S.C.C. File No. 34258

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

B E T W E E N:

MUHSEN AHEMED RAMADAN AGRAIRA

APPELLANT
(Respondent)

- and –

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

RESPONDENT
(Appellant)

-and-

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, AHMAD DAUD MAQSUDI, CANADIAN COUNCIL FOR REFUGEES AND CANADIAN ASSOCIATION OF REFUGEE LAWYERS and CANADIAN ARAB FEDERATION AND CANADIAN TAMIL CONGRESS

INTERVENERS

FACTUM OF THE CANADIAN COUNCIL FOR REFUGEES AND THE CANADIAN ASSOCIATION OF REFUGEE LAWYERS (INTERVENERS)

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

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PART I – STATEMENT OF FACTS

A. Overview

1. By the Order of Deschamps J. dated 18 July 2012, the Canadian Council for Refugees ("the CCR") and the Canadian Association of Refugee Lawyers ("the CARL") were granted leave to intervene in the within appeal.

2. The CCR and the CARL take no position on the facts as summarized by the parties.

3. Section 34(2) of the *Immigration and Refugee Protection Act* ("the *IRPA*") provides that the grounds of inadmissibility set out in s. 34(1) "do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada *would not be detrimental to the national interest*" (emphasis added). The meaning given to this provision has a direct and significant impact on the fundamental rights and interests of refugees and refugee claimants. The provision therefore must be interpreted in accordance with the *Canadian Charter of Rights and Freedoms* and international refugee and human rights law. The Federal Court of Appeal adopted a restrictive interpretation of the phrase "would not be detrimental to the national interest," holding that "national interest" refers exclusively to public safety and national security. This restrictive interpretation is inconsistent with Canada's obligations under international law, especially in relation to refugees, with *Charter* values and with fundamental principles of statutory interpretation. The CCR and the CARL submit that "national interest" must be broadly construed to include, at a minimum, upholding Canadian humanitarian values and adherence to Canada's international obligations in addition to national security and protection of the public.

PART II – POINTS IN ISSUE

4. The CCR and the CARL agree that this appeal raises the questions of law identified in paragraph 68 of the Appellant's factum and paragraph 42 of the Respondent's factum.

PART III - ARGUMENT

A.1 Impact on refugees: *Charter* engagement and international legal principles

5. Section 34(2) of the *IRPA* has a direct impact on refugees and refugee claimants. The provision therefore must be interpreted in accordance with the *Charter* and international refugee and human rights law.[1] Further, ss. 3(3)(d) and (f) of the *IRPA*, respectively, direct that the Act is to be construed and applied in a manner that is consistent with the *Charter* and complies with international human rights instruments to which Canada is signatory.

6. Canada has ratified the key international instruments for the protection of refugees – the 1951 *Convention relating to the Status of Refugees* ("Refugee Convention") and the 1967 *Protocol relating to the Status of Refugees*. These instruments "reflect not only international consensus, but also principles that Canada has committed itself to uphold."[2] These fundamental legal principles concerning refugees have been incorporated into Canadian law in the very statute in which s.34(2) appears. Even without this incorporation, "it is presumed that the legislature acts in compliance with Canada's obligations as a signatory of international treaties and as a member of the international community as well as in conformity with the values and principles of customary and conventional international law."[3] "In choosing among possible interpretations of a statute, the court should avoid interpretations that would put Canada in breach of such obligations: see *Driedger on the Construction of Statutes* (3rd ed. 1994), at p.330."[4] As this Court has held, the Refugee Convention has an "overarching and clear human rights object and purpose",[5] and domestic law aimed at implementing it "must be interpreted in light of that human rights object and purpose."[6]

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[1] *Suresh v. Canada (M.C.I.)*, 2002 SCC 1 [Interveners' Authorities, Tab 20]

[2] *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27, at paras. 69-71 [Interveners' Authorities, Tab 9]

[3] *Németh v. Canada (Justice)*, 2010 SCC 56, at para. 34 and references therein [Interveners' Authorities, Tab 11]

[4] *Orden Estate v. Grail*, [1998] 3 S.C.R. 437, at para. 137 [Interveners' Authorities, Tab 12]

[5] *Pushpanathan v. Canada (M.C.I.)*, [1998] 1 S.C.R. 982, at para. 57 [Interveners' Authorities, Tab 14]

[6] *Németh v. Canada (Justice)*, *supra*, at para. 86 [Interveners' Authorities, Tab 11]

A.2.a Front end ineligibility

7. Refugee claimants who have been found to be inadmissible under s. 34(1) are statutorily barred[7] from seeking refugee protection from persecution under s. 96 of *IRPA*, unless they have been granted relief under s. 34(2). While such individuals may request a Pre-Removal Risk Assessment (PRRA)[8], the consideration of risk in the PRRA will be restricted to the narrow factors set out in s. 97.[9] Moreover, the PRRA decision will be rendered by an immigration officer, generally without an oral hearing, rather than by the relevant quasi-independent administrative tribunal, the Immigration and Refugee Board, following an oral hearing with a right to counsel.

8. As a result, a finding of inadmissibility under s. 34(1) may result in the *refoulement* of refugees who have "a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion" under s. 96 but who cannot establish that they *also* face a substantial risk to life or risk of torture, cruel and unusual treatment or punishment under s. 97.[10] The denial of protection from *refoulement* to persecution - which flows from a s. 34(1) finding that has not been remedied by a grant of relief under s. 34(2) - clearly engages ss. 7 and 12 of the *Charter*, as well as art. 33 of the Refugee Convention and art. 7 of the *International Covenant on Civil and Political Rights* ("ICCPR").[11] It may also engage art. 3(1) of the *Convention against Torture*.[12]

9. Even those inadmissible refugees who have been accepted under a "restricted PRRA" are

[7] *IRPA*, ss. 101(1)(f) and 112(3)

[8] *IRPA*, s. 112(1)

[9] *IRPA*, ss. 112(3) and 113(d)

[10] Even those inadmissible claimants who are able to successfully establish risk under s. 97 in their PRRA application may face *refoulement* if the Minister determines that "the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada" (s. 113(d)(ii)).

[11] Article 33(1) of the Refugee Convention 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." Article 7 of the *ICCPR* states in part that no one "shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

[12] Article 3(1) of the *Convention against Torture* states: "No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

granted only a stay of removal to the particular country where they are at risk of torture, which can be cancelled by the Minister at any time should he determine that there has been a change of circumstances. Unless and until they have been granted relief under s. 34(2), such persons remain inadmissible to Canada and thus are barred from permanent residence and Canadian citizenship. As a result, unlike admissible claimants and those who have been granted relief, they have no possibility of sponsoring their family members to Canada, and no access to permanent residence or naturalization. The lack of access to permanent residence and naturalization, and the denial of family reunification, on the basis of inadmissibility under s. 34, engages s. 7 and in some cases also ss. 2 and/or 15 of the *Charter*, as well as Canada's international obligations under, *inter alia*, art. 34 of the Refugee Convention (assimilation and naturalization of refugees); arts. 17 and 23 of the *ICCPR* (guarantees of protection for the family unit and family life); art. VI of the *American Declaration on the Rights and Duties of Man* (right to establish a family and to protection thereof) and obligations under the *Convention on the Rights of the Child* such as the obligation to make the best interests of the child the primary consideration (art. 3), to respect the right of the child to preserve his or her identity (art. 8), to ensure that a child is not separated from his or her parents against their will (art. 9), to prevent arbitrary interference with the child's family life (art. 16) and to take appropriate measures to ensure that a child who is a refugee or refugee claimant receive appropriate protection and humanitarian assistance (art. 22).

A.2.b Inadmissibility after refugee status granted

10. A finding that a refugee is inadmissible under s. 34(1) can also be made after refugee protection has been granted by the IRB, either before or after being granted permanent residence. In most cases, security inadmissibility findings are made during the application for landing process. In such a case, inadmissibility will prevent the applicant from being granted permanent resident status, and thus from sponsoring family members from abroad, including dependent children. A suspicion of possible inadmissibility under s. 34(1) frequently results in extensive delays in processing applications for permanent residence.[13] As noted above, these impacts engage the *Charter* as well as Canada's obligations under international law.

[13] Sherene Razack, "Abandonment and the dance of race and bureaucracy in spaces of exception", Chapter 4 in Sherene Razack, Malinda Smith and Sunera Thobani (eds.) *States of Race: Critical Race Feminism for the 21st Century* (Between the Lines, 2010) [Interveners' Authorities, Tab 26]

A.2.c Impact of requesting Ministerial relief

11. A request for relief under s. 34(2) does not stay any proceedings; once found inadmissible and hence ineligible for refugee protection, an applicant will be served with a restricted PRRA application regardless of whether or not a request for relief has been made under s. 34(2). If this restricted PRRA is refused, the person may be removed from Canada, including to a country where they have a well-founded fear of persecution on a Convention ground if they were caught by s. 101(1)(f), notwithstanding the existence of a relief request that is "in process."[14]

B.1 Relationship between ss. 34(1) and 34(2)

12. Section 34(2) of the *IRPA* has been characterized as a "saving clause" that mitigates the harm done by the overly broad inadmissibility criteria under s. 34(1). There is no question that s. 34(1) has been broadly interpreted.[15] The jurisprudence contains numerous examples of s. 34(1) inadmissibility findings against individuals for mere association with no involvement in violence, including in opposition to notoriously undemocratic and repressive regimes; for mere formal membership with no actual involvement;[16] for membership as a minor; and for membership in an organization despite the lack of temporal connection between the period of association and the organization's alleged engagement in proscribed acts.[17] When s. 34(1) is challenged directly for overbreadth, Courts have relied on the availability of Ministerial relief under s. 34(2) to deny a judicial remedy.[18]

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[14] *Azeem v. Canada (M.C.I.),* 2012 FC 402, at paras. 15-18 [Interveners' Authorities, Tab 2]; *Poshteh v. Canada (M.C.I.),* 2005 FCA 85, paras. 28-29 [Appellant's Authorities, Tab 26]; *Poshteh v. Canada (M.C.I.),* 2005 FCA 121, at para. 10 [Interveners' Authorities, Tab 13]; *Samad v. Canada (M.C.I.),* 2011 FC 324, at paras. 13-15 [Interveners' Authorities, Tab 18]; *Suleyman v. Canada (M.C.I.),* 2008 FC 780, at paras. 24-35 [Interveners' Authorities, Tab 19]; *Hassanzadeh v. Canada (M.C.I.),* 2005 FC 902, at paras. 27-28 [Interveners' Authorities, Tab 8]

[15] *Poshteh v. Canada (M.C.I.),* 2005 FCA 85, at para. 29 [Appellant's Authorities, Tab 26]; *Ugbazghi v. Canada (M.C.I.),* [2008] FC 694 at para. 47 [Interveners' Authorities, Tab 22]

[16] *Saleh v. Canada (M.C.I.),* 2010 FC 303, at paras. 16-20 [Interveners' Authorities, Tab 17]; *Kozonguizi v. Canada (M.C.I.),* 2010 FC 308 at paras. 19-24 [Interveners' Authorities, Tab 10]

[17] *Gebreab v. Canada (M.P.S.E.P.),* 2009 FC 1213 at paras. 21-26 (aff'd, 2010 FCA 274) [Interveners' Authorities, Tab 6]; *Contreras v. Canada (M.C.I.),* 2010 FC 246, at paras. 28-34 [Interveners' Authorities, Tab 5]; *Al Yamani v. Canada (M.C.I.),* 2006 FC 1457 at paras. 10-14 [Interveners' Authorities, Tab 1]

[18] *Hagos v. Canada (M.C.I.),* 2011 FC 1214, at para. 32 [Interveners' Authorities, Tab 7]; *Al Yamani v. Canada (M.C.I.),* 2006 FC 1457, paras. 13-14 [Interveners' Authorities, Tab 1]; *Qureshi v. Canada (M.C.I.),* 2009 FC 7, paras. 44-45 [Interveners' Authorities, Tab 15]; *Kozonguizi v. Canada (M.C.I.),* 2010 FC 308, paras. 23-24 [Interveners' Authorities, Tab 10]

13. While the CCR and the CARL maintain that s. 34(1) is overbroad and inconsistent with *Charter* values and international law, they acknowledge that the within appeal is not the proper forum to raise these matters. However, until the Courts remedy the overbreadth of s. 34(1) itself, s. 34(2) remains the **only** available recourse. Given this, the Court of Appeal's overly narrow reading of the provision is particularly unjust.

14. Parliament deliberately conferred a discretionary power on the Minister under s. 34(2) of the *IRPA.* As set out above, and contrary to the conclusion of the Federal Court of Appeal, Canada's international human rights obligations are engaged by s. 34(2). Given the direct impact of the provision on the rights and interests of refugees and refugee claimants described above, and pursuant to this Court's reasoning in *Baker v. Canada (M.C.I)*[19] and the expressed intention of the legislature in ss. 3(3)(d) and (f) of the *IRPA*, s. 34(2) must be interpreted in a manner that complies with *Charter* values and with the relevant international instruments pertaining to refugees and human rights[20]. In light of these sources, and in light of the overbreadth of s. 34(1), Ministerial relief cannot be merely a *discretionary* response that *may* be granted in exceptional circumstances to persons whose presence in Canada is not detrimental to the national interest (as interpreted by the Federal Court of Appeal); it is, rather, a remedy that *must* be granted in any case where a refusal would result in a *Charter* breach, and may also be granted in other cases where it is established that the person's presence in Canada would not be detrimental to the national interest, properly understood.

15. The restrictive interpretation of s. 34 (2) adopted by the Court of Appeal is inconsistent with the requirements for the constitutional exercise of discretion as set out in *Suresh v. Canada (Minister of Citizenship and Immigration).*[21] At the very least, such a restrictive interpretation will foreseeably lead to the *refoulement* of refugees in contravention of both international law and the *Charter*.

C.1 Interplay between s. 34(2) and s. 25

16. It is submitted that the Federal Court of Appeal fundamentally misconstrued the role and

[19] *Baker v. Canada (M.C.I)*, [1999] 2 S.C.R. 817 at paras. 66-75 [Interveners' Authorities, Tab 3]

[20] Including the Refugee Convention, CCPR, *Convention on the Rights of the Child*, and *American Declaration on the Rights and Duties of Man.*

[21] *Suresh v. Canada (M.C.I.)*, 2002 SCC 1, at paras. 108-10 [Interveners' Authorities, Tab 20]

relevance of ss. 25(1) and 25.1(1) of the *IRPA* in finding that they presented an adequate alternative remedy to relief under s. 34(2). The Federal Court of Appeal appears to hold that factors not relating to national security and public safety that had once been weighed by the Minister under s. 34(2) can still be raised as humanitarian and compassionate considerations under s. 25(1) or s. 25.1(1). This reflects an erroneous view of the latter provisions.

17. Sections 25(1) and 25.1(1) provide the Minister with the discretion to grant permanent resident status to a foreign national or exempt a foreign national "from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected."

18. While the range of circumstances that can be taken into account under s. 25 is broad, the provision nevertheless explicitly *excludes* any consideration of "the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1)."[22] Risk is, however, an identified factor for consideration under s. 34(2) under the National Interest Guidelines that applied to s. 34(2) decisions before the decision of the Court of Appeal below. Neither is humanitarian or compassionate relief necessarily available to those found inadmissible under s.34(1). Some classes of foreign nationals are prohibited from even requesting relief under s. 25.[23]

19. Finally, it is submitted that an "exemption" from "any applicable criteria or obligations of this Act" is a completely different form of relief from that granted under s. 34(2) (or, for that matter, ss. 35(2) or 37(2)(a)). As this Court held in *Baker* with respect to humanitarian and compassionate exemptions, they are "exceptions to the general principles of Canadian immigration law."[24] In contrast, ss. 34(1) and (2) operate together as an expression of Canadian immigration law. The legislature intended them to operate together, and this Court in *Suresh* recognized their interconnectedness.

20. In summary, contrary to the view of the Federal Court of Appeal, a broader range of

[22] *IRPA*, s.25(1.3)

[23] *IRPA*, ss. 25(1.01), (1.02), (1.03) and (1.2)

[24] *Baker v. Canada (M.C.I.), supra,* at para. 31[Interveners' Authorities, Tab 3]

considerations than national security and public safety remain relevant under s. 34(2) of the *IRPA.*

D. Principles of statutory interpretation

D.1.a The Act as a whole

21. It is submitted that the meaning of "national interest" in s. 34(2) must be determined having regard to the *IRPA* as a whole, including its objectives. Among the objectives of the Act in relation to immigration are: "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration" (s. 3(1)(a)), and "to see that families are reunited in Canada" (s. 3(1)(d)). Among the objectives of the Act in relation to refugees are: "to fulfill Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement" (s. 3(2)(b)), and "to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada" (s. 3(2)(f)).

22. The Act also includes objectives relating to public safety and national security (ss. 3(1)(h), 3(1)(i), 3(2)(g), and 3(2)(h)). However, they are not given any priority over the other objectives set out in ss. 3(1) and (2) of the Act. It is submitted that *all* of the objectives contained in ss. 3(1) and (2) of the *IRPA* ought to be considered in determining whether allowing an inadmissible person to remain in Canada would be "detrimental to the national interest." The Federal Court of Appeal erred in adopting an interpretation of s.34(2) that does not allow this to occur.

D.1.b Presumption of consistent expression

23. It is submitted that the interpretation of "national interest" adopted by the Federal Court of Appeal is inconsistent with the presumption of consistent expression, by which the same words are presumed to have the same meaning and different words different meanings.[25]

24. In this appeal, three distinct phrases found in the *IRPA* are relevant: "not detrimental to the national interest", "danger to the public in Canada" and "danger to the security of Canada". It is submitted that the Federal Court of Appeal unjustifiably made the first phrase synonymous

[25] *Sullivan on the Construction of Statutes (5th ed.)* (Markham, Ont.: LexisNexis Canada Inc., 2008), pp. 214-23 [Interveners' Authorities, Tab 27]

with the conjunction of the other two, which have distinct meanings derived from international refugee law.

25. The phrases "danger to the security of Canada" and "danger to the public in Canada" appear, *inter alia*, in ss. 113(d) and 115(2) of the *IRPA.* They derive directly from the phrases "danger to the security of the country in which [a refugee] is" and "danger to the community of that country" in Art. 33(2) of the 1951 Refugee Convention. The two phrases, which identify narrow exceptions to the principle of *non-refoulement*, have developed specific meanings both in Canadian jurisprudence[26] and in international refugee law.[27]

26. It is submitted that the Federal Court of Appeal had no legislative basis upon which to find that an assessment of "the national interest" should be limited to a consideration of "national security and public safety." If that had been the intent of the legislature, those specific phrases would have been used in s. 34(2) itself, instead of the broader phrase actually used – "detrimental to the national interest."

27. Further, by limiting access to relief under s.34(2) only to those who can demonstrate that they do not present a danger to "national security or public safety", the Federal Court of Appeal effectively barred those found inadmissible under s.34(1)(d) (being a danger to the security of Canada). It is the very precondition for needing to seek relief under s.34(2) that must be negated to obtain the relief sought.

D.1.c Presumption against implicit alteration of law

28. Another important presumption of statutory interpretation is the presumption against

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[26] *Chieu v. Canada (M.C.I.)*, [2002] 1 S.C.R. 84 at para. 58 [Interveners' Authorities, Tab 4]; *Suresh v. Canada (M.C.I)*, 2002 SCC 1 at paras. 80-92 [Interveners' Authorities, Tab 20]; *Ragupathy v. Canada (M.C.I.)*, [2007] 1 F.C.R. 490 (C.A.), at paras. 16-19 and 33 [Interveners' Authorities, Tab 16]; *Thompson v. Canada (M.C.I.)*(1996), 118 F.T.R. 269 (F.C.T.D.) at paras. 19-23 [Interveners' Authorities, Tab 21]

[27] See James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge, UK: Cambridge University Press, 2005), pp. 345-350 [Interveners' Authorities, Tab 24] ; Geoff Gilbert, "Current Issues in the Application of the Exclusion Clauses", Part 7.1 in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge, UK: Cambridge University Press, 2003), pp. 459-462 [Interveners' Authorities, Tab 23]; Sir Elihu Lauterpacht QC & Daniel Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion", Part 2 in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge, UK: Cambridge University Press, 2003), p.134-140 [Interveners' Authorities, Tab 25]

implicit alteration of law.[28] It is presumed that the legislature does not intend to change existing law or to depart from established principles, policies or practices; explicit language effecting the change is required to rebut this presumption. In light of the legislative history, this presumption supports the continuing viability of a more expansive interpretation of "national interest" even after the Minister of Public Safety was given responsibility for making decisions under s. 34(2). Contrary to the findings of the Federal Court of Appeal, the guidelines applied to determinations under s. 34(2) cannot be dismissed as an irrelevant historical artifact that, essentially by accident, was carried over from an earlier time when s. 34(2) decisions were made by the Minister of Citizenship and Immigration.

PART IV – COSTS

29. The CCR and the CARL do not seek costs and ask that none be awarded against them.

PART V – ORDER SOUGHT

30. The CCR and the CARL take no position on the disposition of the appeal but respectfully request that it be determined in light of the submissions set out above.

31. The CCR and the CARL respectfully request leave to present oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

D A T E D at this day of September, 2012.

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_____
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[28] *Sullivan on the Construction of Statutes (5th ed.)* (Markham, Ont.: LexisNexis Canada Inc., 2008), pp. 482-83 [Interveners' Authorities, Tab 27]

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PART VII – STATUTES AND REGULATIONS

Immigration and Refugee Protection Act (S.C. 2001, c. 27

OBJECTIVES AND APPLICATION

Objectives — immigration

3. (1) The objectives of this Act with respect to immigration are

(*a*) to permit Canada to pursue the maximum social, cultural and economic benefits of immigration;

(*b*) to enrich and strengthen the social and cultural fabric of Canadian society, while respecting the federal, bilingual and multicultural character of Canada;

(*b.1*) to support and assist the development of minority official languages communities in Canada;

(*c*) to support the development of a strong and prosperous Canadian economy, in which the benefits of immigration are shared across all regions of Canada;

(*d*) to see that families are reunited in Canada;

(*e*) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;

(*f*) to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada in consultation with the provinces;

(*g*) to facilitate the entry of visitors, students and temporary workers for purposes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities;

(*h*) to protect the health and safety of

Loi sur l'immigration et la protection des réfugiés (L.C. 2001, ch. 27)

OBJET DE LA LOI

Objet en matière d'immigration

3. (1) En matière d'immigration, la présente loi a pour objet :

a) de permettre au Canada de retirer de l'immigration le maximum d'avantages sociaux, culturels et économiques;

b) d'enrichir et de renforcer le tissu social et culturel du Canada dans le respect de son caractère fédéral, bilingue et multiculturel;

b.1) de favoriser le développement des collectivités de langues officielles minoritaires au Canada;

c) de favoriser le développement économique et la prospérité du Canada et de faire en sorte que toutes les régions puissent bénéficier des avantages économiques découlant de l'immigration;

d) de veiller à la réunification des familles au Canada;

e) de promouvoir l'intégration des résidents permanents au Canada, compte tenu du fait que cette intégration suppose des obligations pour les nouveaux arrivants et pour la société canadienne;

f) d'atteindre, par la prise de normes uniformes et l'application d'un traitement efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces;

g) de faciliter l'entrée des visiteurs, étudiants et travailleurs temporaires qui viennent au Canada dans le cadre d'activités commerciales, touristiques, culturelles, éducatives, scientifiques ou autres, ou pour favoriser la bonne entente à l'échelle internationale;

Canadians and to maintain the security of Canadian society;

(*i*) to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and

(*j*) to work in cooperation with the provinces to secure better recognition of the foreign credentials of permanent residents and their more rapid integration into society.

h) de protéger la santé des Canadiens et de garantir leur sécurité;

i) de promouvoir, à l'échelle internationale, la justice et la sécurité par le respect des droits de la personne et l'interdiction de territoire aux personnes qui sont des criminels ou constituent un danger pour la sécurité;

j) de veiller, de concert avec les provinces, à aider les résidents permanents à mieux faire reconnaître leurs titres de compétence et à s'intégrer plus rapidement à la société.

Objectives — refugees

(2) The objectives of this Act with respect to refugees are

(*a*) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;

(*b*) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;

(*c*) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;

(*d*) to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;

(*e*) to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;

(*f*) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family

Objet relatif aux réfugiés

(2) S'agissant des réfugiés, la présente loi a pour objet :

a) de reconnaître que le programme pour les réfugiés vise avant tout à sauver des vies et à protéger les personnes de la persécution;

b) de remplir les obligations en droit international du Canada relatives aux réfugiés et aux personnes déplacées et d'affirmer la volonté du Canada de participer aux efforts de la communauté internationale pour venir en aide aux personnes qui doivent se réinstaller;

c) de faire bénéficier ceux qui fuient la persécution d'une procédure équitable reflétant les idéaux humanitaires du Canada;

d) d'offrir l'asile à ceux qui craignent avec raison d'être persécutés du fait de leur race, leur religion, leur nationalité, leurs opinions politiques, leur appartenance à un groupe social en particulier, ainsi qu'à ceux qui risquent la torture ou des traitements ou peines cruels et inusités;

e) de mettre en place une procédure équitable et efficace qui soit respectueuse, d'une part, de l'intégrité du processus canadien d'asile et, d'autre part, des droits et des libertés fondamentales reconnus à tout être humain;

f) d'encourager l'autonomie et le bien-être socioéconomique des réfugiés en facilitant la réunification de leurs familles au Canada;

members in Canada;

(*g*) to protect the health and safety of Canadians and to maintain the security of Canadian society; and

(*h*) to promote international justice and security by denying access to Canadian territory to persons, including refugee claimants, who are security risks or serious criminals.

Application

(3) This Act is to be construed and applied in a manner that

(*a*) furthers the domestic and international interests of Canada;

(*b*) promotes accountability and transparency by enhancing public awareness of immigration and refugee programs;

(*c*) facilitates cooperation between the Government of Canada, provincial governments, foreign states, international organizations and non-governmental organizations;

(*d*) ensures that decisions taken under this Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada;

(*e*) supports the commitment of the Government of Canada to enhance the vitality of the English and French linguistic minority communities in Canada; and

(*f*) complies with international human rights instruments to which Canada is signatory.

Humanitarian and compassionate considerations — request of foreign national

25. (1) The Minister must, on request of a foreign national in Canada who is inadmissible or who does not meet the requirements of this Act, and may, on request of a foreign national outside Canada, examine the circumstances concerning the foreign national and may grant the foreign national permanent

g) de protéger la santé des Canadiens et de garantir leur sécurité;

h) de promouvoir, à l'échelle internationale, la sécurité et la justice par l'interdiction du territoire aux personnes et demandeurs d'asile qui sont de grands criminels ou constituent un danger pour la sécurité.

Interprétation et mise en oeuvre

(3) L'interprétation et la mise en oeuvre de la présente loi doivent avoir pour effet :

a) de promouvoir les intérêts du Canada sur les plans intérieur et international;

b) d'encourager la responsabilisation et la transparence par une meilleure connaissance des programmes d'immigration et de ceux pour les réfugiés;

c) de faciliter la coopération entre le gouvernement fédéral, les gouvernements provinciaux, les États étrangers, les organisations internationales et les organismes non gouvernementaux;

d) d'assurer que les décisions prises en vertu de la présente loi sont conformes à la *Charte canadienne des droits et libertés*, notamment en ce qui touche les principes, d'une part, d'égalité et de protection contre la discrimination et, d'autre part, d'égalité du français et de l'anglais à titre de langues officielles du Canada;

e) de soutenir l'engagement du gouvernement du Canada à favoriser l'épanouissement des minorités francophones et anglophones du Canada;

f) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.

Séjour pour motif d'ordre humanitaire à la demande de l'étranger

25. (1) Le ministre doit, sur demande d'un étranger se trouvant au Canada qui est interdit de territoire ou qui ne se conforme pas à la présente loi, et peut, sur demande d'un étranger se trouvant hors du Canada, étudier le cas de cet étranger; il peut lui octroyer le statut

resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

Payment of fees

(1.1) The Minister is seized of a request referred to in subsection (1) only if the applicable fees in respect of that request have been paid.

Exceptions

(1.2) The Minister may not examine the request if the foreign national has already made such a request and the request is pending.

Non-application of certain factors

(1.3) In examining the request of a foreign national in Canada, the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under section 96 or a person in need of protection under subsection 97(1) but must consider elements related to the hardships that affect the foreign national.

Provincial criteria

(2) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

Humanitarian and compassionate considerations — Minister's own initiative

25.1 (1) The Minister may, on the Minister's own initiative, examine the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligations of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

Paiement des frais

(1.1) Le ministre n'est saisi de la demande que si les frais afférents ont été payés au préalable.

Exceptions

(1.2) Le ministre ne peut étudier la demande de l'étranger si celui-ci a déjà présenté une telle demande et celle-ci est toujours pendante.

Non-application de certains facteurs

(1.3) Le ministre, dans l'étude de la demande d'un étranger se trouvant au Canada, ne tient compte d'aucun des facteurs servant à établir la qualité de réfugié — au sens de la Convention — aux termes de l'article 96 ou de personne à protéger au titre du paragraphe 97(1); il tient compte, toutefois, des difficultés auxquelles l'étranger fait face.

Critères provinciaux

(2) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

Séjour pour motif d'ordre humanitaire à l'initiative du ministre

25.1 (1) Le ministre peut, de sa propre initiative, étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi; il peut lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, s'il estime que des considérations d'ordre humanitaire relatives à l'étranger le justifient, compte tenu de l'intérêt supérieur de l'enfant directement touché.

Exemption

(2) The Minister may exempt the foreign national from the payment of any applicable fees in respect of the examination of their circumstances under subsection (1).

Provincial criteria

(3) The Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

Security

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(*a*) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

(*b*) engaging in or instigating the subversion by force of any government;

(*c*) engaging in terrorism;

(*d*) being a danger to the security of Canada;

(*e*) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or

(*f*) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (*a*), (*b*) or (*c*).

Exception

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Human or international rights violations

Dispense

(2) Il peut dispenser l'étranger du paiement des frais afférents à l'étude de son cas au titre du paragraphe (1).

Critères provinciaux

(3) Le statut de résident permanent ne peut toutefois être octroyé à l'étranger visé au paragraphe 9(1) qui ne répond pas aux critères de sélection de la province en cause qui lui sont applicables.

Sécurité

34. (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :

a) être l'auteur d'actes d'espionnage ou se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;

b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;

c) se livrer au terrorisme;

d) constituer un danger pour la sécurité du Canada;

e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas *a*), *b*) ou *c*).

Exception

(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(*a*) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(*b*) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*; or

(*c*) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

Exception

(2) Paragraphs (1)(*b*) and (*c*) do not apply in the case of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Organized criminality

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(*a*) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would

Atteinte aux droits humains ou internationaux

35. (1) Emportent interdiction de territoire pour atteinte aux droits humains ou internationaux les faits suivants :

a) commettre, hors du Canada, une des infractions visées aux articles 4 à 7 de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

b) occuper un poste de rang supérieur — au sens du règlement — au sein d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou commet ou a commis un génocide, un crime contre l'humanité ou un crime de guerre au sens des paragraphes 6(3) à (5) de la *Loi sur les crimes contre l'humanité et les crimes de guerre*;

c) être, sauf s'agissant du résident permanent, une personne dont l'entrée ou le séjour au Canada est limité au titre d'une décision, d'une résolution ou d'une mesure d'une organisation internationale d'États ou une association d'États dont le Canada est membre et qui impose des sanctions à l'égard d'un pays contre lequel le Canada a imposé — ou s'est engagé à imposer — des sanctions de concert avec cette organisation ou association.

Exception

(2) Les faits visés aux alinéas (1)*b*) et *c*) n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national.

Activités de criminalité organisée

37. (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants :

a) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction à une loi fédérale punissable par mise en accusation ou de la perpétration, hors du Canada, d'une infraction qui, commise au Canada,

constitute such an offence, or engaging in activity that is part of such a pattern; or

(*b*) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

Application

(2) The following provisions govern subsection (1):

(*a*) subsection (1) does not apply in the case of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest; and

(*b*) paragraph (1)(*a*) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.

constituerait une telle infraction, ou se livrer à des activités faisant partie d'un tel plan;

b) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.

Application

(2) Les dispositions suivantes régissent l'application du paragraphe (1) :

a) les faits visés n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national;

b) les faits visés à l'alinéa (1)*a*) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se livre aux activités qui y sont visées.

Ineligibility

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if

(*a*) refugee protection has been conferred on the claimant under this Act;

(*b*) a claim for refugee protection by the claimant has been rejected by the Board;

(*c*) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;

(*d*) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country;

(*e*) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or

(*f*) the claimant has been determined to be

Irrecevabilité

101. (1) La demande est irrecevable dans les cas suivants :

a) l'asile a été conféré au demandeur au titre de la présente loi;

b) rejet antérieur de la demande d'asile par la Commission;

c) décision prononçant l'irrecevabilité, le désistement ou le retrait d'une demande antérieure;

d) reconnaissance de la qualité de réfugié par un pays vers lequel il peut être renvoyé;

e) arrivée, directement ou indirectement, d'un pays désigné par règlement autre que celui dont il a la nationalité ou dans lequel il avait sa résidence habituelle;

inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(*c*).

Serious criminality

(2) A claim is not ineligible by reason of serious criminality under paragraph (1)(*f*) unless

(*a*) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or

(*b*) in the case of inadmissibility by reason of a conviction outside Canada, the Minister is of the opinion that the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.

PRE-REMOVAL RISK ASSESSMENT

Protection

Application for protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

Exception

(2) Despite subsection (1), a person may not apply for protection if

(*a*) they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;

(*b*) they have made a claim to refugee protection that has been determined under paragraph 101(1)(*e*) to be ineligible;

(*c*) in the case of a person who has not left

f) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)*c*) — , grande criminalité ou criminalité organisée.

Grande criminalité

(2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)*f*) n'emporte irrecevabilité de la demande que si elle a pour objet :

a) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle un emprisonnement d'au moins deux ans a été infligé;

b) une déclaration de culpabilité à l'extérieur du Canada, pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans, le ministre estimant que le demandeur constitue un danger pour le public au Canada.

EXAMEN DES RISQUES AVANT RENVOI

Protection

Demande de protection

112. (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Exception

(2) Elle n'est pas admise à demander la protection dans les cas suivants :

a) elle est visée par un arrêté introductif d'instance pris au titre de l'article 15 de la *Loi sur l'extradition*;

b) sa demande d'asile a été jugée irrecevable au titre de l'alinéa 101(1)*e*);

Canada since the application for protection was rejected, the prescribed period has not expired; or

(*d*) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

Restriction

(3) Refugee protection may not result from an application for protection if the person

(*a*) is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;

(*b*) is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;

(*c*) made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or

(*d*) is named in a certificate referred to in subsection 77(1).

Consideration of application

113. Consideration of an application for protection shall be as follows:

(*a*) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;

(*b*) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;

(*c*) in the case of an applicant not

c) si elle n'a pas quitté le Canada après le rejet de sa demande de protection, le délai prévu par règlement n'a pas expiré;

d) dans le cas contraire, six mois ne se sont pas écoulés depuis son départ consécutif soit au rejet de sa demande d'asile ou de protection, soit à un prononcé d'irrecevabilité, de désistement ou de retrait de sa demande d'asile.

Restriction

(3) L'asile ne peut être conféré au demandeur dans les cas suivants :

a) il est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux ou criminalité organisée;

b) il est interdit de territoire pour grande criminalité pour déclaration de culpabilité au Canada punie par un emprisonnement d'au moins deux ans ou pour toute déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;

c) il a été débouté de sa demande d'asile au titre de la section F de l'article premier de la Convention sur les réfugiés;

d) il est nommé au certificat visé au paragraphe 77(1).

Examen de la demande

113. Il est disposé de la demande comme il suit :

a) le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;

b) une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;

described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;

(*d*) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

c) s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;

d) s'agissant du demandeur visé au paragraphe 112(3), sur la base des éléments mentionnés à l'article 97 et, d'autre part :

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada.