File No. 21937

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

PATRICK FRANCIS WARD

APPELLANT

AND:

THE ATTORNEY GENERAL OF CANADA

RESPONDENT

AND:

**UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES,
IMMIGRATION AND REFUGEE BOARD,
CANADIAN COUNCIL FOR REFUGEES**

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PART I

STATEMENTS OF FACTS

1. By order of The Honourable Mr. Justice Cory, the United Nations High Commissioner for Refugees (UNHCR) was given leave to intervene in this appeal through the filing of a factum.

2. UNHCR is charged by United Nations General Assembly Resolution 428(V) of December 14, 1950 with the function of providing international protection to refugees within its mandate. States parties to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, of which Canada is one, have undertaken to cooperate with UNHCR in the fulfilment of its protection mandate under Article 35 of the 1951 Convention and Article 2 of the 1967 Protocol. In carrying out this mandate at a national level, UNHCR seeks to ensure a better understanding and more uniform interpretation of recognized international principles governing the treatment of refugees.

3. The decision in this case is likely to affect the interpretation by Canada of the 1951 Convention and the 1967 Protocol with regard to the determination of refugee status and the grant of asylum to those who qualify for such status. Moreover, UNHCR anticipates that the present case may influence the manner in which the authorities of other countries apply the refugee definition contained in the 1951 Convention and incorporated by reference in the 1967 Protocol.

4. UNHCR does not take issue with the facts as set out in the Federal Court judgment, but rather restricts its submissions to matters of law relevant to its protection function.

PART II

POINTS IN ISSUE

5. UNHCR will only address the following two issues in this factum:

a) Whether evidence of "State complicity", either direct or indirect, is required to substantiate a finding of well-founded fear of persecution under the definition of a Convention refugee in the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, ratified by Canada on the 4th of June 1969, and incorporated in the Immigration Act, R.S.C. 1985, C.I-2; and

b) Whether desertion and/or dissension from a politico-military organization for reasons of conscience may properly ground a claim to be a Convention refugee on the basis of a well-founded fear of persecution for reasons of political opinion.

PART III

ARGUMENT

INTRODUCTION

6. The definition of Convention refugee established by Article 1A(2) of the 1951 Convention and reiterated in Article 1(2) of the 1967 Protocol has been incorporated by Canada into domestic law.

Immigration Act, R.S.C. 1985, c. I-2, s. 2(1).

7. Moreover, Canada has recognized a commitment to design and administer rules and regulations under the Immigration Act consonant with the need "to fulfil Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted."

Immigration Act, R.S.C. 1985, c. I-2, s.3 (g).

8. It is respectfully submitted that the Immigration Act should be applied in a manner fully consistent with the 1951 Convention Relating to the Status of Refugees and other relevant international legal standards for refugee protection to which it refers.

WHETHER EVIDENCE OF "STATE COMPLICITY", EITHER DIRECT OR INDIRECT, IS REQUIRED TO SUBSTANTIATE A FINDING OF WELL-FOUNDED FEAR OF PERSECUTION UNDER THE DEFINITION OF A CONVENTION REFUGEE IN THE 1951 CONVENTION AND 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, RATIFIED BY CANADA ON THE 4TH OF JUNE 1969, AND INCORPORATED IN THE IMMIGRATION ACT, R.S.C. 1985, C.I-2.

9. It is respectfully submitted that the Federal Court of Appeal erred in finding that the definition of Convention refugee requires that there be "State complicity" (involvement of the state), either direct or indirect, before a risk of serious harm can be characterized as a fear of persecution under the 1951 Convention and 1967 Protocol. In other words, agents of persecution are not limited to authorities of the State.

Reasons of the Court of Appeal, Appeal Case, p.27

Canada (Attorney General) v. Ward, [1990] 2 F.C. 667, 677.

10. "Well-founded fear of persecution" is the key phrase in the refugee definition. First, the term "well-founded fear" contains a subjective and an objective element. Both elements must be considered in determining whether a "well-founded fear" exists. Second, the "well-founded fear" must relate to persecution. Though persecution is not defined in the 1951 Convention or in any other international instrument, a threat to life or freedom is generally considered persecution. Third, a refugee claimant must show a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion. Fourth, the claimant must either be unable or unwilling for these reasons to avail himself or herself of the protection of his or her State.

UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (1988), paras 38, 51 and 64.

A. Grahl-Madsen, The Status of Refugees in International Law, vol. 1, 1966 ("A. Grahl-Madsen"), at 188-216;

G. Goodwin-Gill, The Refugee in International Law, 1983 ("G. Goodwin-Gill"), at 38-46;

J. Hathaway, The Law of Refugee Status, 1991 ("J. Hathaway"), at 99-134.

11. It is submitted that a refugee claimant's fear should be considered well-founded if he or she can reasonably establish that the continued stay in his or her country of origin has become intolerable to him or her for the reasons stated in the refugee definition or would for the same reasons be intolerable if he or she returned there.

10 See UNHCR Handbook, para 42.

12. The well-founded fear criteria expressed in the 1951 Convention focuses on the situation of an individual claimant; it requires a claimant to show objective evidence of risk. Evidence of persecutory intent may be conclusive as to the existence of a well-founded fear. The absence of such evidence, however, does not preclude a finding of a well-founded fear of persecution. The refugee definition does not require a claimant to show either motive
20 or intent on the part of the persecutor, and there is no indication in the drafting history of the 1951 Convention that this was ever to be considered a controlling factor in the determination of refugee status. Therefore, it is submitted that neither an intention to harm nor negligence on the part of State authorities is required to establish well-founded fear of persecution under the definition of Convention refugee.

30 13. Moreover, the travaux preparatoires of the 1951 Convention do not indicate that a well-founded fear of persecution must emanate from a government or its official agencies.

See the United States draft: UN doc. E/AC.32/L.4, para. B. Cf. the views of the United Kingdom: UN docs. E/AC.32/SR.6, para. 5; E/AC.32/L.2 Rev.1.

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UNHCR Handbook

14. While not formally binding on States parties, the UNHCR Handbook has been endorsed by the States which are members of the Executive Committee of the UNHCR, including Canada, and has been relied upon by the courts of States parties.

> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention at the 1967 Protocol Relations to the Status of Refugees (1988)
>
> I.N.S. v. Cardoza Fonseca, 480 U.S. 421 (United States Supreme Court, 1987);
>
> R. v. Secretary of State for the Home Department ex parte Sivakumaran, [1988] 1 All E.R. 193 (House of Lords, 1988);
>
> Ahmad Ali Zalzali v. M.E.I., Federal Court of Appeal Decision No. A-382-90, April 30, 1991.

15. With respect to the issue of State complicity as a requirement for establishing a claim under the 1951 Convention, the UNHCR Handbook states at page 17, paragraph No. 65:

> "Persecution is normally related to action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned... Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection."

16. The meaning of the UNHCR Handbook on this issue is clear. Though persecution is often instigated or acquiesced in by the authorities of a country, this is not always nor necessarily the case. In certain situations, the persecutor may not be the government but rather, for example, a paramilitary death squad, guerrilla group, or insurgent force. The non-official nature of the actor does not make seriously harmful acts less persecutory and is not inconsistent with the definition of Convention refugee. The common element of these situations is the absence of State protection.

17. In those situations where the persecution does not emanate from the authorities of a country, it should be carefully assessed to ascertain whether the person having a well-founded fear of persecution is "unable" or "unwilling" to avail him/herself of the protection of his/her country of origin. The person would be "unable" (and "unwilling") to do so, if the authorities in practice could not ensure his/her protection against the persecutors. This would be the case where the authorities, for one reason or another, are not fully in control of the security situation in the country, or where the persecution emanates from autonomous paramilitary groups engaged in covert operations that the authorities hitherto have not been able to constrain. Whether the authorities are willing to provide protection is thus immaterial where they are unable to do so and a threat of persecution exists. The absence of protection by the country of origin may in itself create sufficient evidentiary basis for a presumption of a well-founded fear.

> "... [E]ven if a government has the best of wills to prevent atrocities on the part of the public (or certain elements of the population), but for some reason or other is unable to do this, so that the threatened persons must leave the country in order to escape injury, such persons shall be considered as true refugees": A. Grahl-Madsen, supra at 191.
>
> "Fear of persecution and lack of protection are themselves interrelated elements. The persecuted clearly do not enjoy the protection of their country of origin, while evidence of the lack of protection on either the internal or external level may create a presumption as to the likelihood of persecution and to the well-foundedness of any fear": G. Goodwin-Gill, supra at 38.
>
> "[R]efugee law is designed to interpose the protection of the international community only in situations where there is no reasonable expectation that adequate national protection of core human rights will be forthcoming. Refugee law is therefore 'substitute protection' in the sense that it is a response to disfranchisement from the usual benefits of nationality": J. Hathaway, supra at 124.

United States Jurisprudence

18. The courts of other States parties have interpreted the concept of "well-founded fear of persecution" to include the actions of non-governmental actors insofar as the State is

unable or unwilling to afford effective protection against those actions. For instance, in a United States case, which also dealt with a deserter from a politico-military organization in Ireland, an Immigration Judge found that "the Government of the Republic of Ireland is unable to control the activities of the PIRA [Provisional Irish Republican Army] and if [the asylum applicant] were to be returned to that country he would suffer persecution within the meaning of [United Nations] Convention Protocol and Section 243(h) of 8 U.S.C. Section 1253(h)." Though the United States Board of Immigration Appeals reversed the finding that the individual had shown a sufficient likelihood of persecution on appeal, the Ninth Circuit Court in 1981 reversed the Board of Immigration Appeals and confirmed that persecution included persecution "by groups which the government is unable to control".

> McMullen v. I.N.S., 658 F.2d 1312, 1315 (9th Cir. 1981) This case decided the issue of "likelihood of persecution by the Provisional Irish Republican Army." Subsequently, upon petition for review of the Board of Immigration Appeals' order finding the claimant ineligible for asylum, the Court denied the petition in McMullen v. I.N.S., 788 F.2d 591 (9th Cir. 1986). This latter case, however, dealt with other issues and did not contradict the reasoning of the first McMullen case.

19. Many other U.S. cases have accepted and reiterated the principle established by McMullen. It is noteworthy that in discussing the issue of agents of persecution, these U.S. cases accepted that the national governments in question were unable to control opposition guerrilla and/or para-military groups.

> Bolanos-Hernandez v. I.N.S., 749 F. 2d 1316 (9th Cir. 1984).
>
> Artiga-Turcios v. I.N.S., 829 F. 2d 720 (9th Cir. 1987)
>
> Rodriguez v. I.N.S., 841 F. 2d 865 (9th Cir. 1987).
>
> Arteaga v. I.N.S., 836 F. 2d 1227 (9th Cir. 1988);
>
> Maldonado-Cruz v. I.N.S., 883 F. 2d 788 (9th Cir. 1989);
>
> Aguilera-Cota v. I.N.S., 914 F. 2d 1375 (9th Cir. 1990);
>
> Estrada-Posadas v. I.N.S., 924 F. 2d 916 (9th Cir. 1991).

Canadian Jurisprudence

20. The predominant view in the Canadian jurisprudence to date has similarly reflected the view that persecution may include not only the actions which are committed or countenanced by the State, but also those forms of serious harm to which the State is unable or unwilling to respond effectively.

Aram Ovakimoglu v. M.E.I. (1983), 52 N.R. 67 (Federal Court of Appeal);

Zahirdeen Rajudeen v. M.E.I. (1985), 55 N.R. 129 (Federal Court of Appeal);

Khemraj Surujpal v. M.E.I. (1985), 60 N.R. 73 (Federal Court of Appeal);

Vahe Salibian v. M.E.I., [1990] 3 F.C. 250 (Federal Court of Appeal);

Ahmad Ali Zalzali v. M.E.I., Federal Court of Appeal Decision A-382-90, April 30, 1991.

Conclusion

21. In conclusion, the UNHCR respectfully submits that it is incorrect in the refugee determination process to include the requirement that persecution can only be inferred when it is carried out with the "involvement of the State" or when there is an intention to harm on the part of government. In other words, the concept of persecution is not limited to the actions of governments or their agents. Decision-makers are not called upon to establish the guilt or liability of the persecutor, but whether the claimant's fear is well-founded. The refugee definition itself does not provide justification for imposing upon the applicant the burden of showing the agent's intent to persecute. Such a requirement would therefore contravene the underlying purpose of the refugee definition set out in the 1951 Convention.

Amicus Curiae Brief of the United Nations High Commissioner for Refugees in support of Petitioners in Canas-Segovia v. I.N.S. 902 F. 2d 717 (9th Cir. 1990).

22. The position of the UNHCR is consistent with the minority opinion of MacGuigan J.A.. In his dissenting reasons, MacGuigan J.A., rejects the requirement of State complicity.

> "(I)t seems to me to be begging the question to read into the concept of a well-founded fear of persecution that it must emanate from the state or at least involve state complicity".

He further maintains that, in addition to a literal reading of the statute, when the absence of any decisive Canadian precedents and the weight of international authority are taken into account, the Board's interpretation that there need not be State complicity to constitute persecution is the preferable one.

Reasons for Judgement, MacGuigan J.A., Case on Appeal, pp. 18 - 38;

Canada (Attorney General) v. Ward, [1990] 2 F.C. 667, 689-693.

WHETHER DESERTION AND/OR DISSENSION FROM A POLITICO-MILITARY ORGANIZATION FOR REASONS OF CONSCIENCE MAY PROPERLY GROUND A CLAIM TO BE A CONVENTION REFUGEE ON THE BASIS OF A WELL-FOUNDED FEAR OF PERSECUTION FOR REASONS OF POLITICAL OPINION.

23. It is also submitted that the Federal Court of Appeal erred in considering that the claimant's fear of persecution was based on membership in an organization and in failing to hold that the claimant's fear was based on the claimant's political opinion. It is submitted that a dissenter from a paramilitary organization may well fear persecution for reasons of his/her political opinion, whether express or imputed, concerning the organization. This argument was not advanced before the Federal Court of Appeal.

24. Thus, a dissenter may mark his/her dissent by committing actions harmful to the organization he/she belongs to, such as, inter alia, releasing hostages, turning police informer or revealing confidential information relating to other members. These acts are often taken by paramilitary organizations as an expression of a contrary political sentiment. There can be few more deeply divisive political disagreements than those dealing with

whether an individual is willing to fight, kill and die for a political objective. Even in the situation where the dissenter leaves the organization without committing any actions harmful to it, the organization may nevertheless impute to the person a contrary political opinion. Given the illegal activities of a paramilitary organization usually engaged in a guerrilla war situation opposed to Government forces, the organization can often not accept anything less than absolute commitment to its aims and means. In simple terms, "if you are no longer a friend, you are an enemy".

25. Paramilitary organizations, when faced with dissenters, will often consider serious reprisals against the dissenter. The gravity of such reprisals will depend on a number of factors: whether the person constitutes a "security-risk"; has committed acts harmful to the organization; and the degree of importance placed on showing other members the consequences of dissent. These reprisals on account of political opinion may well constitute persecution within the meaning of the refugee definition.

26. The concept of imputed political opinion derived from specific forms of conduct is well established as a basis for a claim to refugee status under the 1951 Convention.

> "While the definition speaks of persecution 'for reasons of political opinion', it may not always be possible to establish a causal link between the opinion expressed and the related measures suffered or feared by the applicant ... It will, therefore, be necessary to establish the applicant's political opinion, which is at the root of his behaviour, and the fact that it has led or may lead, to the persecution that he claims to fear." UNHCR Handbook, at 19-20, paragraph 81.
>
> "Repercussions against a person because he refuses to become a police informer may likewise be labelled persecution by reason of (implied) political opinion...": A. Grahl-Madsen, supra at 224.
>
> "Political opinions may or may not be expressed, and they may be rightly or wrongly attributed to the applicant for refugee status": G. Goodwin-Gill, supra at 31.

"An alternative to grounding a claim on adherence to a political opinion per se is to rely on engagement in activities which imply an adverse political opinion...": J. Hathaway, supra at 152.

27. The courts of other States parties have recognized the concept of imputed political opinion.

Kovac v. I.N.S., 407 F. 2d 102, at 104 (9th Cir., 1969);

Coriolan v. I.N.S., 559 F. 2d 993 (5th Cir., 1977);

Bolanos Hernadez v. I.N.S., 767 F. 2d 1277 (9th Cir., 1985);

Lazo-Majano v. I.N.S., 813 F. 2d 1432 (9th Cir., 1987);

Maldonado Perez v. I.N.S., 865 F. 2d 328 (District of Columbia, 1989);

Maldonado-Cruz v. I.N.S., 883 F. 2d 788 (9th Cir., 1989);

Canas-Segovia v. I.N.S., 902 F. 2d 717 (9th Cir., 1990);

Arriaga Barriento v. I.N.S., 925 F. 2d 1177 (9th Cir., 1990);

Hessicher Verwaltungsgerichtsof (Administrative Appeals Court of Hesse), May 2, 1990, Ref. 13 UE 1568/84; Federal Republic of Germany;

Bundesverfassungsgericht (Federal Constitutional Court), December 8, 1990, Ref. 2BvR 933/90; Federal Republic of Germany.

28. Imputed political opinion has also been accepted in Canadian jurisprudence.

Ricardo Andizes Inzunza Orellana v. M.E.I. (1979), 103 D.L.R. (3d) 105 (Federal Court of Appeal);

Leonardo Arturo Espinosa Astudillo v. M.E.I. (1979), 31 N.R. 121 (Federal Court of Appeal);

Angel Eduardo Jerez Spring v. M.E.I., [1981] 2 F.C. 527 (Federal Court of Appeal);

Francisco Humberto Gonzalez Galindo v. M.E.I., [1981] 2 F.C. 781 (Federal Court of Appeal);

Luis Rene Amayo (Encina) v. M.E.I., [1982] 1 F.C. 520 (Federal Court of Appeal)

Alfredo Manuel Oyarzo Marchant v. M.E.I., [1982] 2 F.C. 779 (Federal Court of Appeal);

Yaw Owusu Adjei v. M.E.I., Federal Court of Appeal Decision A-498-81, February 25, 1982;

Akrimul Huque Chowdhury v. Deputy Attorney General of Canada, Federal Court of Appeal Decision A-468-87, May 12, 1988;

Hamdi Hilo v. M.E.I., Federal Court of Appeal Decision A-260-90, March 15, 1991.

29. When the agent of persecution is a non-governmental entity, which the State is either unwilling or unable to control, it is the likelihood that this agent of persecution will impute political opinion which is the relevant consideration. This is consistent with a recent judgement of the Federal Court of Appeal which upheld a claim to refugee status on the ground of political opinion imputed to a Lebanese claimant by a non-governmental agent of persecution.

> "The conclusion at which I have arrived carries with it an obligation to alter certain established rules in other circumstances. Where no established authority exists, it will not be possible to apply in their entirety the rules stated with regard to persecution for political opinions, since there is strictly speaking no State to be aware of the claimant's political opinions or attribute any to him. In that case, the first instance tribunal and the Refugee Division will have to decide, in light of all the circumstances presented, whether those who are persecuting the refugee status claimant are doing so on account of political opinions he has or which they attribute to him" (emphasis added):

Ahmad Ali Zalzali v. M.E.I., Federal Court of Appeal, Decision A-382-90, April 30, 1991, per Decary J.A., at 12.

30. Therefore, it is respectfully submitted that it is unnecessary to evaluate whether or not a dissenter from a paramilitary group should be considered to fall within the scope of "membership in a particular social group", since the fear of persecution in the instant case in fact derives from the political opinion of the person concerned.

31. Moreover, in light of the concerns of the Federal Court in determining who is entitled to protection under the 1951 Convention, the UNHCR wishes to draw the Court's attention to the exclusion clauses in the 1951 Convention.

32. Determination of refugee status under the 1951 Convention consists of two stages. First, it must be determined whether the applicant meets the refugee definition. If so, it must then be determined whether the applicant falls under one of the exclusion clauses in Article 1(F) of the 1951 Convention. The exclusion clauses have now been incorporated into Canadian law. Although the exclusion clauses were not in force at the time this case was heard and were not referred to in the Court of Appeal, the result might well have been the same, even if they had been in force.

Immigration Act, R.S.C. 1985, c.28 (4th Supp.), s.2(1) as amended.

33. Article 1(F) of the 1951 Convention excludes from refugee status, as undeserving of international protection, those persons who have committed crimes against humanity and peace, war crimes or other serious non-political crimes. When applying this provision, it is necessary to take into account all the circumstances of the claimant's allegedly criminal conduct, before determining that the claimant is to be excluded as a refugee under the Convention. It is submitted that former membership of an organization which advocates or practices violence is not in itself sufficient to exclude a person from refugee status. The person would only be excluded if, in addition to his/her association, he/she has directly participated in, or has been responsible for, acts of such a nature as to fall within the scope of one of the exclusion clauses.

> "In evaluating the nature of the crime presumed to have been committed, all the relevant factors - including any mitigating circumstances - must be taken into account. The fact that an applicant convicted of a serious non-political crime has already served his sentence or has been granted a pardon or has benefitted from an amnesty is also relevant. In the latter case, there is a presumption that the exclusion clause is no longer applicable, unless it can be shown that, despite the pardon or amnesty, the applicant's criminal character still predominates": UNHCR Handbook at 37, paragraph 157. Also, see paragraphs 155 and 156.

"What constitutes a 'serious' non-political crime for the purposes of this exclusion clause is difficult to define, especially since the term 'crime' has different connotations in different legal systems... In the present context, however, a 'serious' crime must be a capital crime or a very grave punishable act". UNHCR Handbook at 36, paragraph 155.

"In applying this exclusion clause, it is also necessary to strike a balance between the nature of the offence presumed to have been committed by the applicant and the degree of persecution feared". UNHCR Handbook at 37, paragraph 156.

"Keeping in mind that we are concerned here with persons who were it not for Article 1(F)(b) - would have a perfect claim to refugeehood .. it stands to reason to submit that crimes for which punishment has been suffered .. should not be held against persons seeking recognition as refugees": A. Grahl-Madsen, supra at 291-292.

"With respect to all cases, the following elements were suggested [by UNHCR] as tending to rebut a presumption or finding of serious crime: minority of the offender; parole; elapse of five years since conviction or completion of sentence; general good character (for example, one offence only); offender was merely accomplice; other circumstances surrounding commission of the offence (for example, provocation and self-defence)": G. Goodwin-Gill, supra at 62-63.

"If the gravity of harm feared by the claimant outweighs the significance of her criminal activity, she is not appropriately excluded under this clause." J. Hathaway, supra at 225.

Conclusion

34. The majority opinion of the Federal Court of Appeal argues that recognizing the status of a fugitive from one or two or more factions engaged in terrorist activities designed to overthrow a government "would be inconsistent with Canada's obligations as spelled out in the Act and does not fall within the category of being among the humanitarian obligations."

Reasons of the Court of Appeal, Appeal Case p. 27.

Canada (Attorney General) v. Ward, [1990] 2 F.C. 667, 677.

35. It is submitted that recognizing a dissenter from a para-military organization engaged in armed struggle against the authorities of a State can be, depending on the specific circumstances of the case, consonant with Canada's humanitarian obligations. Moreover, if the actions of the organization are condemned by the international community as being contrary to the basic rules of human conduct, the humanitarian argument in favour of granting refugee status is all the stronger. Rejecting valid claims from such applicants would only serve to confirm many potential dissenters' sense of futility at the prospect of renunciation, hence serving to solidify these para-military groups even more.

36. UNHCR respectfully submits that a dissenter from a para-military organization may fear persecution from the organization for reasons of his/her political opinion, whether express or imputed. Whether an applicant who meets the refugee definition should be considered as undeserving of international protection should be decided in a manner consistent with the relevant provisions of the 1951 Convention.

PART IV

ORDER DESIRED

37. The UNHCR submits that the arguments expressed herein should be considered by the court in its disposition of the appeal.

All of which is respectfully submitted,

Eduardo Arboleda

United Nations High Commissioner
for Refugees

PART IV

ORDER DESIRED

37. The UNHCR submits that the arguments expressed herein should be considered by the court in its disposition of the appeal.

All of which is respectfully submitted,

Eduardo Arboleda

United Nations High Commissioner
for Refugees

N.B. This factum was drafted by Eduardo Arboleda, Legal Officer for UNHCR Branch Office Canada, in conjunction with UNHCR's Division of International Protection in Geneva. Professors Guy Goodwin-Gill of Carleton University and James Hathaway of the Osgoode Hall Law School acted as unofficial consultants in the writing of the factum. Mr. Ian Hoy, Legal Intern, UNHCR Branch Office Canada, and Mr. Erik Mackay, Legal Researcher/Counsel, also assisted in the preparation of this factum.

LIST OF AUTHORITIES

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