

The AHRA and the federal criminal law power

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The paper is available at
<http://tinyurl.com/LeeAHRA>

Outline

1. The ostensible disagreement between the judges is not their real disagreement.
2. The licensing provisions are problematic, and probably too significant to be incidental.
3. Does the test for valid criminal law need fixing? (No.)

AHRA

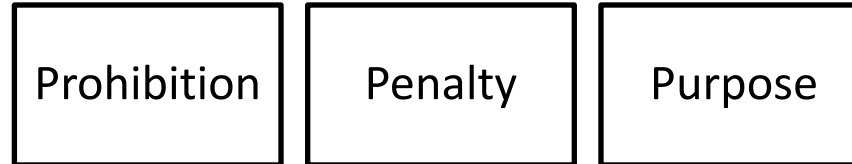
5-9 Prohibited activities	10-13 Controlled activities	14-19 Information collection & privacy	20-39 Agency	40-59 Licences, administ'n, enforcem't	60-68 Offences, regulations, equivalency
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Prohibited except
in accordance
with the
regulations and a
licence

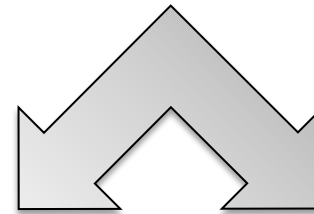
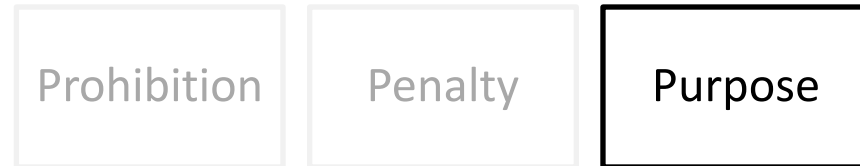
The ostensible disagreement

The *Margarine*
criteria:



The ostensible disagreement

The *Margarine* criteria:



Prohibit inappropriate
conduct
(McLachlin ¶24)

Establish national
standards for AHR
(Lebel/Deschamps ¶226)

Prevent moral, health,
security harms
(McLachlin ¶89-121)

No serious risk to
morality, health, safety
(Lebel/Deschamps ¶251)

Controlled activities

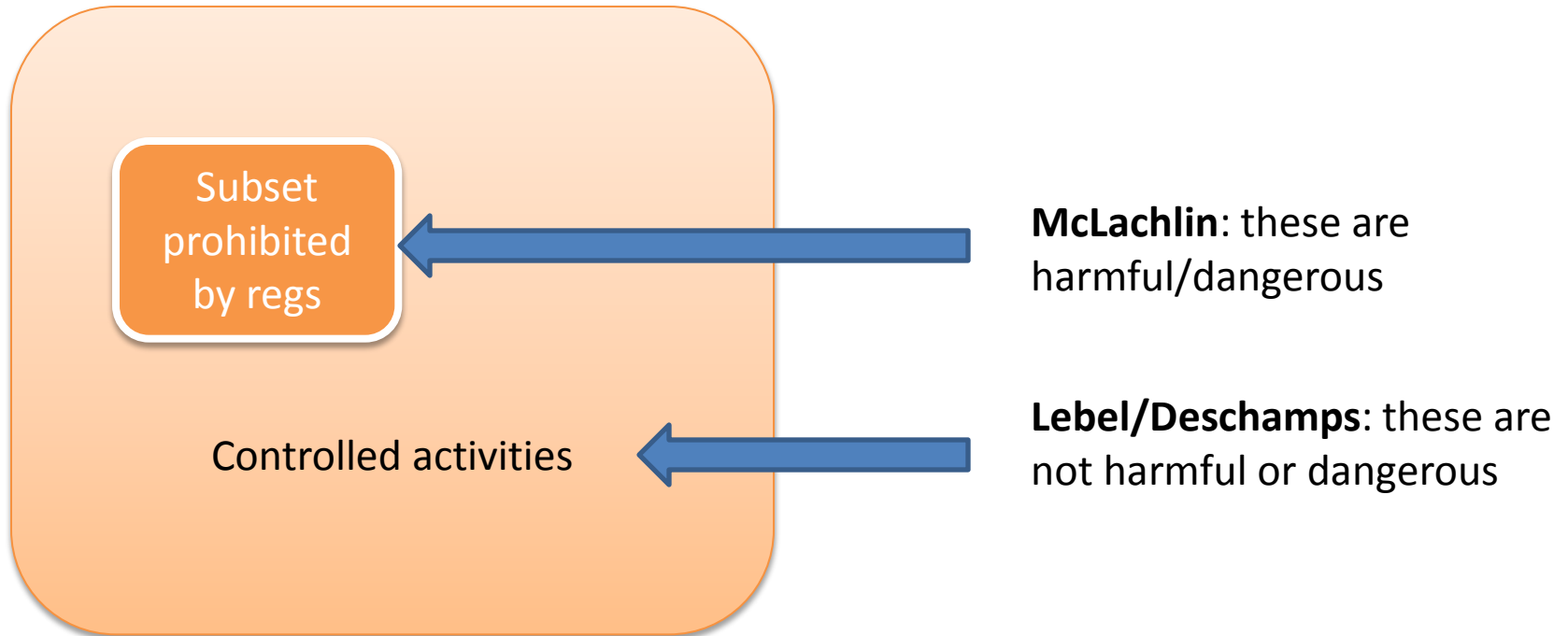


Subset
prohibited
by regs

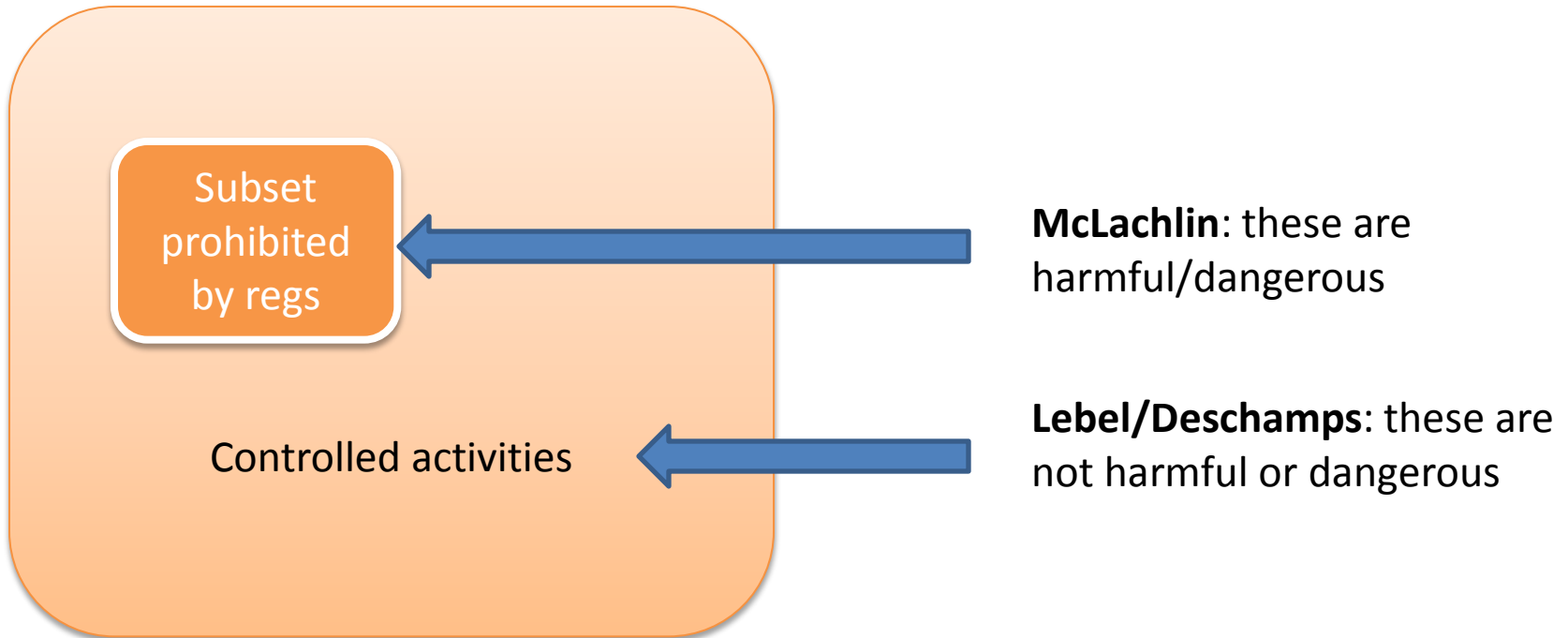
The diagram consists of a large light orange rounded rectangle with a thin orange border. Inside this rectangle, in the upper-left quadrant, is a smaller, darker orange rounded rectangle with a white border. This smaller rectangle contains the text 'Subset prohibited by regs'. Below the smaller rectangle, centered within the larger rectangle, is the text 'Controlled activities'.

Controlled activities

Controlled activities

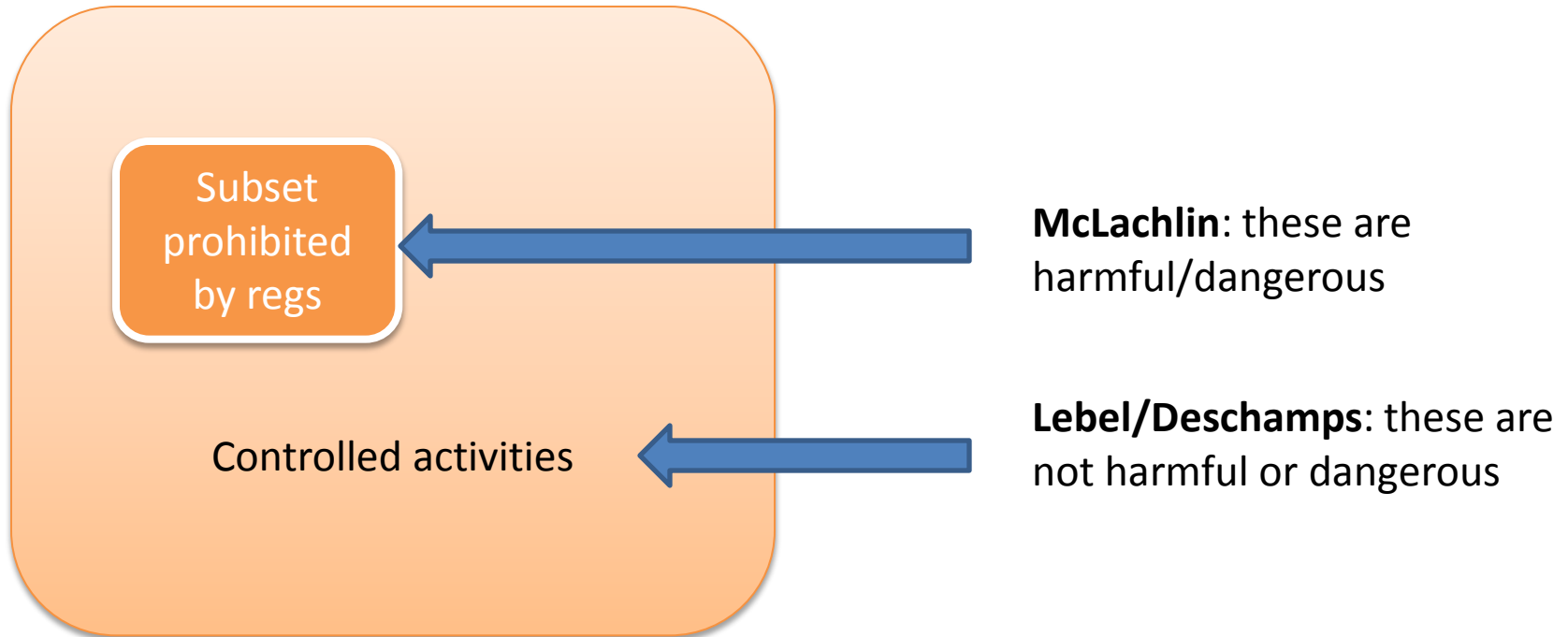


Controlled activities



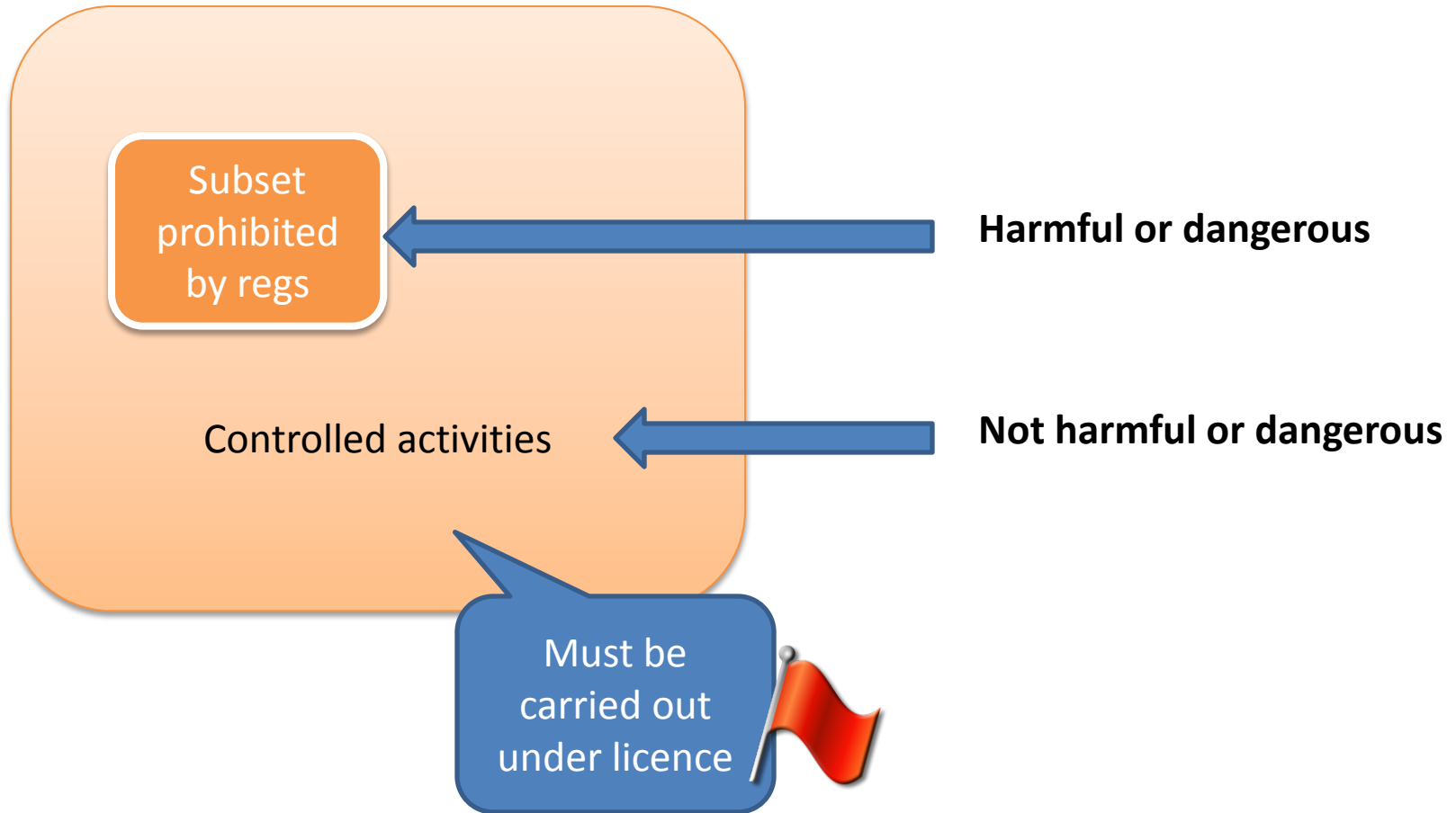
1. Can Parliament authorize the G-in-C to define the prohibited subset by regulation?
2. Is this what the challenged provisions actually do?

Controlled activities



1. Can Parliament authorize the G-in-C to define the prohibited subset by regulation? **YES**
2. Is this what the challenged provisions actually do? **NOT QUITE**

Controlled activities



Are the licensing requirements incidental to the prohibitions?

Licensing of controlled activities

Are the licensing requirements incidental to the prohibitions?

Licensing of controlled activities

Provincial
jurisdiction
over property
and civil rights

Are the licensing requirements incidental to the prohibitions?

Licensing of controlled activities

Prohibition
of subset of
controlled
activities

Categorically
prohibited
activities

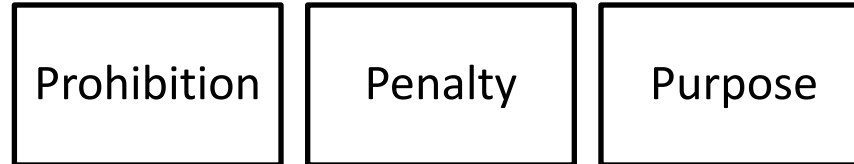
The AHRA

Outline

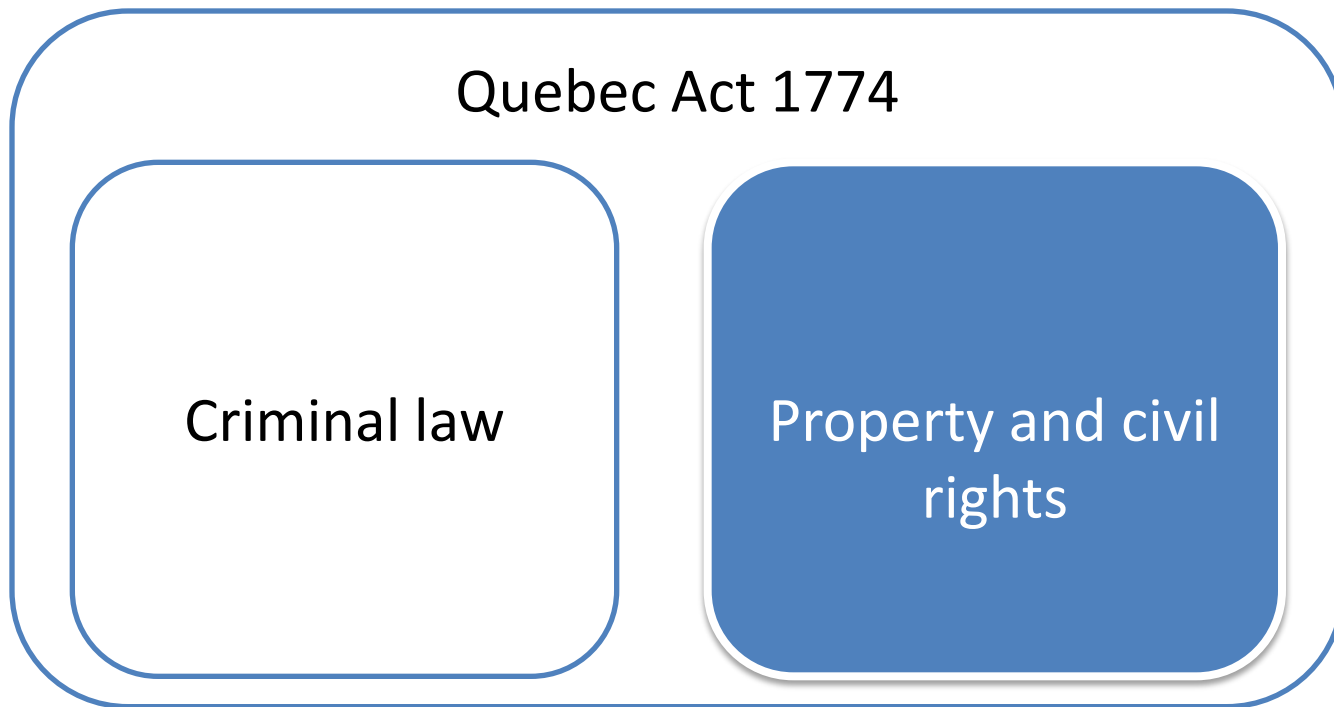
1. The ostensible disagreement between the judges is not their real disagreement.
2. The licensing provisions are problematic, and probably too significant to be incidental.
3. **Does the test for valid criminal law need fixing? (No.)**

Fix the test?

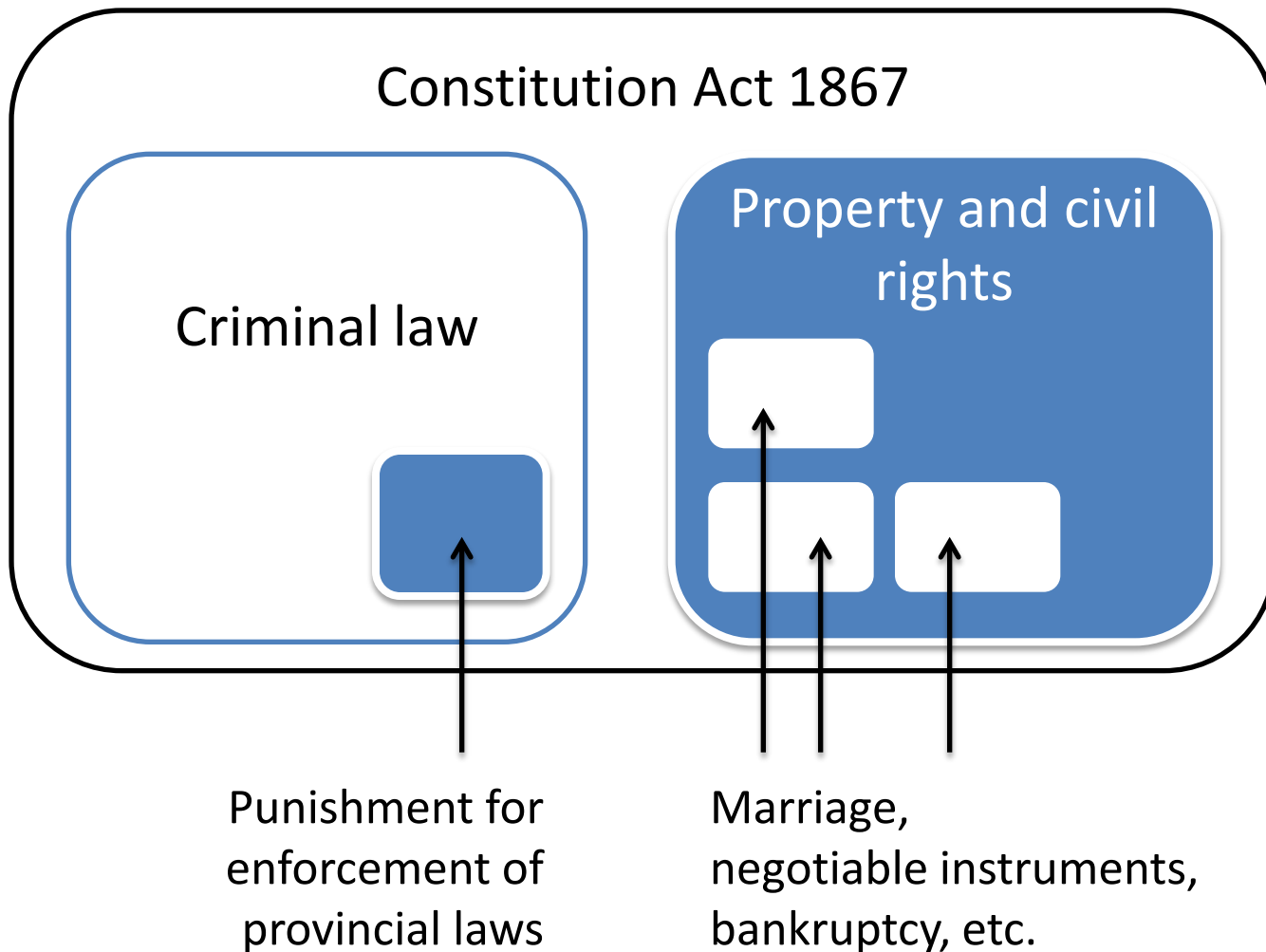
The *Margarine*
criteria:



Criminal law vs property & civil rights



Criminal law vs property & civil rights



Limits of the criminal law power



Criminal law

Limits of the criminal law power



Margarine 1950



Boggs 1981

Purpose was not to suppress harmful conduct

A red arrow pointing left towards the text 'Margarine 1950' and 'Boggs 1981'. The arrow is contained within a light red rectangular box.

Criminal law

Limits of the criminal law power



Margarine 1950



Boggs 1981

Purpose was not to suppress harmful conduct



Dominion Stores 1980



Labatt 1980

Standardized contractual terms

Criminal law

Limits of the criminal law power

Criminal law

Firearms
2000



Margarine 1950



Boggs 1981



Dominion Stores
1980



Labatt 1980



Reciprocal
Insurance
1924

Purpose was
not to
suppress
harmful
conduct

Standardized
contractual
terms

Licensing of
non-harmful
activity

Conclusions

- Criminal legislation is directed at the suppression of conduct regarded by Parliament as harmful or dangerous.

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- Criminal legislation is directed at the suppression of conduct regarded by Parliament as harmful or dangerous.
- The harmful or dangerous sphere may be defined in delegated legislation.
- Conduct outside this sphere may not be subjected to federal licensing.
- Licensing may be permissible if incidental to an otherwise valid prohibitory scheme, but this depends on the licensed sphere being small relative to the prohibited sphere.