S.C.C. No. 25823

IN THE SUPREME COURT OF CANADA

(On Appeal from the Federal Court of Appeal)

B E T W E E N :

MAVIS BAKER

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

FACTUM OF THE
CHARTER COMMITTEE ON POVERTY ISSUES

PART I - FACTS

1. This appeal is about the validity of the decision of the Minister of Citizenship and Immigration (the "Minister") to deny Mavis Baker's application for permanent residence on humanitarian and compassionate grounds and, in all likelihood, separate her from her children.

2. The only reasons the Minister has provided for refusing Ms. Baker's application are the notes of the recommending officer Lorenz, which state, *inter alia*:

> PC is unemployed -- on Welfare. No income shown -- no assets. Has four Cdn.-born children - four other children in Jamaica - HAS A TOTAL OF EIGHT CHILDREN. ...
>
> This case is a catastrophy. It is also an indictment of our "system" that the client came as a visitor in Aug. '81, was not ordered deported until Dec. 92 and in Apr. '94 IS STILL HERE!
>
> The PC is a paranoid schizophrenic and on Welfare. She has no qualifications other than as a domestic. She has FOUR CHILDREN IN JAMAICA AND ANOTHER FOUR BORN HERE. She will of course be a tremendous strain on our social welfare systems for (probably) the rest of her life. There are no H&C factors other than her Four CANADIAN-BORN CHILDREN. Do we let her stay because of that? I am of the opinion that Canada can no longer afford this type of generosity. However because of the circumstances involved, there is a potential for adverse publicity. I recommend refusal but you may wish to clear this with someone at Region.
>
> There is also a potential for violence -- see charge of "assault with a weapon".
>
> (Emphasis in the original)

Notes of Officer Lorenz, Respondent's Record, Tab 2C, p. 28

PART II - ISSUES

3. CCPI's submissions focus on the appellant's third issue -- whether the Federal Court of Appeal erred in holding that a human rights treaty such as the Convention on the Rights of the Child (the "CRC") has no legal effect over the exercise of discretion under s.114(2) of the *Immigration Act*.

PART III - LAW AND ARGUMENT

4. International human rights treaty law enters into Canadian law by virtue of interpretive reception by institutions, primarily courts, charged with construing the Charter of Rights and Freedoms and statutes, and thereby governs the exercise of discretion under s.114(2) of the Act. This body of law does not have direct force of law in Canada but has a significant normative force.

5. International human rights treaties to which Canada is a party structure administrative decision-making by two main routes:

   (a) *the Charter route* -- the use of the Charter to interpret the statutory limits of administrative discretion in association with the presumption that international human rights law gives content to Charter rights; and

   (b) *the treaty route* -- the use of international human rights treaties in statutory interpretation, based on the presumption of legislative compliance with international law.

6. In this case, CCPI submits that the Minister acted outside the jurisdiction granted her by s. 114(2) of the *Immigration Act*:

   (a) by failing to exercise her discretion so as to avoid violating ss. 7 and 15 of the Charter, as informed by Canada's obligations under the CRC and related international human rights treaty obligations; and

   (b) by failing, in any event, to exercise that discretion in accordance with the relevant international human rights treaties, regardless of whether the Charter is violated.

A. THE CHARTER ROUTE

7. In the present case no legislative provision has been challenged under the Charter and thus no constitutional questions have been set. However, the Charter is not only a vehicle for challenging legislative provisions inconsistent with Charter rights. Equally important, it is an affirmation of the fundamental values of Canadian democracy which must inform all aspects of the judiciary's interpretive role. This Court most recently demonstrated in *Eldridge* that the underlying values and principles of the Charter can be effectively promoted by Charter-consistent interpretation.

Eldridge v. British Columbia (Attorney General) [1997] 3 S.C.R. 624

The *Slaight* Double Presumption

8. In *Slaight Communications*, the Supreme Court established the following two interpretive doctrines:

(a) "'...the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified'" (the "international human rights presumption"); and

(b) statutes must be interpreted as far as possible so as not to empower administrative actors to violate Charter rights (the "Charter compliance presumption").

Slaight Communications Inc. v. Davidson, [1989] 1 S.C.R. 1038 at 1056-1057, 1078-1081 per Dickson C.J. on (a) and Lamer J. on (b)

9. These two principles create an intrepretive presumption that administrative discretion be exercised in accordance with international human rights law. In this case, this double presumption requires that the Minister's discretion pursuant to s. 114(2) of the *Act* must be exercised, to the extent the statutory language permits, in compliance with ss. 7 and 15 of the Charter, which provide at least as much protection as the rights contained in the CRC and other relevant treaties.

The Need to Reaffirm the *Slaight* International Human Rights Presumption

10. The *Slaight* presumption of Charter compliance has become a central doctrine of administrative law review. In general, however, lower courts have placed far less reliance on the *Slaight* international human rights presumption. There remains, in the words of Judge Rosalyn Higgins of the International Court of Justice, a "cultural resistance to international law" on the part of many lower courts. CCPI submits that the present case represents a prime opportunity for this Court to convey to the Canadian judiciary as a whole the centrality of international human rights to the over-riding values and interpretive framework of the Canadian legal order.

Higgins *Problems and Process: International Law and How we Use It*, Clarendon Press, Oxford, 1994 at 206-207

11. Such a judgment could draw upon two themes that can be distilled from judgments and speeches of members of this Court:

(a) the Charter shares the same fundamental values and commitment to legal protection as international human rights treaties, to such an extent that the Charter can be understood as the domestic analogue of those treaties; and

(b) domestic courts have an obligation to enter into a dialogue with international human rights bodies by contributing to and taking seriously international human rights jurisprudence.

12. With respect to the theme of shared values, Chief Justice Dickson in *R. v. Keegstra* held that:

> Generally speaking, the international human rights obligations taken on by Canada reflect the values and principles of a free and democratic society, and thus those values and principles that underlie the Charter itself.

Chief Justice Lamer, in a recent keynote conference speech, similarly affirmed that "the Charter should be, and has been, understood as part of the international human rights movement."

R. v. Keegstra, [1990] 3 S.C.R. 697 at 750
Rt. Hon. Antonio Lamer, "Enforcing International Human Rights law: The Treaty System in the 21st Century", address at York University, June 22, 1997 at 6

13. With respect to the dialogue between Canadian courts and international bodies, Chief Justice Lamer emphasized in the same speech:

> For international human rights law to be effective, ...it must be supported by what I would term a "human rights culture", by which I mean a culture in which there is a firm and deep-seated commitment to the importance of human rights in our world... I turn now to the second aspect of what I have termed the "institutional moment" of international human rights law, the growth of institutional dialogue between international human rights bodies and national courts. Like any true dialogue, this dialogue depends on the willing participation of both parties. ...[B]y looking to international treaties and the jurisprudence of international human rights bodies in the interpretation of domestic human rights norms[,] ...judges raise the profile of those international treaties and further the creation of a human rights culture.
>
> Rt. Hon. Antonio Lamer, International Human Rights Address, *supra* at 3, 4 and 7

14. In another keynote conference speech, Justice La Forest spoke in similar terms about the cultivation of a certain cosmopolitan institutional orientation, or ethos, for the Canadian judiciary:

> What is happening is that we are absorbing international legal norms affecting the individual through our constitutional pores...Thus our courts - and many other national courts - are truly becoming international courts in many areas involving the rule of law. They will become more so and they continue to rely on and benefit from one another's experience. Consequently, it is important that...national judges adopt an international perspective.
>
> Hon. Gérard La Forest, "The Expanding Role of the Supreme Court of Canada in International Law Issues" (1996) 34 C.Y.I.L. 89 at 98, 100-101
> Randall, *Federal Courts and the International Human Rights Paradigm*, Durham, Duke U.P., 1990 at 206, 280

15. In the same speech, Mr. Justice La Forest commented that the Charter is viewed by this Court as "the instrument of choice in fostering compliance with international human rights law". Very recent cases indicate that lower court judges may be increasingly receptive to this point.

> Hon. Gérard La Forest, *ibid.* at 91
> *Suresh v. R.* (1998), 38 O.R. (3d) 267
>
> *Francis v. Canada* [1998] O.J. No. 1791

Provision of Effective Domestic Remedies Through Expansive Interpretation

16. The growing emphasis by members of this Court on taking international human rights seriously through the Charter is mirrored by the emphasis of UN treaty bodies on the duty to provide effective judicial remedies. The Committee on Economic, Social and Cultural Rights has specifically linked effective remedies under the International Covenant on Economic, Social and Cultural Rights (the "ICESCR") with an expansive interpretation of the Charter:

> The Committee encourages the Canadian courts to continue to adopt a broad and purposive approach to the interpretation of the Charter of Rights and Freedoms so as to provide appropriate remedies against violations of social and economic rights in Canada.

Committee on Economic, Social and Cultural Rights, Concluding Observations on Canada, U.N. Doc. E/C.12/1993/5 (1993)
See also CRC General Guidelines Regarding the Form and Contents of Periodic Reports, 1996

17. Even where complaint mechanisms exist at the international level, international human rights bodies can only be expected to play a "secondary or supportive role" to domestic institutions in the effective protection of human rights. Thus, the Human Rights Committee, in charge of monitoring compliance with the International Covenant on Civil and Political Rights ("ICCPR"), emphasizes the integral role of "mechanisms at the domestic level …[that] … allow the Covenant rights to be enforceable at the local level."

Alston, "Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights" (1987) 9 HRQ 332 at 357
Human Rights Committee, General Comment 24(52), *General comment on issues relating to reservations...,* U.N. Doc. CPR/C/21/Rev.1/Add.6 (1994)

18. The corresponding emphasis of both the domestic and international legal orders on the importance of domestic courts in the protection of international human rights requires a purposive and expansive interpretive approach to the role of the Charter in this common enterprise. Courts must be extremely reluctant to interpret any Charter right narrowly so as to deny protection to an international human right. The presumption of compliance with international human rights law must be translated into a strong presumption of protection. Chief Justice Lamer has made this link in his recent speech:

> ...Canada is a signatory to many international human rights treaties and, as a result, the Charter can be viewed in an important sense as the domestic analogue of those instruments. In other words, the Charter can be understood to give effect to Canada's international legal obligations, and should therefore be interpreted in a way that conforms to those obligations.

Rt. Hon. Antonio Lamer, International Human Rights Address, *supra* at 6

Special Role of Sections 7 and 15 of the Charter as Links with International Human Rights

19. As there is a strong presumption that international human rights are protected in the rights set out in the Charter, those rights not specifically provided for in the Charter must be located in general provisions. Sections 7 and 15 are particularly apt for the reception of international human rights.

20. This Court in *Oakes* and subsequent cases has stated that the values underpinning a free and democratic society are the genesis of the rights in the Charter. Two of the most important values underpinning a free and democratic society, as cited in *Oakes*, are "respect for the inherent dignity of the human person …[and]…commitment to social justice and equality." The lead article in the Universal Declaration of Human Rights (the "Universal Declaration") states: "All human beings are born free and equal in dignity and rights…." Section 7 is the primary vehicle in the Charter for the respect, protection, and fulfilment of human freedom, while section 15 is the primary vehicle for the promotion of equality. Together, these lead provisions in the Charter correspond to the lead provision of the Universal Declaration and its ideal of achieving dignity through rights.

R. v. Oakes, [1986] 1 S.C.R. 103 at 136
Universal Declaration, 1948, Article 1

21. With respect to s. 7, international human rights law plays two specific roles. First, in keeping with the principles set out in *Slaight,* international human rights law helps give minimal content to "life, liberty and security of the person" interests. Second, as Chief Justice Lamer stated in this Court's first decision respecting s. 7, international human rights law is a central source of the content for the principles of fundamental justice. Like the Charter, this body of law places reasonable limits on individual rights. CCPI submits that if an infringement of a right cannot be justified under international law limitations analysis, it cannot be regarded as in accordance with the principles of fundamental justice.

Godbout v Longueuil [1997] 3 S.C.R. at para 69, 74-91, *per* La Forest J.

Francis v. Canada, supra, para. 10

Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486 at 503, 512

22. With respect to s. 15, much of international human rights treaty law elaborates the substantive content and governmental responsibilities in the guarantee of equality. The CRC plays such a role with respect to the substantive equality rights of children.

Violation of the Children's Rights Under the CRC and Section 7

23. The deportation of Ms. Baker raises fundamental issues of security for her children. If they remain in Canada without their mother, they will be deprived of her positive parenting and their development will be placed at risk. These children experience multiple barriers in society as a result of racism and the challenges faced by their mother as a single parent without citizenship. As such, the presence of a mother on whom they are dependent for emotional and psychological well-being and development is all the more crucial.

Landy and Tam, "Yes, Parenting Does Make a Difference to the Development of Children in Canada" *National Longitudinal Survey of Children and Youth*, StatsCan 1996 at 103-104
R. v. Parks (1993), 84 C.C.C. (3d) 353 at 365-370

R. v. Williams [1998] S.C.J. No. 49 at paras. 21, 22, 35,54

24. On the other hand, if the children leave Canada with their mother, they will be exposed to risk factors associated with the life that they can expect in Jamaica including poverty, lack of opportunity, and lack of broader familial and community support. There is a strong possibility that Ms. Baker will relapse into mental illness and not have the medication she needs to help her control her symptoms.

Letter from Dr. Evan Collins, August 5, 1993, Respondent's Record, Tab 2G at 45-46
Children's Aid Society Letter, August 18, 1993, Respondent's Record, Tab 2G at 43-44

25. Security of the person, as guaranteed under s. 7 and interpreted expansively and purposively, includes the right to protection of and assistance to family relationships which promote the well-being and development of family members. Psychological evidence points to the fundamental value of protecting such relationships:

> Historically throughout the world, families have given children an essential sense of identity.... Disrupting these relationships can substantially harm the child. …. [T]he principle of family continuity …recognizes children's need for continuous, caring family and community relationships that form a basis for connectedness throughout life.

Patterson and Andrews, "Protecting the Child against Separation from the Family Environment" (1996) 15 *Children's Legal Rights Jl* 2 at 2
B.(R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315 at 431 (*per* Iacobucci J.)

Beldjoudi v. France, Euro. Ct. H.R., Ser. A. No. 246, 26 March 1992 at 38 (*per* Judge Martens)

26. An interpretation narrower than this would be entirely inconsistent with Canada's obligations under international human rights law, which provides extensive protection to family relationships.

CRC, 1989, *inter alia*, Arts. 2, 3, 7, 8, 9, 10, 12 and 16
ICCPR, 1966 *inter alia*, Arts. 2(2), 17, 23 and 26

ICESCR, 1966 *inter alia*, Arts. 2, 10, 11(1)

CEDAW, *inter alia*, Arts. 11(2)(c), 16(f)

27. More specifically, in the case of involuntary separation of children from their parents, three provisions of the CRC are particularly salient.

(a) Article 3, the over-arching "best interests of the child" provision, provides a minimal floor of protection in respect of all actions concerning children.

Alston, "The Best Interests Principle: Toward a Reconciliation of Culture and Human Rights", (1994) 8 *International Journal of Law and Family* 1 at 13-16
Implementation Handbook for the Convention on the Rights of the Child, Hodgkin and Newell, prepared for UNICEF, 1998 at 37-40

(b) Article 9(1) provides that states "shall ensure" children and parents are not separated against their will *except* when necessary in the best interests of the child.

(c) Article 10(1) obliges states to expedite reunification of families, "in accordance with" their obligations under article 9(1), in a "positive" and "humane" manner.

28. The Committee on the Rights of the Child has interpreted articles 9 and 10 as together recognizing a right of children not to have their parents deported. In 1995, the Committee expressed its regret that "refugee or immigrant children born in Canada may be separated from their parents facing a deportation order." The Committee also urged that "[s]olutions should also be sought to avoid expulsions causing the separation of families, in the spirit of article 9 of the Convention".

Committee on the Rights of the Child, Concluding Observations, U.N. Doc. CRC/C/15/Add.37 (9th Session, 1995), paras. 13 and 24
Handbook, *supra* at 122-123

29. It is clear from the Committee's formulation that the CRC obligation that a state refrain from deporting a parent is not absolute. But it is equally clear, contrary to the reasoning of Strayer J.A., that the state's obligation is not limited to the minor duty to tell a child of a parent's whereabouts *after* a deportation takes place. The state must first justify the deportation in light of the child's rights.

30. In deciding to deport a parent in a context such as this, a state is required by the CRC to make the child's best interests the paramount consideration. This is because:

(a) article 10(1), as interpreted by the Committee, requires states to take "every feasible measure" to reunite parents with children across borders; and

(b) the duty under article 10(1) is expressly linked to article 9(1), which requires states to ensure a child is not separated from his or her parents unless such separation is *necessary* for the best interests of the child.

31. If article 9(1)'s necessity test were fully applicable to deportation, the child's best interests would be the sole consideration for separation. However, the Committee's phrasing of the state's duty to avoid deportation is such that some room must be left for the state to invoke the public interest despite the fact that deportation would not accord with the citizen child's best interests. However, to justify deportation of a parent, a state's interests in deporting the parent must be far more compelling than the rights of the child and parent not to be separated. The appropriate test, in CCPI's submission, is similar to the third part of the *Oakes* proportionality test, with the child's interests being considered extremely weighty.

R. v. Oakes, supra at 139

32. In any event, article 3(1) of the CRC formulates the minimal test for determining when a parent of a child citizen can be deported. Even if the article 9(1) necessity test or a paramountcy test were not to apply, deportation could only be justified under article 3(1) if it could be shown the children's best interests were "a primary consideration" in the decision. Contrary to Strayer J.A.'s conclusion, article 3(1) applies to a wide range of circumstances and not simply to the family law context. As Officer Lorenz' notes clearly indicate, the children's interests were given only fleeting consideration.

Detrick, ed., *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Preparatoires",* Dordrecht, Martinus Nijhoff, 1992 at 137, para. 121-122
Alston, "The Best Interests Principle" *supra* at 13-14
Handbook, *supra*, pp. 39-40

Violation of Ms. Baker's Rights Under Article 17 of the ICCPR and Section 7

33. The Human Rights Committee has adopted a balancing test with respect to separations of families by deportation under the right to family life in article 17 of the ICCPR. The Committee assesses whether "in the circumstances of [the] case the separation of [a person] from his [or her] family] and its effects on him [or her] were disproportionate to the objectives of the removal." Although the respondent relies on *Canepa* in support of its position, the factors which the Committee found significantly absent in Mr. Canepa's case are conspicuously present in the instant case. The Committee found that Canepa had "neither a spouse *nor children* in Canada"; he had "not shown that the support and encouragement of his family is likely to be helpful to him in the future" (regarding overcoming drug-addiction and associated criminality); he had not shown "that his separation from his family is likely to lead to a deterioration in his situation"; and "[t]here is no financial dependence involved in his family ties.

Canepa v. Canada, Communication No. 558/1993, Human Rights Committee, U.N. Doc. CCPR/C/59/D/558/1993 (20 June 1997) at paras. 11.4 and 11.5

34. The age of the children, Ms. Baker's contributions to Canadian society over 18 years, the family's connection to community here, the lack of any threat presented to the public by her presence, and her enhanced need for familial and community support given her mental illness all point to the disproportionality, indeed the inhumanity, of deporting Ms. Baker.

35. The CRC provides a much more demanding justification test for deportation where children are involved than the general balancing test stated by the Human Rights Committee. The children enjoy the higher protection provided under the CRC. Article 5(2) of the ICCPR stipulates that states may not invoke the ICCPR as a basis for recognising rights to a lesser extent than exist under another treaty.

ICCPR, *supra*, Article 5(2)

Violation of Ms. Baker's Rights under Section 15

36. In *Andrews* , Mr. Justice La Forest observed that "non-citizens are an example without parallel of a group of persons who are relatively powerless politically, and whose interests are likely to be compromised by legislative decisions." Mr. Andrews was a permanent resident who enjoyed a generally privileged position in society as a white, male, lawyer. By contrast, Ms. Baker is a black, low-income, single mother without legal status in this country. Mr. Justice La Forest went on to observe in *Andrews* that "[d]iscrimination on the basis of nationality has from early times been an inseparable companion of discrimination on the basis of race and national or ethnic origin." His statement recognizes implicitly that multiple grounds of discrimination can interact to produce a compendious analogous ground. Mr. Justice La Forest's comments apply *a fortiori* to the appellant in this case and provide a basis for close Charter scrutiny of the exercise of discretion for conformity with section 15.

Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143 at 195 (*per* La Forest J.)
Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity" (1993) 19 *Queen's L. J.* 179

Dartmouth/Halifax County Regional Housing Authority v. Sparks (1993), 101 D.L.R. (4th) 224 at 232-235.

37. In his notes, Officer Lorenz relied upon Ms. Baker's status as a recipient of social assistance as a negative, discriminatory factor, contrary to s. 15 of the Charter, to s. 36(1) of the Constitution Act, 1982, and to the recognition in virtually every human rights treaty that "property" and "social origin" are prohibited grounds of discrimination. He combined this with a number of intersecting stereotypes:

(a) *Single mothers and social assistance* He drew on a popular misconception that single mothers relying on social assistance are likely to be dependent on the government forever. He did not lend any credence to the fact that Ms. Baker had worked to support her family until she became ill after the birth of her last child.

Falkiner v. Ontario (Comm. & Soc. Services) (1997), 140 D.L.R. (4th) 115 at 138
Transitions, Report of the Social Assistance Review Committee, 1988, p. 44

(b) *Mental illness and social assistance* He assumed that all individuals with mental illness share common symptoms and prognoses. He failed to consider that the prognosis for control or recovery from mental illness is very individual, and he ignored the opinion of Ms. Baker's doctor that she could remain well and contribute to society, provided she had proper medication and support.

Letter from Dr. Evan Collins, August 5, 1993, Respondent's Record, Tab 2G at 45-46
Clarke Institute of Psychiatry, "Schizophrenia, Fact Sheet" prepared by Social and Community Psy

Battlefords and District Co-op v. Gibbs, [1996] 3 S.C.R. 566 at 585-587

(c) *Immigrants and social assistance* In stating that "Canada can no longer afford this kind of generosity," the immigration officer operated under the stereotypical belief that immigrants are overly reliant on social assistance and are a drain on Canada's economy.

Martha Kumsa, "Does Immigration Benefit Canada? Fact and Fiction" (OCASI, 1996)
Economic Council of Canada, New Faces in the Crowd, 1991, pp. 21-22
Hon. Lucienne Robillard, Hansard, Vol. 134:092, 35th Parl. 2nd Sess., Oct. 29, 1996, pp. 5769-5771

(d) *Violence, race and mental illness* The immigration officer's conclusion that "there is a potential for violence" must be understood in the context of a pervasive but erroneous popular belief that blacks and schizophrenics are prone to violence. The materials before the immigration officer indicated that Ms. Baker had been charged with assault but that the charges had been quashed. Despite this, he chose to raise the issue of violence.

Immigration File, Respondent's Record, at 28, 54-55
Devlin, "We Can't Go On Together With Suspicious Minds"(1995) 18 Dal. L.J. 408 at 443

Monahan & Arnold, "Violence By People With Mental Illness" (1996) 19 *Psychiatric Rehabilitation Journal* at 67

38. Officer Lorenz' assessment of Ms. Baker's application also betrays a systematic pattern of sex discrimination. First, he failed to consider the value of unremunerated domestic work and child care, the majority of which is performed by women. Second, the officer did not consider that the appellant's specific form of mental illness -- post-partum psychosis, a form of psychosis peculiar to women -- meant that she had a good chance of recovery provided that she had the proper medication and support, even though this information was put before the officer.

Gunderson and Muszynski, *Women and Labour Market Poverty*, Canadian Advisory Council on the Status of Women, 1990 at 12.
Letter from Dr. Evan Collins, August 5, 1993, Respondent's Record, Tab 2G at 45-46

39. This Court has held that s. 15 requires governments to act so as to ameliorate disadvantage and protect the vulnerable. CCPI submits that, in accordance with this Court's decision in *Eldridge,* where a statute permits the state to protect a person who is in need of protection and the state instead treats the person's needs as either irrelevant or as negative factors, then the state has failed to respect equality rights. In the case at bar, the state has provided specifically under s. 114(2) for the possibility of "humanitarian and compassionate considerations" being treated as the basis for allowing a person to stay in Canada. Officer Lorenz, however, did not consider the distinctive need for strong family and community supports arising from Ms. Baker's mental illness and her poverty. Rather, he turned the underlying values of the Charter and of international human rights law on their heads, turning valid humanitarian and compassionate considerations into discriminatory reasons for denying the appellant the benefit of the discretion permitted under the statute.

Eldridge, *supra*
Porter, "Beyond Andrews: Substantive Equality and Positive Obligations After Eldridge and Vriend" (1998) 9:3 Constitutional Forum 71

Committee on Economic, Social and Cultural Rights, General Comment No. 5, *Persons with disabilities*, U.N. Doc. E/C.12/1994/13 (1994) at paras. 9, 15, 19

Violation of the Children's Rights under the CRC and Section 15

40. Two animating equality principles in the CRC have already been recognised by this Court, thereby providing a firm basis for forging deeper normative links between the CRC and s.15:

(a) in *Benner,* this Court accepted that treatment of parents can too easily, intentionally or not, be "visited" upon children due to the fact that "the link between child and parent is of a particularly unique and intimate nature:" and

(b) in *Eaton,* this Court accepted the best interest principle as the measure of equality where children's rights are at issue.

Benner v. Canada (Secretary of State) [1997] 1 S.C.R. 358 at 400
Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 240 at 278-279

Toope, "The Convention on the Rights of the Child: Implications for Canada" in Freeman, ed., Children's Rights: A Comparative Perspective, Dartmouth Publ., 1996 esp. at 34-37, 42, 46, 51-53

41. With respect to harming children through treatment of parents, Article 2(1) of the CRC prohibits discrimination against children in relation to the subject-matter of CRC and prohibits discrimination on the basis of a "*parent's* …. status," including such intersecting features of a parent's identity and attribution as race, colour, sex, national origin, and disability. The Committee, in interpreting article 2(1), has expressed the view that it must be "vigourously applied" in general, and even more "actively" in the case of children who experience disadvantage. Article 2(2) of the CRC enhances the imperative nature of the obligations by specifically requiring states "to take *all* appropriate measures to *ensure*" the "*protect[ion]"* of a child from discrimination on the basis of "the status…of the child's parents." The ICESCR provides in article 10(3) that "[s]pecial measures of protection and assistance should be taken on behalf of all children … without any discrimination for reasons of parentage."

UNICEF *Handbook*, supra at pp 22, 33
ICESCR*, supra*, Article 10(3)

42. Article 2(1) is non-exhaustive, ending with the words "or other status." Thus, Ms. Baker's children are discriminated against if their CRC rights are detrimentally affected due to Ms. Baker's status as a social assistance recipient having been counted heavily against allowing her to remain. Prohibition of discrimination on the ground of economic disadvantage can be viewed as being located in the interaction of the enumerated grounds of "social origin" and "property" and the open-ended "other status." Similarly, the *travaux* and commentary show that a child's rights in relation to, *inter alia*, care from parents (Article 7), national and family identity (Article 8), and non-separation from parents (Articles 9 and 10) are compromised by deportation of a parent due to the parent's immigration status, an analogous ground which is closely connected to the enumerated ground of parental nationality.

Committee on Economic, Social and Cultural Rights, Concluding Observations, Canada, 1993, *supra* at para. 18
Detrick, *supra* at 142, para.
Handbook, *supra*, pp. 26-27, 32-33

43. Ms. Baker has clearly been discriminated against. However, the CRC does not require that treatment of the parent must amount to discrimination for it to be discriminatory to fail to protect a child from harm resulting from treatment of a parent. CCPI submits that the reasoning of Iacobucci J. in *Benner*, taken as a whole, does not require that the treatment of the parent itself has to be discrimination. However, if this Court interprets *Benner* differently, CCPI submits that this Court should consider revisiting this issue in light of the clear provisions in Article 2 of the CRC.

Benner, supra. at 397-403

44. With respect to the best interests principle, a fundamental disadvantage of children with respect to the benefit of law is that, without special measures, their interests are unlikely to be represented or considered in proceedings which may have a significant effect on their well-being. Officer Lorenz' failure to consider the children's best interest *at least* as a primary consideration as required by Article 3(1) of the CRC amounts to a violation of s. 15 because it represents a denial of their special need for protection from harm. The respondent's argument that the deportation of a mother is *not* a matter "concerning" Ms. Baker's children serves to entrench their vulnerability and reinforce their inequality, rendering them invisible and irrelevant in a process which affects them profoundly.

B. THE TREATY ROUTE

45. This Court and the courts in other jurisdictions have adopted a rule of statutory interpretation that statutes be interpreted, to the fullest extent possible, to comply with international treaty obligations. This principle, founded in the rule of law, is based on the presumption that the legislature intends to act in compliance with international law.

Jacobs and Roberts, eds., *The Effect of Treaties in Domestic Law*, Sweet & Maxwell, London, 1987 at 32-33 (Italy), 60 (France), 69 (Germany), 100 (Italy), 135, 137 (U.K.), 160 (U.S.)

Sullivan, *Driedger on the Construction of Statutes*, 3rd ed., Toronto and Vancouver, Butterworths, 1994 at 330-333

46. This presumption of compliance with international law applies to all international law, not just treaty law, and to all treaties, regardless of the extent to which they have been "incorporated" through domestic legislation. This Court's direction, in *National Corn Growers*, to "strive" to interpret statutes to conform to "relevant international obligations" must be understood as a statement of general applicability. It is *relevance* of a treaty to a statute's subject-matter that matters, not the either/or dichotomy of whether or not a treaty is incorporated.

Bayefsky, "International Human Rights Law in Canadian Courts" in Conforti and Francioni, eds., *Enforcing International Human Rights in Domestic Courts*, Kluwer, 1997 at 312-313
Re. Canada Labour Code, [1992] 2 S.C.R. 50 at 89-90

Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689 at 751

National Corn Growers Assn. v. Canada (Import Tribunal), [1990] 2 S.C.R. 1324 at 1371

47. The generality of the presumption is further suggested by the Department of Foreign Affairs' practice of not viewing specific legislative incorporation as necessary for Canada's treaty obligations to be implemented in domestic law. The presumption thus matches up with the requirement under international treaty law that domestic law must be changed only where existing law is inadequate to meet the relevant international obligations. Where a treaty requires that it be given legal effect in the domestic order and the state ratifies the treaty but does not modify any law, it should be presumed that a state, interpreting its treaty obligations in good faith, views its law as already conforming to the obligations.

Bayefsky, *International Human Rights Law,* Toronto and Vancouver, Butterworths, at 62-63
Jennings and Watts, eds., *Oppenheim's International Law*, 9th ed., Longman, 1996, at 82-86

Vienna Convention on Law of Treaties, 1969, Art. 31(1**)**

48. The scope of administrative power granted under s.114(2) of the Act is a matter of statutory interpretation. The interpretive presumption of compliance with international law is thus a doctrine of judicial review in administrative law in the same way as the *Slaight* double presumption.

49. The issue of judicial review of decisions to deport parents of citizen children has been raised in other Commonwealth jurisdictions, notably in the *Teoh* case in Australia and the *Tavita* case in New Zealand. In each case, the courts were clearly seeking a standard administrative law basis to urge the authorities to reconsider their decisions -- *Teoh* through the doctrine of legitimate expectations and *Tavita* through the doctrine of relevant considerations. *Tavita* comes close to articulating the interpretive obligation being advocated by CCPI but falls short of requiring the avoidance of a breach of international human rights as a mandatory consideration.

Minister for Immigration and Ethnic Affairs v. Teoh (1995), 128 ALR 353 (Austal. H.Ct.)
Tavita v. Minister of Immigration [1993] 2 NZLR 257 (N.Z.C.A.)

50. Murray Hunt has also argued -- very persuasively -- for a judicial obligation to interpret statutes in conformity, where at all possible, with international human rights obligations. This approach avoids the pitfalls of the use of doctrines (especially that of legitimate expectations) that fall short of the deeper impulse motivating judges to invoke them. It is also a more principled approach in that it deals directly with human rights as legal values which are justifiably the subject of generous statutory interpretation and puts the onus on legislatures to express their intention to curtail or fail to protect a right.

Hunt, *Using Human Rights Law in English Courts*, Hart Publishing, (Oxford: 1997), 207-261, esp. at 230-258, & 297-324

51. The Minister in this case makes much of the distinction between incorporated and unincorporated treaties as a basis for contending that the appellant seeks to give the CRC direct effect in domestic law. However, the Minister fails to understand that reliance on the CRC is based on a presumption of statutory interpretation and not on invoking the CRC as a direct source of rights. Interpreting provisions in a statute (including the terms by which an executive power is granted as in s. 114(2)) is just that, *statutory* interpretation. If a statute is capable of being interpreted to conform with Canada's international obligations, then such an interpretation must be adopted. What occurs is an interpretive reception of international treaty law rather than direct application of the treaty.

52. The presumption of conformity of statutes with international law is a "rule of law" doctrine tied to the institutional role of the courts in promoting fundamental legality. This is why, with respect, there is no basis for Mr. Justice Strayer's concern that the executive, by ratifying the CRC, is fettering the discretion granted by Parliament. Mr. Justice Strayer's reasoning, if followed, would undermine the very purpose of judicial review in a society based on the rule of law. It also ignores the hardship that can be caused as a result of unaccountable executive decision-making in the immigration context.

McLachlin, "Rules and Discretion in the Governance of Canada" (1992) 56 Sask. Law Rev. 166 esp. at 178-179

Dyzenhaus, *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy*, Clarendon Press, Oxford, 1991 at 138-140, 155-158

Foster, *Turnstile Immigration: Multiculturalism, Social Order & Social Justice in Canada*, Thomson Educ. Publ., Toronto, 1998 at 38-39, 54-57, 67-69, 119-123

53. Parliament *can* legislate contrary to international law. However, Parliament must enact provisions that clearly and unavoidably conflict with international law to rebut the presumption of compliance with international law. Where it does so, international law will have no direct effect on the statute. Where it has not done so, courts must strive to interpret domestic statutes and the constraints on discretionary decision-making in compliance with international law.

54. With respect to federalism, Strayer J.A *is* correct that a court may not interpret a statute so broadly that it violates the federal division of powers. But this has no relevance to this case. No interpretation at issue in this case takes the federal government outside its jurisdiction over immigration.

55. There are furthermore no division of powers problems with respect to the effect of international treaties on provincial executive discretion or, put differently, interpretation of provincial statutes. The presumption of compliance with international law is a rule of law doctrine. The constitution allows the federal executive to bind Canada in international treaty-making. That international law as constitutionally created may lawfully structure discretion of provincial administrative actors is highlighted by the law of treaties which prohibits states from raising their internal legal order as a basis for failure to comply with a treaty obligation. In any event, in the international human rights field, there is a standing process of federal-provincial cooperation in which provincial consent to ratification of an international human rights treaty is normally sought and received. In any event, provincial legislatures have as full a power as the federal Parliament to legislate to express their intent to breach rights.

Vienna Convention on the Law of Treaties, 1969, Art 27
Bayefsky, *International Human Rights Law*, supra. at 50-53

C. RELATIONSHIP BETWEEN CHARTER AND TREATY ROUTES

56. While a decision-maker is expected to avoid breaches both of the Charter and of relevant international human rights treaties, a plaintiff seeking judicial review should have the option of invoking the treaty as a basis for interpreting statutory powers even if there is every likelihood that the right at issue is also protected via the Charter. Allowing plaintiffs to invoke the presumption of compliance with an international human rights treaty, unmediated by the Charter, could have the salutary effect of gradually introducing judges to the structure and jurisprudence of international human rights law.

D. INTERPRETING S.114(2)

The Charter Route in Relation to s.114(2)

57. According to the *Slaight* interpretive approach, judicial review of administrative conduct is a matter of statutory interpretation by the reviewing court according to a correctness standard. Once it is determined that the statute is capable of being given at least a content that would avoid violating the constitution, other interpretive issues relating to the scope of the administrative discretion within the same statutory provision may well be subject to a different standard of review.

Ross v. New Brunswick School District No. 15 [1996] 1 SCR 825 at 850-852

58. There are two major interpretive questions related to s.114(2):

(a) the meaning of "existence of compassionate or humanitarian considerations"; and

(b) the extent of the power of the Minister not to facilitate admission even if the reviewing courts takes the view that considerations exist that should require admission.

59. With respect to the first question, CCPI submits that the words in question are very open-textured. They thus lend themselves to interpretation consistent with human rights protection. Further, the word "humanitarian" is a particularly apt expression to accommodate the duty under the Charter and international human rights to take positive measures to ameliorate disadvantage. Section 114(2) sends no signal that Parliament intended to permit violation of rights ratified in international treaties in the exercise of the power to decide whether to exempt a person from deportation.

60. With respect to the second question, it might appear that Parliament has authorised violations of human rights by legislating a subjective standard for the Minister's decision. However, it is not in the least unknown in administrative law, and statutory interpretation more generally, for words connoting "may" to be read by the courts to mean "must." CCPI submits that such a reading is required where fundamental considerations of the rule of law and human rights are at stake.

Côté, *The Interpretation of Legislation in Canada*, 2d. ed., Cowansville (Quebec), Yvon Blais, 1991 at 201-202

61. The *Slaight* interpretive presumption of compliance with the Charter is as a directive to avoid conflict between a statute and the Charter. An analogy to federalism paramountcy doctrine is suggested: can the administrative decision-maker comply *both* with the Charter *and* with the statute? The Minister does not breach s.114(2) by giving effect to human rights within her powers. Nothing in s.114(2) prohibits the Minister from conforming to the Charter. Thus, s.114(2) can be read to include, as a minimum content, adherence to Charter rights (and thus, in this case, the CRC and the ICCPR) without placing the Minister in the position of violating the statute.

The Treaty Route in Relation to s.114(2)

62. All of the above substantive analysis of the human rights treaties undertaken as part of determining the scope of the Charter can, in accordance with the presumption of conformity with international law, be brought to bear in the same manner on the interpretation of s.114(2), unmediated through the Charter, as long as the standard of review is also the standard of correctness.

63. In *Pushpanathan*, this Court held that the standard of review with respect to the international legal meaning of a provision of the Refugee Convention in domestic law was the correctness standard. In the case at bar, the meaning of the relevant provisions in international human rights treaties as well as the interpretation of whether s.114(2) is open-textured enough to allow compliance with these treaties should also be subject to correctness review. In particular, the underlying rationale in *Pushpanathan* that human rights are presumptively the preserve of the courts is very salient. The special role of domestic courts in relation to international human rights law adds to the need for a correctness standard.

Pushpanathan v. Canada (MCI) [1998] S.C.J. No. 46 at paras. 23-50, esp. at 45-47

Conclusion

64. The granting of a power of decision in the terms of s.114(2) ("is satisfied") is simply one facet of the broader question of how to interpret legislative silence in terms of the legislature's intention as to what conduct an administrative actor may engage in. Silence or relative silence -- along a continuum of discretion -- does not authorize statutory decision-makers to break the law, much less fundamental human rights law, whether constitutional or international. It is not for the courts to do the work for the legislature and assume that omissions mean that the legislature intended to permit rights violations.

Hunt, *supra*, pp 137-138

PART IV - ORDER SOUGHT

65. CCPI respectfully requests that the appeal be allowed.

Date: September 4, 1998

ALL OF WHICH IS RESPECTFULLY SUBMITTED

John Terry

Craig Scott

PART V - AUTHORITIES

	LAW	No.
1.	*ws v. Law Society of British Columbia* [1989] 1 S.C.R. 143 at 195 (per La Forest J.)	
2.	*v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 at 431 (*per* Iacobucci J.)	
3.	*ords and District Co-Op v. Gibbs,* [1996] 3 S.C.R. 566 at 585-587	
4.	*udi v. France*, European Court of Human Rights, Series A. No. 246, 26 March 1992 at 38 (*per* Judge Martens)	
5.	*v. Canada (Secretary of State)* [1997] 1 S.C.R. 358 at 397-403 **[Respondent's Authorities]**	
6.	*Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 at 751	15
7.	*a v. Canada*, Communication No. 558/1993, Human Rights Committee, U.N. Doc. CCPR/C/59/D/558/1993 (20 June 1997) at paras. 11.4 and 11.5 **[Respondent's Authorities]**	
8.	*outh/Halifax County Regional Housing Authority v. Sparks*, (1993), 101 D.L.R. (4th) 224 at 232-235	

9.	*Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 240 at 278-279	13
10.	*ge v. British Columbia (Attorney General)* [1997] 3 S.C.R. 624	
11.	*er v. Ontario (Comm. & Soc. Services)* (1997), 140 D.L.R. (4th) 115 at 138	
12.	*s v. Canada* [1998] O.J. No. 1791	
13.	*ut v Longueuil* [1997] 3 S.C.R. at para 69, 74-91, per La Forest J.	
14.	*Minister for Immigration and Ethnic Affairs v. Teoh* (1995),128 ALR 353 (Austral. H.Crt.) **[Respondent's Authorities]**	15
15.	*al Corn Growers Assn. v. Canada (Import Tribunal),* [1990] 2 S.C.R. 1324 at 1371	

16.	*Pushpanathan v. Canada (Minister of Citizenship and Immigration)* [1998] S.C.J. No. 46 at paras. 23-50, esp. 45-47 **[Respondent's Authorities]**	19
17.	*eegstra***,** [1990] 3 S.C.R. 697 at 750	
18.	*akes,* [1986] 1 S.C.R. 103 at 136, 139	
19.	*R. v. Parks* (1993), 84 C.C.C. (3d) 353 at 365-370	7
20.	*illiams* [1998] S.C.J. No. 49 at paras 21, 22, 35, 54 **[Respondent's Authorities]**	
21.	*C. Motor Vehicle Act*, [1985] 2 S.C.R. 486 at 503, 512	
22.	*anada Labour Code***,** [1992] 2 S.C.R. 50 at 89-90	
23.	*New Brunswick School District No. 15* [1996] 1 SCR 825 at 850-852	

24.	*Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at 1056-1057, 1078-1081 per Dickson C.J.	
25.	*v. R.* (1998), 38 O.R. (3d) 267	
26.	*Tavita v. Minister of Immigration* (1993), [1993] 2 NZLR 257 (N.Z.C.A.) **[Appellant's Authorities]**	15
	ENTIONS AND TREATIES	
27.	Convention on the Rights of the Child [1990] Can. T.S. No.3, *inter alia*, Arts. 2, 3, 7, 8, 9, 10, 12 and 16 **[Respondent's Authorities]**	8
28.	tional Covenant on Civil and Political Rights, *inter alia*, Arts. 2(2), 17, 23 and 26 Article 5(2) **[Respondent's Authorities]**	
29.	ICESCR, 1966, Arts. 2, 10, 11(1) Article 10(3) **[Appellant's Authorities]**	8, 13
30.	CEDAW, 1979, Arts, 4, 5, 11(2)(c), 12, 13, 15, 16(f)	8

31.	rsal Declaration of Human Rights,1948 Article 1	
32.	Vienna Convention on Law of Treaties, 1969 Art 27, Art. 31(1**)**	17
	CLES AND MONOGRAPHS	
33.	, Philip "Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights" (1987) 9 HRQ 332 at 357	
34.	Alston, Philip "The Best Interests Principle: Toward a Reconciliation of Culture and Human Rights", (1994) 8 *International Journal of Law and Family* 1 at 13, 14	8, 9
35.	ky, Anne F. "International Human Rights Law in Canadian Courts" in Conforti and Francioni, eds., *Enforcing International Human Rights in Domestic Courts*, Dordrecht, Kluwer, (1997) at 50-53, 312-319	
36.	Bayefsky, Anne F. *International Human Rights Law: Use in Canadian Charter of Rights and Freedoms Litigation*, Toronto and Vancouver, Butterworths, (1992) at 62-63	15

37.	ian Mental Health Association "*Schizophrenia: Fact Sheet*"	
38.	Institute of Psychiatry, "*Schizophrenia, Fact Sheet*" prepared by Social and Community Psychiatry Section (September 1990)	
39.	Côté, Pierre-André *The Interpretation of Legislation in Canada*, 2d. ed., Cowansville (Quebec), Yvon Blais, (1991) at 201-202	18
40.	Detrick, Sharon ed., *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Preparatoires",* Dordrecht, Martinus Nijhoff, (1992) at 137 para. 121-122, 142	9, 14
41.	Devlin, Richard F. "We Can't Go On Together With Suspicious Minds" (1995) 18 Dal. Law Journal 137 at 408 at 432	12
42.	haus, David *Hard Cases in Wicked Legal Systems: South African Law in the Perspective of Legal Philosophy*, Clarendon Press, (Oxford: 1991) at 138-140, 155-158	
43.	Lorne *Turnstile Immigration: Multiculturalism, Social Order & Social Justice in Canada*, Thomson Educ. Publ., Toronto, 1998 at 38-39, 54-57, 67-69, 119-123	

44.	Gunderson, Morley; Muzynski, Leon and Keck, Jennifer, *Women and Labour Market Poverty* (Ottawa: Canadian Advisory Council on the Status of Women, 1990) at 13	12
45.	s, Rosalyn *Problems and Process: International Law and How we Use It*, Clarendon Press, Oxford, 1994 at 206-207	
46.	n Rights Committee, General Comment 24(52), General comment on issues relating to reservations..., U.N. Doc. CPR/C/21/Rev.1/Add.6 (1994)	
47.	Murray *Using Human Rights Law in English Courts*, Hart Publishing, (Oxford: 1997) at 25-28, 137-138, 207-261, 297-324	
48.	Iyer, Nitya "Categorical Denials: Equality Rights and Shaping of Social Identity" (1993) 19 Queen's L. J. 179	11
49.	Jacobs, Francis G. and Roberts, Shelley, eds., *The Effect of Treaties in Domestic Law*, Sweet & Maxwell, (London: 1987) at 32-33 (Italy), 60 (France), 69 (Germany), 100 (Italy), 135, 137 (U.K.), 160 (U.S.)	14

50.	Jennings, Sir Robert and Watts, Sir Arthur, eds., *Oppenheim's International Law*, 9th ed., London and New York, Longman, 1996, at 82-86	15
51.	ı, Martha "Does Immigration Benefit Canada? Fact and Fiction" (OCASI, 1996)	
52.	mic Council of Canada, New Faces in the Crowd, 1991, pp. 21-22	
53.	, Sarah and Tam, Kwok Kwan, "Yes, Parenting Does Make a Difference to the Development of Children in Canada" National Longitudinal Survey of Children and Youth, StatsCan 1996 at 103-104	
54.	ıan & Arnold, "Violence by People with Mental Illness" (1996) 19 Psychiatric Rehabilitation Journal at 67	
55.	on, Elizabeth G. and Andrews Arlene Bowers , "Protecting the Child against Separation from the Family Environment" (1996) 15 *Children's Legal Rights Jl* 2 at 2	
56.	Bruce "Beyond Andrews: Substantive Equality and Positive Obligations After Eldridge and Vriend" (1998) 9:3 Constitutional Forum 71	
57.	ll, Kenneth C. *Federal Courts and the International Human Rights Paradigm*, Durham, Duke U.P., 1990 at 206, 280	

58.	ın, Ruth *Driedger on the Construction of Statutes*, 3rd ed., (Toronto and Vancouver**:** Butterworths, 1994) at 330-333	
59.	ɔnourable Mr. Justice Gerard La Forest, "The Expanding Role of the Supreme Court of Canada in International Law Issues" (1996) 34 CYIL 89 at 91, 98, 100-101	
60.	The Honourable Madame Justice McLachlin, "Rules and Discretion in the Governance of Canada" (1992) 56 Sask. Law Rev. 166 esp. at 178-179	16
61.	Toope, S. "*The convention on the Rights of the Child: Implications for Canada"* in Freeman, ed., Children's Rihts: A Comparative Perspective, Dartmouth Publ., 1996 esp. at 34-37, 42, 46, 51-53	13
62.	*tions*, Report of the Social Assistance Review Committee, 1988, p. 44	
63.	*ıentation Handbook for the Convention on the Rights of the Child*, Hodgkin and Newell, prepared for UNICEF, 1998	3, 14
	CR	

64.	ittee on Economic, Social and Cultural Rights, Concluding Observations on Canada, U.N. Doc. E/C.12/1993/5 (1993) at 18	
65.	Committee on Economic, Social and Cultural Rights, General Comment No. 5, Persons with disabilities, U.N. Doc. E/C. 12/1994/13 (1994) at paras 9, 15, 19	12
66.	ittee on the Rights of the Child, Concluding Observations, U.N. Doc. CRC/C/15/Add.37 (9th Session, 1995), paras. 13 and 24	
67.	General Guidelines Regarding the Form and Contents of Periodic Reports, 1996	
68.	n. Antonio Lamer, "Enforcing International Human Rights law: The Treaty System in the 21st Century", address at York University, June 22, 1997 at 3, 4, 6 and 7	
69.	onourable Lucienne Robillard, Hansard, Vol. 134:092, 35th Parl. 2nd Sess., October 29, 1996 pp. 5769-5771	