File No: A-290-19

FEDERAL COURT OF APPEAL

BETWEEN:

MIRNA MONTEJO GORDILLO, JOSÉ LUIS ABARCA MONTEJO, JOSÉ MARIANO ABARCA MONTEJO, DORA MABELY ABARCA MONTEJO, BERTHA JOHANA ABARCA MONTEJO, FUNDACIÓN AMBIENTAL MARIANO ABARCA (MARIANO ABARCA ENVIRONMENTAL FOUNDATION OR FAMA), OTROS MUNDOS, A.C., CHIAPAS, EL CENTRO DE DERECHO HUMANOS DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD AUTÓNOMA DE CHIAPAS (THE HUMAN RIGHTS CENTRE OF THE FACULTY OF LAW AT THE AUTONOMOUS UNIVERSITY OF CHIAPAS), LA RED MEXICANA DE AFECTADOS POR LA MINERÍA (MEXICAN NETWORK OF MINING AFFECTED PEOPLE OR REMA) AND MININGWATCH CANADA

Appellants

– and –

ATTORNEY GENERAL OF CANADA

Respondent

– and –

AMNESTY INTERNATIONAL CANADA and CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS AND THE INTERNATIONAL JUSTICE AND HUMAN RIGHTS CLINIC and the CENTRE FOR FREE EXPRESSION AT RYERSON UNIVERSITY

Interveners

MEMORANDUM OF FACT AND LAW OF THE JOINT INTERVENERS, CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS AND THE INTERNATIONAL JUSTICE AND HUMAN RIGHTS CLINIC

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. As the Supreme Court observed in *Nevsun*, international human rights are not "theoretical aspirations or legal luxuries, but moral imperatives and legal necessities."[1] In turn, for Canada to maintain the integrity of its public service—a core objective of the *Public Servants Disclosure Protection Act* (the "*Disclosure Act*")[2]—it must duly recognize, and investigate, wrongdoing not only at home, but also abroad. Such integrity cannot ignore pervasive disregard for international human rights, often by transnational corporate activity originating in the global north.[3]

2. The instant appeal is illustrative of these concerns. The Public Sector Integrity Commissioner refused to investigate a Complaint against the Canadian Embassy in Mexico, not because the allegations in the Complaint were not credible, but simply because he concluded that they could not amount to "wrongdoing" under the *Disclosure Act*. According to the Commissioner, the threshold for "wrongdoing" could not have been crossed because the Embassy is expected to provide "assistance" to Canadian companies abroad. Moreover, the Commissioner took solace in the Embassy having not completely "ignore[d]" human rights violations.[4]

3. Canadian Lawyers for International Human Rights and the International Justice and Human Rights Clinic, Peter A. Allard School of Law, University of British Columbia—the "Joint Interveners"—submit that the exceedingly high threshold for "wrongdoing" implicit in the Commissioner's observations above sets a dangerous precedent. The Joint Interveners acknowledge that the allegations in the Complaint have not been established—they could not be; they have never been investigated. However, from the standpoint of this intervention, in order to make submissions on the meaning of "wrongdoing", the Joint Interveners assume that the allegations were true. Indeed, to contest the factual allegations at first instance—which were, for the purposes of the Commissioner's legal analysis, undisputed—would simply distract from scrutinizing the legal threshold ultimately applied by the Commissioner.

4. A Mexican human rights defender (Mariano Abarca) was assassinated in the midst

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[1] *Nevsun Resources Ltd. v Araya*, 2020 SCC 5 at para 1 [*Nevsun*].
[2] SC 2005, c 46 [*Disclosure Act*].
[3] Shin Imai, Leah Gardner & Sarah Weinberger, "The 'Canada Brand': Violence and Canadian Mining Companies in Latin America" (2017) Osgoode Leg Studies Research Paper No. 17/2017; Penelope Simons, "Canada's Enhanced CSR Strategy: Human Rights Due Diligence and Access to Justice for Victims of Extraterritorial Corporate Human Rights Abuses" (2015) 56:2 Can Bus LJ 167 at 168–170.
[4] PSIC decision dated April 5, 2018 (Appeal Book at tab 4) at 2–3.

of protracted protests against the social and environmental harms of a Canadian mining company operating in Mexico (Blackfire). In the lead up to Abarca's assassination, the Canadian Embassy had been notified of Blackfire violently suppressing community opposition to its mine and seeking Abarca's detention by local police.[5] Despite this, the Embassy viewed its role in singular terms: to support Blackfire's commercial activity in Mexico—seemingly, at any cost.

5. The Embassy actively supported Blackfire's operations in Mexico, escalating Blackfire's conflict with local communities and exposing Abarca to danger—a risk that was particularly foreseeable given the global scourge of violent suppression against human rights defenders.[6] In particular, the Embassy intervened on Blackfire's behalf to local Mexican officials, facilitated land agreements and explosives licences, and, when Abarca was detained by local police at Blackfire's request, raised concerns about the challenges faced by Blackfire in advancing its mining operations.[7] Indeed, even after Abarca's assassination—and the revelation that Abarca's murderers were allegedly affiliated to Blackfire—the Embassy persisted in supporting Blackfire's mine (which, by that time, had already been shut down for environmental violations).[8] As thousands of Mexicans protested Abarca's murder, and Canadian civil society groups called for an investigation into Blackfire's misconduct, Embassy officials continued to support Blackfire's operations, and even provided Blackfire with information on how to sue Mexico for $800 million.[9]

6. Such allegations plainly implicate the integrity of the Canadian public service. That integrity is fundamentally undermined when the Canadian public service turns a blind eye to—indeed, exacerbates[10]—known and foreseeable human rights abuses,

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[5] Complaint at 10–11.
[6] Complaint at 14–15; Government of Canada, *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders* (Ottawa, 2019) at 4–5 [*Voices at Risk*]; Margaret Sekaggya, Report of the Special Rapporteur on the situation of human rights defenders, General Assembly, 66th Sess, UN Doc. A/66/203 (2011) at paras 17–20; Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II.124 (7 March 2006) at 37–54; Hina Jilani, Report submitted by the Special Representative of the Secretary-General on human rights defenders, UNHRC, 4th Sess, UN Doc A/HRC/4/37 (2007) at 39–41, 45.
[7] Complaint at 4, 5–6, 13–14.
[8] *Ibid* at 6, 13–15
[9] *Ibid* at 27–29, 14, 16.
[10] In Blackfire's own words written to the Embassy: "All of us at Blackfire really appreciate all that the embassy has done to help pressure the state government to get things going for us. We could not do it without your help": Complaint at 20.

for the sake of promoting Canada's commercial interests abroad. With the assistance of the Justice and Accountability Project at Osgoode Hall Law School, Abarca's family (the wife and four children who survived him), along with several non-governmental organizations from Canada and Mexico, applied to the Commissioner to request an investigation into the Embassy's actions. The Commissioner declined.[11] The family and their allies—the Appellants—sought judicial review. The Federal Court declined.[12] Critically, neither the Commissioner nor the Federal Court made any reference to international or constitutional law in their analysis—law which, as these submissions explain, is central to the analysis of the Embassy's wrongdoing.

7. The Joint Interveners submit that international and constitutional law must inform the interpretation of "wrongdoing" under s. 8 of the *Disclosure Act* in the context of Canada's consular bodies. Where an embassy cannot endanger the life or safety of persons (s. 8(d)), international law and *Charter* values pertaining to the right to life must be considered. And where a code of conduct (s. 8(e)) requires an embassy to not only "advance[e] … human rights",[13] but to act with integrity, which "may not be fully satisfied by simply acting within the law",[14] Canada's international and *Charter* obligations, again, must be considered. Ignoring them is, thus, unjustifiable.

PART II – POINTS IN ISSUE

8. The Joint Interveners address the Appellants' second issue on appeal, i.e., whether the Federal Court correctly applied the reasonableness standard to the Commissioner's decision with respect to: (1) endangering life, health or safety of persons (under s. 8(d) of the *Disclosure Act*)); or (2) seriously breaching a departmental code of conduct (under s. 8(e) of the *Disclosure Act*).

PART III – SUBMISSIONS

9. The Joint Interveners' submit that it is not open to the Commissioner to adopt an interpretation of "wrongdoing" that allows members of Canada's public service to single-mindedly support the economic interests of transnational corporations based in Canada without due regard for the human rights violations those corporations commit, or how the involvement of Canadian public officials is likely to exacerbate those violations. This conclusion necessarily follows given (A) the purpose of the *Disclosure Act*, (B) generally, the role of international and constitutional law in

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[11] PSIC decision.
[12] Federal Court Reasons.
[13] Foreign Affairs, Trade and Development Canada, *Values and Ethics Code* (23 May 2014), s 5.3 [*Code*].
[14] *Code*, s 6.3.

statutory interpretation and administrative decision-making, and (C) specifically, the impact of international law and *Charter* values implicated by ss. 8(d) and 8(e) of the *Disclosure Act* in the context of Canada's consular bodies.

A. *Disclosure Act* Purpose: Protecting the Integrity of the Public Service

10. The *Disclosure Act* seeks to protect the integrity of the public service, "an important national institution, which is part of the essential framework of Canadian parliamentary democracy."[15] Its core logic is straightforward: that "confidence in public institutions can be enhanced by establishing effective procedures for the disclosure of wrongdoings … and by establishing a code of conduct for the public sector."[16] Thus, the *Disclosure Act* promotes the integrity of the Canadian public service by (1) creating "a safe haven for public servants so that they can disclose wrongdoing and be protected from reprisal"[17] (i.e., whistleblowing[18]); and (2) requiring that rules be made to govern the public service (i.e., codes of conduct).[19]

11. This Court has stressed the Commissioner's integral role in public accountability:

> [T]he purpose of the *Act* is to denounce and punish wrongdoings in the public sector and, ultimately, build public confidence in the integrity of federal public servants. The public interest comes first, and it is the Commissioner's responsibility to protect it.[20]

12. To this end, "wrongdoing" under the *Act* is broadly defined. It includes contravening federal or provincial law, misusing public funds, gross mismanagement, a serious breach of a departmental code of conduct, and any act or omission that creates a substantial and specific danger to "the life, health or safety of persons."[21] Further, to investigate wrongdoing, the Commissioner need not believe that wrongdoing has certainly, or even likely, occurred. Rather, they must simply have "reason to believe" wrongdoing has been committed.[22] Critically, this threshold relates, not to punishing anyone in the public service, but rather, to whether an investigation of potential wrongdoing will even occur in the first place.

13. The purpose of the *Disclosure Act* necessarily implicates international and

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[15] *El-Helou v Courts Administration Service*, 2011 CanLII 93945 (CA PSDPT) at paras 53(ii), 54(i) [*El-Helou*]; *Disclosure Act*, Preamble.
[16] *Disclosure Act*, Preamble.
[17] *El-Helou* at para 2; See also *Disclosure Act*, s 4.
[18] *El-Helou* at para 45.
[19] *Disclosure Act*, ss 5–7.
[20] *Agnaou v Canada*, 2015 FCA 29 at para 60.
[21] *Disclosure Act*, s 8(a)–(d).
[22] *Disclosure Act*, s 33(1).

constitutional law. Canada's public service includes its consular staff abroad. Where a statute is explicitly directed towards ensuring the integrity of Canada's public service, the statutory meaning of "wrongdoing" must capture the specific ways in which consular agents may, by disregarding international and constitutional law, compromise that integrity abroad. Indeed, to overlook international law when vetting Canada's international integrity would fundamentally impair the *Disclosure Act*'s ability to supervise the conduct of consular agents, despite its clear application to "every person employed in the public sector."[23] Such a perverse interpretation would be antithetical to "ensur[ing] that Canadians are protected by a lawful, transparent and uncorrupted public service."[24]

B. Legal Sources Relevant to Interpreting the Meaning of, and Administrative Decision-Making under, Ordinary Legislation

1. International Law

a. International Law Informs Statutory Interpretation

14. The Supreme Court has been unequivocal: "It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law."[25] This presumption has "two aspects": (1) directly, presuming "compliance with Canada's obligations as a signatory of international treaties and as a member of the international community"; and (2) indirectly, presuming compliance "with the values and principles of customary and conventional international law" which "form part of the context in which statutes are enacted."[26]

b. International Law Informs Administrative Decision-Making

15. In *Vavilov*, the Supreme Court reiterated that "domestic legislation … must be interpreted in a manner that reflects the principles of customary and conventional international law."[27] In Ruth Sullivan's words, such international law forms part of the "legal context" in which legislation is enacted and read.[28] A corollary of this is that, "in some administrative decision making contexts, international law will operate as an important constraint on an administrative decision maker."[29] And in turn,

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[23] *Disclosure Act*, s 2(1).
[24] *Swarath v Canada (AG)*, 2015 FC 963 at para 1.
[25] *R v Hape*, 2007 SCC 26 at para 53 [*Hape*].
[26] *Hape* at para 53.
[27] 2019 SCC 65 at para 182 [*Vavilov*].
[28] Ruth Sullivan, *Construction of Statutes*, 6th ed (Lexis Nexis, September 2014) at 569 [*Sullivan*]; See also *Baker v Canada*, [1999] 2 SCR 817 at para 70; *B010 v Canada*, 2015 SCC 58 at paras 47–49 [*B010*].
[29] *Vavilov* at para 114.

judicial review may consider whether relevant international law was duly considered.[30] Indeed, "even where they have not been implemented domestically by statute", it is "clear that international treaties and conventions … can help to inform whether a decision was a reasonable exercise of administrative power."[31]

2. Constitutional Law (i.e. the *Charter*)

a. The *Charter* informs Statutory Interpretation

16. If legislation is ambiguous, "*Charter* values" inform its interpretation. In operation, this means that that courts should "prefer interpretations that tend to promote those [*Charter*] principles and values over interpretations that do not."[32]

b. The *Charter* informs Administrative Decision-Making

17. *Charter* values also inform administrative decision-making. As held in *Doré*, *Charter* values must be considered, regardless of ambiguity:

> [A]dministrative decisions are always required to consider fundamental values. … administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise.[33]

C. How International and Constitutional Law Inform the Meaning of, and Administrative Decision-Making under, the *Disclosure Act*

1. Conduct that Offends International Law is "Wrongdoing" under the *Disclosure Act*

18. In their analysis of international law, the Joint Interveners, first, discuss two international law duties relevant here, i.e., to respect and protect human rights—general duties applicable to all treaties.[34] Second, the Joint Interveners discuss the

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[30] *Vavilov* at para 182, see also para 195.
[31] *Vavilov* at para 114.
[32] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 62 citing Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed (Toronto: Butterworths, 1994) at 325. See also *Hincks v Gallardo*, 2014 ONCA 494 at para 32 [*Hincks*].
[33] 2012 SCC 12 at para 35 [emphasis in original] [*Doré*]; See also *Taylor-Baptiste v OPSEU*, 2015 ONCA 495 at paras 49–58.
[34] UNHRC, General Comment No. 31: the Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004) at paras 3–5, 8, 13 [UNHRC, GC 31]; UNHRC, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights on the Right to Life, UNCCPR, UN Doc. CCPR/C/GC/36 (30 October 2018) at paras 4, 7, 18 [UNHRC, GC 36]; UNCESCR, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UNCESCR, UN Doc. E/C.12/GC/24 (23 June 2017) at para 10 [UNCESCR, GC 24]; The Canadian government recognizes this obligation: Government of Canada, "Advancing Human Rights" (date modified: 10 November 2017), online: *Government of Canada*.

two forms of wrongdoing implicated in this appeal, and how their content is necessarily informed by international law.

a. Two International Law Duties

i. Duty to Respect Human Rights

19. Canada must respect international human rights, meaning that it must refrain from violating human rights. This duty is not limited to Canada's territorial borders. Indeed, Canada can incur international responsibility where its Embassy staff and/or its Trade Commissioner Service fail to respect international law, i.e., where they commit an internationally wrongful act,[35] or assist in the commission of such an act perpetrated either by the host state[36] or by a non-state actor (e.g., a corporation). As Robert McCorquodale and Penelope Simons explain:

> A home state may also be found to be complicit in the extraterritorial activities of corporations themselves, and thus incur international responsibility … [I]t has been convincingly argued that corporations … have obligations under international law … Therefore, where a home state aids or assists a corporation in the commission of, or in the latter's complicity in, acts that, if committed by that home state would constitute internationally wrongful acts, that state will incur international responsibility, at least where the aid or assistance 'contributed significantly to that act.'[37]

20. States will not always be held complicit for the transnational activities of corporations formed under their laws. In particular, "for the state to be held responsible for complicity … it must be shown that the state knew that it was aiding or assisting in the commission of the wrongful act." That said, "constructive knowledge" may be assumed where the state maintains that it takes into account "the human rights or social impact of a project" in its decision to support a project.[38]

21. Canada does not get a "free pass" from international human rights law because violations occur abroad, or are most proximately linked to private companies. Indeed, "[t]he obligation to respect" rights is violated "when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or

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[35] International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts", Report of the International Law Commission on the Work of its 53rd session, August 2001, UNGA, 56th Sess Supp No 10, UN Doc. A/56/10(SUPP) (2001) at 32 [ILC Articles].
[36] ILC Articles, Article 16 at 65.
[37] Robert McCorquodale & Penelope Simons, "Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law" (2007) 70:4 Mod L Rev 598 at 613–614.
[38] *Ibid* at 615.

when they pursue policies that negatively affect such rights."[39]

ii. Duty to Protect Human Rights

22. Canada's international obligations are not restricted to activities in which it is directly entangled (i.e., respect). Rather, it must also protect rights.[40] This requires Canada to prevent certain private actors—including corporations headquartered or brought into existence under its laws—from violating human rights.[41]

23. For example, Canada has an obligation of due diligence to regulate and monitor the activity of corporations, which requires "prevent[ing] effectively infringements of [human] rights in the context of business activities."[42] This includes ensuring that corporations under its jurisdiction, including those incorporated, headquartered, or with a principal place of business in Canada, do not violate human rights.[43] If such entities allegedly violate human rights, Canada has a duty to investigate. And if such violations indeed occur, it has a duty to hold those entities accountable.[44] In this way,

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[39] UNCESCR, GC 24 at para 12.
[40] See e.g. *Nevsun* at paras 115, 119.
[41] UNOHCHR, *Human Rights Handbook for Parliamentarians No 26*, HR/PUB/16/4, 2016 at 32 [*Handbook for Parliamentarians No 26*]; See e.g. UNHRC, GC 36 at para 22; UNCESCR, GC 24 at paras 25–28; UNCESCR, Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, UNCESCR, 46th Sess, UN Doc. E/C.12/2011/1 (20 May 2011) at paras 4–6 [UNCESCR, Statement on the Obligations of States Parties]. Several prominent international human rights committees have called on Canada to regulate transnational mining companies and provide remedies to foreign plaintiffs whose human rights they violate: UNHRC, Concluding Observations on the Sixth Periodic Report of Canada, UN Doc. CCPR/C/CAN/CO/6 (13 August 2015) at para 6; UNCESCR, Concluding Observations on the Sixth Periodic Report of Canada, UN Doc. E/C.12/CAN/CO/6 (2016) at paras 15–16; UNCRC, Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012), UN Doc. CRC/C/CAN/CO/3-4, (6 December 2012) at paras 28–29.
[42] UNCESCR, GC 24 at para 14.
[43] UNHRC, GC 31 at para 10; UNHRC, General Comment No. 34: Article 19: freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (12 September 2011) at para 7 [UNHRC, GC 34]; UNCESCR, GC 24 at paras 25–28; UNCESCR, Statement on the Obligations of States Parties at para 6; UNCRC, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, UNCRC, UN Doc. CRC/C/GC/16 (17 April 2013) at paras 44–46; *Case of the Kaliña and Lokono Peoples v Suriname* (2015), Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 309 at paras 224–226 [*Kaliña and Lokono*].
[44] *Kaliña and Lokono* at paras 224–226; UNHRC, GC 36 at para 22; UNCESCR, GC

the duty to protect involves a "preventative and remedial dimension."[45]

24. On this point, the Court's recent comments in *Nevsun* concerning transnational corporate activity and international human rights are apposite: "like all states parties to the *International Covenant on Civil and Political Rights*, Canada has international obligations to ensure an effective remedy to victims of violations of those rights." And this includes "that states parties must protect against the violation of rights not just by states, but also by private persons and entities."[46]

25. Significantly, comments concerning the duty to protect as it relates to consular services abroad and transnational corporate activities explain that the duty is breached when a State fails "to take reasonable measures that could have prevented" a rights violation, "even if other causes have also contributed to the occurrence of the violation, and even if the State had not foreseen that a violation would occur, provided such a violation was reasonably foreseeable." Indeed:

> States parties must take the necessary steps in their legislation and policies, including diplomatic and foreign relations measures, to promote and help create … an environment [where Covenant rights can be fulfilled]. States parties should also encourage business actors whose conduct they are in a position to influence to ensure that they do not undermine the efforts of the States in which they operate to fully realize the Covenant rights.[47]

26. To meet its international human rights obligations, then, Canada must take appropriate measures to ensure that its actions, and the actions of corporations under its jurisdiction, respect human rights. Canada can support the economic interests of companies. But it cannot do so at the expense of international human rights.

b. Two Forms of Wrongdoing under the *Disclosure Act*

27. Two forms of wrongdoing under the *Disclosure Act* are relevant here: (1) acts or omissions that endanger life, health, or safety; and (2) a serious breach of a code of conduct established under the *Disclosure Act*.[48] These submissions address each form of wrongdoing separately, though there is some overlap in the analysis insofar as an embassy's code of conduct breaches can, themselves, endanger human life and safety.

i. Conduct that Offends International Human Rights to Life, Health, and Safety Endangers Those Rights under s. 8(d)

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24 at para 54; *Workers of the Hacienda Brasil Verde v Brazil* (2016), Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 318.

[45] *Handbook for Parliamentarians No 26* at 32.

[46] *Nevsun* at para 119 referring to UNHRC, GC 31.

[47] UNCESCR, GC 24 at paras 32, 37; see also para 18.

[48] *Disclosure Act*, s 8(d) & (e).

28. Subsection 8(d) of the *Disclosure Act* provides that "wrongdoing" includes "an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant." International law explicitly foresees the kind of conflict between mining companies and human rights defenders that arose in this case and warns governments and their public servants that this situation is "high risk" for the lives of those defenders. With this in mind, international human rights law imposes specific duties on all organs of government to be alert to the risk to life, imposes standards of conduct, and suggests specific steps that should be taken by Embassy staff. These duties properly inform the kinds of "act[s] or omission[s]" captured by s. 8(d) of the *Disclosure Act*.

29. These submissions focus on rights in the *International Covenant on Civil and Political Rights*[49] ("*ICCPR*"), which codified human rights ideals enshrined in the *Universal Declaration of Human Rights* (in the drafting of which Canada participated).[50] Canada is a party to the *ICCPR* and ratified it in 1976.

30. The Human Rights Committee—a treaty body responsible for monitoring compliance with the *ICCPR*—prepared General Comment 36, which provides authoritative interpretive guidance on State Party obligations.[51] General Comments carry "considerable weight" in analyzing the *ICCPR*.[52] Indeed, the Supreme Court has repeatedly relied on them. In *Suresh*, it relied on *General Comment 20*, said that the comment "makes clear" the scope of an *ICCPR* right, and, in response to a view to the contrary from the Ontario Court of Appeal, observed that *General Comment 20* simply "explains" the right's scope, rather than contradicting it.[53] Further, in *Sauvé #1*, the Court relied on *General Comment 25* to more precisely define *ICCPR* rights.[54] Most recently, in *Nevsun*, the Court cited *General Comment 31* for "[e]xpounding on the nature of" and "provid[ing] additional guidance" on the scope of *ICCPR* rights.[55]

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[49] 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].
[50] GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc. A/810 (1948) 71.
[51] UNHRC, GC 36.
[52] Rüdiger Wolfrum, "Legitimacy of International Law from a Legal Perspective: Some Introductory Considerations" in Volker Röben & Rüdiger Wolfrum, eds, *Legitimacy in International Law*, (Berlin / Heidelberg: Springer, 2008) at 17.
[53] *Suresh v Canada*, 2002 SCC 1 at paras 66–67.
[54] *Sauvé v Canada (Chief Electoral Officer)*, 2002 SCC 68 at para 133.
[55] *Nevsun* at para 119.

a) ICCPR Jurisdiction (Art. 2(1))

31. First, Article 2(1) requires states parties to respect and ensure the *ICCPR* rights of all individuals "subject to [their] jurisdiction." A state's "jurisdiction" extends broadly. It is not limited to actors "situated within the territory of the State Party", or people of a particular "nationality." Rather, a state party's jurisdiction includes anyone "within [its] power or effective control."[56] General Comment 36 explains that, for states, "effective control" includes "corporate entities" operating "outside their territory" that are "subject to their jurisdiction." Further, it notes that state parties must take "due account of related international standards of corporate responsibility and of the right of victims to obtain an effective remedy."[57]

32. Using this case as illustration, Blackfire was, in 2009, a Canadian company based in Calgary.[58] Further, the Embassy and Blackfire were deeply—and alarmingly—entangled throughout the events in question; they had a "very close and supportive relationship" which continued "even after the murder of Mr. Abarca, the closing of the mine for breaches of environmental law, and the news reports in Canada about extortion allegations."[59] The Embassy's entanglement—combined with Blackfire being a Canadian corporation—implicates Canada's obligations under the *ICCPR*.[60]

b) ICCPR Right to Life (Art. 6(1))

33. Second, Article 6(1) of the *ICCPR* provides that "[e]very human being has the inherent right to life", that "[t]his right shall be protected by law", and that "[n]o one shall be arbitrarily deprived of his life." As it is a peremptory norm (*jus cogens*),[61] no derogation is permitted from the duty to respect or protect the right to life.[62]

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[56] UNHRC, GC 31 at para 10.
[57] UNHRC, GC 36 at para 22.
[58] Complaint at 4.
[59] Complaint at 14.
[60] UNHRC, GC 36 at para 63.
[61] *Villagran Morales v Guatemala*, (The 'Street Children' Case) (2001) Inter-Am Ct of HR (Ser C) No 77 at paras 139, 144. See also UNHRC, General Comment No. 24: General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, ICCPR, UN Doc. CCPR/C/21/Rev.1/Add.6 (11 November 1994) at para 8.
[62] UNHRC, GC 36 at para 2. See also Organization of American States, American Declaration of the Rights and Duties of Man art. I, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992) [American Declaration].

34. General Comment 36 elaborates on the steps governments must take to protect the right to life. They must "organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life."[63] Such organization includes "establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation."[64] In other words, states parties must "exercise due diligence to protect the lives of individuals against deprivations."[65]

35. General Comment 36 also elaborates on which deprivations of life fall within its scope. The *ICCPR* is not solely concerned with deprivations of life originating with direct state action. Rather, the *ICCPR* also requires protection against "deprivations caused by persons or entities whose conduct is not attributable to the State" to ensure that "the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life."[66] General Comment 36 is clear that states have positive obligations in relation to threats emanating from non-state actors:

> States parties are thus under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State.[67]

36. And General Comment 36 specifically articulates the form these obligations take:

> States parties must […] take adequate measures of protection, including continuous supervision, in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as private transportation companies, private hospitals and private security firms.[68]

37. General Comment 36 clarifies that a loss of life is not required for the right to life to be implicated (though Abarca lost his life here). Indeed, "States parties may be in violation of Article 6 even if such threats and situations do not result in loss of life."[69]

38. Finally, General Comment 36 addresses the right to life in the context of human rights defenders, who are at significant risk of harm, particularly when resisting

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[63] UNHRC, GC 36 at para 19.
[64] *Ibid* at para 19.
[65] UNHRC, GC 36 at para 7.
[66] *Ibid* at paras 6–7.
[67] *Ibid* at para 21.
[68] *Ibid* at para 21.
[69] *Ibid* at para 7; See also UNHRC, Communication No. 821/1998, UN Doc. CCPR/C/70/D/821/1998 (views adopted on 25 November 2000).

transnational business projects.[70] As Canada has expressly recognized, environmental human rights defenders face a "heightened risk of violence or repression"[71]

39. General Comment 36 elucidates how states must "take special measures of protection" towards vulnerable persons, with the first listed example for such persons being "human rights defenders." More specifically, General Comment 36 observes that states parties must "take the necessary measures to respond to death threats and provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights."[72]

40. This appeal illustrates the principles outlined above: Abarca was "arbitrarily deprived of his life",[73] after months of violent suppression linked to Blackfire (which, in itself, was sufficient to trigger the duties to respect and protect the right to life, whether or not Abarca was eventually killed[74]). Further, the Embassy is a "state organ" which, by exclusively prioritizing Blackfire's commercial interests, failed to "respect and ensure" Abarca's life.[75] Continuing to unconditionally support Blackfire despite apparent escalation in its violent intimidation of Abarca cannot plausibly satisfy any reasonable conception of "due diligence" on the Embassy's part with respect to protecting life,[76] nor can demanding the barest of diligence in relation to human rights qualify as imposing a "disproportionate burden" on Canada.[77] And, while we do not know who killed Abarca with certainty, this provides no immunity to the Embassy because "the right to life extends to reasonably foreseeable threats and life-threatening situations."[78] For anyone in Abarca's position—i.e., who faced beatings, an arbitrary detention at Blackfire's behest, and received multiple death threats—the danger was obvious. And that danger was only amplified by his status as

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[70] *Ibid* at paras 23, 53. See also UNHRC, *Protecting Human Rights Defenders*, A/HRC/22/L.13 (15 March 2013) at para 2.
[71] *Voices at Risk* at 30; See also OSCE Office for Democratic Institutions and Human Rights, *Guidelines on the Protection of Human Rights Defenders* (10 June 2014) at 27–28 [*Guidelines on the Protection of HRDs*].
[72] UNHRC, GC 36 at paras 23, 53; See also UNHRC, *Protecting Human Rights Defenders* at paras 2–3; UNGA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, GA Res. 53/144 (9 December 1998), art 2 [Declaration on HRDs].
[73] *ICCPR*, art 6(1).
[74] UNHRC, GC 36 paras 6–7.
[75] UNHRC, GC 36 at para 19.
[76] UNHRC, GC 36 at para 7.
[77] UNHRC, GC 36 at para 21.
[78] UNHRC, GC 36 at para 7.

a human rights defender, for whom "special measures" are required.[79]

41. For clarity, Abarca's status as a human rights defender under international law cannot be seriously challenged. Human rights defenders are those who "individually and in association with others" seek to "promote … the protection and realization of human rights and fundamental freedoms at the national and international levels."[80] This unquestionably describes Abarca: a "prominent spokesperson" for the townspeople of Chicomuselo who opposed Blackfire's mine, and a "community leader who led protests" of that mine's "social and environmental impacts."[81]

ii. Conduct that Offends International Law Seriously Breaches Departmental Codes of Conduct under s. 8(e)

42. Violations of international law qualify as serious breaches of a departmental code of conduct. To explain why, the Joint Interveners, first, discuss why the applicable code incorporated international law, and second, discuss the types of international law that were relevant to the Embassy's conduct here.

a) The Applicable Code Incorporates International Law

43. Subsection 8(e) of the *Disclosure Act* provides that "wrongdoing" includes "a serious breach of a code of conduct established under section 5 or 6."

44. The events leading up to Abarca's murder occurred in 2009.[82] While the Complaint did not attach the s. 6 code applicable to the Department in 2009, this was simply because the Appellants' pro bono counsel "were not able to obtain" that version.[83] They instead attached the Department's publicly available 2014 *Values and Ethics Code* (the "*Code*"),[84] and indicated that they "believe that the spirit of the directive will be similar."[85] Before this Court, Canada has not claimed otherwise.

45. The *Code* is explicit about the relevance of international law to the Department's mandate. Indeed, the Department's "specific areas of responsibility include … the development of international law and its application to Canada."[86]

46. Additionally, the *Code* requires public servants in the Department to "advanc[e]

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[79] UNHRC, GC 36 at para 23; See also *Guidelines on the Protection of HRDs* at paras 14, 16–17, 68, 76–77, 98, 279.
[80] *Declaration on HRDs* art 1. See also *Guidelines on the Protection of HRDs* at para 2.
[81] Complaint at 3–4.
[82] Federal Court Reasons at paras 8–12.
[83] Complaint at 4 (note 3).
[84] *Code*.
[85] Complaint at 4 (note 3).
[86] *Code*, s 5.3.

… human rights", to act "in accordance with the law", to respect "the rule of law" and carry out their duties "in accordance with legislation", and to act with integrity, which "may not be fully satisfied by simply acting within the law."[87] The *Code* identifies "[f]ulfilling these responsibilities in Canada and abroad, with the highest professional and ethical standards" as "the cornerstone of [the Department's] work."[88] These obligations incorporate international law into the *Code*. For example, international law outlines a variety of human rights, and the *Code* requires that public servants "advanc[e]" such rights. Likewise, the *Code* requires that public servants act "in accordance with the law"—and international law is part of "the law" governing Canada. Ratified treaties are binding on Canada;[89] and, international law forms part of the "legal context" in which Canadian legislation is interpreted and applied.[90]

47. Any doubt as to whether the *Code* incorporates international law is alleviated by the requirement for public servants to act with integrity, which "may not be fully satisfied by simply acting within the law."[91] As explained above, international law is the law. But, to the extent certain forms of international law are only persuasive, the *Code* is capacious enough to even include such law within its broad articulation of integrity. The *Code*'s references to integrity are not superficial. Indeed, "[t]he Department is expected to take steps to integrate the values set out in Section 6 of this Code [i.e., integrity] into any decisions, actions, policies, processes, and systems."[92]

b) International Law Constrains the Embassy's Conduct

48. Like with the right to life—already discussed above, and so not repeated here—the Joint Interveners submissions will be limited to rights included in the *ICCPR*.

49. First, Article 19(2) guarantees free expression. While Article 19(3) permits restrictions, those restrictions "shall only be such as are provided by law and are necessary," and must be approached cautiously in the context of human rights defenders "engaged in protests linked to …. land rights, natural resources and environmental claims" as those protesters are "often in need of special protection."[93]

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[87] *Code*, s 5.3, 5.4, 6.1, 6.3; See also Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Service* (1 September 2003) at 8, 9 [*2003 Code*].
[88] *Code*, s 5.3 [emphasis added]; *2003 Code* at 6 ("[the *2003 Code*] sets forth the values and ethics of public service to guide and support public servants in all their professional activities") [emphasis added].
[89] *Nevsun* at para 158.
[90] Sullivan at 569; *B010* at paras 47–49.
[91] *Code*, s 6.3.
[92] *Code*, s 5.3.
[93] Margaret Sekaggya, Report of the Special Rapporteur at para 55.

As General Comment 34 clarifies, the right "requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities."[94]

50. The facts here are illustrative. Blackfire's violent suppression of Abarca's political speech was neither "by law" nor "necessary." In retaliation for his protesting (a form of speech), Abarca was beaten along with his son and wife, who had a pistol held to her head;[95] he was "detained for 8 days without charge",[96] and eventually released "because there was no evidence that the protest in which [he] was participating was violent or threatened public order;"[97] he "received multiple death threats",[98] including death threats from Blackfire employees just two days before his assassination;[99] and he was, ultimately, assassinated—"shot four times at close range" just outside his home.[100] The Embassy's active support for Blackfire throughout this escalation fell well short "ensur[ing]" that Abarca was "protected from any acts by private persons or entities that would impair the enjoyment" of his free speech—indeed, it surely exacerbated the risk his rights would be compromised.

51. Second, Article 9 guarantees liberty and security of the person, specifying a series of rights: "[e]veryone has the right to liberty and security of the person" and "[n]o one shall be subjected to arbitrary … detention" (Art. 9(1)); "[a]nyone who is arrested … shall be promptly informed of any charges against him" (Art. 9(2)); "[a]nyone … detained on a criminal charge shall be brought promptly before a judge" (Art. 9(3)); "[a]]nyone who is deprived of his liberty by … detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention (Art. 9(4)); and "[a]nyone who has been the victim of unlawful … detention shall have an enforceable right to compensation" (Art. 9(5)).

52. As General Comment 35 elaborates: (1) "[t]he right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained"; (2) "States parties [must] take appropriate measures

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[94] UNHRC, GC 34 at para 7; See UNHRC, Communication No. 633/1995, UN Doc. CCPR/C/65/D/633/1995, ICCPR (views adopted on 7 April 1999) at paras 13.5–15.
[95] Complaint at 4–5, 25, 26.
[96] Complaint at 28.
[97] Complaint at 5.
[98] Complaint at 3.
[99] Complaint at 17.
[100] Complaint at 28.

in response to death threats against persons in the public sphere, and more generally [must] protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors"; and (3) "States parties must respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders."[101]

53. Yet again, the facts here are illustrative. Abarca—who was "detained for 8 days without charge"[102] and released because there was "no evidence" his protests disturbed public order[103]—was deprived each liberty and security of the person right described above: he was arbitrarily detained; arrested without charge; never brought before a judge; never brought before a court; and never paid compensation.[104] Further, to be not only beaten, but alongside one's wife and child, while she has a pistol held to her head, surely qualifies as intentional infliction of bodily and mental injury.[105] There has been no suggestion that "appropriate measures" were taken in response to the death threats against Abarca, who, as a "prominent spokesperson",[106] existed in the "public sphere."[107] Lastly, as a human rights defender, Abarca's vulnerability should have been all the more apparent and foreseeable.[108] And given the violent means used to suppress Abarca's rights, that suppression equally illustrates how his "safety" (s. 8(d) of the *Disclosure Act*) was likewise endangered.

2. Conduct that Offends *Charter* Values is "Wrongdoing" under ss. 8(d)-(e)

54. Several rights described above—e.g., life, liberty, and security of the person[109]—are also guaranteed by the *Charter*, the values of which inform the meaning of "wrongdoing" and the Commissioner's administrative decision-making.[110]

55. While somewhat novel, the relevance of *Charter* values to this appeal should not be controversial. To begin, the *Charter* is not being technically enforced, but is simply acting as an interpretive aid and administrative constraint on the exercise of

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[101] UNHRC, General Comment No. 35 (2014) on article 9 of the International Covenant on Civil and Political Rights on Liberty and security of person, UNCCPR, UN Doc. CCPR/C/GC/35 (16 December 2014) at para 9 [UNHRC, GC 35].
[102] Complaint at 28.
[103] Complaint at 5.
[104] *ICCPR*, art 9(1)–9(5).
[105] UNHRC, GC 35 at para 9.
[106] Complaint at 4.
[107] UNHRC, GC 35 at para 9.
[108] UNHRC, GC 35 at para 9.
[109] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 7.
[110] *Doré* at para 35; *Hincks* at para 32.

executive power. But even if the *Charter* were being fully enforced, each of the rights described here are guaranteed to "everyone", not "citizens." And relying on *Charter* values to inform Canada's investigation of wrongdoing committed by a Canadian embassy poses no jurisdictional concerns with Mexico—at most, it merely attaches "domestic consequences to events that occurred abroad"[111] (to the extent Canada's conduct within its embassy is even properly characterized as "abroad"[112]). Indeed, *Disclosure Act* investigations are, undoubtedly, a matter "within the authority of Parliament."[113] In any event, "comity cannot be invoked to allow Canadian authorities to participate in activities that violate Canada's international obligations", and relatedly, deference to principles of comity "ends where clear violations of international law and fundamental human rights begin."[114]

56. As discussed, the Embassy's conduct contributed to escalating violations of Abarca's human rights, and ultimately culminated in his foreseeable murder. These submissions have detailed how international obligations are triggered in this case—and those obligations set a minimum standard of protection under the *Charter*.[115] Further, the *Charter* has been interpreted with adequate breadth to capture such state conduct. In *PHS* (life), the Court observed that, in certain circumstances, where the state "creates a risk to health", the right to life is deprived—and that "the deprivation is even clearer" where the state "creates a risk not just to the health but also to the lives of the claimants."[116] In *Bedford* (security of the person), the Court held that only "a sufficient causal connection" between state conduct and prejudice is required, meaning, that the state conduct need not be "the only or the dominant cause of the prejudice." Indeed, the Court indicated that making a "lawful activity more dangerous" was enough. And the Court clarified that this was not the imposition of positive obligations, but rather, scrutiny of state conduct that "aggravate[s] the risk of .. violence and death."[117] Lastly, in *Khadr* (liberty), the Court opined that the state simply "contributing to" the deprivation of liberty—even where that deprivation is

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[111] *Hape* at para 60.
[112] *Amnesty Int'l Canada v Canada*, 2008 FC 336 at paras 258–261 aff'd 2008 FCA 401; *Foreign Missions and International Organizations Act*, SC 1991, c. 41.
[113] *Hape* at para 104.
[114] *Hape* at para 101, 52.
[115] *Hape* at para 55.
[116] *Canada (AG) v PHS Community Services Society*, 2011 SCC 44 at para 93; See also *Carter v Canada (AG)*, 2015 SCC 5 at para 62.
[117] *Canada (AG) v Bedford*, 2013 SCC 72 at paras 75–76, 87–88.

extraterritorial—is sufficient to trigger the *Charter*.[118] Consequently, while Canada may only have been indirectly complicit in Abarca's harassment, beatings, and murder, *Charter* values nevertheless reinforce the characterization of the Embassy's conduct in this case as "wrongdoing" under ss. 8(d) and (e) of the *Disclosure Act*.

D. Conclusion

57. The Commissioner held that "the information provided [in the Complaint] does not suggest that wrongdoing … was committed."[119] The Federal Court upheld that decision. In its view, while Abarca's surviving family and allies "would have liked the Embassy to have acted in a certain way", and while "perhaps Mr. Abarca would not have been murdered" had the Embassy acted differently, it was nevertheless "reasonable" for the Commissioner to refuse any investigation whatsoever.[120]

58. The basis for the Commissioner's conclusion bears repeating: the Canadian Embassy may provide "assistance" to Canadian companies abroad, and it did not "ignore" human rights concerns.[121] The work that "assistance" and "ignore" do in the Commissioner's reasoning can only be understood in their factual context—a factual context constructed, not from a comprehensive investigation, but from "extensively redacted" government materials that can only "glean part of the story."[122]

59. What "assistance" did the Embassy provide Blackfire? It had a "very close and supportive relationship with Blackfire" and relentlessly advocated on its behalf—even after Abarca's assassination—throughout Blackfire's escalating use of violence to suppress opposition to its mine.[123] Indeed, the Embassy's advocacy specifically included helping Blackfire deal with protest blockades.[124] And what did the Embassy know throughout this persisting campaign of support? It knew about tensions between Blackfire and the community in 2007, 2008, and 2009; it knew about the dangers to human rights defenders in Mexico; it knew Blackfire used its employees as "thugs" to suppress opposition; it received 1400 emails and letters from people alarmed at Abarca's "kidnapping … at the behest of Blackfire" by police; and it knew that the three men charged with Abarca's murder were associated with Blackfire.[125]

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[118] *Canada (Prime Minister) v Khadr*, 2010 SCC 3 at para 21.
[119] PSIC Decision at 3.
[120] Federal Court Reasons at paras 66-67.
[121] PSIC Decision at 2–3.
[122] Complaint at 3.
[123] Complaint at 14.
[124] Complaint at 11–12.
[125] Complaint at 10–12, 27–29.

This is the "assistance" the Embassy provided to Blackfire.

60. In stark contrast, how did the Embassy not "ignore" human rights concerns? When Abarca was arbitrarily detained for over a week in retaliation for leading protests against Blackfire's mine, the Embassy contacted, among others, Blackfire and the Canadian Chamber of Commerce to seek out information about his detention.[126] It also contacted the government of Chiapas "about the detention of Mr. Abarca, and expressed concerns about the challenges faced by Blackfire."[127] While the Embassy "intervened often with state officials on behalf of Blackfire", it never reached out to the local community, and only came into contact with them in July 2009, when that community protested at the Embassy.[128] This is how the Embassy did not "ignore" the human rights concerns raised—no risk assessments; no conditions on its support for Blackfire; no meaningful dialogue with local communities; no concern for integrity, other than the desire to minimize negative perceptions thereof by downplaying its knowledge of threats facing Abarca and its (public) involvement with the dispute, even after Abarca's assassination;[129] and all this, despite its obligations to respect human rights and to act with due diligence.

61. The Joint Interveners submit that such a legal threshold for wrongdoing—given the international and constitutional law relevant to, yet unaddressed in, the decisions below—is intolerable to even the most modest conception of integrity in the Canadian public service. As such, it is antithetical to the broad legislative aims of the *Disclosure Act* underpinning the foundation of Canada's democratic commitments.

PART IV – SUBMISSIONS ON COSTS AND ORDER SOUGHT

62. The Joint Interveners do not seek costs and request that no costs be awarded against them. The Joint Interveners do not request any orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Vancouver, this 4th day of December, 2020.

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[126] PSIC Decision at 3.
[127] Complaint at 6.
[128] Complaint at 6, 11–12.
[129] Complaint at 12–14.

PART V – LIST OF AUTHORITIES

TAB	DECISIONS
1	*Agnaou v Canada*, 2015 FCA 29
2	*B010 v Canada (Citizenship and Immigration)*, 2015 SCC 58
3	*Baker v Canada (Citizenship and Immigration)*, [1999] 2 SCR 817
4	*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42
5	*Canada (Attorney General) v Bedford*, 2013 SCC 72
6	*Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44
7	*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65
8	*Canada (Prime Minister) v Khadr*, 2010 SCC 3
9	*Carter v Canada (Attorney General)*, 2015 SCC 5
10	*Doré v Barreau du Québec*, 2012 SCC 12
11	*El-Helou v Courts Administration Service*, 2011 CanLII 93945
12	*Hincks v Gallardo*, 2014 ONCA 494
13	*Nevsun Resources Ltd. v Araya*, 2020 SCC 5
14	*R v Hape*, 2007 SCC 26
15	Sauvé *v* Canada (Chief Electoral Officer), 2002 SCC 68
16	*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1
17	*Swarath v Canada (Attorney General)*, 2015 FC 963
18	*Taylor-Baptiste v Ontario Public Service Employees Union*, 2015 ONCA 495
19	*Amnesty Int'l Canada v Canada*, 2008 FC 336

TAB	LEGISLATION & POLICIES
20	*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11
21	Foreign Affairs, Trade and Development Canada, *Values and Ethics Code* (23 May 2014)
22	*Foreign Missions and International Organizations Act*, SC 1991, c. 41
23	Government of Canada, *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders* (Ottawa, 2019)
24	*Public Servants Disclosure Protection* Act, SC 2005, c 46
25	Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Service* (1 September 2003)
26	Government of Canada, "Advancing Human Rights" (date modified: 10 November 2017), online: *Government of Canada*

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27	Robert McCorquodale & Penelope Simons, "Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law" (2007) 70:4 Mod L Rev 598
28	Rüdiger Wolfrum, "Legitimacy of International Law from a Legal Perspective: Some Introductory Considerations" in Volker Röben & Rüdiger Wolfrum, eds, *Legitimacy in International Law*, (Berlin / Heidelberg: Springer, 2008)
29	Ruth Sullivan, *Construction of Statutes*, 6th ed (Lexis Nexis, 2014)
30	Shin Imai, Leah Gardner & Sarah Weinberger, "The 'Canada Brand': Violence and Canadian Mining Companies in Latin America" (2017) Osgoode Leg Studies Research Paper No. 17/2017
31	Penelope Simons, "Canada's Enhanced CSR Strategy: Human Rights Due Diligence and Access to Justice for Victims of Extraterritorial Corporate Human Rights Abuses" (2015) 56:2 Can Bus LJ 167

TAB	INTERNATIONAL
32	Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II.124 (7 March 2006)

33	*International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, accession by Canada 19 May 1976)
34	International Law Commission, "Articles on the Responsibility of States for Internationally Wrongful Acts", Report of the International Law Commission on the Work of its 53rd session, August 2001, UNGA, 56th Sess Supp No 10, UN Doc. A/56/10(SUPP) (2001) at 32
35	Margaret Sekaggya, Report of the Special Rapporteur on the situation of human rights defenders, General Assembly, 66th Sess, UN Doc. A/66/203 (2011)
36	Organization of American States, American Declaration of the Rights and Duties of Man art. I, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992)
37	OSCE Office for Democratic Institutions and Human Rights, *Guidelines on the Protection of Human Rights Defenders* (10 June 2014)
38	UNCESCR, Concluding Observations on the Sixth Periodic Report of Canada, UN Doc. E/C.12/CAN/CO/6 (2016)
39	UNCESCR, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, UNCESCR, UN Doc. E/C.12/GC/24 (23 June 2017)
40	UNCESCR, Statement on the Obligations of States Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, UNCESCR, 46th Sess, UN Doc. E/C.12/2011/1 (20 May 2011)
41	UNCRC, General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, UNCRC, UN Doc. CRC/C/GC/16 (17 April 2013)
42	UNGA, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, GA Res. 53/144 (9 December 1998)
43	UNGA, *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc. A/810 (1948) 71.
44	UNHRC, Communication No. 633/1995, UN Doc. CCPR/C/65/D/633/1995, ICCPR (views adopted on 7 April 1999)
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47	UNHRC, General Comment 31: the Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004)
48	UNHRC, General Comment No. 24: General Comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, ICCPR, UN Doc. CCPR/C/21/Rev.1/Add.6 (11 November 1994)
49	UNHRC, General Comment No. 31, CCPR/C/21/Rev.1/Add. 13 (26 May 2004)
50	UNHRC, General Comment No. 34: Article 19: freedoms of opinion and expression, UN Doc. CCPR/C/GC/34 (12 September 2011)
51	UNHRC, General Comment No. 35 (2014) on article 9 of the International Covenant on Civil and Political Rights on Liberty and security of person, UNCCPR, UN Doc. CCPR/C/GC/35 (16 December 2014)
52	UNHRC, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights on the Right to Life, UNCCPR, UN Doc. CCPR/C/GC/36 (30 October 2018)
53	UNHRC, *Protecting Human Rights Defenders*, A/HRC/22/L.13 (15 March 2013)
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55	*Villagran Morales v Guatemala*, (The 'Street Children' Case) (2001) Inter-Am Ct of HR (Ser C) No 77
56	Hina Jilani, Report submitted by the Special Representative of the Secretary-General on human rights defenders, UNHRC, 4th Sess, UN Doc. A/HRC/4/37 (2007)
57	UNHRC, Communication No. 821/1998, UN Doc. CCPR/C/70/D/821/1998 (views adopted on 25 November 2000)
58	*Workers of the Hacienda Brasil Verde v Brazil* (2016), Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No. 318
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