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For immediate release

## **Supreme Court Harkat decision maintains fundamentally unfair process for non-citizens**

The International Civil Liberties Monitoring Group (ICLMG) and the Canadian Council for Refugees (CCR) are disappointed with the Supreme Court of Canada's decision in Harkat, which leaves in place a fundamentally unfair process that relies on secret evidence in deciding whether to deport a non-citizen, potentially to a risk of torture.

In its decision, the Supreme Court upheld as constitutional the security certificate scheme, finding that Special Advocates can adequately compensate for the failure to share with the persons concerned some of the evidence used against them.

The ICLMG and the CCR regret that this decision leaves in place unequal protections for non-citizens' basic rights. When these rights are at stake for citizens, such as in criminal proceedings, we do not tolerate the use of secret evidence. Non-citizens deserve an equal opportunity to know and respond to the evidence used against them. The Court did not engage with the discriminatory aspects of these provisions. The Court also failed to refer to international human rights law, which should provide a crucial framework for Canadian law.

Decisions made using secret evidence in immigration proceedings have dramatic consequences for the individual: a person found inadmissible on security grounds cannot make a refugee claim and is only eligible for a much narrower risk review, with a higher standard of proof. There is therefore a real possibility that affected persons will be sent back to face persecution, in violation of Canada's international human rights obligations. Because the definition of security inadmissibility in Canadian immigration law is very broad, those affected may include people who have never engaged in or promoted violence and who represent no threat to Canada's security.

In its ruling, the Court places the responsibility of ensuring a fair process on the judge hearing the case. This is an extremely challenging task, in a context where a person, whose life may be at stake, does not have access to all the evidence. This challenge is

faced not only by judges, but also by members of the Immigration and Refugee Board, as similar proceedings involving secret evidence are heard there.

The ICLMG and the CCR welcome the emphasis placed by the Court on ensuring, within the security certificate scheme, that the process is fair and that only evidence that would (not just could) endanger national security is excluded. Also welcome is the note that Supreme Court hearings should be held in public.

The ICLMG and the CCR intervened jointly in the case, represented by Barbara Jackman, Sharry Aiken and Andrew Brouwer.

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