Court File No:33289

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

B E T W E E N:

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 ASSOCIATION,
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'UNIVERSITY DE LAVAL,
CANADIAN CIVIL LIBERTIES ASSOCIATION and
NATIONAL COUNCIL FOR THE PROTECTIONS OF CANADIANS ABROAD

Interveners

FACTUM OF THE INTERVENER, NATIONAL COUNCIL FOR THE PROTECTION OF CANADIANS ABROAD

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I: STATEMENT OF FACTS

The Case on appeal

1. The facts are as set out in the Record put before this Honourable Court by the Appellants and the Respondent.

PART II: QUESTION IN ISSUE

2. The National Council for the Protection of Canadians Abroad ("**NCPCA**") will confine its submissions to the Appellants' primary contention that the Government of Canada ("**GOC**") does not have a positive duty to take affirmative action on behalf of a Canadian citizen abroad when there has been a serious violation of that citizen's human rights and, when there has been a violation of that citizen's *Charter* s.7 rights as found in the case at bar by the courts below. [1]

PART III: STATEMENT OF ARGUMENT

3. The NCPCA submits that the GOC has a positive duty to take affirmative action on behalf of a Canadian citizen abroad in cases such as the one at bar. This positive duty ("**Duty to Protect**") is triggered when a Canadian citizen's human rights are violated in a foreign jurisdiction.

4. When the Duty to Protect arises, the GOC is bound to meet a due diligence standard of conduct. It is required to take all necessary steps to protect a Canadian citizen from human rights abuse in a foreign jurisdiction.

5. Contrary to the Appellants' contention, the Duty to Protect does not dictate the result that the GOC must attain on behalf of the Canadian citizen. It does not put the GOC in

[1] *See* Appellants' Factum, para. 44 – 51.

the position of guaranteeing a Canadian citizen's protection.[2] The Duty to Protect does, however, structure and direct the means available to the GOC to exercise its duty.

A. International Law Informs Charter Interpretation and Provides a Minimum Standard of Protection Under the *Charter*

6. International human rights law is derived from treaty law and customary international law.[3] Taken together, these sources of international law support the existence of the Duty to Protect that qualifies as a "basic tenet of our legal system", that is, a "principle of fundamental justice" within the meaning of *Charter* s. 7.[4]

7. Major international human rights treaties ("**Applicable Treaties**") that Canada has ratified (*International Covenant on Civil and Political Rights*;[5] *First Optional Protocol of the International Covenant on Civil and Political Rights;*[6] *Convention on the Rights of the Child,*[7] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[8]), inform *Charter* interpretation and provide a minimum standard for the content of *Charter* rights. This is so regardless of whether the Applicable Treaties have been formally implemented. This Court has noted:

> [t]he content of Canada's international human rights obligations is…an important indicia of the meaning of the 'full benefit of the *Charter*'s protection'… [T]he *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified. [9]

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[2] *See* Appellants' Factum, para. 49.
[3] Customary international law is defined as a "general practice [of States] accepted as law." *Statute of the International Court of Justice*, [1945] Can. T.S. No. 7, (done in San Francisco 26 June 1945, in force for Canada 20 Nov. 1945), Article 38(1)(b). *See generally*, I. Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Clarendon Press 1990) at pp. 4-7. **[NCPCA Brief of Authorities, TABS 16, 21 (hereinafter by "TAB" reference only)]**
[4] Appellants' Factum, para. 51, citing *Re BC Motor Vehicle Act*, [1985] 2 S.C.R. 486, at pp. 503-13.
[5] 999 UNTS 171, [1976] Can.T.S. No. 46 (done at New York, 19 December 1966; in force 23 March 1976; in force for Canada 19 August 1976; 164 parties as of 25 June, 2009). **[TAB 14]**
[6] 999 UNTS 171, [1976] Can.T.S. No. 47 (done at New York 19 December 1966, in force 23 March 1976; in force for Canada 19 August 1976; 112 parties as of June 25, 2009). **[TAB 11]**
[7] 1577 UNTS 3 (done at New York, 20 November 1989, in force 2 September 1990; in force for Canada 28 May 1990; 193 parties as of 25 June, 2009). " **[TAB 10]**
[8] 1465 UNTS 85 (done at New York 10 Dec 1984, in force 23 June 1987; in force for Canada 24 July 1987; 146 parties as of 25 June, 2009). **[TAB 9]**
[9] *R v. Hape,* [2007] 2 S.C.R. 292, [2007] S.C.J. 26 at para. 55, [*Hape*], citing *Slaight Communications Inc. v. Davidson* [1989] 1 S.C.R. 1038, at 1056 majority reasons per Dickson C.J.. **[TAB 5]**

8. The Applicable Treaties constitute compelling evidence of customary international law since they command the support of the community of nations and are reflective of state practice and *opinio juris*.[10] Such customary international law is directly incorporated into the Canadian common law, which, informs *Charter* interpretation.[11]

9. The above sources of international law give rise to a "presumption of conformity" – a presumption that Canadian domestic law, including *Charter* s. 7, conforms with international law. In recognition of the significant relationship between international and domestic law, this Court "has sought to ensure consistency between its interpretation of the *Charter*, on the one hand, and Canada's international obligations and the relevant principles of international law, on the other hand."[12]

B. The Basis of the Duty to Protect Under Treaty Law

10. The Applicable Treaties not only impose negative obligations on States to refrain from committing violations; they also impose positive obligations to take reasonable measures to prevent and redress violations of the rights of their citizens. The general obligation of States under the ICCPR is "to respect and to ensure" ICCPR rights.[13] This obligation has been interpreted as imposing both "negative and positive" legal obligations.[14] Positive obligations of a State Party include the adoption of "legislative, judicial, administrative, educative and other appropriate measures in order to fulfill their

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[10] See *North Sea Contintental Shelf* cases, [1969], ICJ Rep. 3 at 32-41 [*North Sea Continental Shelf* cases]; Brownlie, *supra* note 3 at pp.11-13; John Currie, *Public International Law*, (Toronto: Irwin Law, 2001) at pp. 183-89. **[TAB 4]**

[11] *Hape supra,* note 9 at para. 39. **[TAB 5]**

[12] *Hape, supra*, note 9 at para. 55. More generally, Lebel, J. noted : "***It is a well-established principle*** of statutory interpretation that ***legislation will be presumed to conform to international law***." (emphasis added) *Id.* at para. 53; *see also id.,* at paras. 54-56 citing, *inter alia*, *Daniels v. White*, [1968] S.C.R. 517, at 541, per Pigeon, J : "Parliament is not presumed to legislate in breach of a treaty or in any manner inconsistent with the comity of nations and the established rules of international law." **[TAB 5]**

[13] ICCPR, *supra* note 5, Article 2:1,: "Each State Party to the present Covenant undertakes ***to respect and to ensure*** to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (emphasis added) **[TAB 14]**

[14] ICCPR General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, U.N. DOC. /CCPR/C/21/Rev.1/Add.13 (General Comments) at para. 6. [GC 31]. **[TAB 12]**

legal obligations."[15]

11. The operational language of the ICCPR requires that "each State Party … **undertakes to take the necessary steps**, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."[16]

12. State duties to take "positive" measures extend beyond guarding against violations by their own agents to address violations by third parties. Failure to do so renders states liable by "permitting or failing to take appropriate measures or to exercise **due diligence** to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."[17]

13. The GOC's Duty to Protect its citizens abroad coequally applies when the third party is another State.[18] ICCPR General Comment No. 31 ("**GC 31**") explains *erga omnes* obligations arising under ICCPR Art. 2 as follows:

> [E]very State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the "Rules concerning the basic rights of the human person" are *erga omnes* and that, as indicated in the fourth preambular paragraph of the Covenant, there is a United Nations Charter obligation to promote universal respect for, and observance for, Universal rights and fundamental freedoms. [19]

14. *Erga omnes* obligations become that much more compelling where, as in the case at bar, there is evidence of a violation of a peremptory norm of international law, *jus cogens*, which includes the prohibition against torture.[20] Under international treaty law,

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[15] GC 31, *supra* note 14 at para. 7. **[TAB 12]**
[16] ICCPR, *supra* at note 5, Article 2:2. (emphasis added). **[TAB 14]**
[17] GC 31, *supra* note 14 at para. 8. **[TAB 12]**
[18] See generally: GC 31, *supra* note 14. **[TAB 12]**
[19] GC 31, *supra* at note 14, para. 2. *see Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Second Phase), [1970] ICJ Rep. 3 at para. 33..: « [A]n essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of al1 States. In view of the importance of the rights involved, al1 States can be held to have a legal interest in their protection; they are obligations *erga omnes*." [Barcelona] **[TABS 12, 1]**
[20] A. Cassese, *International Law*, 2nd ed. (Oxford: University Press, 2005), pp. 202 and 203*; see also United Nations Convention on the Law of Treaties*, 1155 UNTS 331, 1980 Can.T.S. No. 37 (Done at Vienna 3 May 1969, in force and in force for Canada 27 January 1980), at Art. 53: "A treaty is void if its

no derogation is permitted from a *jus cogens* norm.[21]

C. The Basis of the Duty to Protect Under Customary International Law

15. The Duty to Protect is not only based on treaty law *per se*; it also derives from customary international law. This Honourable Court has affirmed that such law is directly incorporated into Canadian common law:

> [T]he doctrine of adoption operates in Canada such that prohibitive rules of customary international law should be incorporated into domestic law in the absence of conflicting legislation. The automatic incorporation of such rules is justified on the basis that international custom, as the law of nations, is also the law of Canada unless, in a valid exercise of its sovereignty, Canada declares that its law is to the contrary. Parliamentary sovereignty dictates that a legislature may violate international law, but that it must do so expressly. Absent an express derogation, the courts may look to prohibitive rules of customary international law to aid in the interpretation of Canadian law and the development of the common law.[22]

16. The general practice of States accepted as law, reflects a positive obligation to "ensure" human rights. This general practice is evidenced by the following:

(a) overwhelming support within the community of nations, including Canada, for positive due diligence obligations arising under the Applicable Treaties.[23]; and

(b) the Applicable Treaties, and other similar human rights instruments, have been interpreted and applied by international human rights committees, regional human rights courts and international tribunals. The decisions rendered by such interpretive bodies, and the responses of States thereto, constitute a body of precedent and State practice evidencing a positive state obligation to ensure human rights.[24]

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conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations." [UNCLT] **[TABS 22, 18]**

[21] UNCLT *supra* note 20, at Art. 53. **[TAB 18]**

[22] *Hape supra,* note 9 at para 39. (Majority Reasons per Le Bel J.) **[TAB 5]**

[23] It has been recognized by the International Court of Justice that treaties can consitute significant evidence of international custom by way of codification, crystallization, and in some cases even in the creation of customary rules. *See* : *North Sea Contintental Shelf* cases, *supra* note 10, at 32-41; Brownlie, *supra* note 3 at pp.11-13; Currie, *supra* note 10, at pp. 183-89. **[TABS 4, 21, 23]**

[24] Further to sources cited at note 3, *supra,* customary international law arises from a general practice of States, which they recognize as legally binding. Among other sources of evidence of the existence of a customary norm are diplomatic correspondence, a "pattern of treaties in the same form," and the "practice of international organs." Brownlie, *supra* note 3*, at* p. 5. **[TAB 21]**

17. Canada is a party to the *First Optional Protocol of the ICCPR* which allows for individual complaints to be filed against any State Party. One of the best known cases involving the GOC is *Lovelace v. Canada*,[25] where it was alleged that provisions of the *Indian Act* operated to the effect that a woman lost her Indian status upon marrying a non-Indian man. The GOC accepted and met its due diligence obligations under the ICCPR by amending the *Indian Act* in response to the UN Human Rights Committee finding.[26]

18. The GOC's contemporary instructions to its consulates abroad echo - and provide clear evidence of Canadian acceptance of - such positive due diligence obligations:

> "It is a basic principle of international law that whatever a State's treatment of its own subjects, aliens must be accorded an international minimum standard of treatment, including freedom from arbitrary arrest, due process in the determination of legal rights, and respect for human rights generally." [27]
>
> …
>
> "Consistent with Canada's commitment with fundamental human rights, Canadian consular officers do what they can to protect Canadians against violations of these rights." [28]

19. Similar acceptance of positive due diligence obligations is demonstrated in prominent State practice regulated by regional human rights treaties. The *European Convention on Human Rights*[29] ("**ECHR**") and the *Inter-American Convention on Human Rights*[30] ("I**ACOHR**") create positive obligations similar to those found in the ICCPR. In the context of the IACOHR, the Inter-American Court has acknowledged that:

> This obligation implies the duty of State Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation

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[25] Communication No. R.6/24, U.N.Doc.Supp. No. 40 (A/36/40/at 166 (1981). **[TAB 6]**

[26] *See An Act to Amend the Indian Act*, S.C., c. 27, reflected in *Indian Act*, R.S.C. 1985, c.I-15, s. 6(1)(a). **[TAB 25]**

[27] *Manual of Consular Instructions* (2007), § 2.4.1, quoted in Luke T. Lee and John Quigley, *Consular Law and Practice*, p. 138 (3rd ed. 2008{ TA \l "Luke T. Lee, Consular Law and Practice (2d ed. 1991)" \s "Lee" \c 5 }). **[TAB 24]**

[28] *Ibid.*, at p. 136. **[TAB 24]**

[29] 213 UNTS 221, ETS 5, done at Rome, signed 4 Nov. 1950, entered into force 3 September 1953. See *also* ECHR decision in *Ilascu and others v. Moldova and Russia*, App. No. 48787/099, Judgment of 8 July 2004, para. 490. **[TABS 17, 2]**

[30] Organization of American States, American Convention on Human Rights, (done at San José, Costa Rica, 22 November 1969 (text online at: http://www.cidh.org/basicos/english/Basic3.American%20Convention.htm)). **[TAB 13]**

as warranted for damages resulting from the violation.[31]

20. The Inter-American Court has emphasized that the positive obligation does not require the attainment of a particular, or even satisfactory, result. It simply requires that a State undertake its duty in a serious manner and not as a mere formality that is preordained to be ineffective.[32]

D. Customary International Law Empowers and Obliges the GOC to Take Extraterritorial Action

21. Customary international law affords the GOC the power and, therefore, the means to protect Canadians abroad. Interrelated principles of customary international law such as the nationality principle, the *erga omnes* principle, the law of consular assistance reflected in the *Vienna Convention on Consular Relations*[33] ("**VCCR**"), and the law of diplomatic protection reflected in the *Vienna Convention on Diplomatic Relations*[34] ("**VCDR**"), empower the GOC to take affirmative, extraterritorial action on behalf of a Canadian abroad.

22. Customary international law recognizes the "nationality principle" as a basis upon which "States may assert jurisdiction over acts occurring within the territory of a foreign state on the basis that their nationals are involved".[35] This power is <u>not</u> territorially constrained. To the contrary, it is based on the premise that the GOC has the jurisdiction to act extraterritorially.

23. The GOC's power to act extraterritorially is also based on the *erga omnes* principle, the law of consular assistance and the law of diplomatic protection. Taken together, such customary international law stipulates that all States "have a legal interest", and

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[31] *Velásquez Rodríguez v. Honduras,* Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988) at para. 166. [Velásquez] **[TAB 8]**
[32] *Ibid.,* at para. 177. **[TAB 8]**
[33] 596 UNTS 261 (1963), [1977] Can. T.S. No. 25 [VCCR] **[TAB 19]**
[34] 500 UNTS 95 (1961), [1966] Can. T.S. No. 29, (Done at Vienna, 18 April 1961, in force 24 April 1964, in force for Canada 25 June 1966). [VCDR] **[TAB 20]**
[35] *Hape, supra* note 9, at para. 60. **[TAB 5]**

"obligations *erga omnes*", to protect a foreign national's human rights.[36] This obligation derives from "the principles and rules concerning the basic rights of the human person":[37]

> **When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them**. These obligations, however, are neither absolute nor unqualified. In particular, an essential distinction should be drawn between **the obligations of a State towards the international community as a whole**, and those arising vis-à-vis another State in the field of diplomatic protection. **By their very nature the former are the concern of al1 States. In view of the importance of the rights involved, al1 States can be held to have a legal interest in their protection; they are obligations *erga omnes* .**[38]

24. International law has long recognized that a breach of internationally recognized minimum standards of treatment of foreign nationals gives rise to a right of protection on the part of the sending State:

> It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, for whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights – its right to ensure, in the person of its subjects, respect for the rules of international law.[39]

25. The GOC's powers to render consular assistance and diplomatic protection are partially codified in the VCCR and the VCDR respectively. VCCR Article 5 empowers and entitles the GOC, on behalf of the "sending State", to take all appropriate measures available to protect its citizens in the "receiving State" (United States of America, in the case at bar).[40]

26. The VCDR similarly gives Canada jurisdiction to protect its nationals within the

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[36] *See* para. 10 above and references to GC 31, *supra* note 14. **[TABS 14, 12]**
[37] *Barcelona*, *supra* note 19 at para 34. **[TAB 1]**
[38] *Ibid.* at para 33. (emphasis added) **[TAB 1]**
[39] The Mavrommatis Palestine Concessions (Greece v United Kingdom) [1924] PCIJ (ser A), No 2, 12. **[TAB 7]**
[40] *See* VCCR, *supra* note 33, Art. 5 Consular functions, (in particular : 5(a) protecting nationals of the sending State and in the receiving State; 5(e) helping and assisting nationals of the sending State; 5(h) safeguarding the interests of minors…; 5(i) representing nationals of the sending State before the tribunals and other authorities of the receiving State); and 36 (communication and contact with nationals of the sending State in the receiving State. **[TAB 19]**

territory of a receiving State "within the limits permitted by international law".[41]

27. As noted, customary international law gives the GOC the power to take extraterritorial action. This Court similarly recognizes that such law constitutes "an important interpretive aid" for the *Charter's* "jurisdictional scope" and the GOC's Duty to Protect:

> …certain fundamental rules of customary international law govern what actions a state may legitimately take outside its territory. Those rules are important interpretative aid for determining the jurisdictional scope of s.32(1) of the *Charter*[42]

28. The NCPCA does not dispute, and indeed adopts the Appellants' distinction between diplomatic powers of protection occasioned by an international wrong and consular functions of assistance to Canadians in acute distress abroad (*see* Appellants' Factum, paras. 65, 66). The critical point, however, is that this law must be interpreted and applied in the context of the international human rights violation that gives rise to the Duty to Protect. The case law[43] and international commentary[44] that the Appellants' rely on to deny the existence of the Duty to Protect are distinguishable. These authorities characterize powers of diplomatic and consular protection as "discretionary" without regard to violations of international human rights norms. It is noteworthy that these same authorities make tangential reference to international human rights law, and acknowledge a State's obligation "to protect its nationals abroad when they have been subjected to a serious violation of human rights"[45]; and further, that "[t]here may be a duty on government, consistent with its obligations under international law, to take action to protect one of its citizens against a gross abuse of international human rights norms."[46]

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[41] VCDR, *supra* note 34, Art. 3 :1(b) "***protecting*** in the receiving State ***the interests of the sending State and of its nationals*** within the limits permitted by international law." (emphasis added).**[TAB 20]**
[42] *Hape, supra* note 9, at para. 35. **[TAB 5]**
[43] *See* Appellants' Factum, paras. 94- 96, citing *inter alia , Kaunda and Others v. The President of the Republic of South Africa*, [2004] ZACC 5 at paras. 77-81, and 177.
[44] *See* Appellants Factum, paras. 69-71, citing International Law Commission, Draft Articles on Diplomatic Protection, with Commentaries, U.N.Doc. A61/10(2006), International Law Commission, *Report of the International Commission on the work of its 56th session*, *(3 May -4 June and 5 July -6 August 2004)* U.N. Doc. A/59/10.
[45] International Law Commission, Draft Articles on Diplomatic Protection, with Commentaries, U.N.Doc. A61/10(2006).; Article 2, para. 3. [**TAB 15**]
[46] *Kaunda*, *supra* note 43 p. 173, para. 69. **[TAB 3]**

D. Conclusion

29. The GOC has discretion, in the normal course, to exercise its diplomatic powers of protection and consular functions to assist Canadian nationals placed in distress abroad. However, a serious violation of a Canadian citizen's international human rights outside Canada, as in the case at bar, presents a fundamentally different kind of case. In the presence of such a violation, by definition an "international wrong", the GOC has an obligation to consider the full range of its diplomatic and consular powers and to exercise the best means available to it to provide assistance in the circumstances of the individual case.

30. It is the serious violation of a Canadian citizen's human rights outside Canada that triggers the Duty to Protect. The Duty to Protect does not impede the discretionary exercise of governmental power in the vast majority of cases involving Canadians abroad. To the contrary, the Duty to Protect speaks to the comparatively rare category of case in which a Canadian citizen's fundamental human rights are violated in a foreign jurisdiction.

PART IV: COSTS

31. The NCPCA does not seek and makes no submissions as to costs.

PART V: ORDER REQUESTED

32. The NCPCA respectfully requests:

a) permission to present oral argument; and
b) that this Honourable Court dismiss the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of October, 2009.

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H. Scott Fairley	**Chris MacLeod**	**Dean Peroff**

PART VI: TABLE OF AUTHORITIES

TAB	CASE CITED	PARA. NO.
1.	*Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (Second Phase), [1970] ICJ Rep. 3	13, 23
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9.	*Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,* 1465 UNTS 85 (done at New York 10 Dec 1984, in force 23 June 1987; in force for Canada 24 July 1987; 146 parties as of 25 June, 2009)	7
10.	*Convention on the Rights of the Child,* 1577 UNTS 3 (done at New York, 20 Nov. 1989, in force 2 Sept. 1990.; in force for Canada 28 May 1990; 193 parties as of 25 June, 2009)	7
11.	*First Optional Protocol of the International Covenant on Civil and Political Rights*, 999 UNTS 171, [1976] CAN.T.S. No. 47 (Done at New York 19 December 1966, in force 23 March 1976; in force in Canada 19 August 1976; 112 parties as of June 25, 2009)	7
12.	ICCPR General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, U.N. DOC. /CCPR/C/21/Rev.1/Add.13 (General Comments)	10, 12, 13, 23
13.	*Inter-American Convention on Human Rights,* Organization of American States, American Convention on Human Rights, done at San José, Costa Rica, 22 November 1969, (text online at http://www.cidh.org/basicos/english/Basic3.American%20Convention.htm).	19
14.	*International Covenant on Civil and Political Rights,* 999 UNTS 171, [1976] CAN.T.S. No. 46 (done at New York, 19 December	7, 10, 11

	166; in force 23 March 1976; in force for Canada 19 August 1976; 164 parties as of 25 June, 2009).	
15.	*International Law Commission, Draft Articles on Diplomatic Protection, with Commentaries,* U.N.Doc. A/61/10/ (2006)	28
16.	*Statute of the International Court of Justice*, [1945] CAN. T.S. No. 7, (done in San Francisco 26 June 1945, in force for Canada 20 Nov. 1945),	6
17.	*The European Convention on Human Rights*, 213 UNTS 221, ETS 5, done at Rome, signed 4 Nov. 1950, entered into force 3 Sept 1953	19
18.	*United Nations Convention on the Law of Treaties*, 1155 UNTS 331, 1980 Can T.S. No. 37 (Done at Vienna 3 May 1969, in force and in force for Canada 27 Jan 1980)	14
19.	*Vienna Convention on Consular Relations,* 596 UNTS 261 (1963), [1977] Can. T.S. No. 25	21, 25
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TAB	**AUTHORS AND ADDITIONAL MATERIALS CITED**	**PARA. NO.**
21.	I. Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Clarindin Press 1990)	6, 8, 16
22.	A. Cassese, *International Law*, 2nd ed. (Oxford: University Press, 2005)	14
23.	J. Currie, *Public International Law*, (Toronto: Irwin Law, 2001)	8 ,16
24.	Luke T. Lee and J. Quigley, *Consular Law and Practice*, 3rd ed. (Oxford University Press, 2008)	18

PART VII: STATUTES

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