v Canada (Minister of Citizenship and Immigration)*, 2004 FC 480, and *Ertuk v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1118.
- (e) Finally, in *Suresh v Canada (Minister of Citizenship and Immigration, et al)*, [2002] 1 SCR 3, the Supreme Court of Canada relied on an Amnesty International report concerning Sri Lanka’s torture of members of the Liberation Tigers of Tamil Eelam.

22. In addition to being used by Canadian courts and tribunals, Amnesty International uses its research to prepare other reports, briefing papers, newsletters and campaigning materials. Among its publications is the annual Amnesty International Report on human rights conditions in countries around the world.

### ***Participation in Judicial Proceedings***

23. Amnesty International intervenes regularly before the Supreme Court of Canada, often in the context of refugee and immigration law. The following are cases in which Amnesty International intervened to assist the Supreme Court with the interpretation and application of international law:

- (a) In *Minister of Citizenship and Immigration and Minister of Safety and Emergency Preparedness v Harkat* 2013 SCC (Court File No 34884, decision reserved), Amnesty International presented submissions regarding the revised security certificate system's violations of international human rights norms;
- (b) In *William v British Columbia and the Regional Manager of the Cariboo Forest Region, et al* 2013 SCC (Court File No 34986, decision reserved), Amnesty International intervened with respect to the role of international human rights law in the interpretation of s 35 of the *Constitution Act* 1982;
- (c) In *Ezokola v Minister of Citizenship and Immigration*, 2013 SCC 40, Amnesty International proposed guiding principles to help ensure that Canadian decision-makers' application of Article 1F(a) of the *Refugee Convention* is consistent with international law;
- (d) In *Club Resorts Ltd v Van Breda*, 2012 SCC 17, Amnesty International was granted leave to intervene with respect to international standards of jurisdiction and access to justice;
- (e) In *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44, Amnesty International was granted leave to intervene with respect to Mr. Khadr's rights under the *Charter* as well as binding international human rights law;
- (f) In *Gavrila v Canada (Justice)*, 2010 SCC 57, [2010] 3 SCR 342, Amnesty International was granted leave to intervene with respect to the interplay between extradition and refugee protection in international law;

- (g) In *Charkaoui v Canada (Minister of Citizenship and Immigration) No 2*, [2008] 2 SCR 326, Amnesty International intervened with respect to whether the systematic destruction of interview notes and other information by the Canadian Security Intelligence Service in the context of security certificate proceedings violates international norms;
  - (h) *Charkaoui v Canada (Citizenship and Immigration)*, [2007] 1 SCR 350, Amnesty International presented submissions on the inconsistency of the *Immigration and Refugee Protection Act*'s security certificate regime with Canada's international obligations;
  - (i) In *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002] 1 SCR 3, Amnesty International presented submissions to the Court regarding the nature and scope of the international prohibitions against torture, and the mechanisms designed to prevent and prohibit its use, to which the Court referred;
  - (j) In *Schreiber v Canada (Attorney General)*, [2002] 3 SCR 269, Amnesty International argued that the right to the protection of mental integrity and to compensation for its violation has risen to the level of a peremptory norm of international law, which prevails over the doctrine of sovereign immunity;
  - (k) In *United States v Burns*, [2001] 1 SCR 283, *Reference Re Ng Extradition (Can)*, [1991] 2 SCR 858 and *Kindler v Canada (Minister of Justice)*, [1991] 2 SCR 779, Amnesty International provided information to the Court on the significant international movement towards the abolition of capital punishment.
24. Amnesty International similarly assists lower courts with the interpretation and application of international law, particularly in the refugee and immigration law context, either as an intervener or a party. For example:
- (a) In *Canada (Minister of Justice) v Hassan Naim Diab*, 2013 ONCA (Court file No C55441, decision reserved), Amnesty International intervened with respect to Canada's obligations under international human rights law to refuse extradition for anyone for whom there is a real risk of admission of evidence derived from torture at the trial following extradition;



- (b) In *Tanudjaja et al v Attorney General of Canada and Attorney General of Ontario*, 2013 ONSC 5410, Amnesty International intervened on the nature of Canada's international human rights obligations with respect to social and economic rights, and particularly the right to adequate housing;
- (c) In *Choc et al v HudBay et al*, 2013 ONSC 1414, Amnesty International argued that international norms and standards support the view that a duty of care may exist in circumstances where a parent company's subsidiary is alleged to be involved in gross human rights abuses;
- (d) In *Attorney General of Canada v Canadian Human Rights Tribunal et al* 2013 FCA 75, Amnesty International intervened with respect to the interpretation of the *Canadian Human Rights Act* in light of Canada's international obligations;
- (e) In *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v Canada*, 2008 FCA 229, Amnesty International argued that Canada's "safe third country" agreement with the United States was invalid and unlawful because the United States failed to comply with its international human rights obligations, particularly the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*;
- (f) In *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*, 2008 FCA 401, Amnesty International argued that Canada had breached its obligations under the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* when it transferred Afghan detainees into the custody of Afghan officials, where they were at serious risk of torture or cruel, inhuman or degrading treatment;
- (g) In *Bouzari v Islamic Republic of Iran*, [2004] OJ No 2800, 71 OR (3d) 675, Amnesty International intervened with respect to the right of a torture victim to sue for compensation from the offending government; and

(h) In *Ahani v Canada (Minister of Citizenship and Immigration)*, [2002] OJ No 431, 58 OR (3d) 107, Amnesty International made submissions before the Ontario Court of Appeal on Canada's international obligations in response to the UN Human Rights Committee's request that Canada not deport the appellant pending consideration of his complaint to the Committee.

25. Furthermore, Amnesty International was granted intervener status in the following inquiries:

(a) The Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar ("Arar Inquiry"), where it made submissions on the subject of security and human rights;

(b) The Internal Inquiry into the Actions of Canadian officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin ("Iacobucci Inquiry") where it made submissions on the substantive issues before the Commissioner, including: the source of applicable standards under international law; the prohibition against torture; providing or exchanging information and travel plans with foreign officials; the inadequacy of diplomatic assurances with respect to the use of torture; the prohibition against the use of information obtained through torture; the provision of information and assistance in questioning detained Canadians; the requirement that consular officials ensure that basic human rights are protected; and the presumption of innocence of Canadians detained abroad;

(c) The policy phase of the Ipperwash Inquiry, a provincial inquiry into the events surrounding the death of Dudley George, who was shot by an Ontario Provincial Police officer in 1995 during an Indigenous rights protest at Ipperwash Provincial Park. Amnesty International advanced several arguments, including that the inquiry should interpret Canada's obligations towards Indigenous peoples in light of international rights standards.

26. Moreover, Amnesty International and its local national organizations have made many written and oral submissions in other countries, and before international tribunals, on the proper interpretation and application of international law. Of particular note for the current

appeal, in 2004, Amnesty International submitted an amicus curiae brief to the Federal High Court of Nigeria regarding the interpretation of Article 1F of the *Refugee Convention*.

***Participation in Legislative Proceedings***

27. Amnesty International has also sought to advance international human rights directly through the legislative process. On many occasions, Amnesty International has submitted written and oral arguments to government officials, legislators and House and Senate committees, particularly in the refugee and immigration law context. Such submissions include:

- (a) *Accountability, Protection and Access to Justice: Amnesty International's Concerns with respect to Bill C-43* (A Brief to the House of Commons' Standing Committee on Citizenship and Immigration, outlining the ways in which Bill C-43 would lead to violations of Canada's international obligations and the *Canadian Charter of Rights and Freedoms*, October 31, 2012);
- (b) *Unbalanced Reforms: Recommendations with respect to Bill C-31* (A Brief to the House of Commons' Standing Committee on Citizenship and Immigration, outlining the ways in which Bill C-31 violates Canada's international obligations towards refugees and asylum-seekers, May 7, 2012);
- (c) *Fast and Efficient but not Fair: Recommendations with respect to Bill C-11* (A Brief to the House of Commons' Standing Committee on Citizenship and Immigration, regarding recommendations with respect to changes brought to the refugee determination process by Bill C-11, May 11, 2010);
- (d) Oral submissions before the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development regarding the repatriation of Omar Khadr (May 2008);
- (e) Oral submissions before the House of Commons' Public Safety Committee in December 2007 and the Senate Special Committee on Anti-Terrorism in February 2008 regarding Bill C-3, the proposed amendment to the security certificate regime;

- (f) Oral submissions before the House Defence Committee regarding the transfer by Canadian troops of Afghan detainees in Afghanistan (December 2006);
- (g) Oral submissions before the House Committee on Citizenship and Immigration regarding security certificates (November 2006);
- (h) Oral submissions before the Senate and House of Commons' *Anti-Terrorism Act* Review Committees (May and September 2005);
- (i) *Security through Human Rights* (submission to the Special Senate Committee on the *Anti-Terrorism Act* and House of Commons' Sub-Committee on Public Safety and National Security, as part of the review of Canada's *Anti-Terrorism Act*, May 16, 2005);
- (j) Amnesty International: Brief on Bill C-31 (Immigration and Refugee Protection Act, March 2001);
- (k) Oral submissions before the House of Commons' Standing Committee on Foreign Affairs and International Trade with respect to Bill C-19 (a bill to implement Canada's obligations under the *Rome Statute of the International Criminal Court*).

### ***Involvement with International Organizations***

28. Amnesty International has formal relations with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe, the Organization of American States, the Organization of African Unity, and the Inter-Parliamentary Union.

29. Amnesty International has made submissions to various international organizations regarding Canada's compliance with its international obligations, many of which dealt specifically with international human rights issues in the context of immigration and refugee law, including:

- (a) *Canada: Submission to the UN Universal Periodic Review*, (Amnesty International's submission to the second review of Canada's human rights record by the UN Human Rights Council, October 2012);
- (b) *Canada: Submission to the UN Committee on the Rights of the Child*, (Amnesty International's submission to the Committee's review of Canada, September 2012);
- (c) *Canada: Briefing to the UN Committee Against Torture* (Amnesty International's submission to the Committee's review of Canada, May 2012);
- (d) *Canada: Briefing to the UN Committee on the Elimination of Racial Discrimination* (Amnesty International's submission to the Committee's review of Canada, February 2012);
- (e) *Canada: Submission to the UN Universal Periodic Review* (Amnesty International's submission to the first review of Canada's human rights record by the UN Human Rights Council, February 2009);
- (f) *Human Rights for All: No Exceptions* (Amnesty International's submission to the United Nations 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);
- (g) *Protection Gap: Strengthening Canada's Compliance with its International Human Rights Obligations* (Amnesty Canada's submission to the United Nations Human Rights Committee on the occasion of the consideration of the Fifth Periodic Report of Canada, 2005);
- (h) *Redoubling the Fight Against Torture: Amnesty International Canada's Brief to the UN Committee against Torture with respect to the Committee's Consideration of the Fourth Periodic Report for Canada* (October 8, 2004); and
- (i) *It's Time* (Amnesty International's Briefing to the United Nations Committee against Torture with respect to the Third Report of Canada, November 2000).

30. These international bodies recognize and trust Amnesty International's experience, objectivity and distinctive perspective. As Jean-Pierre Hocke (former United Nations High Commissioner for Refugees) noted, "It's a worn cliché, but if Amnesty did not exist, it would have to be invented. It is simply unique."

### ***Expertise in International Refugee Law***

31. Amnesty International has long been at the forefront of refugee protection worldwide. Amnesty International works to ensure that asylum-seekers are not prohibited from entering a country to seek asylum, are not returned to a country where they would be at risk of serious human rights abuses, have access to fair and effective asylum procedures, have appropriate access to the United Nations High Commissioner for Refugees ("UNHCR"), and are not unlawfully or arbitrarily detained.

32. Among the many examples of Amnesty International's activities cited above, those that directly engage Amnesty International's experience in international refugee law include:

- (a) Monitoring and reporting on Canada's compliance with its international legal obligations with respect to asylum-seekers and refugees;
- (b) Frequent participation (either as a party or intervener) in relevant domestic judicial proceedings, including *Ezokola v. Minister of Citizenship and Immigration*;
- (c) Participation in national legislative processes and hearings affecting Canada's immigration and refugee regime, including submissions to the House of Commons' Standing Committee on Citizenship and Immigration; and
- (d) Participation in relevant international review processes such as the Universal Periodic Review, as well as the monitoring processes related to key human rights instruments.

### **Conclusion**

33. Amnesty International has a strong interest in the legal issues raised in this appeal, not only because of the direct impact the Court's decision will have on refugee law in Canada, but because of the influential nature of this Court's refugee law jurisprudence worldwide. Amnesty

**International would draw upon its expertise in the field of international refugee law and upon its experience as intervener to make unique and useful submissions that would assist the Court in its interpretation of Article 1F(b).**

**34. If granted leave to intervene, Amnesty Canada will be mindful of submissions made by parties and other interveners in this appeal and will seek to avoid duplication of argument and materials before the Court.**

**35. I make this affidavit in support of Amnesty Canada's application to intervene and for no other or improper purpose.**

**SWORN BEFORE ME at the City of**

## Ottawa in the Province of

Ontario this 17 day of

**December, 2013**



## A Commissioner of Oaths

LSUC # 63487F

) ) ) ) ) ) ) ) ) )

**ALEX NEVE**

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

Between:

**LUIS ALBERTO HERNANDEZ FEBLES**

APPELLANT

— and —

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

RESPONDENT

— and —

**AMNESTY INTERNATIONAL**

PROPOSED INTERVENER

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**MEMORANDUM OF ARGUMENT FOR LEAVE TO INTERVENE**  
(Rule 56(b) of the *Rules of the Supreme Court of Canada*)

---

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## PART I – FACTS

### Overview

1. Amnesty International Canada (English Branch) (“Amnesty International”) seeks leave to intervene in this appeal with respect to the appropriate interpretation of the exclusion clause in Article 1F(b) of the *United Nations Convention Relating to the Status of Refugees*,<sup>1</sup> as incorporated into section 98 of the *Immigration and Refugee Protection Act*.<sup>2</sup>

2. Amnesty International regularly intervenes in judicial proceedings, including before this Court, to provide assistance with respect to the appropriate interpretation of international norms and treaties. Amnesty International has a unique expertise in international human rights law and international refugee law, and also has a significant interest in ensuring that the individuals the *Refugee Convention* was designed to protect are not excluded from refugee status.

3. Amnesty International takes the position that in, applying the exclusion provisions of the *Refugee Convention*, Canadian decision-makers must endeavour to maximize the human rights protection that is the Convention’s main intent, and must ensure that they do not put people at risk of serious human rights violations such as torture. If granted leave to intervene, Amnesty International will propose guiding principles to ensure that Canadian decision-makers are interpreting and applying Article 1F(b) of the *Refugee Convention* in compliance with Canada’s international human rights obligations. This Court’s interpretation of Article 1F(b) can be expected to significantly influence the development of international norms surrounding exclusion. Amnesty International will not take a position on the particular facts of this case, and will seek to avoid duplication of arguments and material before the Court.

### Amnesty International: The Organization

4. Amnesty International is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations of people’s fundamental human rights. It is impartial and independent of any government, political persuasion or religious creed. Amnesty International Canada is the Canadian branch of the global Amnesty International movement. Amnesty International and Amnesty Canada are financed by subscriptions and donations from their membership, and receive no government funding. Currently, there are close to 3 million members of Amnesty International in over 150 countries. There are more than 7,500 Amnesty International groups, including local groups, youth or student groups and professional groups, in

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<sup>1</sup> *United Nations Convention Relating to the Status of Refugees*, July 28, 1951, [1969] Can TS No 6 [*Refugee Convention*].

<sup>2</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

more than 90 countries and territories throughout the world. In 55 countries and territories, the work of these groups is coordinated by national sections like Amnesty Canada.<sup>3</sup>

5. Amnesty International'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 instruments.<sup>4</sup> In pursuit of this vision, Amnesty International's mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, economic, social and cultural.<sup>5</sup>

6. In 1977, Amnesty International was awarded the Nobel Peace Prize for its work in promoting international human rights.<sup>6</sup>

7. For five decades, Amnesty International has investigated, documented and reported on human rights abuses. Amnesty International uses its research to prepare other reports, briefing papers, newsletters and human rights advocacy materials. Among its publications is the annual Amnesty International Report on human rights conditions in countries around the world. Amnesty International's research is recognized in Canada and around the world as accurate, unbiased, and credible, which is why its reports are widely consulted by governments, intergovernmental organizations, journalists and scholars. Amnesty Canada has participated in the preparation of these reports and has assisted in the distribution of these reports in Canada.<sup>7</sup>

8. Through its thorough and credible human rights reporting, Amnesty International is a significant contributor to the integrity of refugee protection regimes internationally. In Canada, Amnesty International's research and factual reporting plays an important role in the operation of this country's refugee and immigration system. Canadian courts, as well as administrative decision-makers, often rely on Amnesty International's official reports as evidence, and have highlighted their credibility.<sup>8</sup>

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<sup>3</sup> Affidavit of Alex Neve, sworn December 17, 2013, Amnesty International's Motion Record, Tab 2 at paras 4-6 [Neve Affidavit].

<sup>4</sup> *Universal Declaration of Human Rights*, GA Res. 271 (III), UN GAOR, 3d Sess, Supp. No 3, UN Doc A/810 (1948) [UDHR]; *International Covenant on Civil and Political Rights*, 19 December 1996, 99 U.N.T.S. 171, Can TS 1976 No. 47, 6 I.L.M. 368; *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, Treaty Series, vol 1465 p 85, Can. T.S., 1987 No. 36 [Convention Against Torture]; *Refugee Convention*, *supra* note 1.

<sup>5</sup> Neve Affidavit, *supra* note 3 at paras 15-16.

<sup>6</sup> Neve Affidavit, *supra* note 3 at para 17.

<sup>7</sup> Neve Affidavit, *supra* note 3 at para 19-22.

<sup>8</sup> Neve Affidavit, *supra* note 3 at para 21.

## **Amnesty International's Significant Experience as an Intervener, Particularly in the Area of International Refugee Law**

9. Amnesty International has participated in numerous judicial proceedings, public inquiries, and legislative processes – both in Canada and internationally – implicating international human rights law as well as international refugee law.

### Interventions Before the Supreme Court of Canada

10. Amnesty International has a unique expertise in international law and intervenes regularly before the Supreme Court of Canada with a view to assisting the Court with the interpretation and application of international treaties and principles. Its interventions often take place in the specific context of refugee and immigration law.

11. Notably, Amnesty International recently intervened before this Court in *Ezokola v Minister of Citizenship and Immigration*.<sup>9</sup> Similarly to Amnesty International's proposed intervention in this case, in *Ezokola* Amnesty International proposed guiding principles to help ensure that the application of Article 1F(a) of the *Refugee Convention* was consistent with Canada's international legal obligations.

12. Amnesty International has also provided guidance to this Court on the international legal norms relevant to Canada's immigration and refugee system in several other cases, including: *Minister of Citizenship and Immigration and Minister of Safety and Emergency Preparedness v Harkat*,<sup>10</sup> *Gavrila v Canada (Justice)*,<sup>11</sup> *Charkaoui v Canada (Citizenship and Immigration) No. 2*,<sup>12</sup> *Charkaoui v Canada (Citizenship and Immigration)*,<sup>13</sup> *Canada (Prime Minister) v Khadr*,<sup>14</sup> and *Suresh v Canada (Citizenship and Immigration)*.<sup>15</sup>

13. Moreover, given the breadth of Amnesty International's expertise in international law, it has intervened before this Court to help elucidate the relevant international norms with respect to the rights of First Nations,<sup>16</sup> the rules of jurisdiction,<sup>17</sup> the scope of sovereign immunity,<sup>18</sup> and the international movement towards the abolition of capital punishment.<sup>19</sup>

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<sup>9</sup> *Ezokola v Minister of Citizenship and Immigration*, 2013 SCC 40 [*Ezokola*].

<sup>10</sup> *Minister of Citizenship and Immigration and Minister of Safety and Emergency Preparedness v Harkat*, Court File No 34884, decision reserved.

<sup>11</sup> *Gavrila v Canada (Justice)*, 2010 SCC 57, [2010] 3 SCR 342.

<sup>12</sup> *Charkaoui v Canada (Citizenship and Immigration) No. 2*, [2008], 2 SCR 326.

<sup>13</sup> *Charkaoui v Canada (Citizenship and Immigration)*, [2007] 1 SCR 350.

<sup>14</sup> *Canada (Prime Minister) v Khadr*, 2010 SCC 3, [2010] 1 SCR 44.

<sup>15</sup> *Suresh v Canada (Citizenship and Immigration)*, [2002] 1 SCR 3.

<sup>16</sup> *William v British Columbia and the Regional Manager of the Cariboo Forest Region, et al.* (Court File No. 34986, decision reserved).

### Interventions Before Lower Courts and Public Inquiries in Canada

14. Amnesty International has also participated in proceedings before lower courts in Canada – either as an intervener or a party – in order to make submissions on the proper interpretation and application of international law. Specifically in the area of refugee and immigration law, Amnesty International has been involved in such cases as: *Canadian Council for Refugees*, *Canadian Council of Churches*, *Amnesty International and John Doe v Canada*<sup>20</sup> and *Ahani v Canada (Minister of Citizenship and Immigration)*.<sup>21</sup>

15. More broadly, Amnesty International has made submissions on the international norms affecting sovereign immunity in the context of state-sponsored torture<sup>22</sup> and the transfer of Afghan detainees to the custody of Afghan officials.<sup>23</sup>

16. Furthermore, Amnesty International has been granted intervener status in public inquiries that engage issues under international human rights law.<sup>24</sup>

### Interventions Before Courts in Foreign Jurisdictions and International Tribunals

17. Amnesty International and its local national organizations have made submissions before the domestic courts of other countries on the proper interpretation and application of international law. Of particular note for the current appeal, in 2004, Amnesty International submitted an amicus curiae brief to the Federal High Court of Nigeria regarding the interpretation of Article 1F of the *Refugee Convention*.<sup>25</sup>

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<sup>17</sup> *Club Resorts Ltd v Van Breda*, 2012 SCC 17.

<sup>18</sup> *Schreiber v Canada (Attorney General)*, [2002] 3 SCR 269.

<sup>19</sup> *United States v Burns*, [2001] 1 S.C.R. 283, *Reference Re Ng Extradition (Can)*, [1991] 2 SCR 858 and *Kindler v Canada (Minister of Justice)*, [1991] 2 SCR 779.

<sup>20</sup> *Canadian Council for Refugees, Canadian Council of Churches, Amnesty International and John Doe v Canada*, 2008 FCA 229.

<sup>21</sup> *Ahani v Canada (Minister of Citizenship and Immigration)*, [2002] OJ No 431, 58 OR (3d) 107.

<sup>22</sup> *Bouzari v Islamic Republic of Iran*, [2004] OJ No 2800, 71 OR (3d) 675.

<sup>23</sup> *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*, 2008 FCA 401.

<sup>24</sup> In particular: the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar; and the Internal Inquiry into the Actions of Canadian officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin.

<sup>25</sup> Neve Affidavit, *supra* note 3 at para 26.

## PART II – QUESTION IN ISSUE

18. The question on this motion is whether Amnesty International should be granted leave to intervene in this appeal.

## PART III – ARGUMENT

19. On a motion for intervention, the applicant must show that it has an interest in the outcome of the appeal and that its submissions will be useful to the Court and different from those of the other parties.<sup>26</sup> Amnesty International satisfies both of these criteria.

### **Amnesty International Has a Significant Interest in Ensuring that Canada’s Interpretation of Article 1F(b) Complies with Its International Obligations**

20. Through the people it represents and the mandate it seeks to fulfill, Amnesty International has a significant interest in the outcome of this appeal, and satisfies the interest requirement for an intervention before this Court.<sup>27</sup>

21. Amnesty International has a significant interest in this Court’s interpretation of Article 1F(b) of the *Refugee Convention*. The proposed intervener has an interest in ensuring both that individuals with a well-founded fear of persecution can obtain refugee protection, and that the refugee system does not allow individuals to evade criminal responsibility for serious crimes.

22. Amnesty International has long been at the forefront of refugee protection worldwide. Amnesty International works to ensure that asylum-seekers are not prohibited from entering a country to seek asylum, are not returned to a country where they would be at risk of serious human rights abuses, have access to fair and effective asylum procedures, have appropriate access to the United Nations High Commissioner for Refugees (“UNHCR”), and are not unlawfully or arbitrarily detained.<sup>28</sup>

23. Finally, given the international scope of its human rights mandate, Amnesty International has an interest in this Court’s interpretation of Article 1F(b), which will become part of the international jurisprudence on exclusion that courts in other jurisdictions will consult for guidance. Just as this Court’s decision in *Pushpanathan v Canada*<sup>29</sup> is frequently relied upon by the UNHCR and courts in foreign jurisdictions when interpreting the *Refugee Convention*,<sup>30</sup> this

<sup>26</sup> *Rules of the Supreme Court of Canada*, SOR/2002-156, R 57; *R v Finta* [1993] 1 SCR 1138 at 1142 [*Finta*].

<sup>27</sup> *Finta*, *supra* note 26 at 1142.

<sup>28</sup> Neve Affidavit, *supra* note 3 at paras 31-32.

<sup>29</sup> *Pushpanathan v Canada*, [1998] 1 SCR 982 [*Pushpanathan*].

<sup>30</sup> UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003 at para 37 [UNHCR 2003]; *Al-Sirri v Secretary of State for the*

Court's interpretation of Article 1F(b) can be expected to have important and wide-ranging effects. Amnesty International therefore has a strong interest in ensuring that this Court makes its determination in light of the full international legal context.

### **Amnesty International Will Make Unique and Useful Submissions**

24. Amnesty International seeks leave to intervene in order to assist the Court in interpreting the provision of international law that is at issue in this appeal, namely the exclusion clause in Article 1F(b) of the *Refugee Convention*, incorporated into section 98 of the *IRPA*.

25. If granted leave to intervene, Amnesty International would argue that in, applying the exclusion provisions of the *Refugee Convention*, Canadian decision-makers must endeavour to maximize the human rights protection that is the Convention's main intent, and must ensure that they do not put people at risk of serious human rights violations such as torture. In particular, Amnesty International would propose the following principles to guide the interpretation of Article 1F(b):

- a. Given that they act as exceptions to human rights guarantees, the exclusion provisions must be restrictively construed;
- b. The dominant purpose of Article 1F(b) is to ensure that serious criminals cannot misuse the *Refugee Convention* to avoid extradition and prosecution, and it must be interpreted in light of this purpose;
- c. International human rights instruments and state practice favour taking the fact that a person has served a sentence into account in an Article 1F(b) assessment;
- d. The Court's approach to Article 1F(b) cannot contravene Canada's obligations under the *Convention Against Torture*.

26. Article 1F(b) of the *Refugee Convention* creates an exclusion from refugee protection in the following terms:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: [...] (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

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*Home Department*, [2012] UKSC 54 at paras 13-14 (Supreme Court of the United Kingdom) [*Al-Sirri*]; *Wakn v Minister for Immigration and Multicultural and Indigenous Affairs* (2004) 211 ALR 398 (Federal Court of Australia).

27. The interpretation of section 98 of the *IRPA* and Article 1F(b) of the *Refugee Convention* must be based upon the interpretive principles and sources which are applicable to the construction of international treaties.<sup>31</sup>

28. If granted status as an intervener, Amnesty International will assist this Court by drawing on the following relevant interpretive aids: (i) the purpose of the *Refugee Convention* as a whole, (ii) the purpose and place of Article 1F(b) within the scheme of the *Refugee Convention*, (iii) the *travaux préparatoires* and the historical context of the *Refugee Convention*'s adoption, (iv) the UNHCR's interpretive guidance, (v) relevant international human rights instruments and norms and (iv) the practice of other state parties to the *Refugee Convention*.

29. As a first guiding principle, Amnesty International will submit that the human rights context in which refugee law operates requires that the exclusion provisions be interpreted restrictively. The consequence of exclusion under Article 1F is extremely serious: it means the denial of the entire array of rights attached to refugee status, and creates the potential of being returned to a country where the claimant would be at risk of grave human rights abuses. Exclusion must therefore always be treated as an exceptional and limited measure.

30. The need to interpret the exclusion provisions restrictively has been affirmed by the UK Supreme Court,<sup>32</sup> and finds support in this Court's statement in *Pushpanathan* that an exclusion provision constituting an "*a priori* denial of the fundamental protections of a treaty whose purpose is the protection of human rights is a drastic exception to the purposes of the Convention..."<sup>33</sup> The principle that, as limitations to human rights, the exclusions must be interpreted restrictively has also been highlighted by the UNHCR on multiple occasions.<sup>34</sup> The UNHCR's interpretive guidance on provisions of the *Refugee Convention* "should be accorded considerable weight,"<sup>35</sup> as is reflected in this Court's decisions in *Ezokola*<sup>36</sup> and *Pushpanathan*<sup>37</sup> concerning Articles 1F(a) and 1F(c), as well as other decisions of this Court in the area of refugee law.<sup>38</sup>

<sup>31</sup> *Pushpanathan*, *supra* note 29 at para 51.

<sup>32</sup> *Al-Sirri*, *supra* note 30 at para 75.

<sup>33</sup> *Pushpanathan*, *supra* note 29 at para 74.

<sup>34</sup> UNHCR, *The Exclusion Clauses: Guidelines on their Application*, 2 December 1996; UNHCR 2003, *supra* note 30; UNHCR, *Statement on Article 1F of the 1951 Convention Issued in the context of the preliminary ruling references to the Court of Justice of the European Communities from the German Federal Administrative Court*, July 2009.

<sup>35</sup> *Al-Sirri*, *supra* note 30 at para 36.

<sup>36</sup> *Ezokola*, *supra* note 9 at paras 35, 76-77.

<sup>37</sup> *Pushpanathan*, *supra* note 29 at paras 54, 61-62, 68, 73.

<sup>38</sup> *Németh v Canada (Justice)*, 2010 SCC 56, [2010] 3 SCR 281 at paras 18, 52; *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at para 27 (QL) [*Ward*].

31. The second focus of Amnesty International's proposed submissions is to explain the relationship between Article 1F(b) and the goal of preventing persons from misusing the refugee system to escape criminal responsibility.

32. As the Supreme Court has previously recognized, an examination of the text of Article 1F(b) and the *travaux préparatoires* demonstrates that a dominant purpose of Article 1F(b) is to ensure that the *Refugee Convention* does not frustrate international extradition treaties and that it cannot be misused to allow serious criminals to avoid extradition and prosecution.<sup>39</sup> A strong indication of this dominant purpose is that the wording of the provision – which restricts the exclusion to serious crimes committed “outside the country of refuge prior to his admission to that country as a refugee” – was adopted following expressions of concern by various delegates to ensure congruence between the *Refugee Convention* and extradition law.<sup>40</sup> This concern was addressed, not by having the exclusion depend on the idiosyncrasies of domestic extradition practice, but by focusing the exclusion on serious criminals who were seeking to exploit the refugee system to escape criminal responsibility.

33. Thirdly, Amnesty International will submit that international human rights instruments and state practice favour taking the fact that a person has served a sentence into account in an Article 1F(b) assessment. The sources to which Amnesty International will refer include: (i) Article 14 of the *Universal Declaration of Human Rights*<sup>41</sup> (as well as the importance of this provision to the drafting of Article 1F(b)); (ii) international instruments<sup>42</sup> and widespread domestic state practice affirming that imprisonment should serve the objective of rehabilitation; and (iii) the weight of authority concerning Article 1F(b) from courts in foreign jurisdictions. Amnesty International will also refer to guidance from the UNHCR, supporting the relevance of an applicant having served his sentence in determining whether the exclusion clause is applicable.<sup>43</sup>

<sup>39</sup> Pushpanathan, *supra* note 29 at para 73; Ward, *supra* note 38 at para 75 (QL).

<sup>40</sup> United Nations, *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-fourth Meeting*, 27 November 1951, A/CONF.2/SR.24, online: <<http://www.refworld.org/docid/3ae68cde18.html>>; United Nations, *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-ninth Meeting*, 28 November 1951, A/CONF.2/SR.29, online : <<http://www.refworld.org/docid/3ae68cdf4.html>>.

<sup>41</sup> UDHR, *supra* note 4, Article 14.

<sup>42</sup> United Nations, *Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, UN Doc A/CONF.6/1, annex 1, ESC Res 663C, (XXIV) (1957), UN ESCOR, Supp No. 1, at 11, UN Doc E/3048 (1957), amended by ESC Res 2076, (LXII) (1977), UN ESCOR, Supp No 1, at 35, UN Doc E/5988 (1977) at paras 58-61, 64-65; United Nations, *Basic Principles for the Treatment of Prisoners*, GA Res 45/111, UN Doc A/RES/45/111 (1990) at paras 8, 10.

<sup>43</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/IP/4/ENG/REV. 3 at para 157; UNHCR, *Guidelines on International Protection: Application of Exclusion Clause: Article 1F of the 1951*



34. Finally, the Court's interpretation of Article 1F(b) within the greater scheme of the *IRPA* cannot contravene Canada's obligations under the *Convention Against Torture*, and Amnesty International will provide guidance to that effect.

35. These guiding principles are consistent with the principles set out by this Court in *Pushpanathan* and *Ezokola*. In those cases, this Court clarified the meaning of the other two exclusion clauses included in the *Refugee Convention* (Article 1F(a) and 1F(c)). The Court recognized that the exclusion clauses must be interpreted consistently with Canada's obligations under the *Refugee Convention*.<sup>44</sup> In both *Pushpanathan* and *Ezokola*, this required making the purpose of the *Refugee Convention*, and of the specific exclusion at issue, the starting point of the interpretive analysis.<sup>45</sup> In both cases, a fulsome consideration of the relevant interpretive aids was key to this Court's analysis. Amnesty International's proposed submissions are in keeping with this approach.

#### **PART IV – SUBMISSIONS ON COSTS**

36. Amnesty International does not seek or expect to pay costs.

#### **PART V – ORDER SOUGHT**

37. Amnesty International requests an order

- a) granting leave to intervene in this appeal;
- b) if leave to intervene is granted, leave to present oral and written arguments at the hearing of the appeal; and
- c) such further and other order as this Court may deem appropriate.

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*Convention relating to the Status of Refugees*, September 2003, HCR/GIP/03/05 at para 23; UNHCR 2003, *supra* note 30 at paras 72-75.

<sup>44</sup> *Pushpanathan*, *supra* note 29 at para 51.

<sup>45</sup> *Pushpanathan*, *supra* note 29 at para 55; *Ezokola*, *supra* note 9 at para 31.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18<sup>th</sup> DAY OF DECEMBER, 2013  
BY:

---

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## PART VI – TABLE OF AUTHORITIES

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10.	<i>Club Resorts Ltd v Van Breda</i> , 2012 SCC 17	13
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15.	<i>Németh v Canada (Justice)</i> , 2010 SCC 56, [2010] 3 SCR 281	30
16.	<i>Pushpanathan v Canada</i> , [1998] 1 SCR 982, 160 DLR (4th) 193	23, 27, 30, 32, 35
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21.	UNHCR, <i>Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees</i> , 4 September 2003.	23, 30, 33
22.	UNHCR, <i>Guidelines on International Protection: Application of Exclusion Clause: Article 1F of the 1951 Convention relating to the Status of Refugees</i> , September 2003, HCR/GIP/03/05	33
23.	UNHCR, <i>Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees</i> , December 2011, HCR/1P/4/ENG/REV 3	33

24.	UNHCR, <i>Statement on Article 1F of the 1951 Convention Issued in the context of the preliminary ruling references to the Court of Justice of the European Communities from the German Federal Administrative Court</i> , July 2009	30
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26.	United Nations, <i>Basic Principles for the Treatment of Prisoners</i> , GA Res 45/111, UN Doc A/RES/45/111 (1990)	33
27.	United Nations, <i>Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-fourth Meeting</i> , 27 November 1951, A/CONF.2/SR.24, online : < <a href="http://www.refworld.org/docid/3ae68cde18.html">http://www.refworld.org/docid/3ae68cde18.html</a> >	32
28.	United Nations, <i>Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Twenty-ninth Meeting</i> , 28 November 1951, A/CONF.2/SR.29, online : < <a href="http://www.refworld.org/docid/3ae68cdf4.html">http://www.refworld.org/docid/3ae68cdf4.html</a> >	32
29.	United Nations, <i>Standard Minimum Rules for the Treatment of Prisoners</i> , adopted August 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc A/CONF/6/1, annex 1, ESC Res 663C, (XXIV) (1957), UN ESCOR, Supp No. 1, at 11, UN Doc E/3048 (1957), amended by ESC Res 2076, (LXII) (1977), UN ESCOR, Supp No 1, at 35, UN Doc E/5988 (1977)	33
30.	<i>United States v Burns</i> , [2001] 1 SCR 283	13
31.	<i>William v British Columbia and the Regional Manager of the Cariboo Forest Region, et al</i> , Court File No 34986, decision reserved	13

## PART VII – TABLE OF STATUTES

	<b>STATUTES</b>	<b>PARAS</b>
1.	<i>Immigration and Refugee Protection Act</i> , SC 2001, c 27	1, 24, 27
2.	<i>International Covenant on Civil and Political Rights</i> , 19 December 1996, 99 UNTS 171, Can TS 1976 No 47, 6 ILM 368	5
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***Immigration and Refugee Protection Act, SC 2001, c 27 s 98***

**98.** A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

**98.** La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

***Rules of the Supreme Court of Canada, SOR/2002-156, R 57***

**57. (1)** The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.

(2) A motion for intervention shall

- (a) identify the position the person interested in the proceeding intends to take in the proceeding; and
- (b) set out the submissions to be advanced by the person interested in the proceeding, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.

**57. (1)** L'affidavit à l'appui de la requête en intervention doit préciser l'identité de la personne ayant un intérêt dans la procédure et cet intérêt, y compris tout préjudice que subirait cette personne en cas de refus de l'autorisation d'intervenir.

(2) La requête expose ce qui suit :

- a) la position que cette personne compte prendre dans la procédure;
- b) ses arguments, leur pertinence par rapport à la procédure et les raisons qu'elle a de croire qu'ils seront utiles à la Cour et différents de ceux des autres parties.

***United Nations Convention Relating to the Status of Refugees, 28 July 1951, [1969] Can TS No 6, s 1F***

Article 1. - Definition of the term "refugee"

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) He has been guilty of acts contrary to the purposes and principles of the United Nations.



***Universal Declaration of Human Rights, GA Res 217 (III), UN GAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) s 14***

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 14

1. Devant la persécution, toute personne a le droit de chercher asile et de bénéficier de l'asile en d'autres pays.

2. Ce droit ne peut être invoqué dans le cas de poursuites réellement fondées sur un crime de droit commun ou sur des agissements contraires aux buts et aux principes des Nations Unies.

Court File No. 35215

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

Between:

**LUIS ALBERTO HERNANDEZ FEBLES**

APPELLANT

— and —

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

RESPONDENT

— and —

**AMNESTY INTERNATIONAL**

PROPOSED INTERVENER

**DRAFT ORDER**

**UPON THE MOTION** by Amnesty International requesting leave to intervene in the above-mentioned appeal;

**AND HAVING READ** the material filed;

**IT IS HEREBY ORDERED THAT:**

1. Amnesty International be granted leave to intervene in the above-mentioned appeal;
2. Amnesty International may file a factum of ten (10) pages in length; and
3. Counsel for Amnesty International may make oral argument not exceeding ten (10) minutes in length at the hearing of the above-mentioned appeal.