

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

BETWEEN:

**THE PRIME MINISTER OF CANADA,  
THE MINISTER OF FOREIGN AFFAIRS,  
THE DIRECTOR OF THE CANADIAN SECURITY INTELLIGENCE SERVICE, and  
THE COMMISSIONER OF THE ROYAL CANADIAN MOUNTED POLICE**

Appellants

- and -

**OMAR AHMED KHADR**

Respondent

- and -

**AMNESTY INTERNATIONAL (CANADIAN SECTION, ENGLISH BRANCH),  
HUMAN RIGHTS WATCH, UNIVERSITY OF TORONTO, FACULTY OF LAW –  
INTERNATIONAL HUMAN RIGHTS PROGRAM AND DAVID ASPER  
CENTRE FOR CONSTITUTIONAL RIGHTS,  
CANADIAN COALITION FOR THE RIGHTS OF CHILDREN AND JUSTICE FOR  
CHILDREN AND YOUTH, BRITISH COLUMBIA CIVIL LIBERTIES  
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CRIMINAL LAWYERS' ASSOCIATION (ONTARIO),  
CANADIAN BAR ASSOCIATION,  
AVOCATS SANS FRONTIERES CANADA, BARREAU DU QUEBEC ET GROUPE  
D'ETUDE EN DROITS ET LIBERTES DE LA FACULTE DE DROIT DE  
L'UNIVERSITE LAVAL,  
CANADIAN CIVIL LIBERTIES ASSOCIATION and  
NATIONAL COUNCIL FOR THE PROTECTION OF CANADIANS ABROAD**

Interveners

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## PART I – STATEMENT OF FACTS

1. The Canadian Civil Liberties Association (CCLA) accepts the facts as stated by the Respondent at paragraphs 3 to 56 and 107 to 109.

## PART II – QUESTIONS IN ISSUE

2. The CCLA takes the following positions on the issues raised in this appeal:
- i. **The respondent’s s. 7 rights were violated:** The CCLA supports the recognition of a duty to protect – at least in the respondent’s extreme and exceptional circumstances if not more broadly – and the finding that the respondent’s *Charter* rights were violated by the appellants’ failure to discharge that duty. In addition, the CCLA submits that the respondent’s s. 7 rights were breached by Canadian officials’ ongoing decision not to request his repatriation, as this decision exhibits both procedural and substantive defects of constitutional significance. The CCLA focuses its arguments below on this latter breach.
  - ii. **The remedy ordered is a just and appropriate one:** The CCLA submits that O’Reilly J.’s Order that the appellants request that the United States return the respondent to Canada as soon as practicable is a just and appropriate remedy both to the breach of the respondent’s rights as framed by the respondent, and the further s. 7 violation urged by the CCLA.

## PART III – ARGUMENT

A. **The ongoing decision not to request the respondent’s repatriation violates his s. 7 rights**

*i. The Charter applies*

3. In the CCLA’s submission, there are at least two distinct but interrelated instances of Canadian state action vis-à-vis the respondent that trigger the application of the *Charter*. The first, as developed in detail in the respondent’s submissions, is the action of Canadian state officials who were complicit in the violation of the respondent’s rights under international law at Guantánamo Bay; the second is Canadian state officials’ ongoing decision<sup>1</sup> not to request the respondent’s repatriation. The CCLA submits that the *Charter* applies to that decision, notwithstanding that the respondent is detained abroad, or that it is the government of the United States that is directly responsible for the continuing deprivation of his liberty and security of the person.

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<sup>1</sup> Affidavit of April Bedard at paras. 2-3 (Joint Record, Vol. II, pp. 131-132).

4. The decision by Canadian officials not to request the respondent's repatriation was and continues to be made in Canada by Canadian state actors exercising functions in relation to a Canadian citizen that are wholly within the authority of Parliament within the meaning of s. 32. Accordingly, the conduct at issue, which the CCLA argues gave rise to a violation of respondent's *Charter* rights, occurs in Canada even though the effects of that violation are felt in Guantánamo Bay.<sup>2</sup> The CCLA submits that to subject such state action to constitutional scrutiny – even where the effects of that action are felt in a foreign jurisdiction – does not result in the extraterritorial application of the *Charter*.

5. To the extent that this appeal engages issues of extraterritoriality, the CCLA submits that their determination must be guided by international law, and in particular international law principles of jurisdiction.<sup>3</sup> As this Honourable Court recognized in *Hape*, territoriality is not the only legitimate basis for jurisdiction under international law; jurisdiction may also be grounded, *inter alia*, on nationality.<sup>4</sup> Different forms of jurisdiction are also recognized in international law, and can be expected to give rise to different effects on international comity.<sup>5</sup> Moreover, as this Court held in *Hape* and confirmed in *Khadr 2008*, the principle of comity does not offer a rationale for condoning another state's breach of international law, and the deference required by the principle of comity "ends where clear violations of international law and fundamental human rights begin".<sup>6</sup>

6. The CCLA submits that the principles concerning *Charter* jurisdiction and international law articulated in *Hape* and *Khadr 2008*, when applied to the circumstances of the current appeal, provide ample support for the conclusion that the appellants' decision not to request the respondent's repatriation is subject to *Charter* scrutiny. Assuming *arguendo* that a mere request for repatriation of a Canadian citizen constitutes an assertion of extraterritorial jurisdiction on the basis of nationality, it does not contravene the international law principles of sovereign equality, non-intervention and comity, and therefore does not fall outside the scope of s. 32(1). First, a request involves no coercive or prescriptive assertion; to the contrary, it both invites and indeed relies upon the consent of the recipient state. Second, it is now established that the Guantánamo

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<sup>2</sup> Cf. *Purdy v. Canada (Attorney General)* (2003), 177 C.C.C. (3d) 438 (B.C.C.A.).

<sup>3</sup> *R. v. Hape*, [2007] 2 S.C.R. 292 at para. 33.

<sup>4</sup> *Ibid.* at paras. 59-61.

<sup>5</sup> *Ibid.* at paras. 58, 64-65.

<sup>6</sup> *Hape, supra* at paras. 51, 52, 101; *Canada (Justice) v. Khadr*, [2008] 2 S.C.R. 125 at paras. 18-26.

Bay detention regime to which the respondent is subject resulted in gross violations of fundamental human rights and international law at the time the appellants ought to have made their decision.<sup>7</sup> Violations of international law continue today.<sup>8</sup>

***ii. Canadian state action is causally connected to the continued deprivation of the respondent's rights***

7. The CCLA supports the respondent's submission that Canadian state action is causally connected to the continued deprivation of the respondent's rights by virtue of Canada's past complicity in the Guantánamo Bay interrogation process, which has been found to violate international law. The CCLA further submits that Canadian officials' ongoing decision not to request the respondent's repatriation materially increases the likelihood of a continued deprivation of his liberty and security of the person, and that this is an additional basis on which s. 7 is engaged.

8. In *United States of America v. Burns*,<sup>9</sup> this Court held that the guarantee of fundamental justice applies even to deprivations of life, liberty, or security of the person effected by foreign state actors, so long as there is a sufficient causal connection between our government's actions and the deprivation ultimately effected. In the subsequent case of *Suresh v. Canada (Minister of Citizenship and Immigration)*, this Court affirmed that the principle articulated in *Burns* is a "general one" and is not limited in its application to extradition cases.<sup>10</sup>

9. For s. 7 to be engaged it is not required that the government's action result directly or invariably in the deprivation of a protected right; rather, it is enough that the government's action materially increases the likelihood that a deprivation will occur or continue. In *Burns*, this Court declined to consider whether the Minister's decision to extradite without assurances independently violated s. 12 of the *Charter*, holding that "the degree of causal remoteness between the extradition order to face trial and the *potential* imposition of capital punishment as *one of many possible outcomes* to this prosecution make this a case more appropriately reviewed under s. 7 than under s. 12."<sup>11</sup> Section 7 may therefore be engaged even where Canadian state

<sup>7</sup> *Khadr, supra*; *Rasul v. Bush*, 542 U.S. 466 (2004); *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006); *Boumediene v. Bush*, 128 S.Ct. 2229 (2008).

<sup>8</sup> Respondent's Factum, paras. 107-110.

<sup>9</sup> [2001] 1 S.C.R. 283.

<sup>10</sup> [2002] 1 S.C.R. 3 at para. 54.

<sup>11</sup> *Burns, supra* at para. 57. [Emphasis added.]

action is not alone sufficient for the deprivation to be effected.

10. The CCLA submits that s. 7 can also be engaged where Canadian state action is not strictly necessary for the deprivation to be effected. In *Suresh*, this Court held that the guarantee of fundamental justice applies “[a]t least where Canada’s participation is a necessary precondition for the deprivation”<sup>12</sup> of s. 7 rights by foreign state actors, thus specifically not foreclosing the possibility that s. 7 could be engaged where Canadian state action contributed, but might not be a necessary precondition, to the deprivation. The CCLA submits that the requisite causal connection is established where, *inter alia*, Canadian state action materially increases the likelihood that a deprivation will occur and/or continue.

11. On the facts before this Court and accepted by the courts below – including that the U.S. government has undertaken efforts to have the Government of Canada accept the respondent’s repatriation to face trial here, and that governments of other Western democracies have already requested and secured the repatriation of their citizens and permanent residents from Guantánamo Bay<sup>13</sup> – the CCLA submits it is clear that Canada’s refusal to request the respondent’s repatriation significantly and materially increases the likelihood that the respondent’s rights to liberty and security of the person will continue to be infringed.

***iii. The appellants’ decision-making process violated the respondent’s right to procedural fairness***

12. Section 7 guarantees against deprivations of life, liberty, or security of the person except in accordance with principles of fundamental justice. Those principles have repeatedly been found to incorporate procedural protections at least as robust as those that exist at common law. The procedures required to meet the demands of fundamental justice vary with the context of the proceedings and the nature of the interests at stake.<sup>14</sup>

13. The CCLA submits that in the circumstances of this case, the principles of fundamental justice impose a number of obligations on the appellants in the conduct of their ongoing decision-

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<sup>12</sup> *Suresh, supra* at para. 54. [Emphasis added.]

<sup>13</sup> Affidavit of Lt. Cdr. William Kuebler at paras. 51-52 (Joint Record, Vol. II, p. 145); *Repatriation of Omar Khadr to be Tried Under Canadian Law*, Exhibit NN to Affidavit of Lt. Cdr. William Kuebler (Joint Record, Vol. III, pp. 403-421).

<sup>14</sup> *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350 at para. 20; *Suresh, supra* at paras. 113-120. See also *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177, at pp. 212-13;

making process, including that they:

- a. obtain and consider all relevant information, including with respect to Canada's participation in the Guantánamo Bay interrogation process;
- b. provide the respondent with notice, disclose the information to be considered, and afford an opportunity to make submissions;
- c. accord the appropriate weight to all the applicable factors, including the requirements of international law and the failure of the Guantánamo Bay detention regime to comply with those requirements;
- d. issue a decision without undue delay; and
- e. provide reasons for that decision sufficient to enable the respondent and any reviewing court to understand the basis on which it was reached, and to determine whether a future change in circumstances may appropriately ground a request for reconsideration.

14. The CCLA submits that there is nothing in the record before this Honourable Court that would demonstrate that the appellants complied with any of these requirements. To the contrary, and with specific reference to points (a) and (c) above, the CCLA respectfully submits that the position taken by the appellants throughout these proceedings demonstrates that the appellants continue to minimize both the complicity of Canadian officials in the Guantanamo Bay interrogation process and the continued unlawfulness of the detention regime to which the respondent is subject.

*iv. The respondent is entitled to searching review of the appellants' decision*

15. The CCLA submits, contrary to the position advanced by the appellants,<sup>15</sup> that in the particular circumstances of this case, correctness is the appropriate standard of review in relation to both the procedural and substantive aspects of the appellants' ongoing decision not to request the respondent's repatriation.

16. With respect to the decision-making process, the CCLA submits that the question of what common law procedural fairness requires in a given case, and whether those requirements have been met, are questions of law.<sup>16</sup> Therefore, what procedural measures are required by the principles of fundamental justice, and whether they have been implemented in this case, are also questions of law in respect of which no deference is owed.

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<sup>15</sup> Appellants' Factum at para. 42.

<sup>16</sup> *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539 at para. 5 (*per* Bastarache J. in dissent, but concurring on this point), 100-103 (*per* Binnie J. for the majority).

17. With respect to the substance of the decision, the CCLA disputes the appellants' assertion that reasonableness is the appropriate standard of review of all executive decisions, and in particular, the ministerial decision at issue here.<sup>17</sup> The ministerial decision in *Lake*, the case relied upon by the appellants, engaged only the regular factors concerning extradition, as articulated in *Cotroni*. There, this Court affirmed the customary deference to the Minister in matters relating to Canada's treaty obligations and international interests, based on its recognition of the Minister's superior expertise in these areas. This Court thus concluded that in the usual extradition context, the proper assessment of ss. 6 and 7 interests involves "primarily fact-based balancing tests" of a largely political nature, such that reasonableness was the appropriate standard of review.<sup>18</sup>

18. The CCLA submits, as found by the majority below, that the extraordinary circumstances of the respondent's case open up a different dimension, which removes it from the political realm in which extradition decisions are usually made, and places it squarely within the purview of the judiciary. The case at bar can be usefully analogized to *Burns*, in which this Court considered whether s. 7 requires the Minister, before ordering surrender, to seek assurances that the death penalty will not be imposed, and concluded that such assurances are required in all but the most exceptional cases. This Court noted that the customary deference to the Minister's extradition decisions is rooted in the recognition of Canada's strong interest in international law enforcement activities and resulting international obligations, but nevertheless held that "the availability of the death penalty, like death itself, opens up a different dimension", and placed the Minister's decision within "an area of human experience that falls squarely within 'the inherent domain of the judiciary as guardian of the justice system'".<sup>19</sup> The CCLA submits that here, as in *Burns*, the appropriate standard of review is one of correctness.

19. In *Burns*, this Court affirmed the "balancing process" developed in previous extradition cases, but held that where the "practical and philosophic difficulties associated with the death penalty" are engaged, assurances will almost always be constitutionally required.<sup>20</sup> In effect, the potential imposition of the death penalty tips the balance and thus controls the outcome of the Minister's decision whether to seek assurances. The CCLA submits that actual violations of *jus*

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<sup>17</sup> Appellants' Factum at paras. 42, 87 and

<sup>18</sup> *Lake v. Canada (Minister of Justice)*, [2008] 1 S.C.R. 761 at paras. 28-30, 34-41.

<sup>19</sup> *Burns, supra* at paras. 37-38; see also *Lake, supra* at para. 33.

<sup>20</sup> *Burns, ibid.* at para. 65.

*cogens* and fundamental human rights norms, as exist in the case at bar, give rise to practical and philosophic difficulties of at least equal significance and urgency, which are similarly dispositive of the question whether to request the respondent's repatriation.

20. In the alternative, the CCLA submits that if the substance of the appellants' decision falls to be reviewed on the standard of reasonableness, the decision nevertheless cannot withstand scrutiny and is unreasonable.

**B. The remedy ordered by O'Reilly J. is a just and appropriate one**

21. The CCLA supports the respondent's position that the Order of O'Reilly J. requiring that the appellants request the respondent's return to Canada as soon as practicable is a just and appropriate response to the past and ongoing violations of the respondent's rights, whether those violations are characterized as arising from the appellants' failure to discharge the duty to protect, or, as the CCLA has additionally submitted, as arising from their failure to exercise their discretion to request the respondent's repatriation in accordance with the principles of fundamental justice.

*i. The remedy does not inappropriately trench on the Crown prerogative*

22. The Crown prerogative is "the residue of discretionary or arbitrary authority, which at any given time is left in the hands of the Crown".<sup>21</sup> Acts of Parliament may limit or displace the Crown prerogative; once the prerogative is displaced, the government may no longer act under the prerogative but must act in accordance with the conditions imposed by statute.<sup>22</sup> It is well established that exercises of Crown prerogative are subject to judicial review for compliance with the *Charter*, and the courts have a responsibility to decide claims that the exercise of a prerogative power violates a person's *Charter* rights.<sup>23</sup> In the event that a *Charter* breach is found, the courts also have a responsibility to grant a just and appropriate remedy.<sup>24</sup>

23. The CCLA submits that the exercise of the Crown prerogative in the conduct of foreign affairs is constrained or at the very least structured by the *Department of Foreign Affairs and*

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<sup>21</sup> Dicey, *Introduction to the Study of the Law of the Constitution*, 10<sup>th</sup> ed. (London: Macmillan, 1959) at p. 424, cited in *Black v. Canada (Prime Minister)* (2001), 54 O.R. (3d) 214 (C.A.) at para. 25.

<sup>22</sup> *Black*, *supra* at para. 27.

<sup>23</sup> *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441 at paras. 3, 28, 38 (*per* Dickson CJ for the majority), 64, 67 (*per* Wilson J.); *Black*, *supra* at para. 46.

<sup>24</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3 at paras. 36, 55-59.

*International Trade Act (DFAIT Act)*,<sup>25</sup> s.10(2) of which directs that in exercising his powers and carrying out his duties and functions, “the Minister shall (j) foster the development of international law and its application in Canada’s external relations”. The CCLA submits that the Government of Canada is obligated to conduct external relations in a manner that fosters the application of international law, including the *Geneva Conventions*, the *Convention on the Rights of the Child*, the *International Covenant on Civil and Political Rights*, and the *Convention Against Torture*.

24. Insofar as the *DFAIT Act* has not fully occupied the ground of foreign relations such that the ongoing decision not to request the respondent’s repatriation remains an exercise of Crown prerogative, the CCLA submits that the remedy does not exceed the proper role of the courts as guardians of the Constitution. The remedy ordered by O’Reilly J. and upheld by the Federal Court of Appeal is simply that the government make a particular representation to a foreign state. The CCLA submits that this remedy is neither novel nor extraordinary, and meaningfully vindicates the respondent’s rights while respecting the different powers and functions of the judiciary and the executive.

25. In *Burns*,<sup>26</sup> as noted above, this Honourable Court held that where persons sought for extradition from Canada faced the possibility of capital punishment on conviction, a matter “bound up with basic constitutional values” and which raised issues of “fundamental importance to Canadian society”, the state had an obligation to make representations to the requesting state seeking assurances that the death penalty would not be imposed or executed.<sup>27</sup> The CCLA submits that the remedy ordered in this case goes no further.<sup>28</sup>

26. Thus, contrary to the appellants’ submission,<sup>29</sup> the CCLA contends that the remedy is

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<sup>25</sup> R.S. 1985, c. E-22.

<sup>26</sup> *Burns*, *supra* at para. 35.

<sup>27</sup> The recent decision in *Smith v. Canada (Attorney General)* (2009), 307 D.L.R. (4<sup>th</sup>) 395 (F.C.), though not made on *Charter* grounds, is also instructive. There, the court found that the government’s decision to withdraw diplomatic support for the applicant’s claim to clemency in the State of Montana was made in breach of the duty of procedural fairness and was therefore unlawful and invalid, and ordered that the government take “all reasonable steps” to support the applicant’s case for clemency.

<sup>28</sup> Indeed, the remedy in this case goes somewhat less far than that ordered in *Burns*, where this Honourable Court found that, the persons facing a potential deprivation of their s. 7 rights being necessarily within Canada’s territorial jurisdiction, the government had the further obligation of refusing to accede to an extradition request unless it received an affirmative response to its request for assurances.

<sup>29</sup> Appellants’ Factum, para. 113.

entirely consistent with the approach this Honourable Court has taken to matters of extradition, namely that otherwise broad ministerial discretion whether to make a representation to a foreign state is constrained by the existence of an extraordinary factor, such as the possibility of capital punishment or the fact of a violation of international law. Where such a factor is found to exist, it may control the outcome of the decision and require that a particular representation be made.

27. The appellants note that as a matter of international law, decisions regarding diplomatic protection fall within the exclusive preserve of the executive and are not subject to judicial review.<sup>30</sup> The CCLA submits that while such unfettered executive discretion may exist under international law, Canadian constitutional law imposes certain obligations where, as in this case, decisions regarding diplomatic protection engage an individual's *Charter* rights. Under Canadian municipal law, the prerogative concerning diplomatic protection, like any discretion, must be exercised within the bounds set by the *Charter*.<sup>31</sup>

***ii. The remedy is responsive to the Charter breach***

28. The CCLA submits that if the breach is as it characterizes it, namely that the government's ongoing decision to refuse to request the respondent's repatriation – which materially increased the likelihood of the continued violation of his s. 7 rights – was neither substantively correct nor reached in a manner consistent with procedural fairness, then the remedy that the appellants be ordered to request his repatriation is perfectly tailored to the breach. It meaningfully vindicates the respondent's *Charter* rights and seeks to end the continuing violation of those rights, in a manner that could not be achieved through other, less intrusive remedies.

***iii. The remedy is not rendered inappropriate because it is not certain to achieve the respondent's repatriation, or because the harm has been mitigated***

29. The CCLA does not dispute that, as the appellants submit, the US government's response to a request for repatriation may be a refusal or acquiescence with conditions attached. It may be that the question of what to do in the face of such an answer is a matter exclusively within the purview of the executive. The CCLA does not take a position on that issue, but will submit that it does not fall to be determined here. The question to be determined in this appeal is not whether the US government will permit the respondent to return to Canada, but rather whether the

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<sup>30</sup> Appellants' Factum at para. 67 (relying on *Barcelona Traction*).

<sup>31</sup> *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1078.

appellants are required under Canadian law to take certain minimal steps to materially reduce the likelihood of a continuation of the deprivation of the respondent's rights to liberty and security of the person.

30. The Appellants submit that the remedy granted is inappropriate because, among other things, it fails to take into account changes in the respondent's circumstances between 2004 and 2009.<sup>32</sup> The CCLA submits, to the contrary, that any remedy that allowed the appellants to take into account the partial and belated mitigation of the worst of the deprivations suffered by the respondent would permit the government to benefit from its lengthy and entirely unwarranted delay in making a decision whether to request the respondent's repatriation in accordance with the principles of fundamental justice, and thus undermine its *Charter* obligations. The CCLA therefore submits that the potential alternative remedy to the breach it contends has occurred – namely an order that the appellants reconsider their decision in accordance with procedural fairness and in light of all currently available information, including evidence of steps taken by the US government to ensure that treatment of Guantánamo Bay detainees conforms to international law – would be unjust and inappropriate in the circumstances.

#### PART IV – SUBMISSIONS REGARDING COSTS

31. The CCLA seeks no costs and asks that no costs be ordered against it.

#### PART V – ORDERS REQUESTED

32. The CCLA requests permission to present oral argument, and asks that this appeal be decided in accordance with the submissions set out herein.

ALL OF WHICH is respectfully submitted at Toronto, Ontario, this 20<sup>th</sup> day of October, 2009.

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Marlys Edwardh

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Adriel Weaver

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Jessica Orkin

Counsel for the Intervener, the Canadian Civil Liberties Association

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<sup>32</sup> Appellants' Factum at para. 117.

## PART VI – TABLE OF AUTHORITIES

<b>Authority</b>	<b>Cited at para.</b>	<b>Tab</b>
<i>Black v. Canada (Prime Minister)</i> (2001), 54 O.R. (3d) 214	22,	Resp. 9
<i>Boumediene v. Bush</i> , 128 S. Ct. 2229 (2008)	6	Resp. 10
<i>Canada (Justice) v. Khadr</i> , [2008] 2 S.C.R. 125	5	Resp. 12
<i>Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)</i> , [2003] 1 S.C.R. 539	16	App. 21
<i>Charkaoui v. Canada (Minister of Citizenship and Immigration)</i> , [2007] 1 S.C.R. 350	13	Resp. 15
<i>Doucet-Boudreau v. Nova Scotia (Minister of Education)</i> , [2003] 3 S.C.R. 3	22	Resp. 18
<i>Hamdan v. Rumsfeld</i> , 126 S. Ct. 2749 (2006)	6	Resp. 24
<i>Lake v. Canada (Minister of Justice)</i> , [2008] 1 S.C.R. 761	17	App. 39
<i>Operation Dismantle Inc. v. Canada</i> , [1985] 1 S.C.R. 441	22	App. 44
<i>Purdy v. Canada (Attorney General)</i> (2003), 177 C.C.C. (3d) 438 (B.C.C.A.)	4	CCLA 1
<i>Rasul v. Bush</i> , 542 U.S. 466 (2004)	6	Resp. 48
<i>R. v. Hape</i> , [2007] 2 S.C.R. 292	5, 11, 12	Resp. 40
<i>Slaight Communications Inc. v. Davidson</i> , [1989] 1 S.C.R. 1038	27	App. 67
<i>Smith v. Canada (Attorney General)</i> (2009), 307 D.L.R. (4 <sup>th</sup> ) 395 (F.C.)	25	Resp. 51
<i>Suresh v. Canada (Citizenship and Immigration)</i> , [2002] 1 S.C.R. 3	8,9	Resp. 52
<i>United States of America v. Burns</i> , [2001] 1 S.C.R. 283	8, 9, 18, 19, 25	Resp. 54

## PART VII – STATUTES AND REGULATIONS

*Department of Foreign Affairs and International Trade Act, R.S.C. 1985, c. E-22, s. 10;*

**10.** (1) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to the conduct of the external affairs of Canada, including international trade and commerce and international development.

(2) In exercising his powers and carrying out his duties and functions under this Act, the Minister shall

- (a) conduct all diplomatic and consular relations on behalf of Canada;
- (b) conduct all official communication between the Government of Canada and the government of any other country and between the Government of Canada and any international organization;
- (c) conduct and manage international negotiations as they relate to Canada;
- (d) coordinate Canada's international economic relations;
- (e) foster the expansion of Canada's international trade and commerce;
- (f) have the control and supervision of the Canadian International Development Agency;
- (g) coordinate the direction given by the Government of Canada to the heads of Canada's diplomatic and consular missions;
- (h) have the management of Canada's diplomatic and consular missions;
- (i) administer the foreign service of

**10.** (1) Les pouvoirs et fonctions du ministre s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux et liés à la conduite des affaires extérieures du Canada, notamment en matière de commerce international et de développement international.

(2) Dans le cadre des pouvoirs et fonctions que lui confère la présente loi, le ministre :

- a) dirige les relations diplomatiques et consulaires du Canada;
- b) est chargé des communications officielles entre le gouvernement du Canada, d'une part, et les gouvernements étrangers ou les organisations internationales, d'autre part;
- c) mène les négociations internationales auxquelles le Canada participe;
- d) coordonne les relations économiques internationales du Canada;
- e) stimule le commerce international du Canada;
- f) a la tutelle de l'Agence canadienne de développement international;
- g) coordonne les orientations données par le gouvernement du Canada aux chefs des missions diplomatiques et consulaires du Canada;
- h) assure la gestion des missions diplomatiques et consulaires du Canada;
- i) assure la gestion du service extérieur;

Canada;

*(j)* foster the development of international law and its application in Canada's external relations; and

*(k)* carry out such other duties and functions as are by law assigned to him.

(3) The Minister may develop and carry out programs related to the Minister's powers, duties and functions for the promotion of Canada's interests abroad including:

*(a)* the fostering of the expansion of Canada's international trade and commerce; and

*(b)* the provision of assistance for developing countries.

*j)* encourage le développement du droit international et son application aux relations extérieures du Canada;

*k)* exerce tous autres pouvoirs et fonctions qui lui sont attribués de droit.

(3) Le ministre peut élaborer et mettre en oeuvre des programmes relevant de ses pouvoirs et fonctions en vue de favoriser les intérêts du Canada à l'étranger, notamment :

*a)* de stimuler le commerce international du Canada;

*b)* d'aider les pays en voie de développement.