Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 81/05; Petition 11.862
Session:	Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause:	Andrew Harte and Family v. Canada
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	24 October 2005
Citation:	Harte v. Canada, Petition 11.862, Inter-Am. C.H.R., Report No. 81/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: Lorne Waldman

I. SUMMARY

1. On October 18, 1997, the Inter-American Commission on Human Rights (hereinafter "Commission" or "IACHR") received a petition filed by Mr. Lorne Waldman, Barrister and Solicitor of the firm of Waldman and Associates of Canada (hereinafter "the Petitioner") against the State of Canada (hereinafter "Canada" or "the State"). The petition was presented on behalf of Andrew Harte (hereinafter "Mr. Harte" or "Harte") and his children Rachel and Levi Harte, who are minors.

2. Mr. Harte is a Guyanese national and permanent resident of Canada, while his two children are Canadian citizens, who were born in Canada subsequent to Mr. Harte's emigration there in 1980. At the time of the petition, Mr. Harte was a permanent resident of Canada who had been ordered deported by the State in June 1994 because of multiple convictions for criminal offences between 1987 and 1993. In 1995, Mr. Harte was certified by the State as a "danger to the public", which the Petitioner alleges deprived Mr. Harte of the right to appeal the deportation order. The Petitioner also alleges that the State has failed to take into account the interests of Mr. Harte's children during the legal processes of, or consequential to, the order of Harte's deportation and his certification as a "danger to the public". Mr. Harte was scheduled to be deported from Canada to Guyana on October 24, 1997. However, Mr. Harte went into hiding until he was apprehended and detained by the Canadian authorities in July 1998. Mr. Harte was subsequently released on bail by the Canadian authorities in 1999.

3. The Petitioner alleges that the State is responsible for violating the rights of Mr. Harte under the American Declaration of the Rights and Duties of Man (hereinafter "American

Declaration"), namely: the right to life, liberty and security of the person (Article I), the right to establish a family and to receive protection there-for (Article VI), the right to inviolability of home (Article IX), and the right to due process (Article XVIII). The Petitioner further alleges that the State is responsible for violating the same rights of Rachel and Levi Harte ("the Harte children"), with the exception of the right to life, liberty and security of the person under Article I of the Declaration.

4. The State argues that it has complied with its international human rights obligations and that the Petitioner's complaint fails to characterize any violations of the American Declaration of the Rights and Duties of Man. The State also claims that Mr. Harte has failed to exhaust domestic remedies. The State further contends that the petition is inadmissible principally because (a) Mr. Harte (and his children) failed to pursue available domestic remedies and/or; (b) Mr. Harte did not file his petition within the six months prescribed by Article 38 of the Commission's Regulations. Finally, the State claims that the petition is manifestly groundless because Mr. Harte and his children have not established a prima facie violation of Articles IX and XVIII of the Declaration.

5. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, the Commission has decided to declare the petition inadmissible in accordance with Article 31(1) of the Commission's Rules of Procedure for failure to exhaust domestic remedies.

II. PROCESSING BEFORE THE COMMISSION

6. The Commission acknowledged receipt of the Petitioner's petition on November 4, 1997 (as well as supplemental correspondence from the Petitioner dated October 23 1997 and October 27, 1997). By note of November 12, 1997, the Commission requested the State to stay the deportation of Mr. Harte to facilitate consideration of Petitioner's claims.

7. By note of January 09, 1998, the Commission initiated the processing of the matter by transmitting the pertinent parts of the denunciation to the State, with a response requested within 90 days. In the same note, the Commission reiterated its request to the State to stay the deportation of Mr. Harte, pending its consideration of the claims raised by the denunciation.

8. By note of May 05, 1998, the Commission reiterated its request to the State to provide the requested response within 30 days. On June 10, 1998, the Commission received a note from the State acknowledging receipt of the Commission's communications of January 09, 1998 and May 05, 1998. By this note, the State requested an extension of 90 days to respond to the petition. By note of August 05, 1998, the Commission granted the State an extension of 30 days to respond to the petition.

9. By note of July 31, 1998, the Commission granted precautionary measures in favor of Mr. Harte by requesting the State to stay the deportation of Mr. Harte "until it has had the opportunity to investigate the claims raised in the petition." By letter of August 17, 1998, the Commission informed the Petitioner of the grant of precautionary measures in favour of Mr. Harte.

10. By note dated September 15, 1998, the State transmitted its response to the petition and agreed to comply with the Commission's grant of precautionary measures and stay the deportation of Mr. Harte provided that "the Commission examines the admissibility of the petition at its next session and decides upon the admissibility within a reasonable time…." By communication dated October 20, 1998, the Commission transmitted the State's response to the Petitioner and requested observations thereon within 30 days.

11. By letter of November 20, 1998, the Petitioner submitted observations on the State's note of September 15, 1998, which the Commission thereafter transmitted to the State by note of November 30, 1998. The Commission requested the State to furnish its observations thereon within 30 days.

12. By letter of January 12, 1999, the Petitioner requested the Commission to convene a hearing during its next regular session regarding the admissibility of the petition. By communications to both parties of February 03, 1999, the Commission announced that it had scheduled a hearing for March 05, 1999 on the admissibility and merits of the petition at its next period of session (102nd period of Sessions). By note of February 26, 1999, the State advised of its intention to submit additional written submissions at the hearing.

13. The Commission duly convened the hearing on March 05, 1999, at which representatives of both parties made submissions on the admissibility and merits of the case. The Petitioner advised the Commission that Mr. Harte was unable to be present because he was in hiding in Canada. In any event, Mr. Harte was unable to afford to travel to the United States of America. The Commission decided to adjourn the hearing of the matter pending the delivery of the Canada Supreme Court's judgment in the case of Mavis Baker v Canada (Minister of Citizenship and Immigration[FN1]). This case was said to be pertinent to the petitioner's case insofar as it addressed similar issues, particularly the rights of children born in Canada to persons who (a) were under order of deportation; and (b) had applied to remain in Canada on humanitarian and compassionate grounds under Canadian immigration law.

[FN1] The judgment was ultimately delivered by the Supreme Court of Canada in July 1999. It is reported at [1999] 2 S.C.R. 817 Baker v. Canada

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14. By note of January 24, 2000, the State informed the Commission that the Supreme Court of Canada had delivered its judgment in the Mavis Baker case, and submitted a copy of the decision for the Commission's consideration.

15. By letter of March 23, 2000, the Commission transmitted the pertinent parts of the State's note of January 24, 2000 to the Petitioner, requesting observations within 45 days. The Petitioner submitted its observations by letter of May 03, 2000. The Petitioner submitted, inter alia, that Mr. Harte was indigent, and therefore unable to pay the fee (of Can$500.00) prescribed by the State for an application to remain in Canada on humanitarian and compassionate grounds. By communication of June 26, 2000, the Commission transmitted the pertinent parts of the

Petitioner's observations to the State. The Commission requested the State to submit its observations thereon within 30 days.

16. By note of September 06, 2000, the State submitted further observations, which included rejecting the Petitioner's claim that Mr. Harte was unable to afford the cost of making an application to remain in Canada on humanitarian and compassionate grounds.

17. By note to the State of September 11, 2000, the Commission asked the State whether it would be possible for Canada to waive the requisite application fee, given Mr. Harte's indigence.

18. By letter of October 05, 2000, the Petitioner submitted further observations, including a statutory declaration by Mr. Harte detailing the circumstances of his indigence. The Commission transmitted the pertinent parts thereof to the State by note of October 18, 2000 and requested the State's observation within 30 days.

19. By letter of March 08, 2001, the Petitioner updated the Commission, submitting that Mr. Harte was still unable to pay the requisite fee and that the State was unwilling to waive it.

20. By letter of May 22, 2001, the Commission acknowledged receipt of the Petitioner's letter of March 08, 2001, and advised the Petitioner of changes to the Commission's Rules of Procedure with respect to the registration of petitions and cases.

21. By letter of May 29, 2002, the Petitioner advised the Commission that he had asked Mr. Harte to visit his office so that he (the Petitioner) could update the Commission on the status of the case.

22. By letter to the Petitioner of December 26, 2002, the Commission reminded the Petitioner to provide an update. The Commission further advised that if the Petitioner did not reply within 60 days, it would assume that no further action on the part of the Commission was warranted.

23. By letter received by the Commission on October 15, 2003, the Petitioner informed the Commission that he had finally made contact with Mr. Harte and that the status quo remained the same, and that Mr. Harte continued to be solely responsible for the care of his two children.

24. By note to the State of April 16, 2004, the Commission transmitted pertinent parts of the additional information submitted by the Petitioner and requested the State's observations within one month.

25. By note of October 01, 2004, the State submitted its observations on the Petitioner's submissions received by the Commission on October 15, 2003, requesting that the Commission consider the admissibility of the petition at its next session or withdraw its precautionary measures to stay Mr. Harte's removal from Canada. The pertinent parts of the State's observations were transmitted to the Petitioner under cover of a letter of November 18, 2004, with a request for a response within 14 days.

26. The Petitioner replied to the Commission by letter of January 05, 2005, reiterating previous submissions, including the inability of Mr. Harte to pay the requisite fee for an application to remain in Canada on humanitarian and compassionate grounds.

27. As of the date of this Report, the Commission has not received any further observations on the petition from the parties.

III. POSITIONS OF THE PARTIES

A. The Petitioner

28. The Petitioner states that on June 1994, the Canadian government ordered the deportation of Mr. Harte following multiple criminal convictions (including possession of narcotics (marijuana), breaking and entering, and dangerous operation of a vehicle). These convictions occurred in 1987, 1988, 1990, 1992 and 1993. The deportation order was initially made by an Immigration Adjudicator pursuant to section 27 (1) of Canada's Immigration Act, which authorizes the deportation of permanent residents convicted of offences punishable by five or more years of imprisonment. At the time of Mr. Harte's petition, he was due to be deported on October 24, 1997. Mr. Harte however did not report for deportation on that date, but was subsequently apprehended by the Canadian authorities in July 1998 and detained pending deportation. In February 1998, Mr. Harte applied for a 'Minister's permit' to allow him to remain in Canada. The State denied his application in August 1998, stating that the proper procedure was an application to remain in Canada on humanitarian and compassionate grounds, pursuant to section 114 (2) of Canada's Immigration Act. The Petitioner contends (in reply to the State) that Mr. Harte had neither the money nor access to legal aid to pursue judicial review of this decision.

29. The Petitioner contends that at the time of the deportation order, Canada's Immigration Act provided that permanent residents (like Mr. Harte) had a right to appeal such an order to the Immigration and Refugee Board, Appeal Division. Mr. Harte duly lodged such an appeal in July 1994. However, in 1995, the Immigration Act was amended to give the Immigration Minister the power to certify a permanent resident (who is subject to a deportation order) as a danger to the public. According to this amendment, once a person is so certified, the Appeal Division of the Immigration and Refugee Board would lose its jurisdiction to hear an appeal. Mr. Harte was duly certified by the Immigration Minister as a danger to the public in 1995, and therefore lost his right of appeal. Prior to this certification, the State notified Mr. Harte that the Minister was considering certifying him, and he was given a period of 15 days to make submissions to the Minister. According to the Petitioner, Mr. Harte did not have the resources to hire a lawyer to assist him in making the submissions, nor was he able to access legal aid to do so. Without legal assistance, Mr. Harte ultimately made incomplete submissions[FN2] to the Minister, who nevertheless certified Mr. Harte as "a danger to the public". According to the Petitioner, Mr. Harte's submissions to the Minister did not contain any references to the interests or welfare of his children. With respect to the Harte children, the Petitioner submits that the decision to deport Mr. Harte has grave emotional consequences for their well-being because (a) the children's mother, while a resident of Canada, is a schizophrenic, and unable to look after the children; (b) Mr. Harte is fully responsible for their care and upbringing, and lacks the resources and capacity

to care for them in Guyana; (c) Mr. Harte has no family or social support in Guyana to help to care for the children.

[FN2] As a result of not having legal assistance, the Petitioner's petition of October 15, 1997 (page 2) indicates that the Mr. Harte's submissions excluded "highly relevant information related to the likelihood that he might commit another offence and the circumstances leading to his first difficulties with the law", as well as "psychological reports which are usually provided in these cases setting out the likelihood of further criminal activity." However, see page 6 of the Petitioner's submission of November 20, 1998 (in response to the State's observations of September 15, 1998) where the Petitioner states that Mr. Harte failed to make submissions to the Minister on the issue of danger because he lacked the legal aid to make such a submission.

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30. The Petitioner claims that Mr. Harte was similarly denied legal aid to pursue an application to Federal Court of Canada (Trial Division) for judicial review of the decision to certify him. According to the Petitioner, Mr. Harte did make an application for judicial review without legal assistance, but this application was dismissed in August 1996, because of "failure to properly file the necessary documentation". According to the Petitioner, an applicant for judicial review is obliged to file a memorandum of argument setting out the grounds for the application, which is considered by the Federal Court. The Petitioner states that there is no oral hearing if the application is dismissed, and that notification of the dismissal is sent by registered mail to the applicant's counsel or the last known address of the applicant (if unrepresented by counsel). The Petitioner alleges that Mr. Harte only became aware of this decision in July or August 1997, when he was so informed by a Canadian immigration officer. The Petitioner claims that Mr. Harte was deprived of the right to due process insofar as he was unable to appeal the deportation order or to access the legal assistance necessary to challenge his certification as a "danger to the public".

31. The Petitioner further contends that (a) there is no general right to legal aid in Canada for applications for judicial review of most immigration decisions (including deportations); (b) legal aid is granted by provincial legal aid agencies on a discretionary basis; (c) the discretion to grant or withhold legal aid does not take into account humanitarian and compassionate factors in considering an application by a person declared to be a danger to the public.

32. The Petitioner submits that the threatened deportation of Mr. Harte, and the processes leading up to the deportation order expose Mr. Harte and his children to violations of the right to security of the person (Article 1 of the Declaration); the right to establish family and to receive protection therefor (Article VI); and the right to inviolability of home (Article IX). According to Petitioner these rights would be violated if Mr. Harte is deported and therefore forced to leave his children in Canada, or take them to Guyana where he lacks the resources to maintain himself or the children. The Petitioner alleges that the right to due process (Article XVIII) has been violated by denying Mr. Harte the means of judicially challenging the deportation order or the ministerial certification. With respect to the Harte children, the Petitioner alleges that they have been entirely denied due process, as they have not had the benefit of judicial consideration of their rights or interests during the deportation proceedings against Mr. Harte.

33. The Petitioner also claims that Mr. Harte has exhausted domestic remedies, or has been denied access to the remedies under domestic law or has been prevented from exhausting them, in respect of the allegations raised before the Commission, and therefore that his petition is admissible. Alternatively, the Petitioner contends that most, if not all of the remedies available are incapable of remedying the alleged violations.

34. The Petitioner denies the State's claim that Mr. Harte's petition is inadmissible for failure to submit it within the six month period prescribed by the Commission's Rules of Procedure. While the Petitioner acknowledges that the petition was submitted more than a year after the Federal Court's decision, he contends that Mr. Harte only learned of the dismissal when it was communicated to him by an immigration officer in July 1997. Accordingly, the Petitioner claims that the petition was submitted within the prescribed period because it was filed within six months of Mr. Harte being notified of the decision of the Federal Court.[FN3]

[FN3] The Petitioner further explains that applications for judicial review in the Federal Court of Canada require the applicant to make a written application for leave (for judicial review), accompanied by a memorandum of argument setting out the grounds for the application. The Petitioner adds that there is no oral hearing at which Mr. Harte could be present and be directly notified of the court's decision; notification of dismissal of an application is sent by registered mail to the applicant's last known address or to the address of his lawyer (if the applicant has one). The Petitioner claims that Mr. Harte received no such notification.

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35. With respect to Mr. Harte, the petitioner submits that all domestic remedies have been exhausted, as the last stage in possible legal proceedings was the application for judicial review (which was dismissed). The petitioner similarly submits that domestic remedies with respect to the children have been exhausted on the basis that (a) in the entire legal procedure leading up to the deportation order, there has no been no consideration of the interests of the children, and that the children have no right to have their interests considered at any point; (b) the Appeal Division of the Immigration and Refugee Board was deprived of the jurisdiction to consider the impact of Mr. Harte's deportation on his children as a consequence of the ministerial certification; (c) the Minister of Immigration is not required to consider the interests of the children prior to certifying that Mr. Harte is a danger to the public; and (d) on application for judicial review of the ministerial decision (to certify Mr. Harte), the Federal Court has no jurisdiction to consider the interests of the children.

36. In response to the State's argument that Mr. Harte has failed to apply to remain in Canada on "humanitarian and compassionate grounds", the Petitioner acknowledges that the Canadian Immigration Act (section 19) provides for such an application. However the Petitioner dismisses this as a possible remedy for Mr. Harte on the ground that this provision does not apply to permanent residents who have been declared inadmissible. In any event, the Petitioner contends that even if Mr. Harte was eligible for consideration under this provision, no immigration officer is likely to give Mr. Harte favourable consideration, in light of the ministerial certification that he is a danger to the public. Further, the Petitioner claims that Mr. Harte cannot afford the

Can$500 fee required for this application. In response to the State's claim that Mr. Harte was able to raise Can.$15,000[FN4] for a bail bond, the Petitioner states that this money was raised principally by means of a loan taken out by Mr. Harte's mother, who is unable to supply any further financial assistance to him[FN5].

[FN4] In the Petitioner's submission of October 05, 2000, the amount of the bond is stated as Can.$5000.00, and not Can.$15,000.00.
[FN5] This is documented in a statutory declaration sworn by Mr. Harte on October 05, 2000, a copy of which was transmitted with the submission of October 05, 2000 (supra).

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37. With respect to the State's claim that Mr. Harte failed to litigate violations of his rights under the Canadian Charter of Rights and Freedoms, the Petitioner contends that this does not constitute and effective or available remedy, because (a) the Ontario (Provincial) Court (which has primary jurisdiction over actions brought under the Charter) lacks jurisdiction in immigration matters, even if they involve possible Charter issues; and (b) in previous cases, the State has consistently argued that the only proper (and exclusive) forum for immigration matters is the Federal Court of Canada. The Federal Court, according to the Petitioner, lacks jurisdiction over causes of action arising under the Charter. The Petitioner contends that this argument has found favor before the Supreme Court of Canada (in the 1994 case of Reza[FN6]). In any event, the Petitioner alleges that Mr. Harte lacked the financial resources to pursue such a remedy and further, that Mr. Harte was ineligible to receive legal aid for this purpose.

[FN6] Reza v. Canada [1994] 2 S.C.R 394

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38. With respect to the Harte children, the Petitioner denies the State's allegation that they have failed to exhaust domestic remedies, contending that Federal Court of Canada has ruled that minors have no standing before the Canadian courts with respect to immigration matters, and that they had no standing to intervene at any stage of the immigration process, including the Minister's decision to declare Mr. Harte a danger to the public. More particularly, the Petitioner alleges that the Harte children had no right to challenge the Minister's decision by judicial review. According to the Petitioner, as a result of the 1999 Supreme Court decision in Baker, minors are allowed input into applications (with respect to their parents) for leave to remain on humanitarian and compassionate grounds. However, the Petitioner notes that this input is only possible if such an application is made, which has not been done in the case of Mr. Harte for the reasons stated above. With respect to the State's claim that the Harte children have failed to exhaust remedies available under the Canadian Charter of Rights and Freedoms, the Petitioner relies on the 1999 Ontario Court of Appeal case of Francis v Minister of Citizenship and Immigration[FN7]. The Petitioner argues that this case demonstrates that a remedy under the Charter is unavailable to the Harte children, and that, in any event, the children lack the resources to pursue such a remedy, assuming its availability.

[FN7] Delivered on October 19, 1999; no citation supplied by Petitioner
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39. Based upon the foregoing, the Petitioner argues that the State's domestic laws have not afforded due process of law for the protection of the rights that Mr. Harte alleges before the Commission have been violated. Further the Petitioner contends that Mr. Harte and his children have been denied access to remedies under domestic law or have been prevented from exhausting them. Accordingly, the Petitioner contends that the admissibility of the petition should not be barred by the requirement for exhaustion of domestic remedies.

40. The Petitioner also indicates that the petition does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member.

41. Finally, the Petitioner asserts that the petition tends to establish violations of the American Declaration and is not manifestly groundless or out of order. In this regard, the Petitioner argues on the merits of the petition that the State is responsible for violations of Mr. Harte's rights under Articles I, Article VI, Article IX, and Article XVIII of the American Declaration and that the State is responsible for violations of the Harte children under Articles VI, Article IX, and Article XVIII of the American Declaration.

B. The State

42. The State contends that the petition is inadmissible principally because (a) Mr. Harte (and his children) failed to pursue available domestic remedies and/or; (b) the petition was not filed within the six month limit prescribed by Article 38 of the Commission's Rules of Procedure. Moreover, the State further contends that the petition is manifestly groundless because Mr. Harte and his children have not established prima facie violations of Articles IX and XVIII of the Declaration.

43. With respect to Mr. Harte, the State contends that he failed to exhaust domestic remedies by failing to:

a) file submissions to the Minister of Citizenship and Immigration in the course of the determination that he is a danger to the public;
b) pursue a timely application for leave and judicial review of the decision of the Minister of Citizenship and Immigration (that he is a danger to the public) or the preceding deportation order;
c) apply for 'humanitarian and compassionate' exemption from the regular requirements of the Immigration Act;
d) seek relief for alleged violations of his rights under the Canadian Charter of Rights and Freedoms;
e) to apply for leave for judicial review of the decision to refuse him a 'Minister's permit'.

44. With respect to the Harte children, the State contends that neither Levi nor Rachel have pursued domestic remedies available to them; in particular, that they have failed to seek any

relief for alleged violations of their rights under the Canadian Charter of Rights and Freedoms before the Canadian courts.

45. The State denies that Mr. Harte was indigent or that that legal aid was unavailable to Mr. Harte for the purpose of making "danger to the public" submissions to the Minister or for applying for judicial review of the subsequent determination of the Minister. The State contends that "fully state funded counsel and services in Legal Aid Clinics were available to assist Mr. Harte" in this regard. The State argues that Mr. Harte has not furnished any evidence of his indigence or of the refusal of legal aid agencies to grant him legal aid. Accordingly, the State concludes that Mr. Harte was not prevented from invoking and exhausting domestic remedies on account of his indigence or lack of legal aid.

46. The State further argues that Mr. Harte has not exhausted the remedy of applying to the Canadian authorities to be permitted to remain in Canada on humanitarian and compassionate grounds, pursuant to section 114 (2) of Canada's Immigration Act. The State dismisses the Petitioner's claim that Mr. Harte was unable to afford the requisite fee of Can.$500, citing the fact that Mr. Harte was able to raise a bail bond of Can. $15,000.00 through members of his family and a family friend.

47. With respect to the denial of a Minister's permit to Mr. Harte, the State argues that it was open to Mr. Harte to contest this decision by way of judicial review. The State contends that this is an available remedy has not been pursued by Mr. Harte.

48. The State also points out that Mr. Harte failed to avail himself of available remedies under Canadian Charter of Rights and Freedoms. In particular, the State contends that "Mr. Harte could have asked, in the course of his application, for judicial review for declaratory relief on the basis that the decision or order made by the immigration authorities were contrary to the Canadian Charter of Rights and Freedoms…."

49. The State further contends that the petition filed on behalf of Mr. Harte is inadmissible because it was filed outside of the six-month period prescribed by Article 38 of the Commission's Rules of Procedure. In this regard, the State argues the petition was filed in October 1997 more than a year after the decision of the Federal Court of Canada (in August 1996) dismissing Mr. Harte's application for judicial review of the ministerial decision declaring him a 'danger to the public'. The State argues that the decision of the court was duly conveyed to Mr. Harte by registered mail to his last known address, and that if he failed to advise the court of any change in his address, then he ought not to be excused for a delay for which he is solely responsible.

50. With respect to the complaints of the Harte children, the State argues that they have failed to pursue any remedies under the Canadian Charter of Rights and Freedoms, and that the complaints should accordingly be held to be inadmissible. In particular, the State argues that it was open to the children to challenge the ministerial decision to deport Mr. Harte and to declare him a danger to the public.

51. Finally, the State asserts that the petition is manifestly groundless for failure to establish prima facie violations of Articles I, VI, IX, and XIII. The State argues that in accordance with

Article 41 of the Commission's Rules of Procedure, the Commission should find the petition to be inadmissible for failing to contain facts that tend to establish a violation of the American Declaration.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission ratione personae, ratione loci, ratione temporis and ratione materiae.

52. Upon considering the record before it, the Commission considers that it has the competence ratione personae to entertain the claims in the present petition. In accordance with the terms of Article 23 of the Commission's Rules of Procedure, the Petitioner is authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. Mr. Harte is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commission's Statute[FN8] and Article 49 of the Commission's Rules of Procedure. Canada has been subject to the jurisdiction of the Commission as a Member State of the OAS that deposited its instrument of ratification of the OAS Charter on January 08, 1990.[FN9] The Commission notes that the American Declaration became the source of legal norms for application by the Commission[FN10] upon Canada becoming a member State of the Organization of American States in 1990.

[FN8] Article 20 of the Commission's Statute provides as follows:
In relation to those member states of the Organization that are not parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in article 18:
(a) To pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the rights and Duties of Man;
(b) To examine communications submitted to it and any other available information, to address the government of any member state not a Party to the Convention for information deemed pertinent by this Commission, and to make recommendations to it, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights; and,
(c) To verify, as a prior condition to the exercise of the powers granted under subparagraph b. above, whether the domestic legal procedures and remedies of each member state not a Party to the Convention have been duly applied and exhausted.
[FN9] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Regulations of the Inter-American Commission on Human Rights, Arts. 26, 51-54; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A No. 10 (1989), paras. 35-35; I/A

Comm. H. R., James Terry Roach and Jay Pinkerton v. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87 paras. 46-49
[FN10] I/A Court H.R., Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), 14 July 1989.
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53. Given that the petition alleges violations of rights protected under the American Declaration of the Rights and Duties of Man that have taken place in the territory of a State Party, the Commission concludes that it has the competence ratione loci to take cognizance of it.

54. Further, the Commission has the competence ratione temporis to examine this matter. The petition is based on facts alleged to have occurred beginning in 1994, at which time the obligations undertaken by the State under the American Declaration were in effect.

55. Finally, inasmuch as the Petitioner has filed complaints alleging violations of Articles I, VI, IX, and XVIII of the American Declaration, the Commission is competent ratione materiae to examine the substance of the complaints.

1. Duplication of proceedings and res judicata

56. The Petitioner has indicated that his petition does not essentially duplicate a petition pending or already examined and settled by the Commission or by another international governmental organization of which the State concerned is a member. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioner's claims under Article 33 of the Commissions Rules of Procedure.

2. Time period for submission of the petition

57. Pursuant to Article 32(1) of the Commission's Rules of Procedure, the Commission must refrain from taking up petitions that are lodged after the six-month period following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.

58. In the instant case, the petition was lodged with the Commission on October 18, 1997. However, the State contends that the petition is inadmissible because it was lodged more than a year after the Federal Court of Canada dismissed Mr. Harte's application for judicial review in August 1996. The State argues that the decision of the court was duly conveyed to Mr. Harte by registered mail to his last known address. While the Petitioner acknowledges that the petition was submitted more than a year after the Federal Court's decision, he contends that Mr. Harte did not receive this mail (apparently due to change of address) and that Mr. Harte only learned of the court's decision when an immigration officer communicated it to him in July 1997. The State counters that if Mr. Harte failed to advise the court of any change in his address, then he ought not to be excused for a delay for which he is solely responsible.

59. Accordingly, the Petitioner claims that the petition was submitted within the prescribed period because it was filed within six months of Mr. Harte being notified of the decision of the Federal Court.[FN11]

[FN11] The Petitioner further explains that applications for judicial review in the Federal Court of Canada require the applicant to make a written application for leave (for judicial review), accompanied by a memorandum of argument setting out the grounds for the application. The Petitioner adds that there is no oral hearing at which Mr. Harte could be present and be directly notified of the court's decision; notification of dismissal of an application is sent by registered mail to the applicant's last known address or to the address of his lawyer (if the applicant has one). The Petitioner claims that Mr. Harte received no such notification.

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60. The issue to be resolved by the Commission is whether, for the purpose of the Commission's Rules of Procedure, notification[FN12] of the Federal Court's decision occurred in August 1996 as claimed by the State or in July 1997, as claimed by the Petitioner. In resolving this issue, the Commission notes that there is no dispute on the legal modus operandi of the Federal Court with respect to how its decisions are conveyed to unsuccessful applicants for judicial review. However, the Commission notes that the State has not offered any documentary evidence to support its claim that the court decision was actually communicated to Mr. Harte by registered mail as claimed. In this respect, the State's submissions on this issue merely assume that the decision was issued by registered mail, in accordance with the Court's rules. The State offers no corroborating evidence in this regard, such as a copy of the registered letter issued by the Federal Court or proof of its transmission to Mr. Harte's known address.

[FN12] By way of contrast, Article 35 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, provides that the European Court of Human Rights "may only deal with [a communication] after all domestic remedies have been exhausted…. and within a period of six months from the date on which the final decision was taken."

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61. In the absence of any such corroborating evidence, the Commission is not persuaded that notification of Federal Court's decision occurred in August, as claimed by the State. Given the submissions of both parties, there is no doubt that an agent of the State directly communicated the court's decision to Mr. Harte in July 1997. For the purpose of the Commission's Rules of Procedure, the Commission finds that Mr. Harte was notified of the Federal Court's decision in July 1997. The Commission accordingly concludes that the Petitioner's petition was lodged within the six month period prescribed by Article 32 (1) of the Commission's Rules of Procedure.

3. Exhaustion of domestic remedies

62. Article 31(1) of the Commission's Rules of Procedure specifies that in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic

legal system have been pursued and exhausted in accordance with generally recognized principles of international law. Article 31(2) of the Commission's Rules of Procedure, however, specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

63. Additionally, the Inter-American Court of Human Rights has observed that domestic remedies, in order to accord with generally recognized principles of international law, must be both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they are designed.[FN13]

[FN13] I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C. No 4, (1988),
paras. 64-66.

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64. Further, when the petitioner alleges that he or she is unable to prove exhaustion, Article 31(3) of the Commission's Rules of Procedure provides that the burden then shifts to the State to demonstrate that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the record.[FN14]

[FN14] See also I/A Court H.R., Velasquez Rodriguez Case, Merits, Judgment of July 29, 1988, Ser. C Nº 4, para. 59.

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65. The jurisprudence of the inter American system also makes clear that the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, because the rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had an opportunity to remedy them by internal means.

66. The Commission has previously shared the view of the European Court of Human Rights that in accordance with general principles of international law, a petitioner need not exhaust domestic remedies if on the evidence such proceedings would be obviously futile or have no reasonable prospect of success.[FN15]

[FN15] See e.g. Martinez-Villareal v. US, Case 11.753, Report No. 108/00, Annual Report of the IACHR 2000, para. 70, citing Eur. Court H.R., De Wilde, Oomas and Versyp Cases, June 10, 1971, Publ. E.C.H.R. Ser. A, Vol. 12, p. 34, paras. 37, 62 (finding that at the times pertinent to the complaint, recourse to the appellate courts for the matter raised by the applicants would be

inadmissible according to "settled legal opinion"); Eur. Court H.R., Van Oosterwijck v. Belgium, Judgment (Preliminary Objections), November 6, 1980, Case Nº 7654/76, para. 32, 37 (finding the applicant's case to be inadmissible for failure to exhaust domestic remedies, due in part to the absence of any decision on the issue from the Court of Cassation in Belgium that "could be regarded as likely to render obviously futile an appeal based upon the Convention or on arguments to the same or like effect").

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67. Canada is not a party to the American Convention. However, for purposes of analysis the Commission refers to the Velasquez Rodriquez Case[FN16] in which the Inter-American Court construed Article 46 of the American Convention on the issue of exhaustion of domestic remedies, which provisions are similar to Article 31 of the Commission's Rules of Procedure. In the Velasquez case the Inter-American Court stated that for the rule of prior exhaustion of domestic remedies to be applicable, the domestic remedies of the State concerned must be available, adequate and effective in order to be exhausted. The Court also opined that upon the party raising that allegation of non-exhaustion because of the unavailability of due process in the State, the burden of proof shifts to "the State claiming non-exhaustion and it has an obligation to prove that domestic remedies remain to be exhausted and that they are effective."[FN17]

[FN16] Judgment of July 29, 1988 pages 112-113, paras 56-67citing (Velasquez Rodríguez Case Preliminary Objections, supra 23, para.88), Series C: Decisions and Judgments Nº4
[FN17] Id. Supra para 59-60.

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68. Having regard for the particular facts under consideration, the Inter American Court has also observed that "Once a State Party has shown the existence of domestic remedies for the enforcement of a particular right guaranteed by the Convention, the burden of proof shifts to the complainant, who must then demonstrate that the exceptions provided for in Article 46(2)[FN18] are applicable, whether as a result of indigence … or any other applicable circumstance" and that "...it must also be shown that the rights in question are guaranteed in the Convention and that legal representation is necessary to assert or enjoy those rights"[FN19].

[FN18] This provision is replicated (mutatis mutandis) in Article 31 (2) of the Commission's Rules of Procedure. This provision applies to Canada (a non-signatory of the American Convention) by virtue of Article 50 of the Commission's Rules of Procedure.
[FN19] Series A No. 11 Advisory Opinion OC-11/90 Of August 10, 1990 Exceptions To The Exhaustion Of Domestic Remedies (Art. 46(1), 46(2)(A) And 46(2)(B) American Convention On Human Rights), para. 41, page 9.

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69. In the present case, the Petitioner has argued that that the petition is admissible because Mr. Harte and his children have either exhausted domestic remedies or have been denied access to the remedies under domestic law in respect of the complaints contained in the petition. In particular, the Petitioner argues that Mr. Harte was denied access to remedies on account of his

indigence and inability to access legal aid at critical junctures of domestic legal processes. Finally, the Petitioner contends that most, if not all of the remedies recommended by the State are ineffective.

70. On the contrary, the State has opposed the admissibility of the petition on the ground that neither Mr. Harte nor his children have exhausted available domestic remedies, and that Mr. Harte has failed to demonstrate that he was indigent or that he was refused legal aid when requested.

71. While Canada is not a party to the American Convention, the Commission, for purposes of analysis, refers to the Inter American Court's Advisory Opinion OC-11-90[FN20] in which the Court construed the exceptions to the exhaustion of domestic remedies under Article 46(1), (2)(a) and (2)(b) of the American Convention with particular regard for petitioners who may be denied access to domestic remedies due to indigence or lack of access to legal assistance.

[FN20] Series A No. 11 Advisory Opinion OC-11/90 Of August 10, 1990 Exceptions To The Exhaustion Of Domestic Remedies (Art. 46(1), 46(2)(A) And 46(2)(B) American Convention On Human Rights).

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72. Generally, the Court observed that "merely because a person is indigent does not, standing alone, mean that he does not have to exhaust domestic remedies" and that "[t] he language of Article 46(2) suggests that whether or not an indigent has to exhaust domestic remedies will depend on whether the law or the circumstances permit him to do so"[FN21]. The Court noted that these issues must be considered within the context of the provisions of Articles (1)[FN22], 24[FN23] and relevant parts of Article 8[FN24] of the Convention.

[FN21] Id. see para. 20, page 5

[FN22] Article 1(1) (Obligation to Respect Rights). The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

[FN23] Article 24 (Right to protection of law). All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

[FN24] Article 8 (Right to fair trial). The relevant portions of this Article cited by the Court are as follows:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

3. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
4. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

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73. The Court made the following pertinent observations in this regard:

"… if legal services are required either as a matter of law or fact in order for a right guaranteed by the Convention to be recognized and a person is unable to obtain such services because of his indigency, then that person would be exempted from the requirement to exhaust domestic remedies. The same would be true of cases requiring the payment of a filing fee. That is to say, if it is impossible for an indigent to deposit such a fee, he cannot be required to exhaust domestic remedies unless the state provides some alternative mechanism"[FN25];

"… Even in those cases in which the accused is forced to defend himself because he cannot afford legal counsel, a violation of Article 8 of the Convention could be said to exist if it can be proved that the lack of legal counsel affected the right to a fair hearing to which he is entitled under that Article.[FN26]"

[FN25] Id. Para 30, page 7
[FN26] Id. Para 27, page 5

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74. At paragraph 38 of its opinion, the Court concluded: "In addressing this issue it is clear that the test to be applied must be whether legal representation was necessary in order to exhaust the appropriate remedies and whether such representation was, in fact, available."

75. The Commission considers that this foregoing jurisprudence is applicable to the State of Canada as member state of the Organization of American States, having particular regard for the Inter American Court's views of the American Declaration as a source of obligations for member States of the Organization of American States[FN27].

[FN27] At paragraphs 45 of its Advisory Opinion OC-10/89 July 14, 1989 (Interpretation Of The American Declaration Of The Rights And Duties Of Man Within The Framework Of Article 64 Of The American Convention On Human Rights) the Court observed that:
For the member states of the Organization, the Declaration is the text that defines the human rights referred to in the Charter. Moreover, Articles 1(2)(b) and 20 of the Commission's Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.

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76. Having regard to the foregoing jurisprudence and the submissions of the parties, the main questions to be considered by the Commission appear to be:

a) Was Mr. Harte prevented from invoking and exhausting domestic remedies by indigence and/or lack of access to legal representation?
b) Generally, do the domestic remedies under consideration satisfy the criterion of being available, adequate and effective?
c) Have the Harte children exhausted domestic remedies or are they excused from demonstrating exhaustion of domestic remedies?

Analysis of exhaustion of remedies by Mr. Harte

77. It is the State's case that remedies were available to Mr. Harte that he failed to invoke. While the Petitioner challenges the efficacy of these remedies, the principal response to the State is that Mr. Harte was unable to invoke these remedies due to indigence and lack of legal assistance. On the hypothesis that the State has demonstrated the availability of adequate and effective remedies, the burden shifts to the Petitioner to demonstrate that the exceptions provided for in Article 46(2) of the American Convention[FN28] are applicable, whether as a result of indigence or lack of legal representation. On the hypothesis that Mr. Harte did require legal representation to exhaust domestic remedies, the Commission must now consider whether such representation was available to Mr. Harte and/or whether he was prevented from accessing legal representation and/or domestic remedies because of indigence.

[FN28] This provision is replicated in Article 31(2) of the Commission's Rules of Procedure, and is applicable to non-Convention countries like Canada by virtue of Article 50 of the same Rules of Procedure.
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78. Issue of indigence/access to legal representation. Mr. Harte's claim of indigence relates to his alleged inability to access legal representation generally and, more particularly, with respect to his alleged inability to pay the fees required by the State to pursue an application to remain in Canada on humanitarian and compassionate grounds. In a statutory declaration[FN29] submitted to the Commission on his behalf, Mr. Harte deponed that he is unemployed and that his bail bond was posted by virtue of a loan raised by his mother and not by his own resources. Mr. Harte also deponed that he and the children reside with his mother, where he is the solely responsibility for their care, because their mother is unable to do so because of mental illness. The Commission received no further information or evidence in support of Mr. Harte's claim of indigence.

[FN29] Dated October 05, 2000
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79. For the State, the ability of Mr. Harte to raise money for a bail bond signifies a capacity to fund (at least) the payment of the fee required for an application for relief on humanitarian and compassionate grounds[FN30]. While Mr. Harte's indigence claim is not necessarily refuted by

this fact, the Commission has previously observed that "Allegations of indigence are insufficient without other evidence produced by the Petitioner to prove that he was prevented from invoking and exhausting the domestic remedies…"[FN31] In the Commission's view, Mr. Harte's statutory declaration of indigence without any corroborating evidence is insufficient to establish that "indigence" prevented the Petitioner from invoking and exhausting domestic remedies in Canada. Accordingly, the Commission finds that Mr. Harte was not prevented by indigence from accessing legal representation necessary to pursue domestic remedies or paying the requisite fees to apply to remain in Canada on humanitarian and compassionate grounds.

[FN30] See State's submission of September 06, 2000 to the Commission
[FN31] See Case 11.071, Report Nº 6/97 Cherokee Nation vs United States of America, Annual Report of the IACHR 1996, para.45

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80. Availability of legal assistance. Mr. Harte states that he was unable to afford a private lawyer, and therefore applied for legal aid. He states that his application was refused, but gives no details of when or where this occurred or to whom he directed his application. He provides no documentation in support of his claim, such as letter of refusal. In response to the State's argument that there were community legal clinics available (other than State-sponsored legal aid offices), Mr. Harte claims that he was unaware of their existence.

81. The petitioner more generally argues that (a) there is no general right to legal aid in Canada for applications for judicial review of most immigration decisions (including deportations); (b) legal aid is granted by provincial legal aid agencies on a discretionary basis; (c) the discretion to grant legal aid does not take into account humanitarian and compassionate factors in considering an application by a person declared to be a danger to the public.

82. With reference to the community legal clinics, the petitioner asserts that these clinics lack the resources or the competence to deal with cases like Mr. Harte's. As with the alleged refusal of legal aid, no corroborating documentation has been submitted to the Commission in support of any of these claims. On the other hand, the State asserts that legal aid was available up to April 1996, in addition to community legal clinics. The State has furnished a comprehensive list of these bodies in its submission to the Commission of September 15, 1998 Annex G).

83. In the Commission's view, this evidence of availability of legal representation has not been rebutted by the petitioner's largely general and uncorroborated claims that Mr. Harte was refused legal aid or that community legal clinics were incapable of providing assistance. In the premises, the Commission finds that legal aid/legal representation was available to Mr. Harte to pursue domestic remedies.

84. Availability, adequacy & effectiveness of domestic remedies. If Mr. Harte's access to domestic remedies was not impeded by indigence or lack of access to legal assistance, it now falls to be considered whether these remedies satisfied the criteria of availability, adequacy and effectiveness.

85. As the Inter-American Court of Human Rights has affirmed, "[i]t must not be rashly presumed that a State party to the Convention has failed to comply with its obligation to provide effective domestic remedies [….] The rule of prior exhaustion of domestic remedies allows the state to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction."[FN32]

[FN32] See I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C Nº 4, para. 62.

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86. Based on the record, it is indisputable that there were remedies available to the petitioner that he failed to engage, such as an application for leave to remain in Canada on humanitarian and compassionate grounds or an application for relief under the Canadian Charter of Rights and Freedoms.

87. The Commission wishes to point out that if a remedy is not adequate in a specific case, it obviously need not be exhausted. This is indicated by the principle that a norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. However, the Petitioner has made no efforts to pursue these remedies or offered any compelling evidence that such remedies (if pursued) would be unsuitable to address the legal rights that have allegedly been infringed. Consistent with the principle of the supplementary nature of the Inter-American system for the protection of human rights relative to a States internal legal system, the latter must be allowed the opportunity to resolve possible violations under its internal law and, therefore, the alleged victim must exhaust all domestic remedies available to him.

88. The Commission finds that Article 37 of its Regulations is the controlling instrument in deciding the issue of admissibility and its provisions are applicable. The Petitioner has not met the burden of sufficiently demonstrating that the laws of Canada remedies for the protection of Mr. Harte's rights. As the State has contended, there are still available, domestic remedies in Canada to be invoked and exhausted. While the Commission notes the contentions of the Petitioner as to the ineffectiveness of certain remedies (particularly application under section 114 of the Immigration Act for relief on humanitarian and compassionate grounds) this does not excuse Mr. Harte from making bona fide efforts to exhaust them. The Petitioner has not advanced any evidence specific to Mr. Harte to demonstrate that available remedies would be ineffective. To the contrary, the State has not only identified remedies that remain unexhausted by the Petitioner, but also cited the Supreme Court decision of Baker v Canada, which appears to establish that the State (through an immigration officer) would be obliged to take into account the interests of Mr. Harte's children upon consideration of an application for leave to remain on humanitarian and compassionate grounds. In view of this jurisprudence, it is unable to accept the Petitioner's contention that such an application would ineluctably be futile.

89. The Commission therefore concludes that Mr. Harte has inexcusably failed to exhaust available domestic remedies and that his petition is therefore inadmissible on this basis.

Analysis with respect to exhaustion of remedies by the Harte children

90. The State contends that neither of the Harte children have pursued domestic remedies available to them; in particular, that they have failed to seek any relief for alleged violations of their rights under the Canadian Charter of Rights and Freedoms before the Canadian courts. The Petitioner has asserted that under Canadian law, minors have no standing before the Canadian courts (according to rulings of the Federal Court of Canada) with respect to immigration matters; and that accordingly, the Harte children had no standing to intervene at any stage of the immigration process, including the Minister's decision to declare Mr. Harte a danger to the public.

91. More particularly, the Petitioner alleges that the Harte children had no right to challenge the Minister's decision by judicial review. According to the Petitioner, as a result of the 1999 Supreme Court decision in Baker, minors are allowed input into applications (with respect to their parents) for leave to remain on humanitarian and compassionate grounds. However, the Petitioner notes that this input is only possible if such an application is made, which has not been done in the case of Mr. Harte for the reasons stated above.

92. With particular regard to the State's claim that the Harte children failed to exhaust remedies available under the Canadian Charter of Rights and Freedoms, the Petitioner argues that: (a) the 1999 Ontario Court of Appeal case of Francis demonstrates that a remedy under the Charter is unavailable to the Harte children, and; (b) the Harte children lack(ed) the resources to pursue such a remedy (assuming the availability of such a remedy).

93. Even if the Commission were to accept the Petitioner's submissions on the lack of standing to intervene in the immigration process, the record clearly shows that there are domestic remedies available to the Harte children that have not been exhausted. While the Commission notes that contentions of the Petitioner in this regard, the Commission notes that the Petitioner has adduced no evidence of any attempt to exhaust these remedies or indeed that the Harte children lacked the resources to do so. The Commission notes that in the proceedings before the Minister to declare (to declare Mr. Harte a danger to the public), Mr. Harte admittedly did not raise the issue of the impact of his deportation on the children. In the view of the Commission, this makes moot, the issue of whether the children had any standing to intervene in the proceedings before the minister or the consequential judicial review processes. Secondly, it is a matter of consensus between the parties that the interests of the children could have been considered in an application for humanitarian and compassionate relief, had Mr. Harte elected to do so. As the Commission has already concluded, Mr. Harte has presented no evidence to persuade the Commission that he was prevented (by indigence) from doing so. The Commission accordingly finds the claims of the Harte children to be inadmissible for failure to exhaust domestic remedies.

94. Based upon the foregoing analysis, the Commission concludes the Petitioner's claims of violations of the American Declaration, namely, the right to life, liberty and security of the person (Article I), the right to establish a family and to receive protection there-for (Article VI),

the right to inviolability of home (Article IX), and the right to due process (Article XVIII) are be inadmissible under Articles 31(1) and 34 of the Commission's Rules of Procedure.

V. CONCLUSIONS

95. Pursuant to Articles 31 to 34 of the Commission's Rules of Procedure, the Commission concludes that it has the competence to examine the claims raised in the Petitioner's petition, which includes the competence to determine whether the State has violated rights enshrined in the American Declaration of the Rights and Duties of Man.

96. The Commission also concludes that the claims raised in the petition are inadmissible, on the basis that the alleged victims have failed to pursue and exhaust domestic remedies in accordance with the generally recognized principles of international law as required under Article 31 of the Commission's Rules of Procedure.

97. On the basis of the findings of fact and law set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case inadmissible with respect to the alleged violation of the rights recognized in Articles I, VI, IX, and XVIII of the American Declaration on the Rights and Duties of Man.
2. To notify the parties of this decision.
3. To make this report public, and publish it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 24th day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; and Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.