

MEMORANDUM OF THE INTERVENOR
AMNESTY INTERNATIONAL CANADA FRANCOPHONE

PART I – STATEMENT OF POSITION AND FACTS

1. Amnesty International Canada Francophone intervenes in this matter to offer a perspective on Canada’s binding obligations under international human-rights law, obligations that Canadian courts must take into account when interpreting domestic legal norms, especially those touching on fundamental rights.
 2. This case is of particular importance for protecting the right to equality and non-discrimination because it concerns the ability of women refugee claimants to obtain subsidized childcare services and requires an examination of the overall cumulative effect of multiple, intersecting forms of discrimination through an intersectional lens.
 3. For Amnesty International Canada Francophone, two elements of international law are essential: first, it supports recognizing immigration status as an analogous ground to the enumerated grounds of discrimination under the Canadian Charter of Rights and Freedoms; second, it underscores the need to consider the disproportionate effects of intersectional discrimination.
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PART II – ISSUES IN DISPUTE

4. With respect to the issues raised by the appellant, Amnesty International Canada Francophone submits that principles of international human-rights law support recognizing immigration status as an analogous ground of discrimination under the Charter, assessed through an intersectional analysis aimed at achieving substantive equality.
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PART III – ARGUMENT

A. Immigration status is a prohibited ground of discrimination under international human-rights law

5. In 2020, the majority of this Court in *Québec (Attorney General) v. 9147-0732 Québec inc.* reaffirmed principles set out nearly forty years earlier by then Chief Justice Dickson, emphasizing that binding sources of international law—particularly

the treaties Canada has ratified, on which Amnesty chiefly relies—carry “greater weight in the analysis” and underpin a well-established principle of Charter interpretation, namely the presumption of conformity.

6. The majority also stated that even non-binding international sources are “relevant and persuasive interpretive tools.”
7. The presumption of conformity ensures that Canadian human-rights legislation offers protections at least as broad as analogous provisions in the international instruments Canada has ratified, reflecting the close relationship between the Charter and international human-rights law.
8. The appellant relies in part on the Federal Court of Appeal’s decision in *Toussaint v. Canada (Attorney General)*, where Stratas J.A. refused to recognize immigration status as an analogous ground under the Charter.
9. That case involved Ms. Nell Toussaint, an immigrant woman denied access to a federal health-care program because of her irregular immigration status. Both the Federal Court and the Federal Court of Appeal dismissed her Charter claims and declined to recognize immigration status as an analogous ground.
10. In 2018, however, the UN Human Rights Committee, addressing Ms. Toussaint’s situation, concluded that Article 26 of the International Covenant on Civil and Political Rights—Canada’s international analogue to Charter section 15—prohibits States parties from distinguishing, for the right to life, between migrants with regular and irregular status.
11. The Committee further held that the distinction Canada drew between legally admitted persons and those not so admitted was neither reasonable nor objective and therefore discriminatory. Amnesty International Canada Francophone submits that the same reasoning should inform Charter analysis.
12. The Universal Declaration of Human Rights, which this Court has found “appropriate and relevant to consider,” proclaims in Article 1 that all human beings are born free and equal in dignity and rights, and in Article 2 that everyone is entitled to these rights without distinction based on any status.
13. Likewise, the International Covenant on Economic, Social and Cultural Rights, to which Canada has acceded, does not confine discrimination to the grounds listed in Article 2(2). The Committee on Economic, Social and Cultural Rights has stated that Covenant rights apply to everyone, including non-nationals and asylum seekers, regardless of legal status.

14. Interpreting the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination has affirmed that differential treatment based on citizenship or immigration status is discriminatory unless it pursues a legitimate aim by proportionate means, and that States must ensure legal protection against racial discrimination for non-nationals irrespective of immigration status.
15. The Committee on the Elimination of Discrimination against Women, in General Recommendation 32, emphasises that asylum-seeking and refugee women must, without discrimination, have access to housing, education, health care and other forms of assistance appropriate to their specific needs, and should have income sources and work opportunities.
16. Under the Convention on the Rights of the Child, the Committee on the Rights of the Child has insisted that all children—including asylum-seeking, refugee or migrant children—must enjoy Convention rights irrespective of nationality or immigration status.
17. A joint General Comment of the Committee on Migrant Workers and the Committee on the Rights of the Child likewise reaffirms that Convention rights apply to every child, whatever the migration status of the child or their parents.
18. These instruments, and the authoritative comments of the UN treaty bodies charged with interpreting them—authorities this Court has already considered—establish that a parent's (and therefore their children's) immigration status is indeed a prohibited ground of discrimination in international law.
19. The presumption of conformity invites courts to adopt an interpretation of domestic law that aligns with Canada's international obligations, avoiding conflicts and giving effect to all commitments.
20. Because international law recognises immigration status as a prohibited ground, the principle that the Charter must provide protection at least as great as Canada's human-rights treaties strongly favours recognising immigration status as an analogous ground under section 15(1).
21. Regarding justification, Amnesty International Canada Francophone respectfully submits that, as the UN Human Rights Committee found in *Toussaint*, denying subsidized childcare to asylum seekers has disproportionate negative consequences for children and parents in precarious immigration situations. The exclusion does more than deny essential support; it deepens existing inequalities by

limiting parents' ability to work and children's effective access to education, perpetuating cycles of disadvantage.

22. Though a prima facie discriminatory distinction may be justified where it rests on reasonable and objective criteria serving a legitimate aim, the Committee found Ms. Toussaint's exclusion unjustified because of the irreversible harm it caused. The same reasoning applies here.
23. Recognising immigration status as an analogous ground enables consideration of the disproportionate impact on racialised women asylum seekers. The exclusion imposes cumulative, disproportionate disadvantages on marginalised groups through intersecting grounds of discrimination—in short, intersectional discrimination under international law.

B. International human-rights law requires an intersectional analysis of discrimination

24. Amnesty International Canada Francophone emphasises the importance, under international law, of adequately assessing the disproportionate negative effects of a measure on a racialised woman with asylum-seeker status. These inseparable identities (notably sex and immigration status) expose her to discrimination on multiple, interconnected grounds.
25. Intersectional analysis seeks to understand how the aggregation of two or more grounds of discrimination reinforces subordination and disadvantage. It considers the interplay of discriminatory factors to achieve substantive equality in light of Canada's international obligations, as the right to non-discrimination is enshrined in every major human-rights treaty.
26. For decades, UN treaty bodies have increasingly incorporated intersectional discrimination into their interpretation of rights, effectively "internationalising" intersectionality.
27. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), in General Recommendation 25 (2004), recognised the need to address intersectional discrimination and advised States to adopt special temporary measures to eliminate it and its compounded effects.
28. In General Recommendation 28 (2010), the CEDAW Committee stated that intersectional analysis is fundamental to understanding States' core obligations under Article 2 of CEDAW, noting that sex- or gender-based discrimination is inseparably linked to other factors and that States must legally prohibit these overlapping forms of discrimination and their cumulative negative impact.

29. In its 2024 concluding observations on Canada’s 10th periodic report, the CEDAW Committee reiterated its recommendation that Canada integrate intersectionality into all special temporary measures and ensure they meet the needs of all women, especially migrant women.

30. These interventions echo the Committee on Economic, Social and Cultural Rights, which nearly twenty years ago stressed that the multiplicity of discrimination grounds has specific consequences requiring tailored attention and solutions.

31. The Committee on the Rights of Persons with Disabilities, in General Comment 6, explained that intersectional discrimination occurs when multiple grounds operate and interact simultaneously, exposing individuals to unique disadvantages.

32. Consistent with these international standards—and to achieve genuine substantive equality—Amnesty International Canada Francophone submits that this case requires an analytical framework that recognises the intrinsic linkage of the grounds of discrimination faced by the respondent, namely sex and immigration status.

33. In summary, applying an intersectional analysis to the facts not only aligns with international human-rights law but also ensures substantive equality by fully accounting for the complexity of the respondent’s situation and the deleterious effects of her exclusion from Quebec’s public system of subsidized childcare. This is possible only by acknowledging the multiple, intersecting forms of discrimination she experiences.

PART IV – COSTS

34. The intervenor seeks no costs and requests that none be awarded against it.

PART V – ORDERS SOUGHT

35. Pursuant to Rules 42(2)(e) and 42(3), the intervenor seeks no order.

PART VI – CONFIDENTIALITY

36. No order is sought in this regard.

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Amnesty International Canada Francophone