Court File: A-148-20

FEDERAL COURT OF APPEAL

B E T W E E N:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Appellant

-and-

MEDHANIE AREGAWI WELDEMARIAM

Respondent

-and-

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS

Interveners

MEMORANDUM OF THE INTERVENER – U.N. HIGH COMMISSIONER FOR REFUGEES

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OVERVIEW

1. The Office of the United Nations High Commissioner for Refugees ("UNHCR") is mandated to supervise the application of international conventions for the protection of refugees by States Parties. UNHCR's interpretation of the 1951 *Convention relating to the Status of Refugees* and the 1967 *Protocol* (together "1951 *Refugee Convention*") are authoritative and integral to promoting consistency in the global regime for the protection of refugees and others of concern.

2. UNHCR submits that admissibility provisions must be interpreted in light of the object and purpose of the 1951 *Refugee Convention* as a whole. To be congruent with Canada's international obligations, sections 34(1)(a) and (f) of the *Immigration and Refugee Protection Act* ("*IRPA")* cannot bar asylum-seekers from access to a fair and efficient refugee status determination. Furthermore, in so far as 34(1)(a) and (f) may lead to *refoulement*, their interpretation must conform with the exception to *non-refoulement* contained in Article 33(2) of the 1951 *Refugee Convention*.

PARTS I AND II – THE FACTS AND THE ISSUES

3. UNHCR relies on the facts as set out in the Appeal Record. In the submissions below, UNHCR will address the requirement that Sections 34(1)(a) and (f) of *IRPA* be read in light of Canada's obligations under the 1951 *Refugee Convention* and its human rights framework, which requires that admissibility provisions only apply to asylum-seekers in limited circumstances with specific procedural safeguards; and that their interpretation and application conform with the exceptions to *non-refoulement* contained in Article 33(2) of the 1951 *Refugee Convention*. UNHCR's submissions are strictly limited to questions of law.

PART III – THE LAW AND ARGUMENT

A. The views of UNHCR are persuasive

4. The United Nations General Assembly has entrusted UNHCR with the mandate to provide international protection to refugees and, together with Governments, to seek solutions for them. UNHCR is also responsible for supervising the application of

international conventions for the protection of refugees.[1] This supervisory responsibility is further reflected in Article 35(1) of the 1951 *Refugee Convention* and Article II of the 1967 *Protocol* obliging State Parties to cooperate with UNHCR in the exercise of these functions.[2] Canada is a State Party to both instruments. The views of UNHCR are informed by its seven decades of experience supervising the treaty-based system for refugee protection. The Supreme Court of Canada[3] and high courts internationally[4] have endorsed the views of UNHCR as highly persuasive in this area of law.

B. Sections 34(1)(a) and (f) must be interpreted in light of Canada's obligations under the 1951 *Refugee Convention* and its broader human rights framework

5. Canada's obligations under the 1951 *Refugee Convention* must inform the proper interpretation of section 34(1)(a) and (f) of the *IRPA*.[5]

6. The Preamble to the 1951 *Refugee Convention* embeds it within a broader human rights framework, grounded in the *Charter of the United Nations* and the *Universal Declaration of Human Rights*.[6] This human rights purpose of the 1951 *Refugee*

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[1] *Statute of the Office of the United Nations High Commissioner for Refugees*, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, 1950, paras 1 and 8(a).

[2] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137 ("1951 *Refugee Convention*"); *Protocol Relating to the status of Refugees*, 606 U.N.T.S. 267, Can. T.S. 1969/29 ("1967 *Protocol*").

[3] *Chan v. Canada*, [1995] 3 S.C.R. 593 at paras. 46 and 119; *Canada v. Ward,* [1993] 2 S.C.R. 689 ("*Ward"*), at pp. 713-714.

[4] **UK**: *Al-Sirri v. SSHD and DD v. SSHD*, [2012] UKSC 54, at para. 36; *R (on the application of EM (Eritrea)) v. SSHD*, [2014] UKSC 12, at paras. 71-72; **USA**: *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); 107 S. Ct. 1207.

[5] *Immigration and Refugee Protection Act,* SC 2001, c 27 ("*IRPA*"). This is underscored by section 3(3)(f) of the *IRPA* which states that the Act is to be construed and applied in a manner that "complies with international human rights instruments to which Canada is signatory." Writing for this Court in *de Guzman* (2006), Evans J.A. held that, in light of section 3(3)(f), "a legally binding international human rights instrument to which Canada is signatory is determinative of how the *IRPA* must be interpreted and applied, in the absence of a contrary legislative intention." See *de Guzman v. Canada*, 2005 FCA 436 at para 87, *per* Evans J.A. After citing with approval from this portion of the judgment in *de Guzman*, the Supreme Court noted in *B010 v. Canada (MCI),* 2015 SCC 58 at para. 49 that "There can be no doubt that the *Refugee Convention* is such an instrument."

[6] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI; UN General Assembly, *Universal Declaration of Human Rights 1948*, 10 December 1948, 217 A (III); See also the following Executive Committee Conclusions: No. 82 (b) and (d); and No. 85 (f) and (g). The Executive Committee of the High Commissioner's Programme ('ExCom') adopts Conclusions by consensus of the States that are Members of ExCom and can therefore be considered as reflecting their understanding of legal standards

Convention is reflected in the jurisprudence of the Supreme Court. In *Canada v. Ward*, the Supreme Court held that "[u]nderlying the Convention is the international community's commitment to the assurance of basic human rights without discrimination."[7]

7. In *Pushpanathan v. Canada*, the Supreme Court noted "[t]he human rights character of the Convention" and held that "[t]his overarching and clear human rights object and purpose is the background against which interpretation of individual provisions must take place."[8] This approach was affirmed again in *Ezokola v. Canada*[9] and in *Németh v. Canada*.[10] In the latter case, the Court also addressed the requirement that the *IRPA*, which expressly incorporates certain provisions of the 1951 *Refugee Convention*, be construed and applied in a manner that is consistent with Canada's obligations under international treaties and principles of international law, including international human rights law.[11]

C. Fair and efficient refugee determination procedures are essential to the full and inclusive application of the 1951 *Refugee Convention*

8. Access to a fair and efficient refugee status determination procedure is an essential safeguard to protect refugees and asylum-seekers from *refoulement*. State Parties to the 1951 *Refugee Convention* are required to provide access to such a procedure.[12]

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regarding the protection of refugees. At present, 106 States are members of the Executive Committee, including Canada, which has been a member since 1957.

[7] *Ward, supra* note 3 at para. 34.

[8] *Pushpanathan v. Canada,* [1998] 1 SCR 982 ("*Pushpanathan*") at para. 57. The Supreme Court of Canada has also repeatedly noted that "[t]he preamble to the *Refugee Convention* highlights the international community's 'profound concern for refugees' and its commitment 'to assure refugees the widest possible exercise of . . . fundamental rights and freedoms' and has stressed its "overarching and clear human rights object and purpose": *Febles v. Canada (MCI)*, 2014 SCC 68 at para. 27, *per* McLachlin C.J. (majority opinion).

[9] *Ezokola v. Canada,* 2013 SCC 40 ("*Ezokola"*) at paras 31- 32, *per* LeBel and Fish JJ. (for the Court).

[10] *Németh v. Canada*, 2010 SCC 56 ("*Németh*") at para. 86.

[11] *Ibid* at paras. 21, 34.

[12] UNHCR *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, ("*Fair and Efficient Asylum Procedures*") at para. 8. See also, UNHCR, *A guide to international refugee protection and building state asylum systems*, 2017, Handbook for Parliamentarians N° 27, section 7.2, page 154.

9. The right to seek and enjoy asylum from persecution in another country that is rooted in Article 14(1) of the *Universal Declaration of Human Rights*[13] is implemented in part by the 1951 *Refugee Convention.* Central to the realization of this right is the obligation of States not to expel or return (*refouler*) a person to territories where his or her life or freedom would be threatened. The *non-refoulement* principle is a cardinal principle of international refugee law most prominently expressed in Article 33 of the 1951 *Refugee Convention* and recognized as a norm of customary international law.[14] The *non-refoulement* principle as expressed in Article 33(1)[15] is reflected in jurisprudence applying section 7 of the *Canadian Charter of Rights and Freedoms*, exemplified by the Supreme Court's decisions in *Singh v. Canada (MEI)* and *Charkaoui v. Canada (MCI)*.[16]

10. Refugee status is declaratory in nature, meaning that a person is a refugee within the meaning of the 1951 *Refugee Convention* as soon as they fulfill the criteria contained in the refugee definition.[17] Thus, the prohibition of *refoulement* applies to all refugees, including those who have not formally been recognized as such, which includes asylum-seekers whose status has not yet been determined.[18] Accordingly,

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[13] Article 14(1) provides that "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

[14] See, UNHCR, *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 16 January 2002, at para. 4; UNHCR, *Note on the Principle of Non-Refoulement*, November 1997. See also, Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope and Content of the Principle of *Non-Refoulement*: Opinion," in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (ed. Erika Feller, Volker Türk and Frances Nicholson), (Cambridge University Press, 2003), at 140-164 (paras. 193-253); Concurring Opinion of Judge Pinto de Albuquerque in European Court of Human Rights, *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, 23 February 2012 ("*Hirsi Jamaa*"), p. 42.

[15] Article 33(1) states: 'No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

[16] *Canadian Charter of Rights and Freedoms*, s. 1, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982. C 11; *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177 at para. 47; *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at para. 14; See also *Melo v. Canada (Citizenship and Immigration)*, 2014 FC 1094 at paras. 31-40.

[17] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, April 2019, HCR/1P/4/ENG/REV. 4 ("UNHCR Handbook") at para. 28; *Németh, supra* note 10 at para. 50.

[18] UNHCR Handbook, *ibid* at para. 28; ExCom Conclusions No. 6 (c); No. 79 (j); No. 81 (i)http://www.unhcr.org/pages/49e6e6dd6.html. See also, UNHCR, *Note on International*

States are obliged not to return or expel an asylum-seeker to their country of origin pending a final determination of refugee status. As was recently explained by the Supreme Court of the United Kingdom:

> Under the 1951 Geneva Convention recognition that an individual is a refugee is a declaratory act. The obligation not to refoule an individual arises by virtue of the fact that their circumstances meet the definition of "refugee", not by reason of the recognition by a Contracting State that the definition is met. For this reason a refugee is protected from refoulement from the moment they enter the territory of a Contracting State whilst the State considers whether they should be granted refugee status.[19]

11. To give effect to their obligations under the *1951 Refugee Convention* in good faith,[20] States Parties are required to make independent inquiries as to the need for international protection of persons seeking asylum,[21] a duty recognized by a wide range of national and regional Courts,[22] and provide them access to fair and efficient procedures.[23] Such procedures must allow for an examination of the relevant facts and the application of the eligibility criteria of Article 1 of the 1951 *Refugee Convention*.[24] As Lauterpacht and Bethlehem state, "a *denial* of protection in the absence of a review of individual circumstances would be inconsistent with the prohibition of *refoulement*".[25]

Protection (submitted by the High Commissioner), A/AC.96/815, ExCom Reports, 31 August 1993, para. 11http://www.unhcr.org/refworld/docid/3ae68d5d10.html; UNHCR, *Advisory Opinion from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Scope of the National Security Exception Under Article 33(2) of the 1951 Convention Relating to the Status of Refugees*, 6 January 2006 ("*Advisory Opinion on the Scope of National Security Exception Under Article 33(2)*") at paras 26-31.

[19] *G v G*, [2021] UKSC 9, (19 March 2021): http://www.bailii.org/uk/cases/UKSC/2021/9.html at para 81. See also *ST (Eritrea) v Secretary of State for the Home Department* [2012] UKSC 12 ("*ST*"), para 61.

[20] *Vienna Convention on the Law of Treaties*, 1155 U.N.T.S. 331, Can. T.S. 1980 No. 37 ("*Vienna* Convention") as discussed in relation to the UNHCR Handbook in *Pushpanathan, supra* note 8 at para. 54.

[21] *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations*, *supra* note 18 at para. 8; "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", *supra* note 14 at para. 100; and K. Wouters, *International Legal Standards for the Protection from Refoulement*, Intersentia, Antwerp (2009), p. 164-165.

[22] *Hirsi Jamaa*, *supra* note 14 at para. 146-148; *MSS v Belgium and Greece* (2011), 53 ECHRR 2 at paras 286, 298, 315, 321, 359; *Regina v. Immigration Officer at Prague Airport and another (Respondents) ex parte European Roma Rights Centre and others (Appellants),* [2004] UKHL 55, [2005] 2 AC 1 at para. 26; *C & Ors v Director of Immigration & Anor* [2013] HKCFA 21 at paras 56, 64.

[23] ExCom Conclusions No. 65 (o); No. 71 (i); No. 74 (i) No. 81 (h); No. 82 (d)(ii); No. 93 (a).

[24] *Regina v. Immigration Officer at Prague Airport*, *supra* note 22 at para. 26.

[25] "The Scope and Content of the Principle of *Non-Refoulement*: Opinion," *supra* note 14 at para. 173.

D. Admissibility procedures are only appropriate in limited circumstances, subject to minimum procedural safeguards

12. At international law, States may institute an admissibility stage to their asylum procedures only to determine whether the asylum-seeker has access to effective protection in another country.[26] This is the only permissible bar to full refugee status adjudication in the host State, and nevertheless requires minimum procedural safeguards. An assessment must be conducted as to whether the other country will ensure respect for international protection principles in relation to the asylum-seeker and in particular that of *non-refoulement*. Also required is an examination of the asylum-seeker's own circumstances with an effective opportunity to rebut a general presumption of safety.[27]

13. Application of section 34(1)(a) or (f) of the *IRPA* to asylum-seekers in Canada denies these individuals an assessment of their claims in light of the eligibility criteria of Article 1 of the 1951 *Refugee Convention*. As such, in so far as it applies to asylum-seekers, the application of section 34(1)(a) and (f) is at variance with Canada's international obligations and may pose a risk of *refoulement* contrary to Article 33(1) of the 1951 *Refugee Convention*.

E. Articles 1F and 33(2) ensure the State's ability to protect security interests

14. The 1951 *Refugee Convention* contains specific provisions that take full account of the security interests of States and host communities while enabling States to uphold their obligation to respect the principle of *non-refoulement*. These include the Article 1F exclusions and the Article 33(2) exceptions to the principle of *non-refoulement*.[28]

(i) Article 1F Exclusion Clauses

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[26] *Fair and Efficient Asylum Procedures, supra* note 12 at paras 11-14.
[27] *Ibid.*
[28] Article 1F should not be confused with Article 33(2) of the 1951 Convention. Unlike Article 1F which is concerned with persons who are not eligible for refugee status, Article 33(2) is directed to those who have already been determined to be refugees. Articles 1F and 33(2) are thus distinct legal provisions serving very different purposes. This distinction between Article 1F and Article 33(2) of the *1951 Refugee Convention* was recognized by the Supreme Court in *Pushpanathan, supra* note 8 at para. 58.

15. The exclusion clauses of Article 1F of the 1951 *Refugee Convention* provide for the denial of international refugee protection to persons who would otherwise meet the criteria of the refugee definition, but who are considered undeserving of refugee status on account of having committed certain serious crimes or heinous acts.[29]

16. Exclusion from international refugee protection on these grounds is restricted to those acts and crimes described in Article 1F only. Further, the exclusion provisions cannot act as a preliminary bar to assessing the merits of an asylum claim, nor can persons be excluded from refugee status for any acts that are not captured in Article 1F. Membership alone in a government entity of a repressive regime is not sufficient to bring someone within the scope of the exclusion clauses.[30] The exceptional nature and inherent complexity of exclusion require that the applicability of Article 1F be examined within a regular refugee status determination procedure offering proper procedural safeguards, rather than in admissibility or accelerated procedures.[31]

(ii) Article 33(2) exceptions to non-refoulement

17. The 1951 *Refugee Convention* also includes a mechanism for removing refugees who pose a danger to the community or to the security of the host country, through the exceptions to the principle of *non-refoulement* set out in Article 33(2) of the 1951 *Refugee Convention*. These exceptions apply to:

> a) a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which [they are], or

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[29] UNHCR *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, ("*Guidelines on Exclusion*") at para. 2, and its accompanying Background Note: UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the Convention Relating to the Status of Refugees*, 4 September 2003.

[30] See *Ezokola, supra* note 9 at para. 77, where the Supreme Court of Canada stated, "However, the UNHCR has explained, and other state parties have recognized, that to be excluded from the definition of refugee protection, there must be evidence that the individual knowingly made at least a significant contribution to the group's crime or criminal purpose. Passive membership would not be enough, as indicated above in paras. 70-76."

[31] *Guidelines on Exclusion*, *supra* note 29 at para. 31; UNHCR, *Background Note*, at paras 98-100: In UNHCR's view, a holistic approach to determining eligibility for international refugee protection, whereby both exclusion and inclusion issues are examined, is best suited to ensure a full assessment of the factual and legal issues arising in cases where the application of Article 1F is considered.

> b) [a refugee] who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.[32]

18. The *travaux préparatoires* with respect to Article 33(2) make clear that the exceptions set out therein were intended to be interpreted restrictively.[33] According to Paul Weis, a leading refugee law scholar who was a delegate for the International Refugee Organization during the drafting of the 1951 *Refugee Convention*, Article 33(2):

> ... constitutes an exception to the general principle embodied in paragraph 1 and has, like all exceptions, to be interpreted restrictively. Not every reason of national security may be invoked... [34]

(iii) Application of the 33(2) exception to the principle of non-refoulement

19. The issue raised in this appeal engages the first exception in Article 33(2), a plain reading[35] of which requires that the refugee must be "a danger to the security **of the country in which he is**" [emphasis added]. Article 33(2) of the 1951 *Refugee Convention* makes no reference to the security of other countries or international security concerns generally.[36] Further, Article 33(2) involves an individualized forward-looking assessment of **current or future danger** to the host country, based on reliable and credible evidence.[37]

20. Given the serious consequences for a refugee of *refoulement*, a high threshold applies to any exceptions to the 1951 *Refugee Convention*. "Danger" cannot be read to include

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[32] 1951 *Refugee Convention*, *supra* note 2, art 33(2).
[33] Paul Weis, *The Refugee Convention, 1951: The Travaux préparatoires Analyzed with a Commentary by Dr. Paul Weis*, at 327 (Cambridge University Press, 1995) ("*Weis*") at 18, 62, 63, 72. See also *Advisory Opinion on the Scope of the National Security Exception Under Article 33(2), supra* note 18. It is a general principle of law that exceptions to international human rights treaties, such as Article 33(2) of the 1951 *Refugee Convention*, must be interpreted restrictively.
[34] Weis, *ibid,* at 342.
[35] *Vienna Convention*, *supra* note 20, art 31(1); *Pushpanathan*, *supra* note 8 at para 52.
[36] "The Scope and Content of the Principle of *Non-Refoulement*: Opinion," *supra* note 14 at para 165: "The exceptions in Article 33(2) evidently amount to a compromise between the danger to a refugee from *refoulement* and the danger to the security of his or her country of refuge from their conduct. A broadening of the scope of the exception to allow a country of refuge to remove a refugee to a territory of risk on grounds of possible danger to other countries or to the international community would, in our view, be inconsistent with the nature of this compromise and with the humanitarian and fundamental character of the prohibition of *refoulement*."
[37] UN *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the Sixteenth Meeting*, 23 November 1951, A/CONF.2/SR.16, at 8; "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", *supra* note 14 at paras 147, 164, 168.

anything less than a "**very serious danger"**[38] and significant threats to national security.[39] The *travaux préparatoires* make clear that the drafters were concerned only with significant threats to national security. As Grahl-Madsen states:

> Generally speaking, 'the security of the country' exception may be invoked against acts of a rather serious nature endangering directly or indirectly the constitution, government, the territorial integrity, the independence, or the external peace of the country concerned.[40]

21. Where a sufficiently serious forward-looking danger to the security of the host country exists, the exception to *non-refoulement* protection under the 1951 *Refugee Convention* is lawful only if it is **necessary and proportionate,** as with any exception to a human rights guarantee. Consideration of proportionality is an important safeguard in the application of Article 33(2).[41] It represents a fundamental principle of international human rights law,[42] international humanitarian law,[43] and indeed, is a key aspect of Canada's own framework for the protection of fundamental rights and freedoms.[44] This means there must be a rational connection between removal of the refugee and elimination of the danger posed;[45] *refoulement* must be the last possible option for eliminating the danger;[46] and the danger for the host country must outweigh the risk of harm to the person as a result of *refoulement*.[47]

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[38] "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", *supra* note 14 at para 170 in which it is noted that "the threshold of prospective danger in Article 33(2) is higher than that in Article 1F."
[39] See Weis, *supra* note 33.
[40] Grahl-Madsen, *Commentary on the Refugee Convention 1951* (1963) at 236.
[41] "The Scope and Content of the Principle of *Non-Refoulement*: Opinion", *supra* note 14 at para. 177.
[42] See, e.g., ECtHR, *Silver v United Kingdom* (1983); UN Human Rights Committee, *Guerrero v Colombia,*, UN doc. CCPR/C/15/D/45/1979, at para. 13.3 (31 March 1982).
[43] See for example, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of the Victims of International Armed Conflicts (Protocol 1), 1125 U.N.T.S. 3, 7 December 1978, article 51(5)(b).
[44] *R v Oakes*, [1986] 1 S.C.R. 103 at paras 69 - 71; *Canadian Charter of Rights and Freedoms, supra* note 16.
[45] See Grahl-Madsen, *supra* note 40 at 200.
[46] See Court of Justice of the European Union, Case C 373/13, *H.T. v Land Baden-Württemberg*, 24 June 2015: "The refoulement of a refugee, while in principle authorised by the derogating provision Article 21(2) of Directive 2004/83, [which corresponds to Article 33(2) of the 1951 Convention] is only the last resort a Member State may use where no other measure is possible or is sufficient for dealing with the threat that that refugee poses to the security or to the public of that Member State." at para. 71: See also, J. Hathaway, *The Rights of Refugees under International Law*, CUP, 2005, p. 352; UNHCR, Background Note, supra note 29 at para. 10.
[47] The requirement for a balancing of interests is fully consistent with the *travaux préparatoires* of the 1951 *Refugee Convention* and the views of international refugee scholars. See Weis, *supra* note 33; Goodwin-Gill, *The Refugee in International Law*, 2d ed. (1996) at 139-140.

22. An interpretation of section 34(1)(a) and (f) that includes acts that do not pose a **very serious danger** to the **security *of Canada***, and that does not require assessments of necessity and proportionality, is overbroad and, in so far as it applies to asylum-seekers and refugees, is at variance with Canada's obligations under the 1951 *Refugee Convention*.

F. Conclusion

23. Section 34(1)(a) and (f) of the *IRPA* must be read in conformity with Canada's obligations under the 1951 *Refugee Convention*. The cornerstone principle of *non-refoulement*, combined with the declaratory nature of refugee status, requires that all asylum-seekers, with very limited exception, have access to a full assessment of their risk of persecution. Section 34(1)(a) and (f) cannot bar asylum-seekers from access to that assessment. The principle of *non-refoulement* equally prohibits the return of Convention refugees to a risk of persecution, save for the limited exceptions contained in Article 33(2) of the 1951 *Refugee Convention.* To the extent that section 34(1)(a) and (f) prevents access to fair and efficient refugee status determination and may lead to *refoulement* other than in the limited exceptions of Article 33(2), this provision is inconsistent with Canada's obligations under the 1951 *Refugee Convention.*

PART IV – STATEMENT ON COSTS ORDER SOUGHT

24. UNHCR does not seek costs against any other party and does not waive its privileges and immunities under applicable international legal instruments. UNHCR seeks leave to present oral argument before the Court based on these submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th DAY of APRIL, 2021

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PART V: LIST OF AUTHORITIES

Canadian statutes and regulations

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FEDERAL COURT OF APPEAL

B E T W E E N:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Appellant

-and-

MEDHANIE AREGAWI WELDEMARIAM

Respondent

MEMORANDUM OF THE INTERVENER – U.N. HIGH COMMISSIONER FOR REFUGEES

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