S.C.C. File No. 27677

IN THE SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Canada)

BETWEEN:

RICHARD SAUVÉ

Appellant (Plaintiff)

-and-

CHIEF ELECTORAL OFFICER OF CANADA
THE SOLICITOR GENERAL OF CANADA
THE ATTORNEY GENERAL OF CANADA

Respondents (Defendants)

-and-

SHELDON McCORRISTER, Chairman, LLOYD KNEZACEK, Vice-Chairman on their own behalf and on behalf of the Stony Mountain Institution Inmate Welfare Committee, and CLAIR WOODHOUSE, Chairman, AARON SPENCE, Vice Chairman on their own behalf and on behalf of the Native Brotherhood Organization of Stony Mountain Institution, and SERGE BELANGER, EMILE A. BEAR and RANDY OPOONECHAW,

Appellants (Plaintiffs)

-and-

THE ATTORNEY GENERAL OF CANADA

Respondent (Defendant)

FACTUM OF THE RESPONDENTS THE ATTORNEY GENERAL OF CANADA and THE SOLICITOR GENERAL OF CANADA

DEPARTMENT OF JUSTICE
301 – 310 Broadway
Winnipeg, Manitoba R3C 0S6
Telephone: (204) 983-2232
Facsimile: (204) 984-5434
David Frayer, Q.C.
Gérald L. Chartier
Solicitors for the Respondents,
The Attorney General of Canada and
The Solicitor General of Canada

DEPARTMENT OF JUSTICE
2199 East Memorial Building
284 Wellington Street
Ottawa, ON K1A 0H8
Telephone: (613) 957-4842
Facsimile: (613) 954-1920
Graham Garton, Q.C.
Ottawa Agent

ARNE PELTZ
Public Interest Law Centre
402 – 294 Portage Avenue
Winnipeg, MB R3C 0B9
Telephone: (204) 985-8541
Facsimile: (204) 985-8544
Counsel for the Appellants Sheldon
McCorrister et al

FERGUS J. O'CONNOR
Barrister and Solicitor
104 Johnson Street
Kingston, ON K7L 5J7
Telephone: (613) 546-5581
Facsimile: (613) 546-5540
Solicitor for the Sauvé appellant

ELIZABETH THOMAS
212 – 120 Clarence St.
P.O. Box 871
Kingston, Ontario
K7L 4X8
Telephone: (613) 531-2660
Facsimile: (613) 546-5894
Counsel for Canadian Association
Of Elizabeth Fry Societies and
the John Howard Society of Canada

JOHN W. CONROY, Q.C.
Conroy & Company
2459 Pauline St.
Abbotsford, British Columbia
V2S 3S1
Telephone: (604) 852-5110
Facsimile: (604) 859-3361
Counsel for the British Columbia
Civil Liberties Association

KENT ROACH
Aboriginal Legal Services of Toronto
Legal Clinic
415 Yonge Street
Suite 803
Toronto, Ontario M5B 2E7
Telephone: (416) 408-4041 ext. 224

GOWLING LAFLEUR HENDERSON LLP
2600 – 160 Elgin Street
Ottawa, Ontario
K1P 1C3
Telephone: (613) 786-0212
Facsimile: (613) 563-9869
Henry S. Brown, Q.C.
Ottawa Agent

GOWLING LAFLEUR HENDERSON LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3
Telephone: (613) 233-1781
Facsimile: (613) 563-9869
Henry S. Brown, Q.C.
Ottawa Agent for the Sauvé Appellant

HENRY S. BROWN, Q.C.
Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
Ottawa, Ontario
K1P 1C3
Telephone: (613) 233-1781
Facsimile: (613) 563-9869
Ottawa Agent for Canadian Association
of Elizabeth Fry Societies and
the John Howard Society of Canada

HENRY S. BROWN, Q.C.
Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
Ottawa, Ontario
K1P 1C3
Telephone: (613) 233-1781
Facsimile: (613) 563-9869
Ottawa Agent for the British Columbia
Civil Liberties Association

CHANTAL TIE
South Ottawa Community Legal Services
406 – 1355 Bank Street
Ottawa, Ontario
K1H 8K7

Telephone: (613) 733-0140

Facsimile (416) 408-4268
Counsel for the Aboriginal Legal
of Toronto Inc.

SYLVAIN LUSSIER
Desjardins Ducharme Stein Monast
Suite 2600
600 rue de la Gauchetière ouest
Montreal, QC H3B 4L8
Telephone: (514) 878-5569
Facsimile: (514) 878-9092
Counsel for the Intervenor
The Canadian Bar Association

GERALD CHIPEUR
Fraser Milner Casgrain
237 – 4th Avenue S.W.
Calgary, Alberta
T2P 4X7
Telephone: (403) 268-6861
Facsimile: (403) 268-3100
Counsel for the Alberta Civil Society
Association, for Frederick L. Morton &
For the Attorney General for Alberta

ATTORNEY GENERAL
FOR MANITOBA

Facsimile: (613) 733-0401
Ottawa Agent for Aboriginal Legal Services
of Toronto Inc.

HENRY S. BROWN, Q.C.
Gowling Lafleur Henderson LLP
Suite 2600
160 Elgin Street
Ottawa, ON K1P 1C3
Telephone: (613) 233-1781
Facsimile: (613) 563-9869
Ottawa agent for the Intervenor
The Canadian Bar Association

CAMERON P. TIESMA
Fraser Milner Casgrain
180 Elgin Street, Suite 1200
Ottawa, Ontario
K2P 2K7
Telephone: (613) 783-9600
Facsimile: (613) 783-9690
Ottawa Agent for the Alberta Civil
Society Association, for Frederick L. Morton &
for the Attorney General for Alberta

HENRY S. BROWN, Q.C.
Gowling Lafleur Henderson LLP
2600 – 160 Elgin Street
Ottawa, Ontari
K1P 1C3
Telephone: (613) 233-1781
Facsimile: (613) 563-9869
Ottawa Agent for the Attorney General
for Manitoba

INDEX

PART I – STATEMENT OF FACTS

A. Introduction

1. Every Canadian citizen 18 years of age and older has a presumptive right to vote in a federal election. Only by engaging in serious criminal activity resulting in a judicially imposed prison sentence of two years or more, and then only while serving the custodial part of that sentence, does he or she temporarily forfeit this right.[1] The twin legislative objectives of paragraph 51(e) of the *Canada Elections Act*, as found by the courts below, are 1) the enhancement of civic responsibility and respect for the rule of law and 2) the enhancement of the general purposes of the criminal sanction.

2. All Canadian adult citizens are lawmakers by proxy. In federal elections, they vote to elect members of Parliament. Law-making is Parliament's most important function. Inculcating and promoting respect for the rule of law by temporarily suspending serious lawbreakers from the law-making process and punishing lawbreaking is a legislative norm-setting function well within the limits of a free and democratic society.

3. The rule of law is no mere abstraction and symbol. As this Court has said, it is a fundamental postulate of our constitutional structure and is essential to democracy. While ours is a pluralistic society, Canada has never embraced lawlessness as a tradition to be tolerated or respected. Moreover, the rule of law cannot simply remain a

[1] The only other individuals are Canadian citizens absent from Canada for more than five consecutive years and the Chief Electoral Officer and the Assistant Chief Electoral Officer (Paragraphs 11(d), 4(a), 4(b), *Canada Elections Act* 2000 c.9) and persons holding public office convicted of an indictable offence (s. 750(2) of the *Criminal Code*). Paragraph 51(e) at the material time (now continued in substantially the same form at paragraph 4(c) of *Canada Elections Act* 2000 c.9) read as follows: The following persons are not qualified to vote at an election and shall not vote at an election: ... (e) Every person who is imprisoned in a correctional institution serving a sentence of two years or more... (emphasis added)

constitutional principle: it has to be nurtured and fostered in the citizenry so that all citizens have an allegiance to it[2].

Reference re Secession of Quebec, [1998] 2 S.C.R. 217, at 257-8, _per Curiam_
Reference re Manitoba Language Rights, [1985] 1 S.C.R. 721, at 748-52, _per Curiam_

4. This appeal is not about whether temporarily disenfranchising serious criminal offenders is good public policy or whether enfranchising serious criminal offenders while undergoing punishment would be better public policy. While policy matters are Parliament's domain, the legality of the legislative means used by Parliament to implement a policy choice is subject to judicial review to ensure it meets constitutional standards. The issue of this Court's role in *Charter* adjudication was described by Cory and Iacobucci J.J. in *Vriend v. Alberta*:

> In carrying out their duties, courts are not to second-guess legislatures and the executives; they are not to make value judgments on what they regard as the proper policy choice; this is for the other branches. Rather, the courts are to uphold the Constitution and have been expressly invited to perform that role by the Constitution itself. (...) Section 1 and the jurisprudence under it are also important to ensure respect for legislative action and the collective or societal interests represented by legislation.

Reasons of the Federal Court of Appeal, App. Rec. p. 2094
Vriend v. Alberta [1998] 1 S.C.R. 493 at pp. 564 - 5 _per_ Cory and Iacobucci J. J. for the majority
Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486, at 496 _per_ Lamer J. for the majority

5. This appeal however, is about the dialogue between Parliament and the courts on the issue of disenfranchisement of lawbreakers in that Parliament has enacted new legislation responding to the decision of this Court in *Sauvé v. Canada (Attorney*

---

[2]Evidence of Respondents' witnesses generally, but in particular Dr. Pangle and Dr. Hampton; See also *Byatt v Dykema* (1998) 158 D.L.R. 4th 644 (Alta. C.A.) at pp. 654-58; R. A. Duff, Trials and Punishments, at pp. 96 – 98; Philippe Nonet "The Rule Of Law: Is That The Rule That Was?" in The Rule of Law: Ideal or Ideology?, Hutchinson, Monahan, Toronto: Carswell, 1987.

General) which found that the previous legislation was drawn too broadly[3]. The Respondents submit that Parliament has carefully considered that decision and has enacted legislation which is now well within constitutional standards.

Sauvé v. Canada (Attorney General) [1993] 2 S.C.R. 438 _per_ Iacobucci J. for the Court
R. v. Mills [1999] 3 S.C.R. 668 at 711-713 _per_ McLachlin J. (as she then was) and Iacobucci J. for the majority
10 **_Vriend v. Alberta, supra_, at 564 – 567**
Reasons of the Federal Court of Appeal, App. Rec. p. 2092

B. <u>The Proceedings in the courts below</u>

6. The Appellant, Sauvé, was a member of the Satan's Choice Motorcycle Club who was involved with others in the shooting death of Bill Matiyek on October 18, 1978. He was convicted of first degree murder on December 10, 1979 and sentenced to 25 years incarceration. He filed a Statement of Claim on September 24, 1993 seeking a declaration that paragraph 51(e) of the *Canada Elections Act* is contrary to ss. 3 and 15 of
20 the *Charter*. The Appellants', McCorrister *et al*, are inmates at Stony Mountain Institution in Manitoba. They filed a Statement of Claim on May 12, 1994 seeking the same relief as the Appellant Sauvé. Some of the Appellants in that action are aboriginal. The two actions were joined and heard together by the learned trial judge in May, June and August of 1995.

Reasons of the Federal Court of Appeal, App. Rec. pp. 2093 – 94

7. The learned trial judge gave judgment on December 27, 1995 striking down paragraph 51(e) of the *Canada Elections Act* on the basis that it infringed s. 3 of the
30 *Charter* and did not constitute a reasonable limit justified in a free and democratic society. In so doing, he found that the enhancement of civic responsibility and respect

---

[3] The previous legislation read as follows:

51. <u>The following persons are not qualified to vote at an election and shall not vote at an election:</u>
...
(*e*) <u>every person undergoing punishment as an inmate in any penal institution for the commission of any offence</u>; (emphasis added)

for the rule of law and the enhancement of the purposes of the criminal sanction were the legislative objectives of paragraph 51(e); that these objectives were indeed pressing and substantial; and that there was a rational connection between the means chosen and these objectives. He found, however, that the legislation did not minimally impair the *Charter* right and that the deleterious effects of the legislation outweighed its salutary effects. He also found that paragraph 51(e) did not infringe s. 15 of the *Charter*.

8. The majority of the Federal Court of Appeal allowed the Crown's appeal and dismissed the Appellants' cross-appeal on the s. 15 issue. On the issue of minimal impairment, the majority found that the learned trial judge erred in finding that a judicially-imposed case-by-case disenfranchisement would be a significantly less intrusive and equally effective means of limiting a citizen's right to vote.

Reasons of the majority of the Federal Court of Appeal, App. Rec. pp. 2125 – 2134

9. The majority of the Federal Court of Appeal also found that the learned trial judge erred in finding that the public's ignorance of the disqualification annulled any salutary effects which the provision might have. Further, the majority found that the learned trial judge erred in concluding that the measure failed the proportional effects part of the *Oakes* test. Linden, J.A. for the majority stated that "[to] conclude otherwise would be to challenge Parliament's right to utilize the law to enhance civic responsibility and to establish consequences which express Canada's abhorrence of serious crime."

Reasons of the majority of the Federal Court of Appeal, App. Rec. pp. 2145 - 2147, 2134 – 2144
***R. v. Oakes*, [1986] 1 S.C.R. 103, at 138-140 *per* Dickson C.J. for the majority**

C. Evidence adduced at trial

1. General

10. The evidence adduced at trial included materials from the Royal Commission on Electoral Reform and Party Financing ("the Lortie Commission Report"), excerpts from Hansard, a compilation of foreign law relating to disenfranchisement as well as written

reports and *viva voce* evidence of various expert witnesses. The Respondents' expert evidence addressed the purpose and nature of disenfranchisement laws, and explained why such laws are consistent with the principles animating a free and democratic society.

11. The learned trial judge found that "the defendant's experts have provided a number of thoughtful and compelling arguments supporting disenfranchisement" and added that "...there may be strong philosophic and political reasons to support the disenfranchisement of prisoners ...". He found "the morally-educative function of the law to be compelling" and relied on the Respondents' experts in finding a rational connection between the means chosen and the legislative objectives identified.[4]

Reasons of the Federal Court Trial Division, App. Rec., Vol. XI, pp. 2062, 2069, 2078

12. The McCorrister Appellants allege that the learned trial judge preferred the Appellants' expert evidence over the Respondents' expert evidence on key points (Factum, para. 25). The Respondents disagree with this submission and say that the learned trial judge agreed with the Respondents' witnesses' evidence relating to the nature and purpose of disenfranchisement. The learned trial judge only appeared to prefer the Appellants' experts' testimony on one issue, namely, whether the law furthered the policy purposes of rehabilitation. In that regard, he found that the law's retributive effects were *deleterious*. He thereby preferred the Plaintiff's expert witnesses' testimony on this pure policy issue. However, as the majority of the Federal Court of Appeal stated at the outset of their reasons:

> It is not the role of this Court to decide what works with regard to penal policy and what does not. *It is not the role of this Court to determine what theories of penology should be adopted by our elected legislatures* ...

And later the majority added that:

> While many penologists may disapprove of these goals, these are important and legitimate objectives for Parliament, in its wisdom, to

[4] The majority of the Federal Court of Appeal in adopting the learned trial judge's reason's also accepted the Respondent's expert witnesses' testimony. See Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI p. 2119; in addition the majority of the Federal Court of Appeal explicitly accepted the testimony of Dr. Hampton at 2138-9, Dr. Pangle at 2139-40, Dr. Manfredi at 2140, Dr.Lipset at 2140 and Dr. Meredith at 2143-5.

pursue. *The Courts cannot prevent Parliament from proportionately compromising Charter rights in the name of denouncing crime, even if they disagree with Parliament's penal philosophy.*

Reasons of the learned trial judge, App. Rec. Vol. XI, pp. 2079 - 2081
Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, pp. 2094, 2137 (emphasis added)

10

2. The Respondents' expert evidence

13. Dr. Colin Meredith was one of six experts who filed a report on behalf of the Respondents at trial. His report involved the statistical analysis of selected characteristics of the federal inmate population. The report identified the type of offences for which sentences of two years or more are given. It also contained an analysis of the average number of convictions for every federal inmate (29.5 convictions). As of February 20, 1995 the number of inmates for specific offences was as follows:

Offence	Number	Percent
Crimes Against the Person		
Murder	2,041	14.4
Attempted Murder	451	3.2
Manslaughter	780	5.5
Sexual Assault	1,236	8.7
Sexual Offences Involving Children	574	4.0
Other Sexual Offences	961	6.8
Assaults	2,914	20.6
Kidnap	1,129	8.0
Robbery	4,633	32.7
Firearms Offences	1,488	10.5
Prison Breach	221	1.6
Crimes Against Property		
Arson	129	0.9
Break and Enter	1,733	12.2
Fraud	345	2.4
Drug Offences		
Trafficking	1,606	11.3
Importing/Exporting	321	2.3
Cultivation	37	0.3
Possession of Property Obtained by Certain Offences	61	0.4
Total Number of Inmates	**14,179**	*

Report of Dr. Colin Meredith, App. Rec. Vol III, pp. 566-579
Report of Dr. Colin Meredith, App. Rec. Vol. III, p. 570

14. As an expert in political theory, Dr. Thomas Pangle provided a report demonstrating that paragraph 51(e) advanced the legislative objective of the enhancement of civic responsibility and respect for the rule of law. In his report he identifies the inextricable link between voting and law-making:

> Second, by the serious violation of fundamental law, through the crime for which he or she was incarcerated, the inmate has manifested a profound disrespect for law and for the rule of law. But in a democratic republic, law is the outcome of the electoral process. Disrespect for law in a democracy entails disrespect for the electoral process which culminates in the law. On the one hand, law is not law, it is not legitimate, in a democracy, unless it is the outcome of the electoral process. And on the other hand, the enactment and the administration and enforcement of law is the chief ultimate purpose of the process of voting in elections in a republic. Elections are, more than anything else, the mechanism whereby citizens of the mixed democracy chose those among them who are to enact and administer the law in their name and by their authority. To vote is to declare one's sovereign decision as to who is authorized to represent one in the enactment of the rule of law. To participate in the vote is to participate in the making and the administration of law. To thus participate in the voting process, and then to have proven to have violated – in an especially serious respect – the law which the outcome of the process, is to negate or contradict one's role in the process; it is to renege on the commitment (to abide by the outcome) that is an essential presupposition of the process. Therefore, in a democratic republic, penal servitude for violation of the law, not in a minor but in a major way, gives conclusive evidence of more even than flagrant absence of minimal regard for the welfare of other citizens, and of more than simple disrespect for the law; this condition gives clear evidence of an unwillingness to participate in good faith in the law-making that is the essential heart of voting.

Report of Dr. Thomas Pangle, App. Rec. Vol. III, pp. 457-458; (emphasis in original)

15. Drawing on his expertise as a political theorist, Dr. Pangle discusses in his report the necessity for and the manner in which government legislates a message which instructs on basic matters of civic responsibility:

> How government may promote and foster such education is one of the most difficult and delicate questions of democratic statesmanship, political science, and political theory. (...) From these classical models we learn that government and public policy shape and encourage (or discourage) civic virtue not only in their appropriately subdued direct attempts at exhortation, education, reward and penalty, honor and shame, etc., but—to an equal or greater degree—in almost all of a society's legal code. For the honors and penalties, advantages and disadvantages, qualifications and disqualifications set in the legal code are to be seen not only as rewards and punishments—whether aimed at retribution, or deterrence, or rehabilitation—but also, in some cases (as in the electoral qualifications) more importantly, as the community's mutual civic education, through the solemn public enunciation of community standards of civic responsibility.
>
> **Report of Dr. Thomas Pangle, App. Rec. Vol. III, pp. 461-462**

16. With respect to the educative or expressive function of the law, Dr. Pangle strongly negates any suggestion that this function and its benefits are of mere symbolic worth:

> The law is not merely a symbol, like a flag or an anthem. The law, especially in its educational dimension, is a solemn declaration, a declaration weighty with sanctions and consequences, a declaration of what we as a people affirm to be <u>just</u> or right and wrong, a declaration of what we seek and aim to promote, and what we wish to overcome. No one has ever put it better than Aristotle, in that part of his <u>Ethics</u> that is sometimes called his "Treatise on Law":
>
> > For the matters defined by the lawgiver are lawful, and each of these we say to be just. And the laws make declarations about everything, aiming either at the common advantage of all or the best or those sovereign in accordance with virtue or some other such standard. So that in one sense we say that what is just is what provides and secures happiness and its parts for the political community. And the law promotes the deeds of courage, by ordering one not to desert one's lawful post, or not to

> flee or to abandon one's weapons in the military; the deeds of self-control of the appetites, by ordering one not to commit adultery or rape; the deeds of gentleness, or control of anger, by ordering one not to strike and not to slander; and similarly with other virtues and vices ... 34
>
> By his examples here, Aristotle indicates that the highest (though of course not the sole) aim, even or precisely of the penal law, is not the punishment directed at the actual or other potential criminals. The highest aim is the legal declaration—and thereby the promotion—of civic virtue in the community as a whole.

Report of Dr. Thomas Pangle, App. Rec. Vol. III, pp. 462-463 (emphasis in original)

17. After having analysed the ideal of a free and democratic society, Dr. Pangle discusses the educative function of paragraph 51(e) of the *Canada Elections Act* and states that "[t]he law is indeed, in a democracy, a collective expression, on the part of those voters, of the minimal standards to which they have agreed to hold themselves and one another as responsible voters."

Report of Dr. Thomas Pangle, App. Rec. Vol. III, p. 464

18. As a political scientist, Dr. Christopher Manfredi provided a report to the effect that para. 51(e) is not inconsistent with the principles of a free and democratic society and that it advanced the two legislative objectives accepted by the learned trial judge and the Federal Court of Appeal. In his report he says that the objective underlying the inmate vote disqualification "... is to preserve and promote the virtues of civic responsibility and good citizenship that are necessary to the proper functioning of liberal democratic self-government."[5]

Report of Dr. Christopher Manfredi, App. Rec. Vol. III, pp. 536 - 537

---

[5] Peter Berkowitz in his recent book Virtue and the Making of Modern Liberalism notes that: "...the repudiation of virtue as the aim of politics must not be equated with the repudiation of the very idea of virtue, or with a denial that questions of citizens' and officeholders' character are of pressing political significance." (p. 4)

19. Dr. Jean Hampton has written several books and articles in the area of political philosophy, ethics and philosophy of law including punishment theory. As a moral, legal and political philosopher who has written extensively in the area of punishment theory, she provided testimony demonstrating that paragraph 51(e) advanced the legislative objective of enhancement of the general purposes of the criminal sanction. In her report, Dr. Hampton discussed the expressive nature of retribution, denunciation and the closely related moral education theory of punishment[6]:

> A free and democratic society expresses, and ought to express, through its punishment, its commitment to behavior that respects the freedom and equal dignity of all its citizens. To the extent that this commitment is conveyed through the operation of the criminal justice system, the larger society is benefitting from the moral messages this system sends, insofar as its values are reinforced in a way that may strengthen people's allegiance to those values and deter behavior that violates those values.
>
> **Report of Dr. Jean Hampton, App. Rec. Vol. IV, pp. 717 – 718; (emphasis in original)**

20. In her report, Dr. Hampton refers to the morally-educative function of the paragraph 51(e):

> By telling people "you can have your right to vote suspended if, through your actions, you show contempt for the values that make our society possible", this law links the exercise of freedom with responsibility for its effects. Indeed, not to construct a punishment that sends this message is, in my view, to indirectly undermine those values, by sending the message "Whatever you have done to another, however you have deprived him of his liberty, harmed his person or property, or challenged his equality through your actions, we the community will let you participate in the election process, which is supposed to be animated by the very values your behaviour has betrayed." How is such a message consistent with the moral commitments of a free, democratic society? How can the community not speak on its own behalf about the criminal's betrayal of it and of its moral foundations? Disenfranchisement is a powerful expressive act because it is a way of saying to a criminal that his actions affect the whole community insofar as they undermine its values, and it communicates a democratic

[6] See also R. A. Duff, Trials and Punishments where he discusses the expressive purpose of punishment citing the work of, amongst others, Dr. Hampton at pp. 233 – 239.

society's commitment to the idea that participation in the political process ought to involve each voter's respect for those values[7].

Expert Report of Dr. Jean Hampton, App. Rec. Vol. IV, pp. 723-724
Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. IX, pp. 2138, 2139

10

21. Dr. Ernest van den Haag has published several books on a variety of topics including one entitled "Punishing Criminals" and has written several articles in academic journals on the issue of crime and crime control. As a criminologist, he provided testimony demonstrating that paragraph 51(e) advanced certain aims of punishment and therefore promoted the enhancement of the general purposes of the criminal sanction. In his report he states "[t]o give the vote to incarcerated criminals is inconsistent then, with the moral, denunciatory and educational purpose of punishment – perhaps its most important purpose".

20 **Report of Dr. Ernest van den Haag, App. Rec. Vol IV, pp. 680**

22. In his expert report sociologist Dr. Seymour Martin Lipset points out that differing political and legal cultures can often reflect a differing approach to individual rights and societal responsibilities. Dr. Lipset observes that Canadian legislation is often expressive of the more communitarian values which generally underlie aspects of its political culture. He is of the opinion that the limitation contained in paragraph 51(e) represents an approach to balancing individual liberty with individual responsibility and community interests. Such an approach which lies at the core of paragraph 51(e) is congruent with Canada's political culture.

30 **Report of Dr. Seymour Martin Lipset, p. Rec. Vol. II, pp. 314 - 390**
Transcript, App. Rec. Vol. VI, pp. 1112 - 1113

---

[7] See also Jean Hampton "Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of the Law", Canadian Journal of Law and Jurisprudence Vol. XI, No. 1 (January 1998) p. 23

23. The deponent put forward for discovery by the Appellants in the McCorrister case, Aaron Spence, testified that he valued the right to vote and that it bothered him to be deprived of it and that in his stay in prison he has had an opportunity to reflect on the consequences of his criminal behaviour. He also acknowledged that one of the reasons he wouldn't want to return to Stony Mountain Institution is because he would be deprived of, amongst other things, the right to vote.

Examination for Discovery of Aaron Spence, App. Rec. Vol. II, pp. 405 - 406

PART II – POINTS IN ISSUE

24. Pursuant to the order of McLachlin C.J.C. dated January 19, 2001 stating the constitutional questions, the issues in this appeal are as follows:

(1) Does paragraph 51(e) of the *Canada Elections Act*, R.S.C. 1985, c. E-2 infringe the right to vote in an election of members of the House of Commons, as guaranteed by s. 3 of the *Canadian Charter of Rights and Freedoms?*

10

(2) Does paragraph 51(*e*) of the *Canada Elections Act*, R.S.C. 1985, c. E-2 constitute a reasonable limit, prescribed by law, which can be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms?*

(3) Does paragraph 51(*e*) of the *Canada Elections Act*, R.S.C. 1985, c. E-2 infringe the right to equality before and under the law and equal benefit of the law without discrimination, as guaranteed by s. 15(1) of the *Canadian Charter of Rights and Freedoms?*

20

(4) If the answer to Question (3) is yes, is the infringement a reasonable limit, prescribed by law, which can be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Canadian Charter of Rights and Freedoms?*

PART III – ARGUMENT

25. In *Sauvé v. Canada (Attorney General)* this Court stated that the Attorney General of Canada properly conceded that the predecessor to paragraph 51(e) of the *Canada Elections Act* contravened s. 3 of the *Charter*. This Court dismissed the Attorney General of Canada's appeals however, because the predecessor legislation was drawn too broadly and failed to meet the proportionality test, particularly the minimal impairment component of that test. Here, the Respondents again concede that the impugned provision contravenes s. 3 of the *Charter*, but submit that it fully responds to the concerns identified by this Court in *Sauvé*, and is justified as a reasonable limit. The Respondent also says that paragraph 51(e) of the *Canada Elections Act* does not contravene s. 15 of the *Charter*, and in the alternative, if it does, it is justified as a reasonable limit.

***Sauvé v. Canada (Attorney General)*, *supra*, at 439 – 440 *per* Iacobucci J. for the Court**

26. Following this Court's reasoning in *Harvey v. New Brunswick* and applying it by analogy to the case at bar, the majority of the Federal Court of Appeal below stated:

> Here too Parliament has sought to further electoral goals with a period during which the person convicted of the most serious crimes will be prohibited from participating in the law-making process. *I can see no reason why this Court should declare invalid the balancing engaged in by Parliament in this case.*

While there may be valid public *policy* reasons to support granting the franchise to serious criminal offenders undergoing punishment as there are to temporarily disenfranchising them, the particular policy choice between the two is for Parliament to make. Parliament having made the second choice, it is submitted that the Appellants have not advanced any valid *legal* reasons why paragraph 51(e) of the *Canada Elections Act* is not justified as a reasonable limit.

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, p. 2129 (emphasis added)

Harvey v. New Brunswick (Attorney General), [1996] 2 S.C.R., at 905-6 _per_ La Forest J. for the majority

A. The Federal Court of Appeal correctly found that paragraph 51(e) of the _Canada Elections Act_ is a reasonable limit demonstrably justified in a free and democratic society pursuant to s. 1 of the _Charter_

1. Applicable principles relating to s. 1 of the _Charter_

10

27. The majority of the Federal Court of Appeal followed this Court's decision in *Thomson Newspapers v Canada (Attorney General)* to the effect that proportionality can only be measured through close attention to context. The majority observed that "it is also important in order to determine the type of proof which a court can demand of the legislator to justify its measures under s. 1."

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, p. 2109

20 ***Thomson Newspapers v Canada (Attorney General)*, [1998] 1 S.C.R., at 939 _per_ Bastarache J. for the majority**

28. The majority of the Federal Court of Appeal also correctly noted that this Court has previously observed that in many cases scientific and conclusive proof of the effects of the legislation is impossible. Courts should be willing to find a causal connection between legislation and its intended benefits on the basis of reason, deduction or inference.

30

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, p. 2109

***RJR-MacDonald Inc. v Canada (Attorney General)*, [1995] 3 S.C.R. 199, at 339 _per_ McLachlin J.**

***R v Butler*, [1992] 1 S.C.R. 452, at 502-3 _per_ Sopinka J. for the majority**

29. The majority of the Federal Court of Appeal also considered the appropriate level of deference with respect to the issue at bar and stated that "[w]hile it is important to consider the state's position as "singular antagonist" that cannot and does not end the question of context."

Reasons of the Federal Court of Appeal, App. Rec. Vol. XI, p. 2121

30. This Court has previously commented on the difficulty of applying the "singular antagonist" distinction. In *Thomson Newspapers, supra*, this Court stated that nothing in the cases making the distinction between when the state is acting as antagonist of the individual and those where it is acting as a mediator, suggest that there is one category of cases with a lower standard of justification under s. 1 and another category in which a higher standard is applied. It is simply part of the context of the case.

***Thompson Newspapers, supra,* at 942**

31. In the context of this case, the majority of the Federal Court of Appeal correctly noted that "this statute represents an example of the state setting the ground-rules for its electoral process ... [I]t is Parliament's role to maintain and enhance the integrity of the electoral process. Such considerations are by definition political and therefore warrant deference". With this legislation, Parliament is very much legislating in the political sphere (an Act governing elections). In this political sphere, it is carrying out a policy-making norm-setting function by setting a standard for voter disqualification on the basis of serious criminal conduct. Linden, J.A. referred to this Court's discussion of a mandatory minimum sentence imposed in the British Columbia *Motor Vehicle Act* and noted this Court's view that the provincial legislature's choice regarding the gravity of offences and punishment which results from conviction are entitled to considerable deference. In that case, Gonthier, J. speaking for the majority, quoted with approval the following passage:

> It is not for the court to pass on the wisdom of Parliament with respect to the gravity of various offences and the range of penalties which may be imposed upon those found guilty of committing the offences. Parliament has broad

> discretion in proscribing conduct as criminal and in determining proper punishment. While the final judgment as to whether a punishment exceeds constitutional limits set by the *Charter* is properly a judicial function, the court should be reluctant to interfere with the considered views of Parliament and then only in the clearest cases ...

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, pp. 2122 – 2123
***R. v. Goltz,* [1991] 3 S.C.R. 485, at 502 *per* Gonthier J. for the majority**

32. As noted earlier, the Respondents led substantial expert evidence at trial which dealt with, in particular, the nature of our democracy, the nature and purpose of disenfranchisement and whether disenfranchisement was consistent with democratic principles. This expert evidence was in the nature of legislative, as opposed to adjudicative, facts meant to assist the court in exploring "the broader philosophy underlying the historical development of the right to vote – a philosophy which is capable of explaining the past and animating the future".

***Reference Re Provincial Electoral Boundaries (Saskatchewan),* [1991] 2 S.C.R. 158, *per* McLachlin J., (as she then was) for the majority at 180-1; see also Sopinka J. at 197-8**

33. Finally, as stated by the majority of this Court in *Harvey, supra,* adopting the words of the majority in *Slaight Communications Inc. v Davidson*:

> The underlying values of a free and democratic society both guarantee the rights in the *Charter*, *and in appropriate circumstances, justify limitations upon those rights.*

***Harvey, supra,* at 901**
***Slaight Communications Inc. v. Davidson* [1989] 1 S.C.R. 1038, at 1056 *per* Dickson C.J. for the majority (emphasis added)**

2. The legislative objectives are pressing and substantial

34. The majority of the Federal Court of Appeal noted that the learned trial judge considered the parties' submissions, the legislative history of the provision and the text of the provision in finding that the legislative objectives of the legislation were:

(a) The enhancement of civic responsibility and respect for the rule of law;

(b) The enhancement of the general purposes of the criminal sanction.

The majority of the Federal Court of Appeal reviewed the evidence and agreed with the learned trial judge on this issue. Desjardins, J.A., in dissent, also adopted the learned trial judge's finding on this point.

Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, pp. 2111 - 2112
Reasons of Desjardins, J.A. of the Federal Court of Appeal, App. Rec. Vol. XI, p. 2167

35. The proceedings in Parliament indicate that after much debate the two year marker for disenfranchisement was chosen based on the reasoning that this has been a traditional marker in our law segregating major crimes from those that are minor.

Proceedings in Parliament, App. Rec. pp. 181 - 82, 188, 247

36. The legislative record demonstrates that the objectives were clearly intended to disqualify serious lawbreakers as a societal response to their serious criminal conduct. As long as a person refrains from such activity, the right to vote is maintained but it is temporarily forfeited once a citizen chooses otherwise.

Proceedings in Parliament, App. Rec. pp. 181, 182, 188 – 89, 238, 240, 247

37. While the McCorrister Appellants submit that there is no pressing and substantial governmental objective (Factum paras. 43 – 45), their submissions completely ignore the trial record, the trial judge's finding on this issue, and the fact that the Federal Court of Appeal was unanimous on this point. Instead, their submissions are based on *dicta* from

cases involving previous legislation and material not presented in the courts below.[8] Constitutional litigation remains firmly grounded in the discipline of common law methodology which assumes a trial process.

***Danson v. Ontario (Attorney General),* [1990] 2 S.C.R. 1086 at 1101**

38. Regarding the cases involving the previous legislation, it is important to remember that the Federal Court of Appeal in *Belczowski, supra,* stated that the predecessor legislation made "...no attempt to weigh, assess or balance the seriousness of the conduct which may have resulted in imprisonment and the resultant deprivation of a Charter guaranteed right". The Court stated that a denial of the right to vote upon conviction for a felony[9] could readily be understood as a punishment for that crime, while a similar denial for mere imprisonment looked more like a consequence of that condition rather than punishment for the conduct which brought about the imprisonment. The Ontario Court of Appeal in *Sauvé No. 1, supra,* agreed with the Federal Court of Appeal's reasons in *Belczowski, supra,* on the issue of the distinction between disenfranchising those individuals who were merely imprisoned as opposed to those convicted of serious crimes.

***Belczowski v Canada,* [1992] 2 F.C. 440 (C.A.), at 458, 460**
***Sauvé v Canada,* (1992) 7 O.R. (3d) 481 (Ont. C.A.) at 488**

---

[8] The exception is the article on disenfranchisement entitled: The Disenfranchisement of Ex-Felons: Citizenship, Criminality and "The Purity of the Ballot Box". This article was discussed at trial but involves, as the title indicates, the permanent disenfranchisement of serious criminal offenders even after their sentence is complete. The Respondents' expert witness Dr. Jean Hampton thoroughly critiqued that article at trial in the course of being subjected to a very lengthy cross-examination. The evidence of the Appellant's expert, Professor Jackson, to the extent it has any relevance to this issue, was presumably not accepted by the learned trial judge.

[9] The Court's reference to the term felony refers to a previous enactment that disenfranchised those guilty of felonies or treason. The term felony is described in working paper 48 of the Law Reform Commission of Canada, Criminal Intrusion, 1986 at p. 3: "From the beginning of Anglo-Saxon time there were certain offences for which money could not compensate. These were offences which especially offended the moral or religious values of the community and included robbery, theft, arson, rape, aggravated assault and burglary. These came to be known as felonies." The type of crimes listed above bear a striking resemblance to the table of crimes for which a term of imprisonment of two years or more is given and which is set out in the table at paragraph 13 of this factum.

39. In this case, the majority of the Federal Court of Appeal discussed the effect of this legislation under the proportionality aspects of the *Oakes* test:

> The main salutary effect of this legislation is a complex but important one. The legislation dramatically expresses the sense of societal values of the community in relation to serious criminal behaviour and the right to vote in our society. It is not merely symbolic. This legislation sends a message signalling Canadian values, to the effect that those people who are found guilty of the most serious crimes will, while separated from society, lose access to one of the levers of electoral power. This is an extremely important message, one which is not sent by incarceration alone. Incarceration is essentially separation from the community. Incarceration alone signals denunciation of the offender's anti-soceital (sic) behaviour and indicates society's hope for rehabilitation through separation from the community. Incarceration by itself, however, leaves those convicted of serious crimes free to exercise all the levers of electoral power open to all law-abiding citizens. This maintains a political parity between those convicted of society's worst crimes and their victims. Disqualification from voting, however, signals the denunciation of the criminal's anti-societal behaviour and sends the message that those people convicted of causing the worst forms of indignity to others will be deprived of one aspect of the political equality of citizens – the right to vote. It can be said that, in this context, "kindness toward the criminal can be an act of cruelty toward his victims, and the larger community".
>
> **Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, pp. 2137-2138. (emphasis in original)**

40. The majority also stated:

> This legislation proclaims that values of civic responsibility are important to Canadians. This signal itself is an important benefit of the law. The signal itself is a double signal, a message about the community's view of crime and the repudiation of the indignity perpetrated on victims of crime. Where someone, by committing a serious crime, evinces contempt for basic societal values, their right to vote may be properly suspended. Indeed, not to do so undermines our democratic values.
>
> **Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, p. 2139**

41. In *Reference Re Manitoba Language Rights*, this Court quoted with approval an excerpt from Joseph Raz, in *The Authority of Law:*

> Dr. Raz has said: " 'The rule of law' means literally what it says. The rule of the law . . . It has two aspects: (1) that people should be ruled by the law and obey it, and (2) that the law should be such that people will be able to be guided by it"

***Reference re Manitoba Language Rights, supra,* at 749 – 750 (emphasis added)**

42. In that case, this Court also quoted with approval Wade and Phillips, *Constitutional and Administrative Law* (9th ed. 1977), at p. 89:

> ...the rule of law expresses a preference for law and order within a community rather than anarchy, warfare and constant strife. In this sense, the rule of law is a philosophical view of society which in the Western tradition is linked with basic democratic notions.

43. It is surely always a pressing and substantial objective to foster and enhance civic responsibility and law-abidingness in a democracy. In *Reference re Secession of Quebec,* this Court stated that the concepts of "democracy" and "rule of law" cannot be defined in isolation from each other nor can one principle trump the other. This court has said that "democracy in any real sense of the word cannot exist without the rule of law" and that the rule of law is a fundamental postulate of our constitutional structure. This Court also stated that the rule of law means that the law is supreme over the acts of both government and private persons.

***Reference re Secession of Quebec, supra,* at 248; 257-258**

44. This legislation fosters civic responsibility and respect for the rule of law by disqualifying those citizens who have "encroached on our society's basic code of values as enshrined within our substantive criminal law" from being able to participate in the law-making process in electing our lawmakers. In other words, it sets a minimal standard for the participation in the law-making process. It also has a secondary punitive aspect that enhances the purposes of the criminal sanction.

***R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at 558 *per* Lamer C.J. for the Court**

3. The legislative objectives are rationally connected to the law which seeks to further them

45. The majority below found that the trial judge properly concluded, after considering at length the expert evidence, that the legislation was rationally connected to its objectives. In particular, the learned trial judge:

> seems to have accepted the evidence of Dr. Thomas Pangle and Dr. Christopher Manfredi, who testified that a legislative objective of enhancing civic responsibility and fostering respect for the rule of law was rationally connected to legislation which denounces disrespect for the process of law and for the social contract, and which restricts the franchise as a means of showing connection to the Canadian polity.

Reasons of the majority of the Federal Court of Appeal, App. Rec., pp. 2117 – 2118

46. As noted by the majority below, the learned trial judge also concluded that there was a rational connection between the disenfranchisement of prisoners and "the objective of furthering the criminal sanction". In this regard, the learned trial judge found that:

> [as] an aid to punishment, the provision clearly imposes a sanction, and denounces bad conduct. A fundamental democratic right has been removed for crimes committed and its removal is clearly felt as a deprivation … it is also reasonable to conclude that a morally educative message is sent to offenders, and possibly to the general population, by the imposition of a sanction.

Reasons of the majority of the Federal Court of Appeal, App. Rec., p. 2118

47. The McCorrister Appellants (Factum para. 48) submit that a rational connection is absent because there are many indecent citizens outside of the penitentiary and many penitentiary inmates who are not indecent or evil. The simple answer to this submission

is that the legislative standard for indecency[10] is serious criminal *conduct* warranting a sentence of two years or more. By definition that excludes people outside of the penitentiary who have obviously refrained from such conduct, or alternatively who benefit from the presumption of innocence until a finding of guilt for criminal activity warranting a sentence of two years or more by a competent court of law. Those within a penitentiary are disenfranchised not because they are themselves inherently evil or indecent, but rather because they have committed serious criminal acts warranting a sentence of two years or more, in other words they have done something indecent. The legislative standard contained in paragraph 51(e) is entirely *conduct* driven.

10

48. The McCorrister Appellants submit that the legislation is arbitrary in its practical application (Factum, para. 28-29). The majority of the Federal Court of Appeal correctly noted, however, that proportionality is built into the provision by the fact that those serving longer terms will be disenfranchised for a longer period. Also, as noted by the majority it is the suspension of the right to vote and not necessarily the actual loss of a vote that is significant. In addition, this Court's reasons in *Harvey*, *supra*, specifically rejected a similar argument in relation to s. 119(c) of the *New Brunswick Elections Act* which is apposite here as well:

> I would also reject the appellant's contention that the operation of
20 s. 119(c) is arbitrary because it is mandatory in nature and applies to everyone convicted of a corrupt or illegal practice. While the s. is mandatory, it only comes into play when an individual has been convicted of one of a number of prescribed offences...
>
> The argument that the penalty is arbitrary is also weakened by the fact that it is only imposed after a conviction in a court of law. *Finally, the fact that the trial judge has no discretion with respect to this part of the penalty is no more arbitrary than any minimum sentence found in the Criminal Code or any other penal statute.*

30

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, p. 2132; 2128, 2129, 2141

---

[10] Decent simply means "conforming with generally accepted standards of behavior or propriety." Conversely, indecent simply means "offending against recognized standards of decency." *(Oxford Dictionary, 10th ed.)* Parliament's standard of decency in this case is refraining from serious criminal conduct warranting a term of imprisonment of two years or more. (para. 51(e) *Canada Elections Act*)

***Harvey v. New Brunswick (Attorney General)*, *supra*, at 904, *per* La Forest J. (emphasis added)**

4. Paragraph 51(e) impairs the *Charter* right in an appropriately minimal way

49. As is clear from the proceedings before the Special Committee on Electoral Reform, Parliament was aware of, and responding to, this Court's decision striking down the predecessor legislation which disqualified from voting "every person undergoing punishment as an inmate in any penal institution for the commission of any offence" in deciding on where to draw the line on which offenders could and should be disenfranchised. Parliament created a provision which specifically addressed the deficiency in the previous law that was identified in *Sauvé*.

Belczowski v. Canada*, *supra
Sauvé v. A.G. Canada (Sauvé No. 1)*, *supra
Sauvé v. Canada (Attorney General)*, *supra

50. Parliament chose the two year term on the basis that this is a marker in our law that traditionally divides major crimes from minor ones. In settling upon the threshold of a sentence of two years or more, Parliament has chosen a marker regarding serious criminal activity which is well established in our legal system. For example:

a) Persons serving a sentence of two years or more shall be imprisoned in a penitentiary;

s. 743.1 Criminal Code

b) Persons sentenced to a term of imprisonment of two years or more are not eligible to serve their sentence in open custody;

s. 742.1 Criminal Code

c) An offender serving a sentence of imprisonment of two years or more is subject to having a court delay parole until one half of the sentence is served;

s. 743.6 Criminal Code

d) In the scale of punishments set out in the *National Defence Act*, imprisonment for two years or more is the most serious sentence provided for aside from life imprisonment;

s. 139 National Defence Act

e) The marker of two years or more is also utilized in the *Geneva Conventions Act* in different circumstances for the treatment of prisoners of war;

10

s. 5(1); 6(1); Article 71, Article 74 Geneva Conventions Act (IV)

f) A person holding an office under the Crown or other public employment loses his or her job if sentenced for an indictable offence to a term of imprisonment of two years or more.[11]

s. 750(1) Criminal Code

20 51. The learned trial judge found that "the statistics do verify that the federal inmate population consists of individuals with long histories of involvement in serious criminal activities. Thus, these statistics appear to support Parliament's choice for selecting two years as the cut-off for the disqualification of individual offenders who have exhibited bad criminal conduct". The statistics show a litany of serious crimes and an average of 29.5 convictions per inmate. This conduct shows a disregard for the rule of law.

Reasons of the learned trial judge, App. Rec., Vol. XI, p. 2067

52. Nonetheless, the learned trial judge found that a case-by-case disenfranchisement
30 of each offender by the sentencing judge would be an equally effective and significantly less intrusive means of infringing a citizens' democratic right to vote. He stated that:

> Indecency exists in society generally, and it is not only found in correctional institutions. The law as it now stands cannot distinguish the type of offender whose indecency is so profound as to threaten the principles of our free and democratic society.

---

[11] This provision was recently amended to indicate a sentence of two years or more as opposed to the former provision of five years. It is this enactment which is referred to by Arbour J.A. (as she then was) in her reasons in *Sauvé, supra*, at p. 488 as an example of a provision targeting serious criminal activity.

In her dissenting judgment in the Court below, Desjardins, J.A. concurred in the learned trial judge's view on this issue.

Reasons of the learned trial judge, App. Rec. Vol. XI, p. 2069
Reasons of Desjardins J.A., App. Rec. Vol. XI, p. 2179-80

53. It is especially important for Courts to allow adequate scope for Parliament to achieve its objectives. Courts should not substitute judicial opinions for legislative ones as to where to draw precise lines in the formulation of legislation.

***RJR-MacDonald Inc., supra*, at 342 *per* McLachlin J.**
***Harvey, supra*, at 906 *per* La Forest J.**
***R. v. Edwards Books and Art Ltd.* [1986] 2 S.C.R., at 781-2, *per* Dickson C.J., 794-5 *per* La Forest J.;**
***Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at 983, 989-990 *per* Dickson C.J.**

54. With respect, the reasons of the learned trial judge adopted by Desjardins, J.A. in dissent constitute judicial line-drawing without a principled basis in law. The type of *conduct* warranting a two year sentence is violative of the values which underlie our society, namely the rule of law, and respect for the equality and freedom of our fellow citizens. As stated by Respondent witness Dr. Jean Hampton:

> Q: Can you explain then, or what is it, how these aims of punishment are enhanced, facilitated by this law, and I suppose, I will ask you to start, perhaps, with retribution?
>
> A: Okay. Starting with retribution, a free and democratic society, as I have been saying, really has front and centre two ideals, the ideal of equality and the ideal of freedom. Now, any offence, and I have argued this at some length, but I will briefly go through it here, any offence is going to flout at least one, and usually both of those values. People who murder, or rape, or assault are people who are not respecting other people's freedom, and not respecting their equality. Indeed, sometimes the aim of the wrongdoer, for example in the case of rape, is to degrade the victim. So a system that is interested in those values has got to respond. And it comes up with the punishment in order to do so.

Transcript of Evidence, Respondent's Record, pp. 179 – 180
***McKinney v. University of Guelph*, [1990] 3 S.C.R., 230 at 289 *per* La Forest at 289**

55. In the United States, most states disqualify inmates from the voting process in various ways, they are also disqualified in different ways in England, France, Australia, New Zealand, Germany and Spain. [12] The European Commission of Human Rights has recognized the legislator's ability to draw a line restricting the right to vote in respect of convicted persons. In *H. v. the Netherlands* the Commission stated as follows:

> Such restrictions can be explained by the notion of dishonour that certain convictions carry with them for a specific period, which may be taken into consideration by legislation in respect of the exercise of political rights. Although, at first glance, it may seem inflexible that a prison sentence of more than one year should always result in a suspension of the exercise of the right to vote for three years, the Commission does not feel that such a measure goes beyond the restrictions justifiable in the context of Article 3 of the Protocol.

***H. v. the Netherlands* (1983) 33 Eur. Comm., H.R. 242**

56. The majority of the Federal Court of Appeal correctly held that the impugned legislation "is carefully tailored to affect only Canada's most serious offenders". The Court noted that in order for a person to be disenfranchised, that person had to be convicted beyond a reasonable doubt of a serious offence and sentenced to prison term of not less than two years, which in our criminal justice system is a serious matter.

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, pp. 2126

57. Linden, J.A. for the majority found that the learned trial judge's alternative to the impugned legislation, being disenfranchisement on a case-by-case basis, was not attractive to Parliament, given the additional complexity and resources required to administer such a system.

---

[12] Foreign law is set out in the compilation of foreign law, not reproduced in either of the parties' records. See Federal Court Appeal Book, Vol. I, pp. 67 – 188, Vol. II and Vol. III. See also reasons of the learned trial judge at App. Rec. Vol. XI, p. 2056.

Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, p. 2127

58. The majority also correctly observed that, in *Harvey, supra*, this Court found that there was no justification for it to interfere with the balancing engaged in by the New Brunswick Legislature in selecting a five year disqualification for candidates to run for office in a general election. The reasoning used by this Court in that case is apposite to the case at bar.

Reasons of the majority of the Federal Court of Appeal, App. Rec., Vol. XI, pp. 2128 – 2129
***Harvey, supra,* at 905 - 6**

59. The majority of the Federal Court of Appeal also correctly held that Parliament can validly enact legislation within its legislative competence which creates a civil disability arising out of a criminal conviction.

Reasons of the majority of Federal Court of Appeal, App. Rec., Vol. XI, pp. 2129 – 2132

60. The majority of the Court below correctly stated that the trial judge's reasoning, effectively requiring individualized disenfranchisement, wrongly neglected the individualized elements of the impugned legislation: "Those who are convicted of the most serious crimes – and handed the most serious sentences – will be disqualified from voting for a longer period than those who are sentenced only for two years".

Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, p. 2132

61. Prisoners serving sentences of two years or more are serving time for reasons which relate to a long criminal record or a particular serious conviction, or both. It is the *bad conduct,* (which led the prisoners to this penitentiary period of incarceration), which attracts the important objectives set out above. These two objectives, grounded as they are in the enhancement of civic responsibility and respect for the rule of law, and the enhancement of

the general purposes of the criminal sanction, respond to both the needs of society and the reformative needs of this particular type of bad offender.

Report of Thomas Pangle, App. Rec. Vol. III, pp. 427 - 432
Report of Christopher Manfredi, App. Rec. Vol. III, pp. 536, 537

62. The disqualification of prisoners whose conduct has resulted in periods of incarceration of two years or more underscores the important relationship between lawful conduct and liberal democratic citizenship. Depriving those offenders of the right to participate in the law-making process teaches the importance of lawful conduct as a condition precedent for a functioning democracy. At the same time, the denunciatory aspect of the disqualification teaches the inherent dignity and value of the franchise and the connected link to the adherence to the rule of law.

Report of Dr. Jean Hampton, App. Rec. Vol. IV, pp. 723 - 724

5. Proportionate effects

63. At the final stage of the proportionality analysis, if the imposition of the measure results in the full or nearly full realization of the legislative objective, the court is called upon to balance the importance of the pressing and substantial objectives against the deleterious effects of the measure. In other cases, the measure at issue, while rationally connected to an important objective, may result in only partial achievement of this objective. In such cases the final stage of the proportionality analysis "requires both that the underlying objective and the salutary effects that actually results from its operation be proportional to the deleterious effects the measure has on fundamental rights and freedoms".

***R. v. Oakes, supra*, at 138 – 140 *per* Dickson C.J. for the majority**
***Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, at 887 – 8 *per* Lamer C.J. for the majority**

64. In this case the legislation fully realizes the legislative objective in that it sets a norm and standard for disqualifying serious lawbreakers from the law-making process and has the further objective of punishing serious criminal offenders by way of that disqualification. The enactment of the legislation creates the norm and fulfills the moral aim of the legislation. As in *Harvey, supra*, there is no need to balance the salutary and deleterious effects of this legislation.

R. v. Butler, supra, at 502 _per_ Sopinka J. for the majority
Harvey v. New Brunswick (Attorney General), supra, at 905 - 908 _per_ La Forest J. for the majority

65. The potential for legislation to express a moral aim was confirmed by this Court in *R. v. Butler*:

> On the other hand, I cannot agree with the suggestion of the appellant that Parliament does not have the right to legislate on the basis of some fundamental conception of morality for the purposes of safeguarding the values which are integral to a free and democratic society. As Dyzenhaus, supra, at p. 376 writes:
>
> > Moral disapprobation is recognized as an appropriate response when it has its basis in Charter values.
>
> As the Respondents and many of the interveners have pointed out, much of the criminal law is based on moral conceptions of right and wrong and the mere fact that a law is grounded in morality does not automatically render it illegitimate.

R. v. Butler, supra, at 493, _per_ Sopinka J. for the majority

66. In a concurring judgment in *Butler*, Gonthier J. (L'Heureux-Dubé J. concurring) says at 522 – 4 that:

> ... I cannot conceive that the State could not legitimately act on the basis of morality... In a pluralistic society like ours, many different conceptions of the good are held by various segments of the population... However, if the holders of these different

> conceptions agree that some conduct is not good, then the respect for pluralism that underlies s. 2 of the *Charter* becomes less insurmountable an objection to State action... In this sense a wide consensus among holders of different conceptions of the good is necessary before the State can intervene in the name of morality. This is also comprised in the phrase "pressing and substantial. [13]

A wide moral consensus exists in promoting law-abidingness and denouncing lawlessness in our pluralistic society.

10

67. The Appellants argue that the Respondents failed to "show any awareness of the disqualification by either criminals or the public" and that the pervasive lack of awareness of the provision suggest that it is incapable of promoting respect for the rule of law. The majority of the Federal Court of Appeal quite properly rejected that argument which comprised the *ratio* for the learned trial judge's finding that the legislation had no salutary effects. In this regard Linden, J.A. stated the following:

> With great respect for the Trial Judge, I believe that he erred in focussing on the public awareness of the provision as a proxy for the efficacy of its salutary effects. As I have already pointed out,
20 one cannot speak of salutary effects in the context of this legislation as one might in the pursuit of more conventional objectives. Further, there are salutary effects, discussed above, which are not linked to public awareness of the provision – the provision loudly denounces crime, without increasing the length of jail terms.
>
> It was submitted to this Court that public ignorance of this provision nullifies its proportionality. On reflection, I believe that argument misses the mark. While I am willing to assume that this
30 disqualification is not widely known amongst the public, it cannot be assumed that sentencing Judges and defence counsel do not know about this disqualification. In fact, it is reasonable to expect

---

[13] This line of reasoning is close to Oxford professor Dr. Joseph Raz's perfectionist liberalism set out in his book, The Morality of Freedom, (Oxford: Clarendon Press, 1986). Princeton professor Robert P. George in Making Men Moral, (Oxford: Clarendon Press, 1993) summarizes Dr. Raz's position thus: "According to Raz political theory cannot prescind from questions of individual morality – it cannot simply leave individual morality to the individual. The principles of political morality are tightly connected to the principles that establish the moral rectitude or culpability of individual action. He does not conclude that the state is warranted in enforcing every moral norm; but he does argue that the state cannot adopt a position of neutrality with respect to these norms." (at 169-170) As Dr. Raz states in his book The Morality of Freedom "it is the goal of all political action to enable individuals to pursue valid conceptions of the good and to discourage evil or empty ones." (at 133).

> that Judges know all the consequences of the sentences they hand out.
>
> **Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI pp. 2145 – 2146**

68. It is further submitted that this part of the learned trial judge's reasons, which underpinned and informed that part of his reasons for judgment on proportionate effects and to a lesser extent minimal impairment, - that the apparently unknown status of this law made it inefficacious - is a dubious proposition which has no basis in law. It is a commonplace that all acts of Parliament are enacted and as such are deemed to be known.

69. In careful and detailed reasons, the majority of the court below concluded as follows:

> "viewed as a civil consequence imposed as an alternative to additional incarceration which attaches to the most serious sentences for the most serious crimes, it must be concluded that this measure is proportional. To conclude otherwise would be to challenge Parliament's right to utilize the law to enhance civic responsibility and to establish consequences which express Canada's abhorrence of serious crime".
>
> **Reasons of the majority of the Federal Court of Appeal, App. Rec. Vol. XI, p. 2147**

70. The other ground for the learned trial judge finding that the provision's deleterious effects outweighed its salutary effects was that it failed, in his view, to promote rehabilitation and reintegration into the community. He therefore concluded that "the retributive effects of s. 51(e) are deleterious in that they are contrary to the purpose and principles contained in the C.C.R.A."[*Corrections and Conditional Release Act*].

> **Reasons of the learned trial judge, App. Rec., Vol. XI, p. 2080**

71. It is submitted that the entire analysis of the learned trial judge regarding the weighing of deleterious and salutary effects was unnecessary because the legislative objectives were fully met. In addition, the discussion between the relative benefits of

enfranchising serious criminal offenders or disenfranchising them amounts to an adjudication of the merits of public policy which, as this Court stated in *Vriend* and *Re British Columbia Motor Vehicle Act, supra*, is not a proper function for a court of law.

***Dagenais, supra*, at 885 – 887**
***Thomson Newspapers, supra,* at 967 - 8**

72. The majority of the Federal Court of Appeal found that a main motivation for the passing of this law, in addition to electoral considerations, was the retributive and denunciatory aspects of the penal sanction. Linden, J.A. observed that "The Courts cannot prevent Parliament from proportionately compromising Charter rights in the name of denouncing crime, even if they disagree with Parliament's penal philosophy".

Reasons of the Federal Court of Appeal, App. Rec., Vol. XI, p. 2137
***See R. V. M. (C.A.), supra*, at 556 - 558**

B. Response to Appellant's arguments

73. The Appellant McCorrister submits that the denial of the *Charter* right to vote cannot be justified under s. 1 because it is a denial and not a limit. (Factum paras. 40 - 42) However, this Court has made it clear that s. 3 of the *Charter* is subject to s. 1. This case is not a "rare case of a truly complete denial" of a *Charter* right, as contemplated in *Ford v. Attorney General of Quebec*, but is rather the usual situation that is encountered when a law is found to be inconsistent with a *Charter* guarantee. The legislation results in a temporary suspension of the right to vote, not a lifelong ban on the right to vote. Clearly, the Appellant has mischaracterized the effect of the impugned legislation.

***Ford v. Attorney General of Quebec*, [1988] 2 S.C.R. 712 at 773**
See also *Sauvé v. Canada (Attorney General), supra*

74. The McCorrister Appellants (Factum para. 45), relies upon *dicta* in the Federal Court Trial Division decision in *Belczowski v Canada* that "it is the voters who choose the government, not the other way around". It is submitted that Parliament, pursuant to the powers given to it by the *Constitution Act, 1982* to "exclusively make laws amending

the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons", may validly enact minimal standards of eligibility for participating in the election of members of Parliament.

Belczowski v. Canada, [1991] 3 F.C. 151, (T.D.) at 167
s. 44, Constitution Act, 1982

75. The Appellants say that the mixed messages which Canadian society receives from conflicting Federal and Provincial prisoner voting policies cannot be justified. However, as this Court stated in the *Patriation Reference*, federalism means that the legislatures are supreme within their constitutional jurisdiction. The *Charter* cannot mandate uniform public policy on this issue unless it is found that the legislation promoting a particular public policy itself contravenes the *Charter*.

Re Resolution to Amend the Constitution, [1981] 1 S.C.R. 753, at 905-6

76. The Appellant Sauvé refers to the dissenting judgment in the court below that "no evidence was presented to establish that the *Criminal Code* and the other rules aimed at accomplishing that objective need to be supplemented by this legislation" (Factum, para. 71). It is submitted that this is not the test for determining whether legislation is justified under s. 1 of the *Charter*. Parliament need only show that the limit on the *Charter* right is a reasonable one, not that it is a necessary one. Whether or not particular legislation is necessary or advisable is entirely within Parliament's prerogative and cannot be second-guessed by a court on judicial review absent a finding that the legislation is for some other reason unconstitutional.

77. Finally, in answer to the argument of the Appellant Sauvé (Factum para. 86) that respect for the rule of law in prisoners, and others, is better promoted through enfranchisement than disenfranchisement, the Respondent says that this is a policy decision for Parliament, and not the courts, to decide.

C. Section 15 of the *Charter*

78. No Canadian court has held that the status of prisoners constitutes an analogous ground pursuant to s. 15 of the *Charter*. The entire weight of the jurisprudence is that the difference in treatment for prison inmates arises not from personal characteristics but from past courses of conduct amounting to criminal activities against society. As noted by the Federal Court of Appeal, the consensus of the courts in Canada is that prisoners do not constitute a group analogous to those enumerated under ss. 15(1) of the *Charter*.

Reasons Federal Court of Appeal, App. Rec. p. 2152
***Jackson v. Joyceville Penitentiary Tribunal*, [1990] 3 F.C. (F.C.T.D.) 55, at 112**
***Belczowski, supra*, [1991] 3 F.C. 151, at 162**
***McKinnon v. M.N.R.* 91 D.T.C. 1002 (T.C.C.), at 1004**
***Olson v Canada*, [1996] 2 F.C. 168 F.C.T.D., at 175 - 6**
***Alcorn et al v. Commissioner of Corrections* (Can.) (1999) 163 F.T.R. 1 at 30 - 32**

79. In *Chiarelli v Canada*, the Federal Court of Appeal found that permanent residents who have been convicted of serious criminal offences (in that case federal offences involving terms of imprisonment of five years or more) do not constitute an analogous category to those specifically enumerated in s. 15 of the *Charter*. In that case Pratte J.A. stated as follows:

> The appellant's second argument on this point was that subsection 32(2) infringes section 15 of the *Charter* in enacting an unwarranted distinction between permanent residents who have been convicted of an offence described in subparagraph 27(1)(d)(ii) and other permanent residents. However, in my view, such a distinction, warranted or not, cannot be said to amount to discrimination within the meaning of section 15. No analogy can be made between the grounds of discrimination mentioned in section 15 and the fact that certain permanent residents have been convicted of serious offences. Permanent residents who have been convicted of serious criminal offences do not fall into an analogous category to those specifically enumerated in section 15.

On appeal, this Court agreed with the reasons of the Federal Court of Appeal on this point.

Chiarelli v Canada, [1990] 2 F.C. 299, at 311 (F.C.A.), affirmed by this Court in _Chiarelli v Canada_, [1992] 1 S.C.R. 711, at 736 _per_ Sopinka J. for the Court

80. It is trite to state that individuals serving sentences of two years or more are not incarcerated because of a stereotypical application of presumed group characteristics but rather on the basis of individual conduct and character. Each one of these individuals have been found guilty of serious criminal conduct. Indeed, in committing the serious crimes, they flout the very values that undergird a free and democratic society.

See: Evidence of Respondent witness, Dr. Jean Hampton, _supra_, at para. 60 of this Memorandum

81. It can therefore be said that not only do serious criminal offenders not constitute an analogous group pursuant to s. 15 but that the very conduct that they have been found to have engaged in is itself inimical to one of the purposes of s. 15 – the commitment to the equal worth and human dignity of all persons.

Eldridge v British Columbia (Attorney General), [1997] 3 S.C.R. 624, at p. 667 _per_ La Forest J. for the Court

82. The Federal Court of Appeal also considered the recent decision of this Court in *Law v. Canada* and *M. v. H.* and *Corbière v. Canada* and noted that the *Law* case was now the starting point for the s. 15 analysis. The Federal Court of Appeal also stated that the recent cases didn't affect the criteria that in order to violate the *Charter* any impugned distinction must be made on the basis of an enumerated or analogous ground, and concluded as follows:

> Applying the law to this case, I cannot describe one's status as a prisoner as "a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity." Imprisonment is neither immutable nor unchangeable; for all but a few prisoners it is a status that is meant to change over time.

> Further, it cannot be said that "the government has no legitimate interest in expecting" prisoners to change in order "to receive equal treatment under the law." In fact, the contrary is true – the government has every reason to expect convicted criminals to change their behavior in order to achieve equal treatment under the law. That is the very reason for imprisonment.

Reasons of the majority of the Federal Court of Appeal, App. Rec., pp. 2147 – 2155
***Law v. Canada*, [1999] 1 S.C.R. 497, at pp. 523, 524 *per* Iacobucci J. for the Court**
***M. v. H.*, [1999] 2 S.C.R. 3, at 52 *per* Cory and Iacobucci J.J. for the majority**
***Corbière v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at pp. 216, 217; 219 *per* McLachlin and Bastarache J.J. for the majority**

83. The McCorrister Appellants argue (Factum, paras. 67 – 71) that over-representation of aboriginal persons in prison populations has the effect of placing the burden of disenfranchisement disproportionately on aboriginal people. The Federal Court of Appeal found that according to the evidence at trial only 1,837 aboriginal people were disenfranchised by the impugned legislation, and therefore it cannot be said that over-representation of aboriginal peoples in federal penitentiaries adversely affects the political expression of aboriginal peoples generally as there are over 600,000 registered aboriginal people in Canada.

Reasons of the Federal Court of Appeal, App. Rec., pp. 2155 - 2156

84. It is further submitted that paragraph 51(e) only applies to Canada's most serious criminal offenders. This Court stated in *R. v. Gladue* that generally the more violent and serious the offence, the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals would be close to each other or the same, even taking into account their different concepts of sentencing. This Court also stated that the aim of s. 718.2(e) of the *Criminal Code* was to reduce the over-representation of aboriginal people in prisons. Finally this court noted that it is unreasonable to assume that aboriginal people themselves don't believe in principles such

as denunciation which along with retribution demonstrates concern with crime and for aboriginal victims of crime.

R. v. Gladue, [1999] 1 S.C.R. 688 at pp. 729-730; 737 Transcript testimony of Jean Hampton, Resp. Rec. pp. 194-195, 227-229
See also: Rebuttal Report of Dr. Manfredi, App. Rec. Vol. III, p. 594

10 85. It is submitted that no evidence was presented at trial to indicate the economic status of the persons serving two years or more and who are incarcerated in federal institutions. In any event, it is submitted that people who are poor do not constitute an analogous group pursuant to s. 15 of the *Charter*.

Massé v Ontario (Ministry of Community and Social Services), (1996) 134 D.L.R. (4th) 20 (Ont. Div. Ct.), (leave to appeal S.C.C. denied)
Fernandes v Manitoba (Director of Social Services (Winnipeg Central)), (1992) 93
20 **D.L.R. (4th) 402, at 415 (Man. C.A.), (leave to S.C.C. denied)**
Netupsky v Canada, 96 DTC 6129 (F.C.A.) (leave to S.C.C. denied)
Vosicky v Canada, 96 DTC 6580 (F.C.A.)

86. In the alternative, if this court finds that s. 51(e) of the *Canada Elections Act* infringes s. 15 of the *Charter* then the Appellants submit that the infringement is justified as a reasonable limit.

PART IV – ORDER SOUGHT

87. Constitutional questions 1 and 2 should be answered in the affirmative. Constitutional question 3 should be answered in the negative and if constitutional question 3 is answered in the affirmative, constitutional question 4 should be answered in the affirmative, and the appeals be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at the City of Winnipeg, in Manitoba, this 25 day of June, 2001.

Morris A. Rosenberg
Deputy Attorney General of Canada
Solicitor for the Respondent

Per: David G. Frayer, Q.C.
Gérald L. Chartier
Counsel for the Respondents, The Attorney General of Canada and The Solicitor General of Canada

Department of Justice
Winnipeg Regional Office
301 – 310 Broadway
Winnipeg, Manitoba
R3C 0S6

Telephone: (204) 984-2232
Facsimile: (204) 984-5434

PART V – TABLE OF AUTHORITIES

CASES

STATUTORY PROVISIONS

ARTICLES AND TEXTBOOKS

Jean Hampton, *Punishment, Feminism, and Political Identity: A Case Study in the Expressive Meaning of the Law*, Canadian Journal of Law and Jurisprudence Vol. XI, No. 1 (January 1998) 11

Making Men Moral, (Oxford: Clarendon press, 1993), Robert P. George 31

The Rule of Law: Is That The Rule That Was? Philippe Nonet In The Rule of Law: Ideal or Ideology?, Hutchinson, Monahan, Toronto: Carswell, 1987 2

Trials and Punishments, Cambridge University Press, 1986, R. A. Duff 2

Virtue and the Making of Modern Liberalism, Princeton University Press, 1999, Peter Berkowitz 9

APPENDIX "A"
STATUTORY AUTHORITY CITED OR RELIED ON

CONSOLIDATED STATUTES OF CANADA
Canada Elections Act

QUALIFICATIONS AND DISQUALIFICATIONS OF ELECTORS

51 Disqualifications

51. The following persons are not qualified to vote at an election and shall not vote at an election:
(a) the Chief Electoral Officer;
(b) the Assistant Chief Electoral Officer;
(c) the returning officer for each electoral district during his term of office, except when there is an equality of votes on a recount, as provided in this Act;
(d) [Repealed, 1993, c. 19, s. 23]
(e) every person who is imprisoned in a correctional institution serving a sentence of two years or more; and
(f) [Repealed, 1993, c. 19, s. 23]
(g) every person who is disqualified from voting under any law relating to the disqualification of electors for corrupt or illegal practices.

R.S., 1985, c. E-2, s. 51; 1993, c. 19, s. 23.

LOIS CODIFIÉES DU CANADA
Loi électorale du Canada

AGENTS, VÉRIFICATEURS, REVENUS ET DÉPENSES DES PARTIS ENREGISTRÉS

51 Personnes inhabiles à voter

51. Les individus suivants sont inhabiles à voter à une élection et ne peuvent voter à une élection :
a) le directeur général des élections;
b) le directeur général adjoint des élections;
c) le directeur du scrutin de chaque circonscription tant qu'il reste en fonctions, sauf en cas de partage des voix lors d'un recomptage, ainsi que le prévoit la présente loi;
d) [Abrogé, 1993, ch. 19, art. 23]
e) toute personne détenue dans un établissement correctionnel et y purgeant une peine de deux ans ou plus;
f) [Abrogé, 1993, ch. 19, art. 23]
g) toute personne inhabile à voter en vertu d'une loi relative à la privation du droit de vote pour manoeuvres frauduleuses ou actes illégaux.

L.R. (1985), ch. E-2, art. 51; 1993, ch. 19, art. 23

The Canadian Charter of Rights and Freedoms

Part 1 of the Constitution Act, 1982

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

La Charte canadienne des droits et libertés

Partie 1 de la Loi constitutionnelle de 1982

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Droits démocratiques

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

The Canadian Charter of Rights and Freedoms

Part 1 of the Constitution Act, 1982

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

La Charte canadienne des droits et libertés

Partie 1 de la Loi constitutionnelle de 1982

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Garantie des droits et libertés

1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

The Canadian Charter of Rights and Freedoms

Part I of the Constitution Act, 1982

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Equality Rights

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

La Charte canadienne des droits et libertés

Partie I de la Loi constitutionnelle de 1982

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Droits à l'égalité

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même rotection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

(*e*) an amendment to this Part.

Amendment by general procedure

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) subject to paragraph 41(*d*), the Supreme Court of Canada;

(*e*) the extension of existing provinces into the territories; and

(*f*) notwithstanding any other law or practice, the establishment of new provinces.

Exception

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

Amendment of provisions relating to some but not all provinces

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

(*a*) any alteration to boundaries between provinces, and

(*b*) any amendment to any provision that relates to the use of the English or the French language within a province,

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

Amendments by Parliament

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Amendments by provincial legislatures

45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

Initiation of amendment procedures

46. (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of

Procédure normale de modification

42. (1) Toute modification de la Constitution du Canada portant sur les questions suivantes se fait conformément au paragraphe 38(1) :

a) le principe de la représentation proportionnelle des provinces à la Chambre des communes prévu par la Constitution du Canada;

b) les pouvoirs du Sénat et le mode de sélection des sénateurs;

c) le nombre des sénateurs par lesquels une province est habilitée à être représentée et les conditions de résidence qu'ils doivent remplir;

d) sous réserve de l'alinéa 41*d*), la Cour suprême du Canada;

e) le rattachement aux provinces existantes de tout ou partie des territoires;

f) par dérogation à toute autre loi ou usage, la création de provinces.

Exception

(2) Les paragraphes 38(2) à (4) ne s'appliquent pas aux questions mentionnées au paragraphe (1).

Modification à l'égard de certaines provinces

43. Les dispositions de la Constitution du Canada applicables à certaines provinces seulement ne peuvent être modifiées que par proclamation du gouverneur général sous le grand sceau du Canada, autorisée par des résolutions du Sénat, de la Chambre des communes et de l'assemblée législative de chaque province concernée. Le présent article s'applique notamment :

a) aux changements du tracé des frontières interprovinciales;

b) aux modifications des dispositions relatives à l'usage du français ou de l'anglais dans une province.

Modification par le Parlement

44. Sous réserve des articles 41 et 42, le Parlement a compétence exclusive pour modifier les dispositions de la Constitution du Canada relatives au pouvoir exécutif fédéral, au Sénat ou à la Chambre des communes.

Modification par les législatures

45. Sous réserve de l'article 41, une législature a compétence exclusive pour modifier la constitution de sa province.

Initiative des procédures

46. (1) L'initiative des procédures de modification visées aux articles 38, 41, 42 et 43 appartient au Sénat, à la Chambre des communes ou à une assemblée législative.

(*d*) terminate the conditional sentence order and direct that the offender be committed to custody until the expiration of the sentence.

1995, ch. 22, art. 6.

742.7 [Where person imprisoned for new offence] Where an offender who is at large under a conditional sentence is imprisoned for another offence, whenever committed, the running of the conditional sentence is suspended during the period of imprisonment for that other offence, unless otherwise ordered by the court under subsection 742.4(3) or 742.6(9), but no such order may be incompatible with subsection 718.3(5).

1995, ch. 22, art. 6.

Imprisonment

743. [Imprisonment when no other provision] Every one who is convicted of an indictable offence for which no punishment is specially provided is liable to imprisonment for a term not exceeding five years.

S.R., ch. C-34, art. 670; 1974-75-76, ch. 105, art. 21; 1992, ch. 11, art. 16; 1995, ch. 22, art. 6.

743.1 (1) [Imprisonment for life or more than two years] Except where otherwise provided, a person who is sentenced to imprisonment for

(*a*) life,

(*b*) a term of two years or more, or

(*c*) two or more terms of less than two years each that are to be served one after the other and that, in the aggregate, amount to two years or more,

shall be sentenced to imprisonment in a penitentiary.

(2) [Subsequent term less than two years] Where a person who is sentenced to imprisonment in a penitentiary is, before the expiration of that sentence, sentenced to imprisonment for a term of less than two years, the person shall serve that term in a penitentiary, but if the previous sentence of imprisonment in a penitentiary is set aside, that person shall serve that term in accordance with subsection (3).

(3) [Imprisonment for term less than two years] A person who is sentenced to imprisonment and who is not required to be sentenced as provided in subsection (1) or (2) shall, unless a special prison is prescribed by law, be sentenced to imprisonment in a prison or other place of confinement, other than a penitentiary, within the province in which the person is convicted, in which the sentence of imprisonment may be lawfully executed.

d) mettre fin à l'ordonnance de sursis et ordonner que le délinquant soit incarcéré jusqu'à la fin de la peine d'emprisonnement.

742.7 [Nouvelle infraction] Lorsque le délinquant mis en liberté en application d'une ordonnance de sursis est emprisonné pour une autre infraction, quelle que soit l'époque de la perpétration de celle-ci, la période de sursis est suspendue pendant cette période d'emprisonnement, sauf ordonnance au contraire rendue par le tribunal en application des paragraphes 742.4(3) ou 742.6(9), sous réserve toutefois du paragraphe 718.3(5).

Emprisonnement

743. [Absence de peine] Quiconque est déclaré coupable d'un acte criminel pour lequel il n'est prévu aucune peine est passible d'un emprisonnement maximal de cinq ans.

743.1 (1) [Emprisonnement à perpétuité ou pour plus de deux ans] Sauf disposition contraire de la présente loi ou de toute autre loi fédérale, une personne doit être condamnée à l'emprisonnement dans un pénitencier si elle est condamnée, selon le cas:

a) à l'emprisonnement à perpétuité;

b) à un emprisonnement de deux ans ou plus;

c) à l'emprisonnement pour deux ou plusieurs périodes de moins de deux ans chacune, à purger l'une après l'autre et dont la durée totale est de deux ans ou plus.

(2) [Période postérieure de moins de deux ans] Lorsqu'une personne condamnée à l'emprisonnement dans un pénitencier est, avant l'expiration de cette peine, condamnée à un emprisonnement de moins de deux ans, elle purge cette dernière peine dans un pénitencier. Toutefois, si la peine antérieure d'emprisonnement dans un pénitencier est annulée, elle purge la dernière conformément au pararaphe (3).

(3) [Emprisonnement de moins de deux ans] Lorsqu'une personne est condamnée à l'emprisonnement et qu'elle n'est pas visée par les paragraphes (1) ou (2), elle est, sauf si la loi prévoit une prison spéciale, condamnée à l'emprisonnement dans une prison ou un autre lieu de détention de la province où elle est déclarée coupable, où la peine d'emprisonnement peut être légalement exécutée, à l'exclusion d'un pénitencier.

(3.1) **[Long-term supervision]** Notwithstanding subsection (3), an offender who is required to be supervised by an order made under paragraph 753.1(3)(*b*) and who is sentenced for another offence during the period of the supervision shall be sentenced to imprisonment in a penitentiary.

(4) **[Sentence to penitentiary of person serving sentence elsewhere]** Where a person is sentenced to imprisonment in a penitentiary while the person is lawfully imprisoned in a place other than a penitentiary, that person shall, except where otherwise provided, be sent immediately to the penitentiary, and shall serve in the penitentiary the unexpired portion of the term of imprisonment that that person was serving when sentenced to the penitentiary as well as the term of imprisonment for which that person was sentenced to the penitentiary.

(5) **[Transfer to penitentiary]** Where, at any time, a person who is imprisoned in a prison or place of confinement other than a penitentiary is subject to two or more terms of imprisonment, each of which is for less than two years, that are to be served one after the other, and the aggregate of the unexpired portions of those terms at that time amounts to two years or more, the person shall be transferred to a penitentiary to serve those terms, but if any one or more of such terms is set aside or reduced and the unexpired portions of the remaining term or terms on the day on which that person was transferred under this section amounted to less than two years, that person shall serve that term or terms in accordance with subsection (3).

(6) **[Newfoundland]** For the purposes of subsection (3), "penitentiary" does not, until a day to be fixed by order of the Governor in Council, include the facility mentioned in subsection 15(2) of the *Corrections and Conditional Release Act*.

(3.1) **[Surveillance de longue durée]** Malgré le paragraphe (3), lorsque le délinquant soumis à une ordonnance de surveillance aux termes du paragraphe 753.1(3) est condamné pour une autre infraction pendant la période de surveillance, il doit être condamné à l'emprisonnement dans un pénitencier.

(4) **[Condamnation au pénitencier d'une personne purgeant une peine ailleurs]** Lorsqu'une personne est condamnée à l'emprisonnement dans un pénitencier pendant qu'elle est légalement emprisonnée dans un autre endroit qu'un pénitencier, elle doit, sauf lorsqu'il y est autrement pourvu, être envoyée immédiatement au pénitencier et y purger la partie non expirée de la période d'emprisonnement qu'elle purgeait lorsqu'elle a été condamnée au pénitencier, ainsi que la période d'emprisonnement pour laquelle elle a été condamnée au pénitencier.

(5) **[Transfèrement dans un pénitencier]** La personne qui est détenue dans une prison ou un autre lieu de détention qu'un pénitencier et qui doit purger de façon consécutive plusieurs peines d'emprisonnement dont chacune est inférieure à deux ans est transférée dans un pénitencier si la durée totale à purger est égale ou supérieure à deux ans; toutefois, si l'une des peines est annulée ou si sa durée est réduite de telle façon que la période d'emprisonnement restant à purger à la date du transfert devient inférieure à deux ans, cette personne purge sa peine en conformité avec le paragraphe (3).

(6) **[Terre-Neuve]** Pour l'application du paragraphe (3), «pénitencier» ne vise pas, avant la date à fixer par décret du gouverneur en conseil, l'établissement mentionné au paragraphe 15(2) de la *Loi sur le système correctionnel et la mise en liberté sous condition*.

1992, ch. 11, art. 16; 1995, ch. 19, art. 39, ch. 22, art. 6; 1997, ch. 17, art. 1(2).

743.2 [Report by court to Correctional Service] A court that sentences or commits a person to penitentiary shall forward to the Correctional Service of Canada its reasons and recommendation relating to the sentence or committal, any relevant reports that were submitted to the court, and any other information relevant to administering the sentence or committal.

1995, ch. 22, art. 6.

743.2 [Rapport au Service correctionnel] Le tribunal qui condamne ou envoie une personne au pénitencier transmet au Service correctionnel du Canada ses motifs et recommandations relatifs à la mesure, ainsi que tous rapports pertinents qui lui ont été soumis et tous renseignements concernant l'administration de la peine.

743.3 [Sentence served according to regulations] A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced.

1995, ch. 22, art. 6.

743.3 [Peine purgée conformément aux règlements] Une peine d'emprisonnement est purgée conformément aux dispositions et règles qui régissent l'établissement où le prisonnier doit purger sa peine.

742.1 Were a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

Octroi du sursis

742.1 Lorsqu'une personne est déclarée coupable d'une infraction — autre qu'une infraction pour laquelle une peine minimale d'emprisonnement est prévue — et condamnée à un emprisonnement de moins de deux ans, le tribunal peut, s'il est convaincu que le fait de purger la peine au sein de la collectivité ne met pas en danger la sécurité de celle-ci et est conforme à l'objectif et aux principes visés aux articles 718 à 718.2, ordonner au délinquant de purger sa peine dans la collectivité afin d'y surveiller le comportement de celui-ci, sous réserve de l'observation des conditions qui lui sont imposées en application de l'article 742.3.

(3) [Remaining portion deemed to constitute one sentence] For greater certainty, the remaining portion of the disposition referred to in subsection (2) shall, for the purposes of section 139 of the *Corrections and Conditional Release Act* and section 743.1 of this Act, be deemed to constitute one sentence of imprisonment.

(3) [Peine distincte] Il demeure entendu que le reste de la peine visé au paragraphe (2) est réputé, pour l'application de l'article 139 de la *Loi sur le système correctionnel et la mise en liberté sous condition* et de l'article 743.1 de la présente loi, être une seule peine d'emprisonnement.

1995, ch. 22, art. 6, 19, 20.

Eligibility for Parole

Admissibilité à la libération conditionnelle

743.6 (1) [Power of court to delay parole] Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where an offender receives, on or after November 1, 1992, a sentence of imprisonment of two years or more, including a sentence of imprisonment for life imposed otherwise than as a minimum punishment, on conviction for an offence set out in Schedule I or II to that Act that was prosecuted by way of indictment, the court may, if satisfied, having regard to the circumstances of the commission of the offences and the character and circumstances of the offender, that the expression of society's denunciation of the offences or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.

743.6 (1) [Pouvoir judiciaire d'augmentation du temps d'épreuve] Par dérogation au paragraphe 120(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition*, le tribunal peut, s'il est convaincu, selon les circonstances de l'infraction, du caractère et des particularités du délinquant, que la réprobation de la société à l'égard de l'infraction commise ou l'effet dissuasif de l'ordonnance l'exige, ordonner que le délinquant condamné le 1er novembre 1992 ou par la suite, sur déclaration de culpabilité par mise en accusation, à une peine d'emprisonnement d'au moins deux ans — y compris une peine d'emprisonnement à perpétuité à condition que cette peine n'ait pas constitué un minimum en l'occurrence — pour une infraction mentionnée aux annexes I ou II de cette loi, purge, avant d'être admissible à la libération conditionnelle totale, le moindre de la moitié de sa peine ou dix ans.

(1.1) [Power of court to delay parole] Notwithstanding subsection 120(1) of the *Corrections and Conditional Release Act*, where an offender receives a sentence of imprisonment of two years or more, including a sentence of imprisonment for life imposed otherwise than as a minimum punishment, on conviction for a criminal organization offence, the court may order that the portion of the sentence that must be served before the offender may be released on full parole is one half of the sentence or ten years, whichever is less.

(1.1) [Exception dans le cas d'un gang] Par dérogation au paragraphe 120(1) de la *Loi sur le système correctionnel et la mise en liberté sous condition*, le tribunal peut ordonner que le délinquant condamné pour un acte de gangstérisme, sur déclaration de culpabilité, à une peine d'emprisonnement de deux ans ou plus — y compris une peine d'emprisonnement à perpétuité à condition que cette peine n'ait pas constitué un minimum en l'occurrence — purge, avant d'être admissible à la libération conditionnelle totale, le moindre de la moitié de sa peine ou dix ans.

(2) [Principles that are to guide the court] For greater certainty, the paramount principles which are to guide the court under this section are denunciation and specific or general deterrence, with rehabilitation of the offender, in all cases, being subordinate to these paramount principles.

(2) [Principes devant guider le tribunal] Il demeure entendu que les principes suprêmes qui doivent guider le tribunal dans l'application du présent article sont la réprobation de la société et l'effet dissuasif, la réadaptation du délinquant étant, dans tous les cas, subordonnée à ces principes suprêmes.

1995, ch. 22, art. 6, ch. 42, art. 86(b); 1997, ch. 23, art. 18.

(4) **[Punishment for subsequent offence not affected]** No free pardon or conditional pardon prevents or mitigates the punishment to which the person might otherwise be lawfully sentenced on a subsequent conviction for an offence other than that for which the pardon was granted.

(4) **[Peine pour infraction subséquente]** Aucun pardon absolu ou conditionnel n'empêche ni ne mitige la punition à laquelle la personne en cause pourrait autrement être légalement condamnée sur une déclaration de culpabilité subséquente pour une infraction autre que celle concernant laquelle le pardon a été accordé.

S.R., ch. C-34, art. 682; 1974-75-76, ch. 93, art. 83, ch. 105, art. 22; 1992, ch. 22, art. 12; 1995, ch. 22, art. 6.

748.1 (1) **[Remission by Governor in Council]** The Governor in Council may order the remission, in whole or in part, of a fine or forfeiture imposed under an Act of Parliament, whoever the person may be to whom it is payable or however it may be recoverable.

748.1 (1) **[Remise par le gouverneur en conseil]** Le gouverneur en conseil peut ordonner la remise intégrale ou partielle d'une amende ou d'une confiscation infligée en vertu d'une loi fédérale, quelle que soit la personne à qui elle est payable ou la manière de la recouvrer.

(2) **[Terms of remission]** An order for remission under subsection (1) may include the remission of costs incurred in the proceedings, but no costs to which a private prosecutor is entitled shall be remitted.

(2) **[Conditions de la remise]** Une ordonnance portant remise aux termes du paragraphe (1) peut comprendre la remise de frais subis dans les poursuites, mais non les frais auxquels un poursuivant privé a droit.

1995, ch. 22, art. 6.

749. [Royal prerogative] Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy.

749. [Prérogative royale] La présente loi n'a pas pour effet de limiter, de quelque manière, la prérogative royale de clémence que possède Sa Majesté.

S.R., ch. C-34, art. 683; 1995, ch. 22, art. 6.

Disabilities

Incapacité

750. (1) **[Public office vacated for conviction]** Where a person is convicted of an indictable offence for which the person is sentenced to imprisonment for two years or more and holds, at the time that person is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

750. (1) **[Vacance]** Tout emploi public, notamment une fonction relevant de la Couronne, devient vacant dès que son titulaire a été déclaré coupable d'un acte criminel et condamné en conséquence à un emprisonnement de deux ans ou plus.

(2) **[When disability ceases]** A person to whom subsection (1) applies is, until undergoing the punishment imposed on the person or the punishment substituted therefor by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of Parliament or of a legislature or of exercising any right of suffrage.

(2) **[Durée de l'incapacité]** Tant qu'elle n'a pas subi la peine qui lui est infligée ou la peine y substituée par une autorité compétente ou qu'elle n'a pas reçu de Sa Majesté un pardon absolu, une personne visée par le paragraphe (1) est incapable d'occuper une fonction relevant de la Couronne ou un autre emploi public, ou d'être élue, de siéger ou de voter comme membre du Parlement ou d'une législature, ou d'exercer un droit de suffrage.

(3) **[Disability to contract]** No person who is convicted of an offence under section 121, 124 or 418 has, after that conviction, capacity to contract with Her Majesty or to receive any benefit under a contract between Her Majesty and any other person or to hold office under Her Majesty.

(3) **[Incapacité contractuelle]** Nulle personne déclarée coupable d'une infraction visée à l'article 121, 124 ou 418 n'a qualité, après cette déclaration de culpabilité, pour passer un contrat avec Sa Majesté, pour recevoir un avantage en vertu d'un contrat entre Sa Majesté et toute autre personne ou pour occuper une fonction relevant de Sa Majesté.

(4) **[Application for restoration of privileges]** A person to whom subsection (3) applies may, at any time before a pardon is granted to the person under section 4.1 of the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.

(5) **[Order of restoration]** Where an application is made under subsection (4), the Governor in Council may order that the capacities lost by the applicant by virtue of subsection (3) be restored to that applicant in whole or in part and subject to such conditions as the Governor in Council considers desirable in the public interest.

(6) **[Removal of disability]** Where a conviction is set aside by competent authority, any disability imposed by this section is removed.

S.R., ch. C-34, art. 685; 1995, ch. 22, art. 6.

(4) **[Demande de rétablissement des droits]** La personne visée au paragraphe (3) peut, avant que lui soit octroyée la réhabilitation prévue à l'article 4.1 de la *Loi sur le casier judiciaire*, demander au gouverneur en conseil d'être rétablie dans les droits dont elle est privée en application de ce paragraphe.

(5) **[Ordre de rétablissement]** Sur demande présentée conformément au paragraphe (4), le gouverneur en conseil peut ordonner que le demandeur soit rétabli dans tout ou partie des droits dont il est privé en application du paragraphe (3) aux conditions qu'il estime souhaitables dans l'intérêt public.

(6) **[Disparition de l'incapacité]** L'annulation d'une condamnation par une autorité compétente fait disparaître l'incapacité imposée par le présent article.

Miscellaneous Provisions

751. [Costs to successful party in case of libel] The person in whose favour judgment is given in proceedings by indictment for defamatory libel is entitled to recover from the opposite party costs in a reasonable amount to be fixed by order of the court.

S.R., ch. C-34, art. 686; 1995, ch. 22, art. 6.

751.1 [How recovered] Where costs that are fixed under section 751 are not paid forthwith, the party in whose favour judgment is given may enter judgment for the amount of the costs by filing the order in any civil court of the province in which the trial was held that has jurisdiction to enter a judgment for that amount, and that judgment is enforceable against the opposite party in the same manner as if it were a judgment rendered against that opposite party in that court in civil proceedings.

1995, ch. 22, art. 6.

Dispositions diverses

751. [Attribution des frais en matière de libelle] La personne en faveur de qui jugement est rendu dans des poursuites par acte d'accusation pour libelle diffamatoire a le droit de recouvrer de la partie adverse en remboursement de ses frais, une somme raisonnable dont le montant est fixé par ordonnance du tribunal.

751.1 [Exécution civile] Faute de paiement immédiat des frais fixés en application de l'article 751, la partie en faveur de qui le jugement est rendu peut, par le dépôt du jugement, faire inscrire celui-ci pour le montant des frais au tribunal civil compétent; l'inscription vaut jugement exécutoire contre la partie adverse, comme s'il s'agissait d'un jugement rendu contre elle, devant ce tribunal, au terme d'une action civile.

PART XXIV

DANGEROUS OFFENDERS AND LONG-TERM OFFENDERS

Interpretation

752. [Definitions] In this Part,

["court" *«tribunal»*] "court" means the court by which an offender in relation to whom an application under this Part is made was convicted, or a superior court of criminal jurisdiction;

PARTIE XXIV

DÉLINQUANTS DANGEREUX ET DÉLINQUANTS À CONTRÔLER

Définitions

752. [Définitions] Les définitions qui suivent s'appliquent à la présente partie.

[*«sévices graves à la personne»* "*serious...*"] *«sévices graves à la personne»* Selon le cas:

CONSOLIDATED STATUTES OF CANADA
Geneva Conventions Act

PART II: LEGAL PROCEEDINGS IN RESPECT OF PROTECTED PERSONS

5(1) Notice of trial of protected persons

5. (1) The court before which

(a) a protected prisoner of war is brought for trial for an offence, or

(b) a protected internee is brought for trial for an offence for which that court has power to sentence that internee to death or to imprisonment for a term of two years or more,

shall not proceed with the trial until it is proved to the satisfaction of the court that written notice of the trial containing, where known to the prosecutor, the information mentioned in subsection (2) has been given to the accused and the accused's protecting power, not less than three weeks before the commencement of the trial, and, where the accused is a protected prisoner of war, to his prisoners' representative.

LOIS CODIFIÉES DU CANADA
Conventions de Genève, Loi sur les

PARTIE II PROCÉDURES JUDICIAIRES À L'ÉGARD DE PERSONNES PROTÉGÉES

5(1) Avis du procès de personnes protégées

5. (1) Le tribunal devant lequel :

a) ou bien un prisonnier de guerre protégé est traduit afin d'y être jugé pour une infraction;

b) ou bien un interné protégé est traduit afin d'y être jugé pour une infraction à l'égard de laquelle le tribunal a le pouvoir de lui imposer la peine de mort ou un emprisonnement de deux ans ou plus,

ne peut ouvrir le procès tant qu'il n'est pas prouvé à sa satisfaction que l'avis écrit du procès contenant, lorsqu'ils sont connus du poursuivant, les renseignements mentionnés au paragraphe (2) a été donné à l'accusé et à sa puissance protectrice trois semaines au moins avant l'ouverture du procès et, si l'accusé est un prisonnier de guerre protégé, au représentant de ce prisonnier.

CONSOLIDATED STATUTES OF CANADA
Geneva Conventions Act

PART II: LEGAL PROCEEDINGS IN RESPECT OF PROTECTED PERSONS

6(1) Time for appeal from sentence of death or imprisonment for two years or more

6. (1) Where a protected prisoner of war or a protected internee has been sentenced by a court to death or to imprisonment for a term of two years or more, the time allowed for an appeal against the conviction or sentence or against the decision of a court of appeal not to allow, dismiss or quash the conviction or sentence shall run from the day on which the protecting power has been notified of the conviction and sentence by

(a) an officer of the Canadian Forces, in the case of a protected prisoner of war; or

(b) the Minister of Foreign Affairs, in the case of a protected internee.

LOIS CODIFIÉES DU CANADA
Conventions de Genève, Loi sur les

PARTIE II PROCÉDURES JUDICIAIRES À L'ÉGARD DE PERSONNES PROTÉGÉES

6(1) Délai d'appel d'une sentence de mort ou d'emprisonnement de deux ans ou plus

6. (1) Lorsqu'un tribunal a imposé la peine de mort ou un emprisonnement de deux ans ou plus à un prisonnier de guerre protégé ou à un interné protégé, le délai accordé pour interjeter appel de la déclaration de culpabilité ou de la sentence, ou de la décision du tribunal d'appel de ne pas maintenir, infirmer ou annuler la déclaration de culpabilité ou la sentence, court à partir du jour où la puissance protectrice a été avisée de la déclaration de culpabilité et de la sentence :

a) par un officier des Forces canadiennes, dans le cas d'un prisonnier de guerre protégé;

b) par le ministre des Affaires étrangères, dans le cas d'un interné protégé.

SCHEDULE III
SECTION V RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

Article 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

Conventions de Genève, Loi sur les

ANNEXE III

SECTION V RELATIONS DES PRISONNIERS DE GUERRE AVEC L'EXTÉRIEUR

Article 71

Les prisonniers de guerre seront autorisés à expédier ainsi qu'à recevoir des lettres et des cartes. Si la Puissance détentrice estime nécessaire de limiter cette correspondance, elle devra au moins autoriser l'envoi de deux lettres et quatre cartes par mois, établies autant que possible selon les modèles annexés à la présente Convention (et ceci sans compter les cartes prévues à l'article 70). D'autres limitations ne pourront être imposées que si la Puissance protectrice a tout lieu de les estimer dans l'intérêt des prisonniers eux-mêmes, vu les difficultés que la Puissance détentrice rencontre dans le recrutement d'un nombre suffisant de traducteurs qualifiés pour effectuer la censure nécessaire. Si la correspondance adressée aux prisonniers doit être restreinte, cette décision ne pourra être prise que par la Puissance dont ils dépendent, éventuellement à la demande de la Puissance détentrice. Ces lettres et cartes devront être acheminées par les moyens les plus rapides dont dispose la Puissance détentrice; elles ne pourront être retardées ni retenues pour des raisons de discipline.

Les prisonniers de guerre qui sont depuis longtemps sans nouvelles de leur famille ou qui se trouvent dans l'impossibilité d'en recevoir ou de lui en donner par la voie ordinaire, de même que ceux qui sont séparés des leurs par des distances considérables, seront autorisés à expédier des télégrammes dont les taxes seront passées au débit de leur compte auprès de la Puissance détentrice ou payées avec l'argent dont ils disposent. Les prisonniers bénéficieront également d'une telle mesure en cas d'urgence.

En règle générale, la correspondance des prisonniers sera rédigée dans leur langue maternelle. Les Parties au conflit pourront autoriser la correspondance en d'autres langues.

Les sacs contenant le courrier des prisonniers seront soigneusement scellés, étiquetés de façon à indiquer clairement leur contenu et adressés aux bureaux de poste de destination.

SCHEDULE III
SECTION V RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

Article 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

ANNEXE III
SECTION V RELATIONS DES PRISONNIERS DE GUERRE AVEC L'EXTÉRIEUR

Article 74

Tous les envois de secours destinés aux prisonniers de guerre seront exempts de tous droits d'entrée, de douane et autres.

La correspondance, les envois de secours et les envois autorisés d'argent adressés aux prisonniers de guerre ou expédiés par eux, par voie postale, soit directement, soit par l'entremise des Bureaux de renseignements prévus à l'article 122 et de l'Agence centrale des prisonniers de guerre prévue à l'article 123, seront exonérés de toutes taxes postales, aussi bien dans les pays d'origine et de destination que dans les pays intermédiaires.

Les frais de transport des envois de secours destinés aux prisonniers de guerre, qui, en raison de leur poids ou pour tout autre motif, ne peuvent pas leur être transmis par voie postale, seront à la charge de la Puissance détentrice dans tous les territoires placés sous son contrôle. Les autres Puissances parties à la Convention supporteront les frais de transport dans leurs territoires respectifs.

En l'absence d'accords spéciaux entre les Puissances intéressées, les frais résultant du transport de ces envois, qui ne seraient pas couverts par les franchises prévues ci-dessus, seront à la charge de l'expéditeur.

Les Hautes Parties contractantes s'efforceront de réduire autant que possible les taxes télégraphiques pour les télégrammes expédiés par les prisonniers de guerre ou qui leur sont adressés.

Punishments

139(1) Scale of punishments

139. (1) The following punishments may be imposed in respect of service offences:

(a) death,

(b) imprisonment for two years or more,

(c) dismissal with disgrace from Her Majesty's service,

(d) imprisonment for less than two years,

(e) dismissal from Her Majesty's service,

(f) detention,

(g) reduction in rank,

(h) forfeiture of seniority,

(i) severe reprimand,

(j) reprimand,

(k) fine, and

(l) minor punishments,

and each of the punishments set out in paragraphs (b) to (l) shall be deemed to be a punishment less than every punishment preceding it.

139(2) Definition of "less punishment"

(2) Where a punishment for an offence is specified by the Code of Service Discipline and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

R.S., c. N-4, s. 125.

Peines

139(1) Échelle des peines

139. (1) Les infractions d'ordre militaire sont passibles des peines suivantes, énumérées dans l'ordre décroissant de gravité :

a) mort;

b) emprisonnement minimal de deux ans;

c) destitution ignominieuse du service de Sa Majesté;

d) emprisonnement de moins de deux ans;

e) destitution du service de Sa Majesté;

f) détention;

g) rétrogradation;

h) perte de l'ancienneté;

i) blâme;

j) réprimande;

k) amende;

l) peines mineures.

139(2) Interprétation

(2) Lorsque le code de discipline militaire prévoit que l'auteur d'une infraction, sur déclaration de culpabilité, encourt comme peine maximale une peine donnée, l'autorité compétente peut lui imposer, au lieu de celle-ci, toute autre peine qui la suit dans l'échelle des peines.

S.R., ch. N-4, art. 125.

CHAPTER E-3
Elections Act

PENALTIES AND PROCEDURE

119 Any person who is convicted of having committed any offence that is a corrupt or illegal practice shall, during the five years next after the date of his being convicted, in addition to any other punishment by this or any other Act prescribed, be disqualified from and be incapable of

(a) being registered as an elector or of voting at any election,

(b) holding any office in the nomination of the Crown or of the Lieutenant-Governor in Council, or

(c) being elected to or sitting in the Legislative Assembly and, if at such date he has been elected to the Legislative Assembly, his seat shall be vacated from the time of such conviction.

1967, c.9, s.119.

CHAPITRE E-3
Loi électorale

PEINES ET PROCÉDURE

119 Quiconque est déclaré coupable d'une infraction constituant une manoeuvre frauduleuse ou un acte illicite est, pendant les cinq années qui suivent la date de sa déclaration de culpabilité, en plus de toute autre peine imposée par la présente loi ou par toute autre loi, privé du droit et incapable

a) d'être inscrit comme électeur ou de voter à une élection,

b) de remplir une charge dont la Couronne ou le lieutenant-gouverneur en conseil nomme le titulaire, ou

c) d'être élu ou de siéger à l'Assemblée législative et, s'il est déjà élu à cette date à l'Assemblée législative, son siège devient vacant à la date d'une telle déclaration de culpabilité.

1967, c.9, art.119.