

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

LUIS ALBERTO HERNANDEZ FEBLES

Appellant
(Appellant)

- and -

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent
(Respondent)

- and -

**THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, AMNESTY
INTERNATIONAL, THE CANADIAN COUNCIL FOR REFUGEES, THE
CANADIAN CIVIL LIBERTIES ASSOCIATION AND THE CANADIAN
ASSOCIATION OF REFUGEE LAWYERS**

INTERVENERS

**FACTUM OF THE INTERVENER,
THE CANADIAN COUNCIL FOR REFUGEES**

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FACTUM OF THE INTERVENER, THE CANADIAN COUNCIL FOR REFUGEES

PART I – OVERVIEW AND STATEMENT OF FACTS

1. The Canadian Council for Refugees (CCR) relies on the summary of the facts in the Appellant’s Factum.

**PART II—CONCISE OVERVIEW OF INTERVENER'S
POSITION WITH RESPECT TO THE APPELLANT'S QUESTIONS
ON WHICH INTERVENER HAS INTERVENED**

2. The central issue in this appeal is the proper interpretation of Article 1F(b) of the 1951 *Convention Relating to the Status of Refugees*¹ (the Refugee Convention). More specifically, the appeal concerns the relevance of sentence completion on the application of Article 1F(b), which requires the exclusion from refugee status of those alleged to have committed a serious non-political crime. The CCR asserts that persons who have completed their sentences prior to entering Canada and seeking refugee status should not be excluded. To fully understand why this is the case requires consideration of the context of the exclusion clause generally, and recognition of its place in the refugee scheme as a narrow exception to the Convention’s human rights guarantees.

PART III – ARGUMENT

A) Interpretive Context

3. The CCR supports the interpretation of Article 1F(b) provided by the Appellants in this matter. Should this Honourable Court reject the Appellant’s interpretation, the CCR proposes an equally persuasive alternative that is also in line with the context, scope and purposes of Article 1F(b): namely, that persons who have served their sentences should be considered to have expiated their crimes and thus avoid exclusion under Article 1F(b).
4. Article 1F(b) of the Refugee Convention states:

¹ *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150, as incorporated into the *Immigration and Refugee Protection Act*, RSC 2001, c.27, Schedule A, **Appellant’s Book of Authorities**, v.1 Tab 1.

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

5. Two principles are paramount in interpreting the exclusion clauses. The first is that rules of international treaty interpretation apply.² Second, the clauses must be narrowly interpreted because they are exceptions to human rights protection.³ Furthermore, under Canadian law, all aspects of the refugee status determination process attract the protections of section 7 of the *Charter* and as such must comply with the principles of fundamental justice.⁴
6. The consequences of an exclusion finding are grave. When refugee claimants are excluded from refugee protection, they face the prospect of removal, potentially to persecution, with little recourse. Excluded persons will also be inadmissible to Canada under immigration law, meaning that virtually all other legal avenues for remaining in Canada are foreclosed. This being the case, an overly broad approach to exclusion under Article 1F(b) results in an unwarranted deprivation of the rights-protecting mechanisms contained in the Refugee Convention.
7. Furthermore, an overly broad approach to exclusion can result in the exclusion, stigmatization and removal of *precisely* the kinds of vulnerable individuals that Canada has bound itself to protect: those with a well-founded fear of persecution. It is for this reason that the international commentary on the exclusion clauses is of one voice when it states that the exclusion clauses must be interpreted narrowly and in a way that promotes

² *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, **Appellant's Book of Authorities, v. II, Tab 21**; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, 160 DLR (4th) 193, **Appellant's Book of Authorities, v. II, Tab 35**.

³ *Al-Sirri Al-Sirri (FC) (Appellant) v Secretary of State for the Home Department (Respondent) and DD (Afghanistan) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)*, [2012] UKSC 54 at [16] **Appellant's Book of Authorities, vol. IV, Tab 88**; UNHCR *Guidelines on International Protection: Application of Exclusion Clauses* at para 2, **Appellant's Book of Authorities, v. IX, Tab 159**; Hathaway, James C. and Michelle Foster, *The Law of Refugee Status*, 2nd ed., Cambridge University Press, forthcoming, 2014, at 1275, **Intervener CCR's Book of Authorities, Tab 16**; Juss, Satvinder, 'Terrorism and the Exclusion of Refugee Status in the UK' (2012) 17 *Journal of Conflict and Security Law* 465 at fn 19, **Intervener CCR's Book of Authorities, Tab 17**.

⁴ *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, 17 DLR (4th) 422, **Appellant's Book of Authorities, v. III, Tab 50**.

human rights.⁵ As such, the CCR submits that the Court must place the consequences of exclusion at the forefront of its analysis in considering the scope of the exclusion clauses.

8. This appeal appears to turn on the narrow issue of whether an individual who has committed a serious non-political crime is forever excluded from refugee protection on the basis of that crime. The Respondent in this matter takes the view that such is the case. The other participants in this matter, and indeed the bulk of international commentary on the issue, arrive at the opposite conclusion, arguing that this cannot be the case because it ignores the history and context of the exclusion clauses as well as the rules of international treaty interpretation, and leads to absurd results. A full understanding of what is at stake in this dispute, and what the consequences of this Honourable Court’s ruling will be, requires attention to all aspects of Article 1F(b).

B) The Seriousness Threshold

9. The bulk of international commentary on the ‘seriousness’ threshold under Article 1F(b) suggests that it should only be applied in respect of crimes of a particularly serious character; in the words of the UNHCR, “serious” crime refers to a “capital crime or a very grave punishable act.”⁶
10. In recent years, Canadian jurisprudence has shifted away from this consensus as to what constitutes a ‘serious’ crime for the purpose of Article 1F(b) and towards an assessment of seriousness through the prism of domestic immigration law. One illustration of this shift is the presumption in Canadian practice that a crime which *could* attract a term of imprisonment of ten years meets the seriousness threshold for the purposes of Article 1F(b) of the Convention.

⁵ Above note 3.

⁶ *Handbook on Procedures and Criteria for determining Refugee status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979), para 155, **Appellant’s Book of Authorities, v.XI, Tab 160**. There is also support for restricting the application of Article 1F(b) of the Convention to particularly serious crimes from within the *travaux préparatoires*, see for example Conference of Plenipotentiaries on the Status of Refugees & Stateless Persons, 29th mtg., U.N. Doc. A/CONF.2/SR.29, at 11 (1951) (statements of Mr. Hoare of the United Kingdom), (statement of Mr. Herment of Belgium), **Appellant’s Book of Authorities v. I, Tab 17**.

11. The CCR notes that the ambit of crimes attracting such punishment is extremely broad and that many such crimes are simply not of a character envisioned to attract exclusion under Article 1F(b).⁷ Despite this, the presumption of seriousness has been interpreted by many decision-makers as being virtually un rebuttable. It is for this reason that individuals in recent years have been excluded for, amongst other things, using a false passport⁸, minor theft offences⁹, helping to cook food for asylum-seekers aboard migrant ships¹⁰ and “cumulative” acts of complicity in a company’s usurious loan practices.¹¹
12. The CCR further submits that the presumption of seriousness for crimes potentially attracting a ten year sentence is inappropriate because it does not conform with treaty interpretation principles.¹² It is not a ‘narrow’ approach to interpreting an exception to a human rights provision.¹³ It departs from the principle of individualized analysis in refugee determination and instead fosters a mechanical calculation of sentences imposed and Canadian equivalencies. The better approach, the CCR submits, is to take the

⁷ Examples of such crimes are use of a forged passport (Criminal Code s 57(1)), perjury (Criminal Code s 130), procuring (Criminal Code s 212(1), criminal harassment (Criminal Code s 264), cattle theft (Criminal Code s 338(2), theft or forgery of credit card (Criminal Code s 342), unauthorized use of a computer (Criminal Code s 342.1), stop mail with intent (Criminal Code s 345), being unlawfully in a dwelling house (Criminal Code s 349), possession of housebreaking instruments (Criminal Code s 351(1)), disguise with intent (Criminal Code s 351(2)), theft from mail (Criminal Code s 356, forgery (Criminal Code s 366-368), filing false prospectus (Criminal Code s 400), identity fraud (Criminal Code s 403), wilful mischief, data (Criminal Code s 430(5)), possession/uttering of counterfeit money (Criminal Code s 450, 452).

⁸ In *Durango v. Canada (MCI)*, 2012 FC 1081, the Federal Court *dismissed* an application for judicial review involving an individual who had used false documentation in the United States, and used this documentation in order to return to his native Colombia to undertake humanitarian work. The court rejected the applicant’s submissions that the alleged crime, for which he was never charged in the U.S., was not serious and was, at root, political in nature, **Intervener CCR’s Book of Authorities, Tab 3**.

⁹ In *Re (X)*, TB1-01127, November 2, 2012, Immigration and Refugee Board (IRB), unreported, the board found that an individual formally diagnosed with kleptomania was excluded arising primarily from credit card theft purchases valued at just over \$100, **Intervener CCR’s Book of Authorities, Tab 8**. The Federal Court dismissed an application for judicial review of this decision: IMM-11924-12, April 10, 2013.

¹⁰ In *Re(X)*, TB0-10677, June 14, 2012, IRB, unreported, the board found a smuggled passenger aboard the MV *Sun Sea* vessel to be excluded pursuant to Article 1F(b) because he had agreed to help with cooking aboard the ship, **Intervener CCR’s Book of Authorities, Tab 9**. Once again, the Federal Court dismissed an application for leave and judicial review of the board’s decision: IMM-6749-12.

¹¹ See *Re(X)*, TA1-21823, September 23, 2005, IRB, unreported, where the board explicitly acknowledged that no single act committed by the refugee claimant amounted to a serious non-political crime, but his continued employment at a company that charged usurious rates on (relatively small) loans amounted to an Article 1F(b) excludable offence, **Intervener CCR’s Book of Authorities, Tab 10**. Once again, this decision was upheld on judicial review, see: *Rudyak v. Canada (M.C.I.)*, 2006 FC 1141, **Intervener CCR’s Book of Authorities, Tab 11**.

¹² *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, **Appellant’s Book of Authorities, v.I, Tab 9**.

¹³ See footnote 3 above.

possibility of a ten year sentence as a *threshold* issue that must be met to trigger consideration of Article 1F(b). Once met, the decision-maker should then embark on an individualized assessment of the seriousness of the alleged crime, taking various factors into account, without the potentially skewing effect of a presumption of seriousness.

13. The CCR adopts the criteria for determining seriousness that are described in the UNHCR’s *Background Note* and by the Federal Court of Appeal, namely: the nature of the act; the actual harm inflicted; the form of procedure used to prosecute the crime; the nature of the penalty for such a crime; whether most jurisdictions would consider the act in question as a serious crime, the presence of aggravating or mitigating factors.¹⁴ These criteria reflect international treaty interpretation principles through their focus on consensus among nations.

C) The Meaning of “Non-Political Crimes”

14. This Honourable Court’s approach to ‘seriousness’ will have consequences for the interpretation of the ‘non-political’ element of Article 1F(b) because the jurisprudence has drawn a clear link between these two elements. The focus of Article 1F(b) exclusions on ‘non-political’ crimes is important because it signals two key factors. First, that the intent of 1F(b) is to ensure that fugitives from justice not be protected by the Refugee Convention.¹⁵ That is, that Article 1F(b) shares some ground with extradition law, where a political crimes exception is commonplace.¹⁶ Second, that those who act in opposition to repressive regimes are often the very people whom the Refugee Convention seeks to protect.¹⁷

¹⁴ UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003 (UNHCR Background Note), **Appellant’s Book of Authorities, v.XI, Tab 157**; *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 404, **Appellant’s Book of Authorities, v.III, Tab 60**.

¹⁵ Hathaway and Foster, *supra*, note 3; *Pushpanathan*, *supra*, note 3; *Attorney-General (Minister of Immigration) v Tamil X* [2011] 1 NZLR 721, **Appellant’s Book of Authorities, Vol. 5 Tab 100**.

¹⁶ United Nations General Assembly, *Model Treaty on Extradition*, 14 December 1990, A/RES/45/116, Article 3(1), **Intervener CCR’s Book of Authorities, Tab 2**.

¹⁷ Protection for those at risk of being persecuted because of their political opinions is particularly robust in refugee jurisprudence. The accepted definition of political opinion is very broad (‘...any opinion on any matter in which the machinery of state, government and policy may be engaged’ (*Ward*, *supra* note 2 at para 81)).

15. The requirement that common crimes on which exclusion can be based under Article 1F(b) must be *non-political* crimes reflects these vital principles.
16. At the same time, it is now well established internationally that particularly violent crimes directed toward civilian populations will be considered to have lost their political character, regardless of their any underlying political motivation and, as such, may become subject to exclusion under Article 1F(b).¹⁸
17. The point at which crimes with a political motivation lose their political character for the purposes of Article 1F(b) is not adequately defined. One predictable consequence of the absence of clear guidelines is that an increasing number of crimes have been found to be non-political in recent years.¹⁹ This expansion risks departure from the clear original purposes of Article 1F(b), namely to exclude those who would be subject to extradition for serious common crimes.
18. The CCR submits that a crime with an otherwise clear political motive ought only be considered to have lost its political character when: a) it is a crime of personal rather than property violence, involving the targeting of non-governmental civilians rather than state targets and/or political actors;²⁰ **or** b) the 'political' objective that animates the alleged criminal act is itself contrary to international human rights law.²¹

Political opinion has also been interpreted to include imputed opinions which may not be actually held, and opinions that are discernable from actions (*Ward* at para 82).

¹⁸ *Bundesrepublik Deutschland v B und D* [2010] ECR I-000 C-57/09 and C-101/09 at para 81, **Appellant's Book of Authorities, v. VI, Tab 112**; *European Council Directive* 2004/83/EC of 29 April 2004 at Article 2(b). **Intervener CCR's Book of Authorities, Tab 1**; Hathaway and Foster, *supra*, note 3.

¹⁹ Kaushal, Asha and Catherine Dauvergne. 'The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions' (2011) 23:1 Intl J Refugee L 54 at 74, **Intervener CCR's Book of Authorities, Tab 18**; Juss, Satvinder, 'Terrorism and the Exclusion of Refugee Status in the UK' (2012) 17 Journal of Conflict and Security Law 465, at 475-76, **Intervener CCR's Book of Authorities, Tab 17**.

²⁰ The term 'civilian' is often used in the case law. It is important, however, that the understanding of 'civilian' be restricted so that high profile politicians and government leaders are recognized as 'political' actors, along with the military actors who are traditionally contrasted with 'civilians'.

²¹ The *International Covenant on Civil and Political Rights*, 19 December 1966, UNTS 171 **Appellant's Book of Authorities, v.1, Tab 7** sets out the core political rights recognized internationally and is the key starting point for this analysis. See also *Tamil X* above note 15 (analysis of 'non-political' must not be mechanical, at p. 728); *Minister for Immigration and Multicultural Affairs v Singh* (2002), 186 ALR 393 (Aust. HC), 209 CLR 533, **Appellant's Book of Authorities, v.V, Tab 96**; *Gil v Canada (Minister of Employment and Immigration)* [1995] 1 FC 508 (CA) (regarding contextual analysis of political 535), **Intervener CCR's Book of Authorities, Tab 4**; *Immigration and Naturalization Service v Aguirre-Aguirre*, 526 U.S. 415 (1999) (there is no automatic

D) Expiation

19. International authority on Article 1F(b) most often suggests that persons who have served their sentences should not be subject to exclusion under Article 1F(b). The Appellant asserts that this is so because Article 1F(b) was intended to ensure fugitives from justice did not benefit from refugee protection.²²
20. The CCR agrees with this position and in addition presents an alternative and equally persuasive basis for arriving at the same outcome. In the CCR's submission, the serving of a sentence is not simply proof that the refugee claimant is not a fugitive from justice; in addition, serving a sentence can also function as one form of "expiation" of the crime in question.
21. As noted by the UNHCR in its *Guidelines on International Protection* (2003) and the *Background Note on the Applicability of the Exclusion Clauses*, expiation serves as a ground for rejecting individual responsibility under Article 1F generally, as does a lack of *mens rea*, and any available defenses.²³ It is a well-established principle in Canada and elsewhere that defenses and other grounds for rejecting individual responsibility should be raised in the context of Article 1F(b) exclusion.²⁴

equivalence between atrocity and 'non-political' at para 432), **Appellant's Book of Authorities, v.VI, Tab 109**; Kidane, Wan, 'The Terrorism Bar to Asylum in Australia, Canada, the United Kingdom and the United States: Transporting Best Practices' (2010) 33 *Fordham LJ* 300 at 348 and 367, **Intervener CCR's Book of Authorities, Tab 19**; Juss, *supra*, note 19 at 467.

²² Hathaway and Foster, *supra*, note 3 at 1289-1295.

²³ *UNHCR Background Note, supra* note 14, paragraphs 64-75. See also *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees* [HCR/GIP/03/05, 4 September 2003, at paragraph 23, **Appellant's Book of Authorities, v.XI, Tab 159**. The guidelines were considered in *Varela v. MCI* [2009] 1 F.C.R. 605, **Intervener CCR's Book of Authorities, Tab 12**.

²⁴ *Ramirez v MEI*, [1992] 2 F.C. 306 at 327 and 328 **Intervener CCR's Book of Authorities, Tab 7**; *Kathiravel v. MCI*, 2003 FCT 680, **Intervener CCR's Book of Authorities, Tab 5**; *MCI v. Maan*, 2007 FC 583 at para 18, **Intervener CCR's Book of Authorities, Tab 6**; *Hussain, R (on the application of) v Secretary of State for the Home Department* [2012] EWHC 1952 (Admin) (13 July 2012); **Intervener CCR's Book of Authorities, Tab 14**; *ABC (A Minor) (Afghanistan), R (On the Application Of) v Secretary of State for the Home Department* [2011] EWHC 2937 (Admin) (06 December 2011), **Intervener CCR's Book of Authorities, Tab 13**.

22. According to the UNHCR’s *Guidelines and Background Note*, expiation of an Article 1F(b) crime can be achieved in a variety of ways. The clearest is by completion of a penal sentence. However such things as a pardon, an amnesty or “the passage of time since the commission of the offence, the seriousness of the offence, the age at which the crime was committed, the conduct of the individual since then, and whether the individual has expressed regret or renounced criminal activities”²⁵ may all validly give rise to a finding of expiation as well. The serving of a sentence, amnesty or pardon are forms of officially state-sanctioned expiation and are thus well-suited to function as a threshold bar to an exclusion finding under Article 1F(b). Other forms of expiation, such as rehabilitation, remorse and the passage of time, function more as defenses to or grounds for relief from an otherwise valid exclusion finding.
23. By situating the completion of a penal sentence within a broader understanding of expiation, the purposes of the Article 1F exclusion clauses are well-served. Further, consideration by the decision maker of the other possible forms of expiation mentioned above provides the opportunity to make an individualized assessment in order to ensure that respect for human rights remains paramount in the context of exclusion.
24. Viewing the serving of a sentence as part of an expiation ‘response’ to 1F(b) exclusion would bring the law of exclusion into line with basic principles of penal law as well. In an authoritative commentary on the refugee definition, Paul Weis noted:

It is ... difficult to see why a person who before becoming a refugee, has been convicted of a serious crime and has served his sentence, should forever be debarred from refugee status. Such a rule would seem to run counter to the generally accepted principle of penal law that a person who has been punished for an offence should suffer no further prejudice on account of the offence committed.²⁶

²⁵ *Background Note*, supra note 14, paragraph 73.

²⁶ Paul Weis, *The Concept of the Refugee in International Law*, 87 J. Du Droit Int’l 928, 984-86 (1960), **Appellant’s Book of Authorities, v. VIII, Tab 136**, as cited in Hathaway, James C. and Colin Harvey, *Framing Refugee Protection in the New World Disorder*, (2001) J. 34 Cornell Int’l L.J. 257 at 279, **Appellant’s Book of Authorities, v.VII, Tab 127**.

25. In a forthcoming revision of the seminal *The Law of Refugee Status*, Hathaway and Foster also endorse expiation as a complete answer to exclusion and lament Canada's shift away from this position in recent jurisprudence. They note:

Indeed, delegates to the Conference on Territorial Asylum were able to agree that the criminality exclusion should bar only the claims of persons believed to be “still liable to prosecution or punishment.” The early jurisprudence of the Canadian Federal Court of Appeal thus sensibly concluded that “it is clear ... that Article 1F(b) cannot be invoked in cases where a refugee claimant has been convicted of a crime and served his or her sentence outside Canada prior to his or her arrival in this country.” Regrettably, jurisdictions which have not recognized the limited purpose of Art. 1(F)(b) have often declined to see expiation as a bar to exclusion – a view that is explicable if this clause is misconceived to have the role actually attributed to Art. 33(2), namely the protection of host state safety and security.²⁷

E) A Framework for Analysis

26. Taking the above into account, the CCR offers the following framework for analysis of Article 1F(b)'s application. This framework will facilitate consistent and coherent decision-making regardless of whether the Court adopts the position of the Appellant or the CCR's alternative position on the issue of the impact of having served a sentence.

- Was a crime committed?
 - a. Identify the crime including the *actus reus* and *mens rea*, taking into consideration applicable legal principles related to secondary actors.²⁸
 - b. Has there been a conviction?
 - i. If convicted: assessment of the judicial system; consideration of whether the prosecution was in fact an element of persecution (i.e. are there any reasons that the conviction should be disregarded)

²⁷ Hathaway and Foster, *supra* note 3 at 1296.

²⁸ The ruling of this Court in *Ezokola*, 2013 SCC 40, was directed to ensuring that the analysis of complicity in exclusion matters would not be overbroad. While the crimes in consideration in Article 1F(a), and thus in *Ezokola*, involve international criminal law and therefore a different framework for complicity than the domestic crimes addressed in Article 1F(b), the point that complicity ought not be stretched beyond the bounds of ordinary criminal law remains vital in 1F(b) analysis.

- ii. Sentence served? If so, this form of expiation will end the inquiry absent concerns about the relevant judicial system. This is also the case if there has been a pardon or an amnesty.
- Was the crime serious?
 - a. Assess whether the refugee claimant's actions amounted to a "capital crime or a very grave punishable act." In order to do this, examine: the nature of the act; the actual harm inflicted; the form of procedure used to prosecute the crime; the nature of the penalty for such a crime; whether most jurisdictions would consider the act in question as a serious crime, any remaining mitigating or aggravating factors.
 - b. Look at actual facts, not at theoretical maximum punishments.
- Was the crime political?
 - a. What was the motive (explicit or implicit) for the crime? Some guidance may come from extradition law on this point;
 - b. Does the nature or effect of the crime put it outside this exception (violent personal crime affecting non-governmental civilians or a 'political' objective that is contrary to international human rights law)?
- Are there any grounds for disregarding the crime for 1F(b) purposes?
 - a. Are there other expiation factors, not linked to a formal decision of the state? For example: rehabilitation, passage of time, retribution, remorse, mitigating or aggravating circumstances.
 - b. Was there a complete or partial defense available?

PART IV – COSTS

27. The CCR seeks no costs and respectfully requests that none be awarded against it.

PART V: ORDER SOUGHT

28. The CCR takes no position on the disposition of the appeal but respectfully requests that it be determined in light of the submissions set out above. The CCR requests leave to be heard in oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED this 7th day of March, 2014.

CATHERINE DAUVERGNE

ANGUS GRANT

PIA ZAMBELLI

Counsel for the intervener, the Canadian Council for Refugees

PART VI – TABLE OF AUTHORITIES

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<i>Handbook on Procedures and Criteria for determining Refugee status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees</i> (HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979)	9
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Paul Weis, <i>The Concept of the Refugee in International Law</i> , 87 J. Du Droit Int'l 928 (1960)	24
UNHCR, <i>Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees</i> , 4 September 2003	13, 21, 22

PART VII – STATUTES AND REGULATIONS

<i>Immigration and Refugee Protection Act</i> (S.C. 2001, c. 27)	<i>Loi sur l'immigration et la protection des réfugiés</i> (L.C. 2001, ch. 27)
<p>96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,</p> <p>(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or</p> <p>(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.</p>	<p>96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :</p> <p>a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;</p> <p>b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.</p>
<p>97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally</p> <p>(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or</p> <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(ii) the risk would be faced by the</p>	<p>97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :</p> <p>a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;</p> <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(ii) elle y est exposée en tout lieu de</p>

<p>person in every part of that country and is not faced generally by other individuals in or from that country,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> <p>(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.</p>	<p>ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,</p> <p>(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> <p>(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.</p>
<p>98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.</p>	<p>98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.</p>
<p>153. (1) The Chairperson and members of the Refugee Appeal Division and Immigration Appeal Division</p> <p>...</p> <p>(4) The Deputy Chairperson of the Immigration Appeal Division and a majority of the Assistant Deputy Chairpersons of that Division and at least 10 per cent of the members of the Divisions referred to in subsection (1) must be members of at least five years standing at the bar of a province or notaries of at least five years standing at the Chambre des notaires du Québec.</p>	<p>153. (1) Pour ce qui est du président et des commissaires de la Section d'appel des réfugiés et de la Section d'appel de l'immigration</p> <p>...</p> <p>(4) Le vice-président de la Section d'appel de l'immigration, la majorité des vice-présidents adjoints de cette section et au moins dix pour cent des commissaires visés au paragraphe (1) sont obligatoirement inscrits, depuis au moins cinq ans, au barreau d'une province ou membres de la Chambre des notaires du Québec.</p>

<p>SCHEDULE</p> <p>(Subsection 2(1))</p> <p>SECTIONS E AND F OF ARTICLE 1 OF THE UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES</p> <p>[...]</p> <p>F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:</p> <p>(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</p> <p>(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;</p> <p>(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.</p>	<p>ANNEXE</p> <p>(paragraphe 2(1))</p> <p>SECTIONS E ET F DE L'ARTICLE PREMIER DE LA CONVENTION DES NATIONS UNIES RELATIVE AU STATUT DES RÉFUGIÉS</p> <p>[...]</p> <p>F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :</p> <p>a) Qu'elles ont commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité, au sens des instruments internationaux élaborés pour prévoir des dispositions relatives à ces crimes;</p> <p>b) Qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;</p> <p>c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.</p>
<p><i>Canadian Charter of Rights and Freedoms</i> PART I OF THE CONSTITUTION ACT, 1982</p> <p>Life, liberty and security of person</p> <p>7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.</p>	<p><i>Charte canadienne des droits et libertés</i> PARTIE I DE LA LOI CONSTITUTIONNELLE DE 1982</p> <p>Vie, liberté et sécurité</p> <p>7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</p>

<i>Criminal Code</i> (R.S.C., 1985, c. C-46)	<i>Code criminal</i> (L.R.C. (1985), ch. C-46)
<p>57. (1) Every one who, while in or out of Canada,</p> <p>(a) forges a passport, or</p> <p>(b) knowing that a passport is forged</p> <p style="padding-left: 40px;">(i) uses, deals with or acts on it, or</p> <p style="padding-left: 40px;">(ii) causes or attempts to cause any person to use, deal with or act on it, as if the passport were genuine,</p> <p>is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.</p>	<p>57. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, étant au Canada ou à l'étranger, selon le cas :</p> <p>a) fait un faux passeport;</p> <p>b) sachant qu'un passeport est faux :</p> <p style="padding-left: 40px;">(i) soit s'en sert, le traite ou lui donne suite,</p> <p style="padding-left: 40px;">(ii) soit fait, ou tente de faire, accomplir l'un des actes visés au sous-alinéa (i).</p>
<p>131. (1) Subject to subsection (3), every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.</p>	<p>131. (1) Sous réserve du paragraphe (3), commet un parjure quiconque fait, avec l'intention de tromper, une fausse déclaration après avoir prêté serment ou fait une affirmation solennelle, dans un affidavit, une déclaration solennelle, un témoignage écrit ou verbal devant une personne autorisée par la loi à permettre que cette déclaration soit faite devant elle, en sachant que sa déclaration est fausse.</p>
<p>212. (1) Every one who</p> <p>(a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada,</p> <p>(b) inveigles or entices a person who is not a prostitute to a common bawdy-house for the purpose of illicit sexual intercourse or prostitution,</p> <p>(c) knowingly conceals a person in a</p>	<p>212. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans quiconque, selon le cas :</p> <p>a) induit, tente d'induire ou sollicite une personne à avoir des rapports sexuels illicites avec une autre personne, soit au Canada, soit à l'étranger;</p> <p>b) attire ou entraîne une personne qui n'est pas prostituée vers une maison de débauche aux fins de rapports sexuels illicites ou de</p>

<p>common bawdy-house,</p> <p>(d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,</p> <p>(e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,</p> <p>(f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house,</p> <p>(g) procures a person to enter or leave Canada, for the purpose of prostitution,</p> <p>(h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally,</p> <p>(i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or</p> <p>(j) lives wholly or in part on the avails of prostitution of another person,</p> <p>is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.</p>	<p>prostitution;</p> <p>c) sciemment cache une personne dans une maison de débauche;</p> <p>d) induit ou tente d'induire une personne à se prostituer, soit au Canada, soit à l'étranger;</p> <p>e) induit ou tente d'induire une personne à abandonner son lieu ordinaire de résidence au Canada, lorsque ce lieu n'est pas une maison de débauche, avec l'intention de lui faire habiter une maison de débauche ou pour qu'elle fréquente une maison de débauche, au Canada ou à l'étranger;</p> <p>f) à l'arrivée d'une personne au Canada, la dirige ou la fait diriger vers une maison de débauche, l'y amène ou l'y fait conduire;</p> <p>g) induit une personne à venir au Canada ou à quitter le Canada pour se livrer à la prostitution;</p> <p>h) aux fins de lucre, exerce un contrôle, une direction ou une influence sur les mouvements d'une personne de façon à démontrer qu'il l'aide, l'encourage ou la force à s'adonner ou à se livrer à la prostitution avec une personne en particulier ou d'une manière générale;</p> <p>i) applique ou administre, ou fait prendre, à une personne, toute drogue, liqueur enivrante, matière ou chose, avec l'intention de la stupéfier ou de la subjuguier de manière à permettre à quelqu'un d'avoir avec elle des rapports sexuels illicites;</p> <p>j) vit entièrement ou en partie des produits de la prostitution d'une autre personne.</p>
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<p>264. (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.</p>	<p>264. (1) Il est interdit, sauf autorisation légitime, d'agir à l'égard d'une personne sachant qu'elle se sent harcelée ou sans se soucier de ce qu'elle se sente harcelée si l'acte en question a pour effet de lui faire raisonnablement craindre — compte tenu du contexte — pour sa sécurité ou celle d'une de ses connaissances.</p>
<p>338. (1) Every one who, without the consent of the owner,</p> <p>(a) fraudulently takes, holds, keeps in his possession, conceals, receives, appropriates, purchases or sells cattle that are found astray, or</p> <p>(b) fraudulently, in whole or in part,</p> <p>(i) obliterates, alters or defaces a brand or mark on cattle, or</p> <p>(ii) makes a false or counterfeit brand or mark on cattle,</p> <p>is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.</p> <p>(2) Every one who commits theft of cattle is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.</p>	<p>338. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque, sans le consentement du propriétaire, selon le cas :</p> <p>a) frauduleusement prend, détient, garde en sa possession, cache, reçoit, s'approprie, achète ou vend des bestiaux trouvés errants;</p> <p>b) frauduleusement, en totalité ou en partie:</p> <p>(i) soit efface, altère ou maquille une marque ou empreinte mise sur des bestiaux,</p> <p>(ii) soit met sur des bestiaux une empreinte ou marque fausse ou contrefaite.</p> <p>(2) Quiconque commet un vol de bestiaux est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans.</p>
<p>342. (1) Every person who</p> <p>(a) steals a credit card,</p> <p>(b) forges or falsifies a credit card,</p> <p>(c) possesses, uses or traffics in a credit card or a forged or falsified credit card,</p>	<p>342. (1) Quiconque, selon le cas :</p> <p>a) vole une carte de crédit;</p> <p>b) falsifie une carte de crédit ou en fabrique une fausse;</p> <p>c) a en sa possession ou utilise une carte de</p>

<p>knowing that it was obtained, made or altered</p> <p>(i) by the commission in Canada of an offence, or</p> <p>(ii) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence, or</p> <p>(d) uses a credit card knowing that it has been revoked or cancelled,</p> <p>is guilty of</p> <p>(e) an indictable offence and is liable to imprisonment for a term not exceeding ten years, or</p> <p>(f) an offence punishable on summary conviction.</p>	<p>crédit — authentique, fausse ou falsifiée, — ou en fait le trafic, alors qu’il sait qu’elle a été obtenue, fabriquée ou falsifiée :</p> <p>(i) soit par suite de la commission d’une infraction au Canada,</p> <p>(ii) soit par suite de la commission ou de l’omission, en n’importe quel endroit, d’un acte qui, au Canada, aurait constitué une infraction;</p> <p>d) utilise une carte de crédit qu’il sait annulée,</p> <p>est coupable :</p> <p>e) soit d’un acte criminel et passible d’un emprisonnement maximal de dix ans;</p> <p>f) soit d’une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p>
<p>342.1 (1) Every one who, fraudulently and without colour of right,</p> <p>(a) obtains, directly or indirectly, any computer service,</p> <p>(b) by means of an electro-magnetic, acoustic, mechanical or other device, intercepts or causes to be intercepted, directly or indirectly, any function of a computer system,</p> <p>(c) uses or causes to be used, directly or indirectly, a computer system with intent to commit an offence under paragraph (a) or (b) or an offence under section 430 in relation to data or a computer system, or</p> <p>(d) uses, possesses, traffics in or permits another person to have access to a computer password that would enable a</p>	<p>342.1 (1) Quiconque, frauduleusement et sans apparence de droit :</p> <p>a) directement ou indirectement, obtient des services d’ordinateur;</p> <p>b) au moyen d’un dispositif électromagnétique, acoustique, mécanique ou autre, directement ou indirectement, intercepte ou fait intercepter toute fonction d’un ordinateur;</p> <p>c) directement ou indirectement, utilise ou fait utiliser un ordinateur dans l’intention de commettre une infraction prévue à l’alinéa a) ou b) ou une infraction prévue à l’article 430 concernant des données ou un ordinateur;</p> <p>d) a en sa possession ou utilise un mot de passe d’ordinateur qui permettrait la</p>

<p>person to commit an offence under paragraph (a), (b) or (c)</p> <p>is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or is guilty of an offence punishable on summary conviction.</p>	<p>perpétration des infractions prévues aux alinéas a), b) ou c), ou en fait le trafic ou permet à une autre personne de l'utiliser,</p> <p>est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans ou d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p>
<p>345. Every one who stops a mail conveyance with intent to rob or search it is guilty of an indictable offence and liable to imprisonment for life.</p>	<p>345. Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité quiconque arrête un transport du courrier avec l'intention de le voler ou de le fouiller.</p>
<p>349. (1) Every person who, without lawful excuse, the proof of which lies on that person, enters or is in a dwelling-house with intent to commit an indictable offence in it is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or of an offence punishable on summary conviction.</p>	<p>349. (1) Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans, soit d'une infraction punissable sur déclaration sommaire de culpabilité quiconque, sans excuse légitime, dont la preuve lui incombe, s'introduit ou se trouve dans une maison d'habitation avec l'intention d'y commettre un acte criminel.</p>
<p>351. (1) Every one who, without lawful excuse, the proof of which lies on them, has in their possession any instrument suitable for the purpose of breaking into any place, motor vehicle, vault or safe under circumstances that give rise to a reasonable inference that the instrument has been used or is or was intended to be used for such a purpose,</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p> <p>(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of</p>	<p>351. (1) Quiconque, sans excuse légitime dont la preuve lui incombe, a en sa possession un instrument pouvant servir à pénétrer par effraction dans un endroit, un véhicule à moteur, une chambre-forte ou un coffre-fort dans des circonstances qui donnent raisonnablement lieu de conclure que l'instrument a été utilisé ou est destiné ou a été destiné à être utilisé à cette fin est coupable :</p> <p>a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans;</p> <p>b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p> <p>(2) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans</p>

<p>an indictable offence and liable to imprisonment for a term not exceeding ten years.</p>	<p>quiconque, dans l'intention de commettre un acte criminel, a la figure couverte d'un masque ou enduite de couleur ou est autrement déguisé.</p>
<p>356. (1) Everyone commits an offence who</p> <p>(a) steals</p> <p>(i) anything sent by post, after it is deposited at a post office and before it is delivered, or after it is delivered but before it is in the possession of the addressee or of a person who may reasonably be considered to be authorized by the addressee to receive mail,</p> <p>(ii) a bag, sack or other container or covering in which mail is conveyed, whether or not it contains mail, or</p> <p>(iii) a key suited to a lock adopted for use by the Canada Post Corporation;</p> <p>(a.1) with intent to commit an offence under paragraph (a), makes, possesses or uses a copy of a key suited to a lock adopted for use by the Canada Post Corporation, or a key suited to obtaining access to a receptacle or device provided for the receipt of mail;</p> <p>(b) has in their possession anything that they know has been used to commit an offence under paragraph (a) or (a.1) or anything in respect of which they know that such an offence has been committed; or</p> <p>(c) fraudulently redirects, or causes to be redirected, anything sent by post.</p>	<p>356. (1) Commet une infraction quiconque, selon le cas :</p> <p>a) vole :</p> <p>(i) soit une chose envoyée par la poste, après son dépôt à un bureau de poste et avant sa livraison, ou après sa livraison mais avant que son destinataire ou toute personne qu'il est raisonnable de considérer comme autorisée par lui à recevoir le courrier l'ait en sa possession,</p> <p>(ii) soit un sac ou autre contenant ou couverture dans lequel le courrier est transporté, qu'ils contiennent ou non du courrier,</p> <p>(iii) soit une clef correspondant à un cadenas ou à une serrure adoptés pour l'usage de la Société canadienne des postes;</p> <p>a.1) dans l'intention de commettre une infraction prévue à l'alinéa a), fait, a en sa possession ou utilise une copie d'une clef correspondant à un cadenas ou à une serrure adoptés pour l'usage de la Société canadienne des postes ou d'une clef pouvant donner accès à un contenant ou dispositif prévu pour le dépôt du courrier;</p> <p>b) a en sa possession une chose dont il sait qu'elle a servi à la perpétration d'une infraction prévue aux alinéas a) ou a.1) ou une chose à l'égard de laquelle il sait qu'une telle infraction a été commise;</p> <p>c) réexpédie ou fait réexpédier frauduleusement une chose envoyée par la poste.</p>

<p>366. (1) Every one commits forgery who makes a false document, knowing it to be false, with intent</p> <p>(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or</p> <p>(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.</p> <p>(2) Making a false document includes</p> <p>(a) altering a genuine document in any material part;</p> <p>(b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or</p> <p>(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.</p> <p>(3) Forgery is complete as soon as a document is made with the knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing anything.</p> <p>(4) Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine.</p> <p>(5) No person commits forgery by reason only that the person, in good faith, makes a false document at the request of a police force, the</p>	<p>366. (1) Commet un faux quiconque fait un faux document le sachant faux, avec l'intention, selon le cas :</p> <p>a) qu'il soit employé ou qu'on y donne suite, de quelque façon, comme authentique, au préjudice de quelqu'un, soit au Canada, soit à l'étranger;</p> <p>b) d'engager quelqu'un, en lui faisant croire que ce document est authentique, à faire ou à s'abstenir de faire quelque chose, soit au Canada, soit à l'étranger.</p> <p>(2) Faire un faux document comprend :</p> <p>a) l'altération, en quelque partie essentielle, d'un document authentique;</p> <p>b) une addition essentielle à un document authentique, ou l'addition, à un tel document, d'une fausse date, attestation, sceau ou autre chose essentielle;</p> <p>c) une altération essentielle dans un document authentique, soit par rature, oblitération ou enlèvement, soit autrement.</p> <p>(3) Le faux est consommé dès qu'un document est fait avec la connaissance et l'intention mentionnées au paragraphe (1), bien que la personne qui le fait n'ait pas l'intention qu'une personne en particulier s'en serve ou y donne suite comme authentique ou soit persuadée, le croyant authentique, de faire ou de s'abstenir de faire quelque chose.</p> <p>(4) Le faux est consommé, bien que le document faux soit incomplet ou ne soit pas donné comme étant un document qui lie légalement, s'il est de nature à indiquer qu'on avait l'intention d'y faire donner suite comme authentique.</p> <p>(5) Nul ne commet un faux du seul fait qu'il a fait de bonne foi un faux document à la</p>
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<p>Canadian Forces or a department or agency of the federal government or of a provincial government.</p> <p>367. Every one who commits forgery</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p>	<p>demande des forces policières, des Forces canadiennes ou d'un ministère ou organisme public fédéral ou provincial.</p> <p>367. Quiconque commet un faux est coupable :</p> <p>a) soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans;</p> <p>b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p>
<p>400. (1) Every one who makes, circulates or publishes a prospectus, a statement or an account, whether written or oral, that he knows is false in a material particular, with intent</p> <p>(a) to induce persons, whether ascertained or not, to become shareholders or partners in a company,</p> <p>(b) to deceive or defraud the members, shareholders or creditors, whether ascertained or not, of a company, or</p> <p>(c) to induce any person to</p> <p>(i) entrust or advance anything to a company, or</p> <p>(ii) enter into any security for the benefit of a company,</p> <p>(d) [Repealed, 1994, c. 44, s. 26]</p> <p>is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.</p>	<p>400. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans quiconque fait, met en circulation ou publie un prospectus, état ou compte, soit écrit, soit oral, qu'il sait être faux en quelque point essentiel, avec l'intention, selon le cas :</p> <p>a) d'induire des personnes, qu'elles soient particulièrement visées ou non, à devenir actionnaires ou associés d'une compagnie;</p> <p>b) de tromper ou de frauder les membres, actionnaires ou créanciers d'une compagnie, particulièrement visés ou non;</p> <p>c) d'induire qui que ce soit, selon le cas :</p> <p>(i) à confier ou à avancer quelque chose à une compagnie,</p> <p>(ii) à contracter une garantie pour le bénéfice d'une compagnie.</p> <p>d) [Abrogé, 1994, ch. 44, art. 26]</p> <p>• <i>Note marginale : Définition de</i></p>

	<p>« <i>compagnie</i> »</p> <p>(2) Au présent article, « <i>compagnie</i> » désigne un syndicat, une personne morale ou une compagnie, en existence ou dont la création est projetée.</p>
<p>403. (1) Everyone commits an offence who fraudulently personates another person, living or dead,</p> <p>(a) with intent to gain advantage for themselves or another person;</p> <p>(b) with intent to obtain any property or an interest in any property;</p> <p>(c) with intent to cause disadvantage to the person being personated or another person; or</p> <p>(d) with intent to avoid arrest or prosecution or to obstruct, pervert or defeat the course of justice.</p> <p>(2) For the purposes of subsection (1), personating a person includes pretending to be the person or using the person's identity information — whether by itself or in combination with identity information pertaining to any person — as if it pertains to the person using it.</p> <p>(3) Everyone who commits an offence under subsection (1)</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p>	<p>403. (1) Commet une infraction quiconque, frauduleusement, se fait passer pour une autre personne, vivante ou morte :</p> <p>a) soit avec l'intention d'obtenir un avantage pour lui-même ou pour une autre personne;</p> <p>b) soit avec l'intention d'obtenir un bien ou un intérêt sur un bien;</p> <p>c) soit avec l'intention de causer un désavantage à la personne pour laquelle il se fait passer, ou à une autre personne;</p> <p>d) soit avec l'intention d'éviter une arrestation ou une poursuite, ou d'entraver, de détourner ou de contrecarrer le cours de la justice.</p> <p>(2) Pour l'application du paragraphe (1), se fait passer pour une autre personne quiconque prétend être celle-ci ou utilise comme s'il se rapportait à lui tout renseignement identificateur ayant trait à elle, que ce renseignement soit utilisé seul ou en conjonction avec d'autres renseignements identificateurs relatifs à toute personne.</p> <p>(3) Quiconque commet une infraction prévue au paragraphe (1) est coupable :</p> <p>a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans;</p> <p>b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p>

<p>430. (1) Every one commits mischief who wilfully</p> <p>(a) destroys or damages property;</p> <p>(b) renders property dangerous, useless, inoperative or ineffective;</p> <p>(c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or</p> <p>(d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.</p> <p>Every one commits mischief who wilfully</p> <p>(a) destroys or alters data;</p> <p>(b) renders data meaningless, useless or ineffective;</p> <p>(c) obstructs, interrupts or interferes with the lawful use of data; or</p> <p>(d) obstructs, interrupts or interferes with any person in the lawful use of data or denies access to data to any person who is entitled to access thereto.</p> <p>(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and liable to imprisonment for life.</p> <p>(3) Every one who commits mischief in relation to property that is a testamentary instrument or the value of which exceeds five thousand dollars</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or</p>	<p>430. (1) Commet un méfait quiconque volontairement, selon le cas :</p> <p>a) détruit ou détériore un bien;</p> <p>b) rend un bien dangereux, inutile, inopérant ou inefficace;</p> <p>c) empêche, interrompt ou gêne l'emploi, la jouissance ou l'exploitation légitime d'un bien;</p> <p>d) empêche, interrompt ou gêne une personne dans l'emploi, la jouissance ou l'exploitation légitime d'un bien.</p> <p>Commet un méfait quiconque volontairement, selon le cas :</p> <p>a) détruit ou modifie des données;</p> <p>b) dépouille des données de leur sens, les rend inutiles ou inopérantes;</p> <p>c) empêche, interrompt ou gêne l'emploi légitime des données;</p> <p>d) empêche, interrompt ou gêne une personne dans l'emploi légitime des données ou refuse l'accès aux données à une personne qui y a droit.</p> <p>(2) Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité quiconque commet un méfait qui cause un danger réel pour la vie des gens.</p> <p>(3) Quiconque commet un méfait à l'égard d'un bien qui constitue un titre testamentaire ou dont la valeur dépasse cinq mille dollars est coupable :</p> <p>a) soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans;</p>
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<p><i>(b)</i> is guilty of an offence punishable on summary conviction.</p>	<p><i>b)</i> soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.</p>
<p>450. Every one who, without lawful justification or excuse, the proof of which lies on him,</p> <p><i>(a)</i> buys, receives or offers to buy or receive,</p> <p><i>(b)</i> has in his custody or possession, or</p> <p><i>(c)</i> introduces into Canada,</p> <p>counterfeit money is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.</p>	<p>450. Quiconque, sans justification ou excuse légitime, dont la preuve lui incombe, selon le cas :</p> <p><i>a)</i> achète, reçoit ou offre d'acheter ou de recevoir;</p> <p><i>b)</i> a en sa garde ou possession;</p> <p><i>c)</i> introduit au Canada,</p> <p>de la monnaie contrefaite, est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans.</p>