Court File No.: 35958

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

FRANCIS ANTHONIMUTHU APPULONAPPA
HAMALRAJ HANDASAMY
JEYACHANDRAN KANAGARAJAH
VIGNARAJAH THEVARAJAH

APPELLANTS

- and -

HER MAJESTY THE QUEEN

RESPONDENT

- and -

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FACTUM OF THE INTERVENER, ATTORNEY GENERAL OF ONTARIO

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Part I: Ontario's Response to the Constitutional Question

1. The Attorney General of Ontario ("Ontario") intervenes solely for the purpose of making submissions with respect to the Court's approach to legislative purpose and overbreadth under section 7 of the *Canadian Charter of Rights and Freedoms*. Ontario takes no position as to how the constitutional question should be answered.

Part II: Ontario's Response to the Questions Raised by the Appellant's Factum

2. Ontario agrees with Canada that section 117 of the *Immigration and Refugee Protection Act* (*IRPA*) is not overbroad. The overbreadth analysis does not involve an examination of whether the object or purpose of legislation it itself consistent with the principles of fundamental justice. Rather, at issue is whether the means employed are rationally connected to the purpose *set by Parliament.* Here, Parliament's purpose was indeed to criminalize any assistance provided, regardless of motive, to those entering Canada without proper documentation. The B.C. Court of Appeal was correct in finding a perfect correspondence between means and ends. However, Ontario also submits that overbreadth is not the end of the analysis. This Court's prior case law also permits an examination as to whether the object or purpose of legislation is itself in accord with the principles of fundamental justice.

Part III: Statement of Argument

A. Step 1 of Section 7 of the Charter: "Life, Liberty and Security of the Person"

3. The case at bar clearly engages the liberty interest in section 7 of the *Charter*. The prior jurisprudence of this Court confirms that an individual's liberty interest is infringed or denied where imprisonment is a potential penalty for violating an offence.

> *Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 SCR 134 at paras. 85 to 90 (hereafter "Insite"); *R. v. Malmo-Levine*, [2003] 3 SCR 571 at para. 89.

4. However, contrary to paragraph 42 of the Appellants Kanagarajah's and Thevarajah's factum, there is no violation of security of the person by the mere finding of

inadmissibility to Canada for the reasons set out in Ontario's factum on the companion appeals from the Federal Court of Appeal.

B. Step 2 - The Principles of Fundamental Justice

5. In order to constitute a principle of fundamental justice the following test must be satisfied:

> [F]or a rule or principle to constitute a principle of fundamental justice for the purposes of s. 7 , it must be a legal principle about which there is significant societal consensus that it is fundamental to the way in which the legal system ought fairly to operate, and it must be identified with sufficient precision to yield a manageable standard against which to measure deprivations of life, liberty or security of the person.
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> *R. v. Malmo-Levine, supra* at para. 113; See also: *Rodriguez v. British Columbia (Attorney General),* [1993] 3 SCR 519, at p. 590; *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 SCR 76 at para. 8.

1) Principle of Proportionality

6. In *Bedford,* the Court described the well-established principle of proportionality between legislative objectives and legislative means. At para. 105:

> [L]aws run afoul of our basic values when **the means** by which the state seeks to attain its objective is fundamentally flawed, in the sense of being arbitrary, overbroad, or having effects that are grossly disproportionate to the legislative goal. To deprive citizens of life, liberty, or security of the person by laws that violate these norms is not in accordance with the principles of fundamental justice. (emphasis added).[1]

7. In this regard, the Court's three-step approach from *R v. Khawaja* involves an examination of the scope of the law, a determination of its purpose and then deciding whether the means selected are arbitrary, overbroad or grossly disproportionate.[2]

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[1] *Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101 at para. 105.
[2] *R. v. Khawaja,* [2012] 3 SCR 555 at para. 40. See also *Canada (Attorney General) v. Bedford, supra* at para. 106.

8. The overbreadth analysis accepts and adopts the purpose of the legislation as set by Parliament or the Legislatures. What is measured in this inquiry are means, not ends. As the Chief Justice recognized in *Bedford* at para. 107, quoting from Professor Hogg:

> [t]he doctrines of overbreadth, disproportionality and arbitrariness are all at bottom intended to address what Hamish Stewart calls "failures of instrumental rationality", by which he means that the Court **accepts the legislative objective**, but scrutinizes the policy instrument enacted as the means to achieve the objective. (emphasis added).[3]

9. Following *Bedford* the overbreadth test examines whether there is any rational connection, or logical link, between the law's scope (i.e., the conduct or activity captured by its provisions) and its objectives. As well, the rationality analysis asks "whether *anyone's* life, liberty or security of the person has been denied" by a law that is overbroad". An overbroad impact on one person is sufficient to establish a breach.

Canada (Attorney General) v. Bedford, supra at paras. 112-119, 123.

10. Ontario agrees with Canada at para. 16 of its factum that the B.C. Court of Appeal was correct in concluding that s. 117(1) has the broadest possible scope. It criminalizes the actions of anyone who provides assistance to persons entering Canada without the required documents. For example, referring to the "reasonable hypotheticals" that form a central part of this case, Ontario agrees with all parties that the scope of s. 117(1) would include the Afghan mother coming to Canada with her infant daughter to escape genital mutilation ordered by a local official,[4] two refugee claimants traveling together and providing "mutual assistance" to each other and the "humanitarian" or religiously motivated individuals who, for no profit or personal gain, assists those fleeing persecution from their country of origin to come to Canada to make a refugee claim.

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[3] See generally in this regard: *R. v. Hebert*, [1990] 2 SCR 151 at 180; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at 882 per Iacobucci J.; *Cunningham v. Canada*, [1993] 2 SCR 143 at 151-152; *Rodriguez v. Attorney General (British Columbia)*, *supra* at 592-594; *R. v. L. (D.O.)*, [1993] 4 SCR 419 at 471-472; *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625 at paras 111-112; *Suresh v. Canada (Minister of Citizenship and Immigration*, [2002] 1 SCR 3 at para. 47; *R. v. Malmo-Levine*, *supra* at para. 96; *Chaoulli v. Quebec (Attorney General)*, [2005] 1 SCR 791 at paras. 129 to 133; *Insite*, *supra* at paras. 129 to 134.

[4] See generally Meredith Aherne, *Olowo v. Ashcroft: Granting Parental Asylum Based on a Child's Refugee Status,* 18 Pace Int'l L. Rev. 317 at 318-319, 338-340 (2006).

11. The characterization of the purpose of s. 117(1) for the overbreadth analysis is an issue of key disagreement between the parties. The Appellants contend s. 117(1) was only designed to deal with "human smuggling" that involves activity carried out for gain or profit or has an "exploitive" component. In contrast, Canada's position is that s. 117(1) was intended to "creat[e] a broad offence with no exceptions, directed to concerns of border control and the particular issue of deterring and penalizing those who assist others in entering Canada illegally."

12. The B.C. Court of Appeal recognized a broad objective to the statute. It held, at para. 143, that s. 117(1) is “directed to concerns of border control and the particular issue of deterring and penalizing those who assist others in entering Canada illegally”. Ontario's analysis proceeds on the basis that the B.C. Court of Appeal's characterization of Parliament’s purpose is correct. Section 117(1) is intended to deter any conduct by which a person assists another to enter Canada without proper approval, regardless of motive or the presence of financial gain. Parliament also intended to rely on the federal Attorney General’s prosecutorial discretion under s. 117(4) to not pursue particular cases which would be contrary to the public interest to prosecute for various reasons including humanitarian religious or family motives.

13. Accordingly, the means employed by the impugned provision, even as applied to a single individual, *do* achieve Parliament's broad goal, as identified by the B.C. Court of Appeal. Unlike in *Bedford*, the Parliamentary goal is not limited to capturing exploitive conduct such as the kind that will often arise when human smuggling is undertaken for gain or profit. Any assistance, whether benign, humanitarian, religious, or based on close family connections, is to be potentially subject to criminal charges, subject only to the exercise of discretion by the federal Attorney General, or his delegate. Having accepted this broad statutory objective it cannot be said that there is no connection between the law's effects and its purposes. In fact, the means employed of capturing all forms of assisting or aiding persons to enter Canada without proper documentation line up exactly with the statutory purpose. As the British Columbia Court of Appeal held at para. 90:

"section 117(1) is thus not overbroad as its scope and objective are identical."[5] Where there is perfect correspondence between means and ends there can obviously be no overbreadth.

2) The Morally Blameless Principle

14. Perfect correspondence between ends and means disposes of the issue of proportionality. However, this does not end the s. 7 analysis where, as here, there is another principle of fundamental justice that may be at stake.[6]

15. One principle of fundamental justice that has been identified by this Court is that a law should not have as its purpose the punishment of those that are morally blameless. In *Re B.C. Motor Vehicle Act*, *supra*, Lamer J. held the following at 492:

> A law that has the potential to convict a person who *has not really done anything wrong* offends the principles of fundamental justice and, if imprisonment is available as a penalty, such a law then violates a person's right to liberty under s. 7 of the *Charter*. (emphasis added)
>
> See also: *R. v. Vaillancourt*, [1987] 2 SCR 636 at para. 28; *R. v. Bernard*, [1988] 2 SCR 833 at 880; *R. v. Martineau*, [1990] 2 SCR 633 at 645; *R. v. Arkell*, [1990] 2 SCR 695 at 704; *R. v. Beatty*, [2008] 1 SCR 49 at para. 35.

16. In *R. v. Perka*, [1984] 2 SCR 232, Dickson J., as he then was, recognized that there may be rare instances in which certain justificatory conduct is not regarded as wrongful. Speaking of the statutory criminal law justifications contained in the *Criminal Code* he stated at 246:

> A "justification" challenges the wrongfulness of an action which technically constitutes a crime. The police officer who shoots the hostage-taker, the innocent object of an assault who uses force to defend himself against his assailant, the Good Samaritan who commandeers a car and breaks the speed laws to rush an accident victim to the hospital[7], these are

[5] See, also, in this regard the recent decision in *R. v. Abdulle*, 2014 ONSC 7455 at para. 79.

[6] For cases that have involved an examination of the legislative purpose itself see, for example: *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at 503; *R. v. Malmo-Levine, supra* at para. 113; *R. v. D.B.*, [2008] 2 SCR 3 at para. 46; *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, *supra* at para. 8.

[7] See, for eg., *R. v. Ungar*, [2002] OJ No. 2915 at para. 33 (OCJ); *R. v. Trencs*, [2011] OJ No. 224 at para. 14 (SCJ).

> all actors whose actions we consider *rightful*, not wrongful. For such actions people are often praised, as motivated by some great or noble object. The concept of punishment often seems incompatible with the social approval bestowed on the doer. (emphasis in the original)[8]

17. Further, in *R. v. Ruzic* (1998), 41 OR (3d) 1 at para. 79 the Ontario Court of Appeal held that the concept of moral blamelessness could apply where the statutory self-defence justification had been made out:

> Like Professor Shaffer, I do not see why the notion of moral blameworthiness should be restricted to the *mens rea* of a criminal offence. Actions taken in defence can make a person morally blameless despite the presence of *mens rea*. A conviction does not automatically follow a finding that the accused committed the *actus reus* of the offence with the necessary *mens rea*. For example, persons who act in self-defence inflict harm intentionally but are entitled to an acquittal because **they are justified** in protecting themselves from aggression. Persons who act in self-defence **are not morally blameworthy**. (emphasis added). [9]

3) Application of the Morally Blameless Principle of Fundamental Justice

18. It is open for this Court to measure the impugned provisions against the principle of fundamental justice regarding punishment of the morally blameless. The scenario involving two family members providing mutual assistance to each other and traveling together to Canada directly from their country of origin can be considered.

19. Section 133 of *IRPA* effectively recognizes that those seeking to escape persecution in their country of origin will usually not, by virtue of that alleged persecution, have passports or travel documents. This arises out of a recognition that it would be difficult, if not impossible, to obtain a passport or travel document from a state authority that is allegedly persecuting the refugee claimant. Section 133 provides:

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[8] Eric Colvin and Sanjeev Anand point out that in *Perka* at 246, Dickson J. "drew attention to the coverage of justification under the *Code* and suggested that any extension would be an inappropriate exercise of the judicial function" subject, of course, to a constitutional finding that existing statutory justification defences are inadequate (citing *R. v. Ruzic*, [2001] 1 SCR 687 for support): E. Colvin, S. Anand, *Principles of Criminal Law, 3rd ed.*, (Thomson Canada Ltd., Toronto, 2007) at pp. 288-289.

[9] On appeal to this Court this issue appears to have remained unresolved. Although the Court did say at para. 41:"[o]nce the elements of the offence have been established, the accused can no longer be considered blameless", it may have done so in the context of a discussion of legal excuses, such as duress, as opposed to in the context of legal justifications, such as self-defence. *R. v. Ruzic*, *supra* at para. 41.

133. A person who has claimed refugee protection, and who came to Canada directly or indirectly from the country in respect of which the claim is made, **may not be charged with an offence** under section 122, paragraph 124(1)(*a*) or section 127 of this Act or under section 57, paragraph 340(*c*) or section 354, 366, 368, 374 or 403 of the *Criminal Code*, in relation to the coming into Canada of the person, **pending disposition of their claim for refugee protection or if refugee protection is conferred.** (emphasis added)

133. L'auteur d'une demande d'asile nepeut, tant qu'il n'est statué sur sa demande, **ni une fois que l'asile lui est conféré, être accusé d'une infraction** visée à l'article 122, à l'alinéa 124(1)*a*) ou à l'article 127 de la présente loi et à l'article 57, à l'alinéa 340*c*) ou aux articles 354, 366, 368, 374 ou 403 du *Code criminel*, **dès lors qu'il est arrivé directement ou indirectement au Canada du pays duquel il cherche à être protégé** et à la condition que l'infraction ait été commise à l'égard de son arrivée au Canada. (soulignement ajouté)

20. By operation of s. 133 of *IRPA* two family members (eg., a husband and wife or the hypothetical Afghan mother and her infant daughter) both fleeing persecution from their country of origin cannot initially be charged under s. 124(1)(a) for their own conduct in attempting to come into Canada without first having the proper documentation. These potential charges are delayed and, should the refugee claim be granted, then no charges under s. 124(1)(a) can be brought. Section 133 reflects Article 31(1) of the *Refugee Convention* which prohibits penalties "on refugees" who "enter or are present in [the] territory [of the contracting state] without authorization". The list of offences in s. 133 that are to be delayed or stayed does not include s. 117(1). At issue is whether that exclusion is contrary to the principles of fundamental justice.

21. The Appellants point out that two family members[10] providing mutual assistance to each other can be charged under s. 117(1) with "aiding and abetting" the other "regardless of the outcome of the assisted person's refugee claim." (Kanagarajah and Thevarajah Factum at para. 65). They argue that this is contrary to Canada's international obligation to comply with the *Refugee Convention,* as recognized in s-s. 3(2)(b), 3(2)(d) and 3(3)(f) of *IRPA.* In mutual assistance cases both "refugees" (the Convention uses the plural) are subject to charges because the other has no visa or entry documentation. In short, where two or more refugee claimants travel together and assist each other in coming to Canada, s. 117(1), the Appellants contend, effectively criminalizes the act of

[10] Cases involving charges against family members include: *R. v. Jupiter,* [1983] O.J. No. 2408 (Ont. Co. Ct.); *R. v. Bello*, [2004] O.J. No. 5312 (OCJ).

making a refugee claim. This forces those fleeing persecution to come to Canada on their own without any assistance which, it is alleged, increases risk and can, in particular, endanger small children and vulnerable persons.

22. Canada's response, at paras. 37 to 44 of its factum, is that Article 31 prohibits state parties from imposing penalties on refugees "on account of *their* illegal entry", but does not preclude penalties for assisting *others* to enter without proper documentation. Canada relies on the Quebec Court of Appeal's decision in *Chowdhury* for the position that the successful refugee claimant has still committed an offence but is granted "amnesty" once the claim is successful. Canada further argues that its international obligations do not preclude domestic legislation designed to protect sovereignty, safety, security and the integrity of Canada's immigration system.

23. In this regard the question may be asked as to why s. 133 of *IRPA* grants an "amnesty" to the successful refugee claimant from being charged with coming into Canada without proper documentation.[11] This may be because it is a recognition that such a person "has not really done anything wrong" (*Re B.C. Motor Vehicle Reference*, *supra* at 492). In short, her conduct may be seen by Parliament as having been justified in all of the circumstances. She is, in fact, following the procedure set out in Part 2 of *IRPA* for making a refugee claim in Canada. Section 99(1) of that Act expressly provides that a claim for refugee protection may be made *in Canada*. Section 133 is a legislative acknowledgement that prosecution is not appropriate in this defined circumstance, despite the elements of the offence otherwise being present. It recognizes the reality that most refugee claimants, by virtue of the fact that they are fleeing their country of origin, will not be able to obtain travel documents from their alleged persecutors. It is difficult to

[11] Canada emphasizes the word "amnesty", the characterization adopted by the Québec Court of Appeal in *R. v. Chowdhury*, 2002 CanLII 41146 at para. 30. It is of significance that this term is used rather than "pardon" or "parole". See: Jean Teillet, "Exoneration for Louis Riel: Mercy, Justice, or Political Expediency?", (2004), 67 Sask. L. Rev. 359 at paras. 33, fn 55 acknowledging that amnesty is generally given in advance of conviction while a pardon is granted after a finding of criminal wrongdoing. See also the Proclamation of Amnesty for the Upper Canada Rebellion, Upper Canada Gazette, Toronto, 25 October 1838.

understand why the parent or spouse who travels with them to Canada is not equally morally blameless and undeserving of criminal prosecution.

24. Canada stresses, however, that it cannot be known at the time of entry whether the claim will ultimately be successful and the risk posed by undocumented individuals cannot be ascertained in advance. In addition, Canada correctly notes that there is no constitutional right to make a refugee claim. There is, however, a statutory mechanism that Canada has made available permitting individuals to make refugee claims. For that process to work criminal charges for effectively making the claim need to be deferred. Further, it is the case that a claimant traveling alone without assistance may also present a risk to Canada and his claim too may ultimately be unsuccessful. Yet, he is entitled by s. 133 to a deferral of charges for arriving without documentation (and to the "amnesty" if successful). Paradoxically, the parent and child or two spouses providing mutual assistance to each other, are not.

25. Second, this analysis can be informed by the reality that parents are expected to and can have a legal duty[12] to provide protection and support for their children.[13] For example, s. 215 of the *Criminal Code* imposes a legal duty on a parent to provide the necessaries of life to a child under 16 years of age. Further, every province and territory has enacted legislation mandating parents to provide support for their minor children.[14] The *United Nations Convention on the Rights of the Child*[15] (ratified by Canada but not incorporated into domestic law) recognizes the family in its preamble as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community." In

[12] See, *R. v. Perka*, *supra* at 274-279 per Wilson J.
[13] See, for example, *Childs v. Desormeaux*, [2006] 1 SCR 643 at para. 36.
[14] *Family Law Act*, RSO 1990, c F.3, s 31(1); *Maintenance and Custody Act*, RSNS 1989, c 160, ss 18(2), 23(1); *Family Services Act*, SNB 1980, c F-2.2, s 113(1); *Family Law Act*, RSNL 1990, c F-2, s 37(1); *Family Law Act*, RESPEI 1988, c F-2.1, s 31(1); *Civil Code of Québec*, Articles 585-586 and 598-599; *The Family Maintenance Act*, CCSM c. F20, s 36(1); *The Children's Law Act*, 1997, SS 1997, c C-8.2, s 3(1); *Family Maintenance Act*, 1997, SS 1997, c F-6.2, s 4(3); *Family Law Act*, c F-4.5, s 49; *Family Law Act*, SBC 2011, c 25, s 147.
[15] *Convention on the Rights of the Child*, 20 November 1989, 1577 United Nations Treaty Series 3 (entered into force 2 September 1990).

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 SCR 817 this Court recognized at para. 71 that such international instruments place "special importance on protections for children and childhood, and on particular consideration of their interests, needs, and rights." Further, in both *Burns* and *Suresh* this Court relied on international human rights instruments in helping to delineate principles of fundamental justice.[16]

26. Section 117(1) is not included in the list of offences in s. 133 that are to be delayed or stayed. Accordingly, close family members assisting each other can be charged and their conduct criminalized. At issue is whether this exclusion from the protecton provided by s. 133, at least with respect to such close family members assisting each other in this manner, is contrary to the principle of fundamental justice against punishing the morally blameless.

Part IV & V: Costs and Request for Oral Argument

27. Ontario does not seek costs. Ontario requests permission to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 30th DAY OF JANUARY, 2015.

Hart Schwartz

Padraic Ryan

Counsel for the Intervener, the Attorney General of Ontario

[16] *United States v. Burns,* [2001] 1 SCR 283 at paras. 85 to 92; *Suresh v. Canada (Minister of Citizenship and Immigration), supra* at para. 46.

Part VI: Table of Authorities

	Authorities	**Paragraph Reference in Factum**
1.	*Canada (Attorney General) v. Bedford*, [2013] 3 SCR 1101 at paras. 105, 106, 112-119, 123	6, 7, 9
2.	*Canada (Attorney General) v. PHS Community Services Society*, [2011] 3 SCR 134 at paras. 85 to 90, 129 to 134 (hereafter "Insite")	3, 8
3.	*Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 SCR 76 at para. 8	5, 14
4.	*Chaoulli v. Quebec (Attorney General)*, [2005] 1 SCR 791at paras. 129 to 133	8
5.	*Childs v. Desormeaux*, [2006] 1 SCR 643 at para. 36	25
6.	*Cunningham v. Canada*, [1993] 2 SCR 143 at 151-152	8
7.	*Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 at 882	8
8.	*R. v. Abdulle*, 2014 ONSC 7455 at para. 79	13
9.	*R. v. Arkell*, [1990] 2 SCR 695 at 704	15
10.	*R. v. Beatty*, [2008] 1 SCR 49 at para. 35	15
11.	*R. v. Bello*, [2004] O.J. No. 5312 (OCJ)	21
12.	*R. v. Bernard*, [1988] 2 SCR 833 at 880	15
13.	*R. v. Chowdhury*, 2002 CanLII 41446 at para. 30 (Que. CA)	23
14.	*R. v. D.B.*, [2008] 2 SCR 3 at para. 46	14
15.	*R. v. Hebert*, [1990] 2 SCR 151 at 180	8
16.	*R. v. Jupiter*, [1983] O.J. No. 2408 (Ont. Co. Ct.)	21
17.	*R. v. Khawaja*, [2012] 3 SCR 555 at para. 40	7
18.	*R. v. L. (D.O.)*, [1993] 4 SCR 419 at 471-472	8
19.	*R. v. Malmo-Levine*, [2003] 3 SCR 571 at para. 89, 96, 113	3, 5, 8, 14

20.	*R. v. Martineau*, [1990] 2 SCR 633 at 645	15
21.	*R. v. Perka*,[1984] 2 SCR 232, at 246, 274-279	16, 25
22.	*R. v. Ruzic* (1998), 41 OR (3d) 1 at para. 79 (CA)	17
23.	*R. v. Ruzic*, [2001] 1 SCR 687 at paras. 41	16, 17
24.	*R. v. Trencs*, [2011] OJ No. 224 at para. 14 (SCJ)	16
25.	*R. v. Ungar*, [2002] OJ No. 2915 at para. 33 (OCJ)	16
26.	*R. v. Vaillancourt*, [1987] 2 SCR 636 at para. 28	15
27.	*Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at 492, 503	14, 15, 23
28.	*Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519, at p. 590, 592-594	5, 8
29.	*Suresh v. Canada (Minister of Citizenship and Immigration*, [2002] 1 SCR 3 at paras. 46, 47	8, 25
30.	*United States v. Burns*, [2001] 1 SCR 283 at paras. 85 to 92	25
31.	*Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625 at paras 111-112	8
Secondary Sources		
32.	E. Colvin, S. Anand, *Principles of Criminal Law, 3rd ed.*, (Thomson Canada Ltd., Toronto, 2007) at pp. 288-289	16
33.	Jean Teillet, "Exoneration for Louis Riel: Mercy, Justice, or Political Expediency?", (2004), 67 Sask. L. Rev. 359 at paras. 33, fn 55	23
34.	Meredith Aherne, *Olowo v Ashcroft: Granting Parental Asylum Based on a Child's Refugee Status*, 18 Pace Int'l L. Rev. 317 at 318-319, 338-340 (2006)	8

Part VII: Legislative Provisions

1.	*Civil Code of Québec*, Articles 585-586 and 598-599
2.	*Family Law Act*, SA 2003, c F-4.5, s 49
3.	*Family Law Act*, RESPEI 1988, c F-2.1, s 31(1)
4.	*Family Law Act*, RSNL 1990, c F-2, s 37(1)
5.	*Family Law Act*, RSO 1990, c F.3, s 31(1)
6.	*Family Law Act*, SBC 2011, c 25, s 147
7.	*Family Maintenance Act*, 1997, SS 1997, c F-6.2, s 4(3)
8.	*The Children's Law Act*, 1997, SS 1997, c C-8.2, s 3(1)
9.	*Family Services Act*, SNB 1980, c F-2.2, s 113(1)
10.	*Maintenance and Custody Act*, RSNS 1989, c 160, ss 18(2), 23(1)
11.	*The Family Maintenance Act*, CCSM c. F20, s 36(1)
12.	*Convention on the Rights of the Child*, 20 November 1989, 1577 United Nations Treaty Series 3 (entered into force 2 September 1990)

CIVIL CODE OF QUÉBEC

585. Married or civil union spouses, and relatives in the direct line in the first degree, owe each other support.
1991, c. 64, a. 585; 1996, c. 28, s. 1; 2002, c. 6, s. 36.

586. Proceedings for the support of a minor child may be instituted by the holder of parental authority, his tutor, or any person who has custody of him, according to the circumstances.

A parent providing in part for the needs of a child of full age unable to support himself may institute support proceedings on the child's behalf, unless the child objects.

The court may order the support payable to the person who has custody of the child or to the parent of the child of full age who instituted the proceedings on the child's behalf.
1991, c. 64, a. 586; 2004, c. 5, s. 2.

598. A child remains subject to the authority of his father and mother until his majority or emancipation.
1991, c. 64, a. 598.

599. The father and mother have the rights and duties of custody, supervision and education of their children.

They shall maintain their children.
1991, c. 64, a. 599.

CODE CIVIL DU QUÉBEC

585. Les époux et conjoints unis civilement de même que les parents en ligne directe au premier degré se doivent des aliments.
1991, c. 64, a. 585; 1996, c. 28, a. 1; 2002, c. 6, a. 36.

586. Le recours alimentaire de l'enfant mineur peut être exercé par le titulaire de l'autorité parentale, par son tuteur ou par toute autre personne qui en a la garde, selon les circonstances.

Un parent qui subvient en partie aux besoins de son enfant majeur qui n'est pas en mesure d'assurer sa propre subsistance peut exercer pour lui un recours alimentaire, à moins que l'enfant ne s'y oppose.

Le tribunal peut déclarer les aliments payables à la personne qui a la garde de l'enfant ou au parent de l'enfant majeur qui exerce le recours pour lui.
1991, c. 64, a. 586; 2004, c. 5, a. 2.

598. L'enfant reste sous l'autorité de ses père et mère jusqu'à sa majorité ou son émancipation.
1991, c. 64, a. 598.

599. Les père et mère ont, à l'égard de leur enfant, le droit et le devoir de garde, de surveillance et d'éducation.

Ils doivent nourrir et entretenir leur enfant.
1991, c. 64, a. 599.

ALBERTA

FAMILY LAW ACT
Statutes of Alberta, 2003
Chapter F-4.5
Current as of January 1, 2014

Obligation to support child
49(1) Every parent has an obligation to provide support for his or her child.
(2) The obligation under subsection (1) does not extend to a child who

(a) is a spouse or adult interdependent partner, or
(b) is under 18 years of age and has voluntarily withdrawn from his or her parents' charge and is living an independent lifestyle.

(3) The obligation under subsection (1) is revived if a child referred to in subsection (2)(b) abandons his or her independent lifestyle and returns to his or her parents' charge.

(4) A child referred to in section 46(b)(ii) has an obligation to make a reasonable contribution to his or her own education.

PRINCE EDWARD ISLAND

FAMILY LAW ACT, RSPEI 1988 Cap.F-2.1

31. (1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, for his or her child who is unmarried and is under the age of eighteen years or, if eighteen years of age or over, is enrolled in a full-time program of education or is unable, by reason of illness, disability or other cause, to withdraw from the charge of his or her parents or to obtain the necessaries of life.

NEWFOUNDLAND

FAMILY LAW ACT
RSNL1990 CHAPTER F-2

Obligation to provide child support
37. (1) Every parent has an obligation, to the extent that the parent is capable of doing so, to provide support for his or her child.

ONTARIO

Family Law Act
R.S.O. 1990, CHAPTER F.3
Obligation of parent to support child
31. (1) Every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so. R.S.O. 1990, c. F.3, s. 31 (1); 1997, c. 20, s. 2.

Loi sur le droit de la famille
L.R.O. 1990, CHAPITRE F.3
Obligation alimentaire du père et de la mère
31. (1) Le père et la mère sont tenus de fournir des aliments à leur enfant non marié qui est mineur ou qui suit un programme d'études à temps plein, dans la mesure de leurs capacités.
L.R.O. 1990, chap. F.3, par. 31 (1); 1997, chap. 20, art. 2.

BRITISH COLUMBIA

FAMILY LAW ACT
[SBC 2011] CHAPTER 25

Duty to provide support for child
147 (1) Each parent and guardian of a child has a duty to provide support for the child, unless the child

(a) is a spouse, or
(b) is under 19 years of age and has voluntarily withdrawn from his or her parents' or guardians' charge, except if the child withdrew because of family violence or because the child's circumstances were, considered objectively, intolerable.

(2) If a child referred to in subsection (1) (b) returns to his or her parents' or guardians' charge, their duty to provide support for the child resumes.

(3) If a guardian who is not the child's parent has a duty to provide support for that child, the guardian's duty is secondary to that of the child's parents.

(4) A child's stepparent does not have a duty to provide support for the child unless

(a) the stepparent contributed to the support of the child for at least one year, and
(b) a proceeding for an order under this Part, against the stepparent, is started within one year after the date the stepparent last contributed to the support of the child.

(5) If a stepparent has a duty to provide support for a child under subsection (4), the stepparent's duty

(a) is secondary to that of the child's parents and guardians, and

(b) extends only as appropriate on consideration of

(i) the standard of living experienced by the child during the relationship between the stepparent and his or her spouse, and

(ii) the length of time during which the child lived with the stepparent.

SASKATCHEWAN

THE FAMILY MAINTENANCE ACT, SS 1997

Chapter F-6.2 of the Statutes of Saskatchewan, 1997 (effective March 1, 1998) as amended by the Statutes of Saskatchewan, 2001, c.51; 2002, c.I-10.03 and 5; 2004, c.16 and 66; 2006, c.31; and 2012, c.24.

4 (3) Every parent has an obligation to provide maintenance for a person described in subsection (2) in accordance with the guidelines or, if the court considers that amount to be inappropriate, in an amount the court considers appropriate, having regard to the needs, means and economic circumstances of the person described in subsection (2) and the ability of each parent to contribute to the maintenance of that person.

THE CHILDREN’S LAW ACT, SS 1997

Chapter C-8.2 of the Statutes of Saskatchewan, 1997
(effective March 1, 1998) as amended by the Statutes of Saskatchewan, 2001, c.34; 2004, c.66; 2006, c.31; 2009, c.V-7.21 and 6; and 2012, c.24.

3 (1) Unless otherwise ordered by the court and subject to subsection (2) and an agreement pursuant to subsection (3), the parents of a child are joint legal custodians of the child with equal rights, powers and duties.

NEW BRUNSWICK

CHAPTER F-2.2
Family Services Act, SNB 1980
1983, c.16, s.1.
Assented to July 16, 1980

113(1) Subject to subsection (2), every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need,

(a) for his or her child, and

(b) for his or her child at or over the age of

CHAPITRE F-2.2
Loi sur les services à la famille, SNB 1980
1983, c.16, art.1.
Sanctionnée le 16 juillet 1980
113(1) Sous réserve du paragraphe (2), tout parent **113**(1) Sous réserve du paragraphe (2), tout parent est tenu, selon les besoins et dans la mesure où il en est capable, de pourvoir au soutien

a) de son enfant, et

b) de son enfant majeur qui ne peut cesser

majority
who is unable to withdraw from the charge of his or her parents or to obtain the necessaries of life by reason of illness, disability, pursuit of reasonable education or other cause.

d'être à la charge du parent ou qui ne peut subvenir à ses propres besoins notamment pour cause de maladie, d'invalidité ou parce qu'il poursuit des études raisonnables.

NOVA SCOTIA

Maintenance and Custody Act, RSNS
CHAPTER 160 OF THE REVISED STATUTES, 1989

18 (2) The court may, on the application of a parent or guardian or, with leave of the court, a grandparent, other member of the child's family or another person make an order

(a) that a child shall be in or under the care and custody of the parent or guardian or authorized person; or
(b) respecting access and visiting privileges of a parent or guardian or authorized person.

23 (1) An application may be made by a person claiming maintenance on his own behalf or on behalf of his dependent child or dependent parent.

MANITOBA

THE FAMILY MAINTENANCE ACT
C.C.S.M. c. F20

Obligation to support children
36(1) Each parent of a child has the obligation, subject to *The Child and Family Services Act*, to provide reasonably for the child's support, maintenance and education, whether or not the child is in that parent's custody.

LOI SUR L'OBLIGATION ALIMENTAIRE
c. F20 de la *C.P.L.M.*

Obligation alimentaire vis-à-vis des enfants
36(1) Sous réserve de la *Loi sur les services à l'enfant et à la famille*, tout parent doit, de façon raisonnable, fournir des aliments à son enfant et pourvoir à son éducation, que l'enfant soit ou non confié à sa garde.

CONVENTION ON THE RIGHTS OF THE CHILD
Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
entry into force 2 September 1990, in accordance with article 49

Preamble

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,