

**SUPREME COURT OF CANADA  
(ON APPEAL FROM A JUDGMENT OF THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N:

Attorney General of Canada

**Appellant  
(Respondent)**

-and-

Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Nedzad Dzihic, Rania El Murr, Oleg Grankin, Raymond Hince, Homa Vossoughi and Hamid Zebaradami

**Respondents  
(Appellants)**

AND BETWEEN

Attorney General of Ontario

**Appellant  
(Respondent)**

- and -

Pritpal Singh Mavi, Maria Cristina Jatuff de Altamirano, Nedzad Dzihic, Rania El Murr, Oleg Grankin, Raymond Hince, Homa Vossoughi and Hamid Zebaradami

**Respondents  
(Appellants)**

- and-

South Asian Legal Clinic of Ontario, Metropolitan Action Committee on Violence against Women, Canadian Civil Liberties Association

**Interveners**

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**FACTUM OF THE INTERVENER**

**THE CANADIAN COUNCIL FOR REFUGEES**

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## PART I – STATEMENT OF FACTS

### A. Overview

...For since many accidents may happen, wherein a strict and rigid observation of the laws may do harm; ... tis fit the ruler should have a power, in many cases, to mitigate the severity of the law...

This power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, is that which is called prerogative.<sup>1</sup>

1. As the British philosopher John Locke stated, there are times when the strict application of the law results in injustice. Discretion, which he calls prerogative, stands as the remedy. The central issues in this appeal are whether the government has the discretion to forgive immigration debts and whether, in the exercise of that discretion, it must provide a process for consideration of relevant personal and financial circumstances. The intervener will address the first issue, with emphasis on the appropriate principles of interpretation and adopts the arguments of the Respondents with respect to the second.
2. Discretion to consider compelling personal circumstances is a fundamental component of Canada's immigration scheme, in keeping with this country's humanitarian values and traditions. Our Courts, including this Court, have drawn inspiration from Canadian values, using them to interpret and apply legislation, including immigration legislation. The Ontario Court of Appeal relied upon these same humanitarian and compassionate values and traditions to aid in the interpretation of the *IRPA* in this case.
3. This Court is now being asked by the Appellants to overturn the Court of Appeal decision and in so doing to turn its back on these shared values in favour of an interpretation of the law which would permit government debt collection, without regard to the circumstances and interests of the marginalized and disadvantaged in our society. The Canadian Council for Refugees [CCR] urges this Court not to let this happen. The CCR is concerned that this retreat from our common shared values will have far reaching consequences for the Respondents in this case; for others in similar situations; and for future interpretations of the legislation.

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<sup>1</sup> John Locke, *Second Treatise of Government*, edited by C.B. Macpherson, Hackett Publishing, Chapter XIV Of Prerogative, at 84, paras. 159-160.

**B. Background Facts**

4. The CCR relies on the facts as set out in the Appellants' and Respondents' affidavits, filed in this matter.

**PART II -- ISSUES**

5. Does section 145(2) of the *IRPA* contain discretion to forgive or alleviate sponsorship debt?

**PART III – STATEMENT OF ARGUMENT**

**A. Immigration sponsorship undertakings**

6. Sponsorship debts are unique financial obligations, which only some people are required to undertake. For most Canadians, undertakings to support family members are not required. People who marry are not required to sign an undertaking of support in respect of one another; parents don't have to sign undertakings as a condition of bringing a child into the world nor do children have to undertake to support their aging parents. Families can be together without providing special support guarantees. For most situations, the criminal and family law obligations of support are considered sufficient. It is only when a family member immigrates to Canada to reunite with loved ones that sponsorship undertakings are required. An appreciation of this larger context is essential to deciding whether discretion exists to relieve against sponsorship debt in this appeal.

**B. Discretion to consider compelling circumstances in Canada's immigration scheme**

7. Respect for Canada's humanitarian and compassionate values is a hallmark of Canada's immigration laws and policy. This tradition is reflected in the treatment we afford refugees, specific humanitarian classes in the *IRPA*, and in the grant of discretionary power to relieve against hardship in individual cases. Discretion, both explicit and implicit, is the means by which we have traditionally ensured that no individual is caught in the 'gaps' of the refugee and immigration rules and their application and that vulnerable groups are not unfairly harmed or penalized.



**i) Humanitarian values and traditions as reflected in IRPA**

8. Our humanitarian values and traditions are most prominently featured in the consideration given to refugees and people in refugee like situations. Section 3(2) of the *IRPA* expresses our commitment to refugees and speaks of the “fundamental expression of Canada’s humanitarian ideals”. In furtherance of these humanitarian ideals, we have committed to a fair refugee process and created classes of immigrants in order to provide assistance to those affected by armed conflict, massive violation of human rights or refugee like situations.<sup>2</sup> Section 12(3) speaks of “Canada’s humanitarian tradition with respect to the displaced and the persecuted” as the basis for our selection of overseas refugees.
  
9. In addition to the recognition of these broad categories of people in need of humanitarian and compassionate consideration, we also recognize that under certain circumstances, the rigid application of the law should be avoided because of the hardship it could cause. We do this through the grant of discretion. Discretion permits the examination of individual circumstances, on a case by case basis, to determine if relief should be granted.
  
10. Section 25 of the *IRPA*, expressly grants the Minister discretion to consider humanitarian and compassionate circumstances. The section is used to exempt foreign nationals from inadmissibility requirements or the application of specific aspects of the *IRPA*<sup>3</sup> and permanent residents from certain residency obligations.<sup>4</sup> Similarly, section 24 of the *IRPA* contains express discretion for an officer to grant temporary resident status “if the officer is of the opinion that it is justified in the circumstances”.<sup>5</sup>
  
11. The Immigration Appeal Division [IAD] of the Immigration and Refugee Board has the jurisdiction to consider humanitarian and compassionate circumstances in appeals against family class visa refusals and removal orders.<sup>6</sup> Section 67(1)(c) authorizes the granting of an appeal if “sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case”.

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<sup>2</sup> *Immigration and Refugee Protection Act*, S.C. 2001, c.27 (“*IRPA*”) at s. 146.

<sup>3</sup> *IRPA* at ss. 25, 25.1

<sup>4</sup> *IRPA* at s. 28(2)(c)

<sup>5</sup> *IRPA* at ss. 24

<sup>6</sup> *IRPA* at ss. 63, 65, 67, 68

12. Under section 68(1), the IAD can stay a removal order if sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case”<sup>7</sup> and the *IRPA* Regulations permit the Minister to grant work permits for humanitarian reasons.<sup>8</sup>

**ii) Implicit discretion under *IRPA***

13. The fact that the *IRPA* contains these explicit provisions mandating decision-makers to consider humanitarian and compassionate factors in the exercise of their discretion does not mean that discretion must always be explicitly conferred. Contrary to the government of Ontario’s submission, not all instances of discretionary decision-making are found in express provisions; rather, the *IRPA* contains provisions where the discretion is implicit.<sup>9</sup>

14. For example, section 48 of the *IRPA* stipulates that removal orders “must be enforced as soon as is reasonably practicable.”<sup>10</sup> Implicit in this provision is the discretion to defer removal if it is the enforcement officer’s opinion that removal is not reasonably practicable.

15. With the 1995 *Poyanipur* decision, the Federal Courts began interpreting the words “reasonably practicable” as imparting discretion on enforcement officers with regard to the pace and timing of removal.<sup>11</sup> As the case law developed, the Courts defined the scope of discretion either broadly or narrowly; however, consideration of compelling personal circumstances has been a common thread throughout the jurisprudence.

16. In the 2001 *Wang* decision, the Federal Court reviewed the early jurisprudence, where discretion to defer removal was found in a variety of circumstances.<sup>12</sup> In his discussion of the logical and legal boundaries of the discretion to defer removal, Justice Pelletier articulated various justifications. Enforcement officers have an obvious authority to defer removal when

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<sup>7</sup> *IRPA* at s. 68(1) and *Immigration and Refugee Protection Regulations* (“*IRPR*”), SOR/2002-227, as am. at s. 233

<sup>8</sup> *IRPR* at s. 208

<sup>9</sup> Factum of the Appellant Ontario, at para. 54

<sup>10</sup> *IPRA* at s. 48(2). The predecessor section from the former *Immigration Act*, R.S.C. 1985, c. I-2, similarly stated that removal orders “shall be executed as soon as reasonably practicable.”

<sup>11</sup> *Poyanipur v. Canada (Minister of Citizenship and Immigration)* [1995] F.C.J. No. 1785 at para. 9

<sup>12</sup> *Wang v. Canada (Minister of Citizenship and Immigration)*, [2001] 3 F.C. 682 at paras. 21-29

a person cannot physically travel on a given day or in light of factors that impact removal arrangements, such as a pending birth, a death or a child's school year.<sup>13</sup> More broadly, the Court concluded that while the statutory imperative to enforce removal orders limits an officer's discretion, they must nevertheless consider whether pending H&C applications based on the risk to life and safety or in other special circumstances justify deferral.<sup>14</sup>

17. The Court has therefore long recognized that, despite no express legislative authority, enforcement officers have discretion to defer removal. This was recently confirmed in the Federal Court of Appeal decision in *Baron*.<sup>15</sup> The discretion underlying deferrals of removal reflects Canada's tradition of relieving hardship in appropriate circumstances.

18. Contrary to paragraph 4 of the Appellant Canada's submissions, the Court of Appeal did not "re-write the legislation." As the Respondents' argue, the Minister already has the discretion under the same section, to forgo forfeiture or estreat immigration bonds paid or promised as condition of a person's release from detention. The CCR adopts the Respondent's arguments on this point.<sup>16</sup>

### iii) Humanitarian values in interpreting legislation

19. This Court is being asked to interpret an arguably ambiguous provision of the legislation, namely, the term "may" contained in section 145(2). To aid in interpreting legislation under such circumstances, this Court has spoken of the importance of "values and principles" which animate our society and which must be used to give meaning to our laws. In *Oakes*, this Court stated:

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<sup>13</sup> *Ibid.* at para. 44

<sup>14</sup> *Ibid.* at para. 45

<sup>15</sup> *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, [2009] F.C.J. No. 314 at para. 51. Post-*Baron* jurisprudence continues to find that discretion to defer removal encompasses a wide variety of compelling personal circumstances, such as those enumerated above. In recent cases, circumstances have included consideration of whether children will be cared for, the risk of deportation to Somalia, pending litigation regarding decisions on H&C and Pre-Removal Risk Assessment when risk is alleged, an ill child receiving treatment in Canada, among others. See *Williams v. Canada (M.P.S.E.P.)*, [2010] F.C.J. No. 318 at paras. 32-35, 48-49, *Ali v. Canada (M.P.S.E.P.)*, [2010] F.C.J. No. 94 at paras. 34, 41, *Shpati v. Canada (M.P.S.E.P.)*, [2010] F.C.J. No. 418 at para. 37-42, *Glasgow v. Canada (M.P.S.E.P.)*, [2009] F.C.J. No. 1386 at para. 24

<sup>16</sup> Joint Factum of the Respondents, at paras. 55-59.

The Court must be guided by the values and principles essential to a free and democratic society which I believe embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. The underlying values and principles of a free and democratic society are the genesis of the rights and freedoms guaranteed by the *Charter* and the ultimate standard against which a limit on a right or freedom must be shown, despite its effect, to be reasonable and demonstrably justified.<sup>17</sup>

20. In this way, this Court has interpreted statutes with reference to both “*Charter* values” and the broader underlying values which animate the *Charter*. In this case, the underlying value is our humanitarian and compassionate tradition, which has such a solid foundation in the *IRPA* itself.

21. In *Baker*, this Court recognized the central role that our humanitarian and compassionate values and traditions play in interpreting and applying our immigration laws and policies. In considering the duty of procedural fairness owed to an applicant and the reasonableness of a discretionary decision, this Court highlighted the importance of “the fundamental values of Canadian society” in balancing competing interests.<sup>18</sup>

22. In determining that the decision was unreasonable, this Court found that insufficient attention had been paid to children’s rights, which were “central humanitarian and compassionate values”. The Court stated:

In my opinion, a reasonable exercise of the power conferred by the section requires close attention to the interests and needs of children. Children’s rights and attention to their interests are central humanitarian and compassionate values in Canadian society.<sup>19</sup>

23. Subsequent Courts have followed this Court’s instructions in this regard to give real meaning in decision making to our humanitarian and compassionate values.<sup>20</sup> For instance, the Federal Court in *Okoloubu*, confirmed that decisions need to be made in concert with the humanitarian principles set out in the *Act*, the *Charter* and with international law:

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<sup>17</sup> *R. v. Oakes* [1986] S.C.J. No. 7, at para. 64.

<sup>18</sup> *Baker v. Canada (M.C.I.)*, [1999] 2 S.C.R. 817 at para. 56.

<sup>19</sup> *Ibid.* at para. 67.

<sup>20</sup> See *I.G. v. Canada (M.C.I.)* [1999] F.C.J. No. 1704 at para. 41.

To respect the objectives of the Act in the performance of their duties, H&C officers must bear in mind the "humanitarian and compassionate values" which are enshrined in the Charter and the ICCPR.<sup>21</sup>

24. Similarly, the existence of the debt forgiveness provisions, both federally and provincially under the respective *Financial Administration Acts*, evidences Canadian society's concern that "financial hardship", "economic considerations" and "other circumstances" should temper strict government debt collection, in appropriate circumstances. These *Acts* give expression to the underlying humanitarian and compassionate values and traditions of Canadian society, which balance debt collection against the human cost involved, and were correctly relied upon by the Court of Appeal, as support for recognizing the discretion they found in s. 145(2).<sup>22</sup>

**iv) Canada's international human rights commitments**

25. This Court has also recognized the importance of international law in interpreting domestic legislation. In *Baker*, this Court held that, while international instruments are not binding law in Canada:

Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. As stated in R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330:

[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred. [Emphasis added.]<sup>23</sup>

26. Canada is signatory to a number of international agreements which provide for the protection and promotion of the family. The International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child all contain strong language regarding the integrity of the family unit, its

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<sup>21</sup> *Okoloubu v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1495 at para.49. This Court has also confirmed that ambiguous legislation must be interpreted to conform with the *Charter*. See *Bell Express Vu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559 at paras. 61-66 where Iacobucci J. provides a detailed explanation as to how the *Charter* may assist in legislative interpretation and instructs that this approach should only be used where there is genuine ambiguity.

<sup>22</sup> OCA Reasons at para. 117.

<sup>23</sup> *Baker v. Canada, supra* at para. 70.

right to protection by the state and freedom from unlawful interference.<sup>24</sup> These agreements, and Canada's ratification of them, demonstrate both international and domestic commitment to the integrity of the family and the best interests of children.

27. For those attempting to effect family reunification, these commitments are hollow if the government punishes sponsors without regard to the consequences. Potentially forcing families and children into poverty in Canada because they have sponsored a close family member does nothing to promote the best interests of children or families. This is particularly concerning because of the chilling effect an inflexible policy of debt collection could have on people of low or even modest income that are seeking family reunification.

28. An interpretation consistent with the international law principles of protection of the family and concern for children is one which recognizes discretion to forgive sponsorship debt in appropriate circumstances, particularly where the failure to forgive would have serious consequences for the financial well being of the families involved. It is these same humanitarian and compassionate values and traditions, which the Court of Appeal correctly draws upon to support the existence of discretion under section 145(2):

Interpreting s. 145(2) of the new Act as conferring a case-by-case discretion strikes an appropriate balance between the important goal of requiring sponsors to comply with the undertaking while at the same time respecting the humanitarian traditions of Canadian immigration legislation.<sup>25</sup>

### **C. Sponsorship debt as a barrier to successful integration**

29. Discretion to forgive sponsorship debt in appropriate circumstances is also consistent with the *IRPA*'s objective of successful integration of recent immigrants.<sup>26</sup> Aside from spousal sponsorships, which are sometimes undertaken by native-born Canadians, the vast majority of "family class" sponsorships are undertaken by immigrants and refugees who still have family

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<sup>24</sup> *International Covenant on Civil and Political Rights*, December 19, 1966, [1976] Can. T.S. no. 47, preamble, Arts. 17, 23, 24; *International Covenant on Economic, Social and Cultural Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976 at Art 10; *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3, preamble, Arts. 3(1), 9(1), 10(1), 27.

<sup>25</sup> OCA reasons at para. 112;

<sup>26</sup> *IRPA*, s. 3(1)(e)

overseas.<sup>27</sup> New immigrants already face economic and societal disadvantage. No possibility of debt forgiveness, will have a disproportionate impact on them.

30. Numerous social science publications over the past few years have concluded that despite high education levels, the earnings of recent immigrants have been deteriorating.<sup>28</sup> Garnett Picot from Statistics Canada suggests that this disadvantage relates to potential issues of language, cultural differences, education equivalency, discrimination facing immigrants from specific source countries, discounting of foreign experience, and an economic downturn in specific sectors for which many new immigrants have been trained.<sup>29</sup> Even greater proportions of refugees in Canada face economic marginalization.<sup>30</sup>
31. Sponsorship debts are sometimes unavoidable, can be incurred under circumstances beyond the sponsor's control and can be overwhelmingly large.<sup>31</sup> The factual circumstances of the Respondents in this case illustrate compelling individual circumstances: sickness, loss of employment, divorce, separation and family violence.<sup>32</sup> While these issues affect all Canadians, the financial consequences for those who sponsor family members can be particularly disastrous, because of immigrants' marginalized status. Heightened vulnerability to layoffs, barriers to reemployment and other barriers to economic and societal integration make this group more vulnerable to the devastating impact of an overwhelming burden of debt.
32. The discretion to forgive sponsorship debt, in appropriate circumstances, is an important, indeed essential tool in achieving Canada's objective of successfully integrating new immigrants. It also accords well with our international commitments and the Canadian values

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<sup>27</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, section 117(1)

<sup>28</sup> Garnett Picot, "Immigrant Economic and Social Outcomes in Canada: Research and Data Development at Statistics Canada" (2008) Statistics Canada, Business and Labour Market Analysis, ISBN 978-1-100-11401-9 at 11-12. See also Mikal Skuterud, "The Visible Minority Wage Gap Across Generations of Canadians" (2010) 43(3) Canadian Journal of Economics at 860 – 81.

<sup>29</sup> *Ibid.* at p. 15-17

<sup>30</sup> Don DeVoretz, Sergiy Pivenko, Morton Beiser, "The Economic Experiences of Refugees in Canada" (2004) Institute for the Study of Labour, Discussion Paper No. 1088 at 30.

<sup>31</sup> Examples: El-Murr: \$95,000.00, Grankin: \$26,000.00, Jatuff De Altamirano: \$50,000.00, Mavi: \$17,000.00 Joint Factum of the Respondents, Appendix, paras. 2, 4, 6, 11, 15, 19.

<sup>32</sup> Joint Factum for the Respondents, Appendix, paras. 1-19.

of enhancing participation of individuals in society, respect for the dignity of individuals, and social justice, referred to in *Oakes*.

33. The decision of the Court of Appeal strikes the proper balance between the competing interests in this case and is firmly grounded in the values and traditions of Canadian society. Debt collection performed without regard for the human consequences, or the extenuating circumstances giving rise to the debt, does not accord with our traditions. While the rule will remain that sponsors in default have to repay their debts, it is appropriate that discretionary debt-forgiveness be available, when there is no evidence of abuse of the system and in the rare circumstances which are sufficiently compelling.

#### **PART IV – COSTS SUBMISSIONS**

34. The CCR does not seek an order as to costs, and respectfully requests that no order as to costs be made against it.

#### **PART V – ORDERS SOUGHT**

35. The CCR requests permission to address the Court at the hearing of this appeal as its concerns will not be addressed by the Respondents.

36. The CCR respectfully submits that the appeals be dismissed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**This 19<sup>th</sup> day of November, 2010.**

\_\_\_\_\_  
Chantal Tie

\_\_\_\_\_  
Carole Simone Dahan

\_\_\_\_\_  
Aviva Basman

Solicitors for the Intervener Canadian Council for Refugees



**PART VI – TABLE OF AUTHORITIES**

<b>CASES</b>	<b>CITED AT PARAGRAPH(S)</b>
<i>Ali v. Canada (Minister of Public Safety and Emergency Preparedness)</i> , [2010] F.C.J. No. 94 (F.C.)	<b>17</b>
<i>Baker v. Canada (M.C.I.)</i> , [1999] 2 S.C.R. 817	<b>21, 22, 25</b>
<i>Baron v. Canada (Minister of Public Safety and Emergency Preparedness)</i> , [2009] F.C.J. No. 314 (F.C.A.)	<b>17</b>
<i>Bell Express Vu Limited Partnership v. Rex</i> , [2002] 2 S.C.R. 559.	<b>23</b>
<i>Glasgow v. Canada (Minister of Public Safety and Emergency Preparedness)</i> , [2009] F.C.J. No. 1386 (F.C.)	<b>17</b>
<i>I.G. v. Canada (M.C.I.)</i> [1999] F.C.J. No. 1704 (F.C.)	<b>23</b>
<i>Okoloubu v. Canada (Minister of Citizenship and Immigration)</i> , [2008] F.C.J. No. 1495 (F.C.A.)	<b>23</b>
<i>Poyanipur v. Canada (Minister of Citizenship and Immigration)</i> [1995] F.C.J. No. 1785 (F.C.)	<b>15</b>
<i>R. v. Oakes</i> [1986] S.C.R. 103	<b>19</b>
<i>Shpati v. Canada (Minister of Public Safety and Emergency Preparedness)</i> , [2010] F.C.J. No. 418 (F.C.)	<b>17</b>
<i>Wang v. Canada (Minister of Citizenship and Immigration)</i> , [2001] F.C.J. No. 295 (F.C.)	<b>16</b>
<i>Williams v. Canada (Minister of Public Safety and Emergency Preparedness)</i> , [2010] F.C.J. No. 318 (F.C.)	<b>17</b>

<b>SECONDARY SOURCES</b>	<b>CITED AT PARAGRAPH</b>
John Locke, <i>Second Treatise of Government</i> , edited by C.B. Macpherson, Hackett Publishing, Chapter XIV Of Prerogative, at 84, paras. 159-160.	<b>Overview</b>
Garnett Picot, “Immigrant Economic and Social Outcomes in Canada: Research and Data Development at Statistics Canada” (2008) Statistics Canada, <i>Business and Labour Market Analysis</i> , ISBN 978-1-100-11401-9.	<b>30</b>
Mikal Skuterud, “The Visible Minority Wage Gap Across Generations of Canadians” (2010) 43(3) <i>Canadian Journal of Economics</i> , at 860 – 81.	<b>30</b>
Don DeVoretz, Sergiy Pivenko, Morton Beiser, “The Economic Experiences of Refugees in Canada” (2004) Institute for the Study of Labour, Discussion Paper No. 1088 at 30.	<b>30</b>

#### **PART VII – TABLE OF STATUES AND REGULATIONS**

<b>A. STATUTES</b>	<b>CITED AT PARAGRAPH(S)</b>
<i>Immigration and Refugee Protection Act</i> , S.C. 2001, c.27.	<b>8, 10, 11, 12, 14, 29</b>
<b>B. REGULATIONS</b>	
<i>Immigration and Refugee Protection Regulations</i> , SOR/2002-227	<b>29</b>

<b>INTERNATIONAL AGREEMENTS</b>	<b>CITED AT PARAGRAPH</b>
<i>International Covenant on Civil and Political Rights</i> , December 19, 1966, [1976] Can. T.S. no. 47	<b>26</b>
<i>International Covenant on Economic, Social and Cultural Rights</i> , G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3	<b>26</b>
<i>Convention on the Rights of the Child</i> , Can. T.S. 1992 No. 3	<b>26</b>

## A. STATUTES

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

<b>English</b>	<b>French</b>
<p><b>3.</b> (1) The objectives of this Act with respect to immigration are</p> <p>(e) to promote the successful integration of permanent residents into Canada, while recognizing that integration involves mutual obligations for new immigrants and Canadian society;</p>	<p><b>3.</b> (1) En matière d'immigration, la présente loi a pour objet :</p> <p>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;</p>
<p><b>25.</b> (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 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.</p>	<p><b>25.</b> (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 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.</p>
<p><b>25.1</b> (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.</p>	<p><b>25.1</b> (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.</p>

<p><b>28.</b> (2) The following provisions govern the residency obligation under subsection (1):</p> <p>(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.</p>	<p><b>28.</b> (2) Les dispositions suivantes régissent l'obligation de résidence :</p> <p>c) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inopposable l'inobservation de l'obligation précédant le contrôle.</p>
<p><b>48.</b> (2) If a removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as is reasonably practicable.</p>	<p><b>48.</b> (2) L'étranger visé par la mesure de renvoi exécutoire doit immédiatement quitter le territoire du Canada, la mesure devant être appliquée dès que les circonstances le permettent</p>
<p><b>63.</b> (1) A person who has filed in the prescribed manner an application to sponsor a foreign national as a member of the family class may appeal to the Immigration Appeal Division against a decision not to issue the foreign national a permanent resident visa.</p> <p>(2) A foreign national who holds a permanent resident visa may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.</p> <p>(3) A permanent resident or a protected person may appeal to the Immigration Appeal Division against a decision at an examination or admissibility hearing to make a removal order against them.</p> <p>(4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.</p>	<p><b>63.</b> (1) Quiconque a déposé, conformément au règlement, une demande de parrainage au titre du regroupement familial peut interjeter appel du refus de délivrer le visa de résident permanent.</p> <p>(2) Le titulaire d'un visa de résident permanent peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.</p> <p>(3) Le résident permanent ou la personne protégée peut interjeter appel de la mesure de renvoi prise au contrôle ou à l'enquête.</p> <p>(4) Le résident permanent peut interjeter appel de la décision rendue hors du Canada sur l'obligation de résidence.</p> <p>(5) Le ministre peut interjeter appel de la décision de la Section de l'immigration rendue dans le cadre de l'enquête.</p>

<p>(5) The Minister may appeal to the Immigration Appeal Division against a decision of the Immigration Division in an admissibility hearing.</p>	
<p><b>65.</b> In an appeal under subsection 63(1) or (2) respecting an application based on membership in the family class, the Immigration Appeal Division may not consider humanitarian and compassionate considerations unless it has decided that the foreign national is a member of the family class and that their sponsor is a sponsor within the meaning of the regulations.</p>	<p><b>65.</b> Dans le cas de l'appel visé aux paragraphes 63(1) ou (2) d'une décision portant sur une demande au titre du regroupement familial, les motifs d'ordre humanitaire ne peuvent être pris en considération que s'il a été statué que l'étranger fait bien partie de cette catégorie et que le répondant a bien la qualité réglementaire.</p>
<p><b>67.</b> (1) To allow an appeal, the Immigration Appeal Division must be satisfied that, at the time that the appeal is disposed of,</p> <p>(a) the decision appealed is wrong in law or fact or mixed law and fact;</p> <p>(b) a principle of natural justice has not been observed; or</p> <p>(c) other than in the case of an appeal by the Minister, taking into account the best interests of a child directly affected by the decision, sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.</p> <p>(2) If the Immigration Appeal Division allows the appeal, it shall set aside the original decision and substitute a determination that, in its opinion, should have been made, including the making of a removal order, or refer the matter to the appropriate decision-maker for reconsideration</p>	<p><b>67.</b> (1) Il est fait droit à l'appel sur preuve qu'au moment où il en est disposé :</p> <p>a) la décision attaquée est erronée en droit, en fait ou en droit et en fait;</p> <p>b) il y a eu manquement à un principe de justice naturelle;</p> <p>c) sauf dans le cas de l'appel du ministre, il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.</p> <p>(2) La décision attaquée est cassée; y est substituée celle, accompagnée, le cas échéant, d'une mesure de renvoi, qui aurait dû être rendue, ou l'affaire est renvoyée devant l'instance compétente.</p>
<p><b>68.</b> (1) To stay a removal order, the Immigration Appeal Division must be satisfied, taking into account the best interests of a child directly affected by the decision, that sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.</p>	<p><b>68.</b> (1) Il est sursis à la mesure de renvoi sur preuve qu'il y a — compte tenu de l'intérêt supérieur de l'enfant directement touché — des motifs d'ordre humanitaire justifiant, vu les autres circonstances de l'affaire, la prise de mesures spéciales.</p>

<p>(2) Where the Immigration Appeal Division stays the removal order  <i>(a)</i> it shall impose any condition that is prescribed  and may impose any condition that it considers necessary;  <i>(b)</i> all conditions imposed by the Immigration Division are cancelled;  <i>(c)</i> it may vary or cancel any non-prescribed condition imposed under paragraph <i>(a)</i>; and  <i>(d)</i> it may cancel the stay, on application or on its own initiative.</p> <p>(3) If the Immigration Appeal Division has stayed a removal order, it may at any time, on application or on its own initiative, reconsider the appeal under this Division.</p> <p>(4) If the Immigration Appeal Division has stayed a removal order against a permanent resident or a foreign national who was found inadmissible on grounds of serious criminality or criminality, and they are convicted of another offence referred to in subsection 36(1), the stay is cancelled by operation of law and the appeal is terminated.</p>	<p>(2) La section impose les conditions prévues par règlement et celles qu'elle estime indiquées, celles imposées par la Section de l'immigration étant alors annulées; les conditions non réglementaires peuvent être modifiées ou levées; le sursis est révocable d'office ou sur demande.</p> <p>(3) Par la suite, l'appel peut, sur demande ou d'office, être repris et il en est disposé au titre de la présente section.</p> <p>(4) Le sursis de la mesure de renvoi pour interdiction de territoire pour grande criminalité ou criminalité est révoqué de plein droit si le résident permanent ou l'étranger est reconnu coupable d'une autre infraction mentionnée au paragraphe 36(1), l'appel étant dès lors classé.</p>
<p><b>146.</b> (1) An amount or part of an amount payable under this Act that has not been paid may be certified by the Minister <i>(a)</i> without delay, if the Minister is of the opinion that the person liable for that amount is attempting to avoid payment; and <i>(b)</i> in any other case, on the expiration of 30 days after the default.</p> <p>(2) The certificate is to be filed and registered in the Federal Court and, when registered, has the same force and effect, and all proceedings may be taken, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate plus interest to the day of payment.</p> <p>(3) The costs of registering the certificate are recoverable in the same manner as if they had been included in the certificate.</p>	<p><b>146.</b> (1) Le montant de tout ou partie d'une somme payable au titre de la présente loi et en souffrance peut être constaté par certificat du ministre sans délai, s'il est d'avis que le débiteur tente d'éluder le paiement, sinon, trente jours francs après le défaut.</p> <p>(2) Le certificat est déposé et enregistré à la Cour fédérale et est dès lors assimilé à un jugement de cette juridiction pour une dette du montant qui y est spécifié, majoré des intérêts prévus par la présente loi jusqu'à la date du paiement.</p> <p>(3) Les frais engagés pour l'enregistrement sont recouvrables de la même manière que s'ils avaient été eux-mêmes constatés par le certificat.</p>

**B. REGULATIONS*****Immigration and Refugee Protection Regulations, SOR/2002-227***

<b>English</b>	<b>French</b>
<p><b>117.</b> (1) A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is</p> <p>(a) the sponsor's spouse, common-law partner or conjugal partner;</p> <p>(b) a dependent child of the sponsor;</p> <p>(c) the sponsor's mother or father;</p> <p>(d) the mother or father of the sponsor's mother or father;</p> <p>(e) [Repealed, SOR/2005-61, s. 3]</p> <p>(f) a person whose parents are deceased, who is under 18 years of age, who is not</p> <p>e) a spouse or common-law partner and who is</p> <p>(i) a child of the sponsor's mother or father,</p> <p>(ii) a child of a child of the sponsor's mother or father, or</p> <p>(iii) a child of the sponsor's child;</p> <p>(g) a person under 18 years of age whom the sponsor intends to adopt in Canada if</p> <p>(i) the adoption is not being entered into primarily for the purpose of acquiring any status or privilege under the Act,</p> <p>(ii) where the adoption is an international adoption and the country in which the person resides and their province of intended destination are parties to the Hague Convention on Adoption, the competent authority of the country and of the province have approved the adoption in writing as conforming to that Convention, and</p> <p>(iii) where the adoption is an international adoption and either the country in which the person resides or the person's province of intended destination is not a party to the Hague Convention on Adoption</p> <p>(A) the person has been placed for</p>	<p><b>117.</b> (1) Appartiennent à la catégorie du regroupement familial du fait de la relation qu'ils ont avec le répondant les étrangers suivants :</p> <p>a) son époux, conjoint de fait ou partenaire conjugal;</p> <p>b) ses enfants à charge;</p> <p>c) ses parents;</p> <p>d) les parents de l'un ou l'autre de ses parents;</p> <p>f) s'ils sont âgés de moins de dix-huit ans, si leurs parents sont décédés et s'ils n'ont pas d'époux ni de conjoint de fait :</p> <p>(i) les enfants de l'un ou l'autre des parents du répondant,</p> <p>(ii) les enfants des enfants de l'un ou l'autre de ses parents,</p> <p>(iii) les enfants de ses enfants;</p> <p>g) la personne âgée de moins de dix huit ans que le répondant veut adopter au Canada, si les conditions suivantes sont réunies :</p> <p>(i) l'adoption ne vise pas principalement l'acquisition d'un statut ou d'un privilège aux termes de la Loi,</p> <p>(ii) s'il s'agit d'une adoption internationale et que le pays où la personne réside et la province de destination sont parties à la Convention sur l'adoption, les autorités compétentes de ce pays et celles de cette province ont déclaré, par écrit, qu'elles estimaient que l'adoption était conforme à cette convention,</p> <p>(iii) s'il s'agit d'une adoption internationale et que le pays où la personne réside ou la province de destination n'est pas partie à la Convention sur l'adoption :</p> <p>(A) la personne a été placée en vue de son adoption dans ce pays ou</p>

<p>adoption in the country in which they reside or is otherwise legally available in that country for adoption and there is no evidence that the intended adoption is for the purpose of child trafficking or undue gain within the meaning of the Hague Convention on Adoption, and</p> <p>(B) the competent authority of the person's province of intended destination has stated in writing that it does not object to the adoption; or</p> <p>(h) a relative of the sponsor, regardless of age, if the sponsor does not have a spouse, a common-law partner, a conjugal partner, a child, a mother or father, a relative who is a child of that mother or father, a relative who is a child of a child of that mother or father, a mother or father of that mother or father or a relative who is a child of the mother or father of that mother or father</p> <p>(i) who is a Canadian citizen, Indian or permanent resident, or</p> <p>(ii) whose application to enter and remain in Canada as a permanent resident the sponsor may otherwise sponsor.</p>	<p>peut par ailleurs y être légitimement adoptée et rien n'indique que l'adoption projetée a pour objet la traite de l'enfant ou la réalisation d'un gain indu au sens de cette convention,</p> <p>(B) les autorités compétentes de la province de destination ont déclaré, par écrit, qu'elles ne s'opposaient pas à l'adoption;</p> <p>h) tout autre membre de sa parenté, sans égard à son âge, à défaut d'époux, de conjoint de fait, de partenaire conjugal, d'enfant, de parents, de membre de sa famille qui est l'enfant de l'un ou l'autre de ses parents, de membre de sa famille qui est l'enfant d'un enfant de l'un ou l'autre de ses parents, de parents de l'un ou l'autre de ses parents ou de membre de sa famille qui est l'enfant de l'un ou l'autre des parents de l'un ou l'autre de ses parents, qui est :</p> <p>(i) soit un citoyen canadien, un Indien ou un résident permanent,</p> <p>(ii) soit une personne susceptible de voir sa demande d'entrée et de séjour au Canada à titre de résident permanent par ailleurs parrainée par le répondant.</p>
<p><b>208.</b> A work permit may be issued under section 200 to a foreign national in Canada who cannot support them self without working, if the foreign national</p> <p>(a) holds a study permit and has become temporarily destitute through circumstances beyond their control and beyond the control of any person on whom that person is dependent for the financial support to complete their term of study; or</p> <p>(b) holds a temporary resident permit issued under subsection 24(1) of the Act that is valid for at least six months.</p>	<p><b>208.</b> Un permis de travail peut être délivré à l'étranger au Canada en vertu de l'article 200 si celui-ci ne peut subvenir à ses besoins autrement qu'en travaillant et si, selon le cas:</p> <p>a) l'étranger est titulaire d'un permis d'études et est temporairement dépourvu de ressources en raison de circonstances indépendantes de sa volonté et de celle de toute personne dont il dépend pour le soutien financier nécessaire à l'achèvement de ses études;</p> <p>b) il est titulaire, aux termes du paragraphe 24(1) de la Loi, d'un permis de séjour temporaire qui est valide pour au moins six mois.</p>



<p><b>233.</b> A removal order made against a foreign national, and any family member of the foreign national, is stayed if the Minister is of the opinion under subsection 25(1) of the Act that there exist humanitarian and compassionate considerations, or public policy considerations, and the stay is effective until a decision is made to grant, or not grant, permanent resident status.</p>	<p><b>233.</b> La décision du ministre prise au titre du paragraphe 25(1) de la Loi selon laquelle il estime que des circonstances d'ordre humanitaire existent ou que l'intérêt public le justifie emporte sursis de la mesure de renvoi visant l'étranger et les membres de sa famille jusqu'à ce qu'il soit statué sur sa demande de résidence permanente.</p>
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### C. INTERNATIONAL AGREEMENTS

<p><b><i>International Covenant on Civil and Political Rights, December 19, 1966, [1976] Can. T.S. no. 47</i></b></p>
<p><b>Preamble</b>  The States Parties to the present Covenant,  Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,  Recognizing that these rights derive from the inherent dignity of the human person,  Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,  Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,  Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,  Agree upon the following articles:</p>
<p><b>Article 17</b>  1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.  2. Everyone has the right to the protection of the law against such interference or attacks.</p>
<p><b>Article 23</b>  1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.  2. The right of men and women of marriageable age to marry and to found a family shall be recognized.  3. No marriage shall be entered into without the free and full consent of the intending spouses.  4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.</p>

**Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

***International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976***

**Article 10**

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

***Convention on the Rights of the Child, Can. T.S. 1992 No. 3, preamble, Arts. 3(1), 9(1), 10(1).***

**Preamble**

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom, Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, 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,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding, Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

**Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

**Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.