Court File No. 35215

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

BETWEEN:

LUIS ALBERTO HERNANDEZ FEBLES

Appellant

- and –

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

- and -

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

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PART I: OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. This case raises the issue of exclusion in the refugee determination context with respect to 'serious prior criminality'.

2. The central question in this appeal is the proper interpretation and application of Article 1F(b) of the 1951 United Nations *Convention Relating to the Status of Refugees* ("*Convention*").[1] These submissions address the factors that must be properly considered by Canada in an Article 1F(b) analysis, including in particular the question of 'rehabilitation'.

3. The Federal Court of Appeal ("FCA") held in the case at bar that no rehabilitation factors could be considered when applying the Article 1F(b) exclusion clause. Such an approach would restrict the Immigration and Refugee Board ("Board") to consideration of factors related only to the commission of the offence. The Board would be prevented from considering anything that post-dated the offence, such as completion of sentence, granting of a pardon, passage of time since commission of the offence or any other factors related to rehabilitation.

4. The FCA decision barring consideration of rehabilitation under Article 1F(b) is inconsistent with Canada's legal obligations under the *Convention*, which require restrictive application of the Article 1F exclusion clauses, particularly because of the deleterious effects of exclusion. The FCA's approach is also inconsistent with international jurisprudence on the issue; it is an extreme position that makes Canada an outlier among its international counterparts. CCLA respectfully submits that rehabilitation is relevant to the exclusion analysis under Article 1F(b) and such consideration is not antithetical to, but rather is consistent with, the stated purposes of Article 1F(b).

5. Barring the Board from considering rehabilitation irrespective of facts relevant to an individualized assessment, is arbitrary, discriminatory and violates basic notions of fairness and the principles of fundamental justice in s.7 of the *Charter*.[2]

6. Moreover, it would lead to the absurd result that while rehabilitation is a standard factor to consider in assessing admissibility for any other class of immigrant or visitor to Canada, it could not be taken into account in deciding whether to exclude refugees who are in situations of

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[1] United Nations, *Convention relating to the Status of Refugees,* 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

[2] *Charter of Rights and Freedoms,* s 3, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982 c 11.

extreme vulnerability and the only non-citizens that Canada has international obligations to accept.

B. Statement of Facts

7. The CCLA relies on the statement of facts set out in the factum of the Appellant.

PART II: QUESTIONS IN ISSUE

8. The appeal will address the appropriate interpretation and application of the exclusion provision in Article 1F(b).

PART III: ARGUMENT

A. Prohibiting consideration of rehabilitation as a factor in an Article 1F(b) analysis is an extreme position that is inconsistent with other jurisdictions

9. The foreign court decisions cited by the Respondent do not support the proposition that a decision-maker should be barred from considering rehabilitation when deciding the applicability of Article 1F(b) exclusion.[3]

10. The UK decision of *AH v. Secretary of State for the Home Department* held that the first purpose of Art. 1F(b) is to exclude fugitives, while the second purpose is to exclude those who have demonstrated by their conduct that they are "unworthy" of protection.[4] The Respondent cites paragraph 97 of the decision to support the position that the interpretation of seriousness of the crime should be limited in time, and cites the holding that "[t]he examination of seriousness should be directed at the criminal acts when they were committed." However, the Respondent omits the critical second part of that sentence which substantially modifies the meaning of the first. The full sentence on which the Respondent relies is as follows:

> The examination of seriousness should be directed at the criminal acts when they were committed, **although events in the supervening passage of time may be relevant to whether exclusion is justified: a formal pardon, or subsequent acquittal, or other event illuminating the nature of the activity may be relevant to this assessment.**[5]

11. Contrary to the Respondent's position, the decision in *AH* expressly recognizes that factors post-dating the commission of the offence may be relevant to whether exclusion is

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[3] Respondent's Factum on Appeal at the Supreme Court at paras 69*ff* [Respondent's Factum].
[4] *AH v Secretary of State for the Home Department*, [2013] UKUT 00382 (IAC) at para 85.
[5] *Ibid* at para 97 (emphasis added).

justified. Despite finding that the level of seriousness required for Article 1F(b) exclusion to be triggered should be of a similar nature to those crimes under 1F(a) and (c), and that one of the purposes of Article 1F(b) was to exclude those "unworthy" of protection, the Court in *AH* still saw a role for factors arising after the commission of the crime in determining whether exclusion is justified.[6]

12. The Respondent also relies on the European Court of Justice ("ECJ") in *B and D* in support of their position. Much like the Federal Court of Appeal in the case at bar, the ECJ determined that a showing of present danger is not required for exclusion under Article 1F(b). The ECJ did not, however, take the extra step that the Respondent proposes here: to find that rehabilitation is never a relevant factor in determining whether a claimant is "undeserving" of refugee protection due to their past criminal acts. Interestingly, the Advocate General attached to the case opined that though present danger need not be shown to trigger exclusion, expiation and rehabilitative factors may nonetheless be relevant to determining whether the application of the exclusion clause is justified.[7]

13. The Australian and New Zealand courts have held the purpose of Article 1F(b) is to exclude fugitives and to ensure the safety and security of the receiving State,[8] both purposes to which rehabilitation is germane. Moreover, the French and Belgian courts, as detailed by the Appellant, have expressly decided that Article 1F(b) does not apply to individuals who have been rehabilitated.[9] Accordingly, it is clear the Respondent's position, if adopted, would place Canada in a position that is fundamentally inconsistent with that of other jurisdictions.

B. Rehabilitation and "serious criminality" under IRPA

14. The Canadian legislation in the *Immigration and Refugee Protection Act* ("IRPA")[10] contemplates "rehabilitation" as a relevant factor with respect to "serious criminality" and admissibility. Section 36(1) of IRPA defines an offence committed outside Canada as "serious criminality" if it would constitute an offence under an Act of Parliament punishable by a

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[6] *Ibid*.
[7] Cases C-57/09 and C-101/09 *Bundesrepublik Deutschland v B und D (B and D)* [2010] ECR I-000 at para 78 and FN 72.
[8] *Ovcharuk v Minister for Immigration and Multicultural Affairs* (1998) 158 ALR 289 (FC) at p 292; *Attorney General v Tamil X*, [2010] NZSC 107 at para 87, [2011] 1 NZLR 721.
[9] Appellant's Factum on Appeal at the Supreme Court at paras 66, 71 [Appellant's Factum].
[10] *Immigration and Refugee Protection Act*, SC 2001 c 27.

maximum term of imprisonment of at least 10 years. As pointed out by the Respondent[11], the FCA in *Jayasekara* [12] refers to this definition as an indication of Parliament's view of "seriousness" under Article 1F(b)[13]. Apart from any discussion of the scope or weight of s.36(1) in assessing seriousness, it is unclear why one would not consider the entire scheme of the Act rather than simply importing an isolated clause.

15. Under s.36(3)(c) of IRPA, the matters referred to in s.36(1)(b) and (c) do not constitute inadmissibility if the person satisfies the Minister that they have been rehabilitated. Sections 17 and 18 of the *Immigration and Refugee Protection Regulations* ("IRPR")[14] set out the criteria for deemed rehabilitation and eligibility periods to apply for rehabilitation. While these provisions pertain to "admissibility" considerations, Parliament is nonetheless unequivocal that someone who is rehabilitated is not inadmissible for "serious criminality".

16. In *Burgon*, the Federal Court of Appeal describes the process of rehabilitation as follows:

> [B]ut all people who have committed crimes are not necessarily excluded forever. Immigration law, like society generally, may forgive those who commit crimes. Those who satisfy…that they have rehabilitated themselves…may be admitted. (See s 19(1)(c)) This provision indicates that a person who commits a serious crime may be given a chance to start a new life in Canada, at least on certain conditions.[15]

17. The approach proposed by the Respondent leads to arbitrary and discriminatory results in this context. Following the Respondent's proposed reasoning, someone who was pardoned in a foreign jurisdiction or even explicitly found to be rehabilitated under IRPA may be admissible to Canada as a visitor, worker or even as a permanent resident. And yet, the same person with a well-founded fear of persecution would continue to be excluded from seeking refugee protection for the rest of their lives.

18. This approach is also contrary to one of the fundamental themes in the *Convention*, that refugees should be afforded the same treatment as nationals, or at the very least the same treatment as other foreign nationals in the country of refuge. This is set out, for example, in Article 7(1), which states, "Except where this Convention contains more favourable provisions, a

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[11] Respondent's Factum, *supra* note 3 at para 40.
[12] *Jayasekara v Canada (Minister of Citizenship and Immigration)*, 2008 FC 404 (CA) at para 40, [2009] 4 FCR 164 [*Jayasekara*].
[13] The seriousness of criminality under 1F(b) should be interpreted in the context of Articles 1F(a) and 1F(c). With respect, section 36(1) is not the appropriate standard for this assessment.
[14] *Immigration and Refugee Protection Regulations*, SOR/2002-227.
[15] *Canada (Minister of Employment & Immigration) v Burgon*, [1991] 3 FC 44 (CA) at para 15, [1991] FCJ No 149 (emphasis added) [*Burgon*].

Contracting State shall accord to refugees the same treatment as is accorded to aliens generally." It is difficult to understand how Canada could justify applying a more stringent threshold for criminality on refugees than on ordinary visitors with respect to whose entry Canada has no international legal obligations.

C. Rehabilitation is a relevant factor consistent with the possible purposes of exclusion

19. The FCA was clear that if the purpose of Article 1F(b) was to prevent receiving states from hosting dangerous criminals, it would be necessary to consider rehabilitation factors.[16] Once the Court found that the purpose was not limited to protecting host states from dangerous criminals, it rejected the relevance of any rehabilitation factors at all and barred the Board from considering these factors. The Court did not assess whether rehabilitation could be relevant even if the purpose was to express a moral denunciation of those claimants who had committed criminal acts.

20. Three primary purposes of the Article 1F(b) exclusion clause have been identified by the courts below, international jurisprudence and scholars:

i. Prevention of fugitives from avoiding prosecution or punishment;
ii. Protection of receiving states from dangerous criminals;
iii. To bar 'undeserving' or 'undesirable' applicants from protection based on prior serious criminal conduct.

It is the CCLA's position that irrespective of the purpose adopted, it is relevant for the Board to consider rehabilitation factors in applying Article 1F(b).

a. Preventing abuse of refugee protection by fugitives

21. Expiation is clearly a fundamental consideration in assessing whether someone is in fact a fugitive. A claimant who has completed their sentence, been pardoned, or has otherwise atoned for a criminal act is not a fugitive. A person in these circumstances neither enjoys impunity nor is evading justice. That is, factors post-dating the offence are relevant to an individualized assessment.

[16] *Febles v Canada (Minister of Citizenship and Immigration)*, 2012 FCA 324 at para 52, 357 DLR (4th) 343 [*Febles*].

22. Even in cases where expiation is not dispositive of the issue, there can be many compelling reasons why an individual has not completed their sentence. For example, the persecution underlying the refugee claim could have occurred while the claimant was serving their sentence thereby requiring their escape. Alternatively, country conditions may have prevented someone from taking the necessary steps to resolve a criminal matter, or even have contributed to the charges themselves. In each of these examples, the person may be considered a "fugitive" in their country of origin by virtue of the unresolved criminal process or sentence.

23. A fair assessment of their circumstances could recognize their flight as an attempt to escape persecution, not to escape justice. Given the policy rationale for excluding fugitives, it would be relevant in the situations described above to consider rehabilitation as a factor in a reasonable and individualized process of deciding on exclusion.

b. Protection from dangerous criminals

24. Rehabilitation is the restoration of someone to a useful place in society.[17] If a person is able to demonstrate that they have been rehabilitated, they have demonstrated that they are no longer a danger to society. This eliminates the basis for exclusion if the purpose is to exclude dangerous criminals.

c. Persons who have committed serious crimes are "undeserving" of protection

25. Even if exclusion from refugee status is dependent on an assessment of moral blameworthiness, the latter must be regarding the state of the individual at the time of the hearing.

26. The position taken by the Respondent is that rehabilitation is irrelevant when the purpose is to exclude "undeserving" refugees based on their past criminal acts. This is grounded on two related premises:

a. crimes triggering Article 1F(b) exclusion are unforgiveable, such that expiation is never possible; and
b. Someone who commits a serious crime can never be rehabilitated

[17] *The Concise Oxford Dictionary*, 10th ed, *sub verso* "rehabilitation".

27. The Respondent asserts that the drafters of the *Convention* intended for the three provisions of Article 1F to be interpreted to form a coherent whole.[18] The Respondent does not, however, suggest that the level of crime characterized as "serious" under Article 1F(b) be of the same nature as those caught by Article 1F(a) and (c). In the UK the Court in *AH* at para 86 acknowledged the level of seriousness of crime should be consistent between Article 1F(a), (b) and (c). The Court states: "We think that limbs 1F(a) and (c) serve to illustrate the level of seriousness required to engage Article 1F(b); the genus of seriousness is at a common level throughout."[19]

28. This Court has found that international crimes are extraordinary in their nature and cannot be assimilated with ordinary crime.[20] The atrocities excluded under Articles 1F(a) and 1F(c) are qualitatively different from ordinary criminality, generally representing a widespread or systemic attack on any civilian population, often on the basis of an enumerated refugee characteristic. The purpose of Articles 1F(a) and (c) is to prevent those that inflict persecution creating refugees to turn around, claim asylum and seek the protection of refugee status themselves.[21]

29. The Respondent's position that there should be a low threshold for the "seriousness" of 1F(b) crimes runs directly counter to their proposition that such crimes would be "unforgivable". In Canadian domestic criminal law, there are very few offences of a gravity one could consider "unforgiveable", and even for those offences the Royal Prerogative of Mercy allows for the possibility of expiation.

D. Principles of rehabilitation and expiation

30. The position that a person cannot be rehabilitated after a serious crime is committed is neither supported by our jurisprudence nor consistent with the basic principles of our system of justice. Rehabilitation plays a significant role in the Canadian justice system and is an underlying objective of criminal sentencing. As this Court pointed out in *Handy*:

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[18] Respondent's Factum, *supra* note 3 at paras 55-57.
[19] *AH*, *supra* note 4 at para 86.
[20] *Ezokola v Canada (Minister of Citizenship and Immigration)*, 2013 SCC 40 at para 44, 447 NR 254 [*Ezokola*].
[21] *Ibid.* at para 34 citing *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982 at para 63 [*Pushpanathan*].

> One of the objectives of the criminal justice system is the rehabilitation of offenders. Achievement of this objective is undermined to the extent the law doubts the "usual suspects" are capable of turning the page and starting a new life.[22]

31. The sentencing goal of rehabilitation, set out in s.718 of the Criminal Code[23], "is aimed at the renunciation by the offender of his wrongdoing and his re-establishment as an honourable, law-abiding citizen."[24]

32. The premise that individuals can redeem and rehabilitate themselves is also reflected in laws surrounding expiation and pardons. In the words of this Court:

> **The saying "once a criminal, always a criminal" has no place in our society.** Individuals who have paid their debt to society are entitled to resume their place in society and to live in it without running the risk of being devalued and unfairly stigmatized.[25]

33. This Court has rejected the notion that offenders can be forever "undeserving" and instead acknowledged the possibility of expiation and reintegration such that the person must be considered to carry none of the censure and stigma of their past act:

> The facts surrounding the offence did occur, but the pardon helps obliterate the stigma attached to the finding of guilt. Consequently, when the time period provided for in the CRA elapses or a pardon is granted, the opprobrium that results from prejudice and is attached solely to the finding of guilt must be resisted, and the finding of guilt should no longer reflect adversely on the pardoned person's character. It must be presumed that the person has completely recovered his or her moral integrity.[26]

34. This affirms that it is not just an individual's legal record which can be absolved but their integrity and identity. In *Therrien (Re*), this Court held that while a pardon does not make the past disappear, it allows a person to move forward with their life and not continue to "suffer the effects associated with the conviction in an arbitrary or discriminatory manner." The pardon acts to "expunge consequences for the future."[27]

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[22] *R v Handy*, 2002 SCC 56 at para 38, [2002] 2 SCR 908.
[23] *Criminal Code*, RSC 1985, c C-46.
[24] *R v Tait*, 2012 ONSC 5609 at para 34.
[25] *Québec (Commission des droits de la personne et des droits de la jeunesse) v Maksteel Québec Inc*., 2003 SCC 68 at para 63, [2003] 3 SCR 228 (emphasis added). [The Court also held the provision in question "…should assist in rehabilitating people who have paid their debt to society, while at the same time preventing them from being penalized a second time for their offence or for the wrongdoing they may have committed. *Ibid* at para 36 (emphases original)].
[26] *Montréal (City) v Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2008 SCC 48 at para 20 (emphasis added).
[27] *Therrien (Re)*, 2001 SCC 35 at para 127, [2001] 2 SCR 3.

35. The FCA has held in a series of cases that foreign pardons ought to be respected in assessing criminal inadmissibility to Canada if the "legal systems are based on similar foundations and share similar values"[28].

36. The same principles that underpin the recognition of rehabilitation and expiation in our judicial system lead to the recognition of similar principles in other jurisdictions. The prospect of rehabilitation is a cornerstone of any modern penal system, and is the goal to which our own criminal justice system aspires. The application of Article 1F(b) as proposed by the Respondent is a blanket rejection of those aspirations.

E. Section 7 Mandates Consideration of all Relevant Factors

37. Any process which fails to consider individual factors such as rehabilitation in a decision resulting in exclusion, is inconsistent with section 7 of the *Charter*. CCLA respectfully submits that section 7 mandates consideration of all relevant factors, including in this case "rehabilitation", in order to ensure that an exclusion assessment concerning a refugee – which incontrovertibly affects rights to life, liberty and security of person – is made in accordance with the principles of fundamental justice.

38. To clarify, CCLA argues that that the Article 1F(b) assessment in itself requires an individualized assessment, must comply with the principles of fundamental justice. The grave and deleterious effects of exclusion cannot be divorced from the necessity of considering all relevant factors in an Article 1F(b) exclusion assessment.

F. Exclusion determination must consider events up until time of claim

39. The integrity of asylum is dependent on claims for protection being determined on their merits in accordance with the human rights object and purpose of the *Convention*. Exclusion decisions unconnected to the valid distinctions between individual circumstances undermine this object and purpose.

40. Refugee status, and therefore exclusion, is determined at the time of the hearing. The IRB must weigh all of the relevant factors and circumstances of the individual claimant at that time, as recognized by this Court in *Pushpanathan*:

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[28] *Burgon*, *supra* note 15.

> Thus, the general purpose of Article 1F is not the protection of the society of refuge from dangerous refugees, whether because of acts committed before or after the presentation of a refugee claim; that purpose is served by Article 33 of the Convention. Rather, it is to exclude *ab initio* those who are not bona fide refugees at the time of their claim for refugee status. [emphasis added][29]

41. The focus on the situation at the time of the refugee hearing is also set out by this Court in *Németh*:

> Under the Refugee Convention, refugee status depends on the circumstances at the time the inquiry is made; it is not dependent on formal *findings*. As one author puts it, "it is one's de facto circumstances, not the official validation of those circumstances, that gives rise to Convention refugee status": James C. Hathaway, The Rights of Refugees under International Law (2005), at pp. 158 and 278.[30]

42. An application of 1F(b) turning on the primitive and discriminatory idea "once a criminal, always a criminal" has no place in the context of modern human rights. Ignoring factors such as rehabilitation that can only arise between the time of offense and the claim creates a determination system that would run afoul of the international principle of non-refoulement and be inimical to Canada upholding its international legal obligations to bona fide refugees seeking asylum.

PART IV, V: COSTS AND ORDER REQUESTED

43. The CCLA seeks no costs and respectfully request that none be awarded against them. The CCLA seeks leave to make oral submissions at the hearing of this appeal, and makes no submissions as to the outcome of the appeal.

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[29] *Pushpanathan, supra* note 21 at para 58.
[30] *Németh v Canada (Justice),* 2010 SCC 56 at para 50, [2010] 3 SCR 281.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED this 4th day of March, 2014.

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PART VI: TABLE OF AUTHORITIES

CANADIAN JUDGEMENTS	CITED AT PARAGRAPH(S)
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PART VII: STATUTES

Canadian Charter of Rights and Freedoms, s 3, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11	**Charte canadienne des droits et libertés, Loi constitutionelle de 1982, constituant l'annexe B de la *loi de 1982 sur le Canada* (R-U), 1982, c 11**
Section 7	**La section 7**
Life, liberty and security of person	Vie, liberté et securité
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.	**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.
...	...
Convention relating to the status of refugees, 28 July 1951, 189 UNTS 150	**Convention relatifs au statut des réfugiés**
Article 1	**Article premier**
1F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	**1F.** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
(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;	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
(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;	b) qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiées;
(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.	c) qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

Article 7 Exemption from reciprocity **7(1)** Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally. ... **Criminal Code, RSC 1985 c C-46** **Section 718** Purpose **718.** The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives: (*a*) to denounce unlawful conduct; (*b*) to deter the offender and other persons from committing offences; (*c*) to separate offenders from society, where necessary; (*d*) to assist in rehabilitating offenders; (*e*) to provide reparations for harm done to victims or to the community; and (*f*) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.	**Article 7** Dispense de réciprocité **7(1)** Sous réserve des dispositions plus favorables prévues par cette Convention, tout Etat Contractant accordera aux réfugiés le régime qu'il accorde aux étrangers en général. ... **Code criminel, LRC 1985 ch C-46** **La section 718** Objectif **718.** Le prononcé des peines a pour objectif essentiel de contribuer, parallèlement à d'autres initiatives de prévention du crime, au respect de la loi et au maintien d'une société juste, paisible et sûre par l'infliction de sanctions justes visant un ou plusieurs des objectifs suivants : *a*) dénoncer le comportement illégal; *b*) dissuader les délinquants, et quiconque, de commettre des infractions; *c*) isoler, au besoin, les délinquants du reste de la société; *d*) favoriser la réinsertion sociale des délinquants; *e*) assurer la réparation des torts causés aux victimes ou à la collectivité; *f*) susciter la conscience de leurs responsabilités chez les délinquants, notamment par la reconnaissance du tort qu'ils ont causé aux victimes et à la collectivité.

…	…
Immigration and Refugee Protection Act, SC 2001, c 27	**Loi sur l'immigration et la protection des réfugiés (LC 2001, ch 27)**
Section 36(1), 36(3)(c)	**La section 36(1), 36(3)(c)**
Serious criminality	**Grande criminalité**
36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36. (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants :
(*a*) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed;	*a*) être déclaré coupable au Canada d'une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans ou d'une infraction à une loi fédérale pour laquelle un emprisonnement de plus de six mois est infligé;
(*b*) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or	*b*) être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
(*c*) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.	*c*) commettre, à l'extérieur du Canada, une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.
Section 36(3)(c)	**Section 36(3)(c)**
Application	Application
(3) The following provisions govern subsections (1) and (2):	(3) Les dispositions suivantes régissent l'application des paragraphes (1) et (2) :
(*c*) the matters referred to in paragraphs (1) (*b*) and (*c*) and (2)(*b*) and (*c*) do not	*c*) les faits visés aux alinéas (1)*b*) ou *c*) et (2)*b*) ou *c*) n'emportent pas interdiction de

constitute inadmissibility in respect of a permanent resident or foreign national who, after the prescribed period, satisfies the Minister that they have been rehabilitated or who is a member of a prescribed class that is deemed to have been rehabilitated;	territoire pour le résident permanent ou l'étranger qui, à l'expiration du délai réglementaire, convainc le ministre de sa réadaptation ou qui appartient à une catégorie réglementaire de personnes présumées réadaptées;
...	…
Immigration and Refugee Protection Regulations, SOR/2002-27	**Règlement sur l'immigration et la protection des réfugiés (DORS/2002-227)**
Section 17	**La section 17**
Proscribed Period	Délai réglementaire
17. For the purposes of paragraph 36(3)(*c*) of the Act, the prescribed period is five years	**17.** Pour l'application de l'alinéa 36(3)*c*) de la Loi, le délai réglementaire est de cinq ans à compter :
(*a*) after the completion of an imposed sentence, in the case of matters referred to in paragraphs 36(1)(*b*) and (2)(*b*) of the Act, if the person has not been convicted of a subsequent offence other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act*; and	*a*) dans le cas des faits visés aux alinéas 36(1)*b*) ou (2)*b*) de la Loi, du moment où la peine imposée a été purgée, pourvu que la personne n'ait pas été déclarée coupable d'une infraction subséquente autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur les jeunes contrevenants*;
(*b*) after committing an offence, in the case of matters referred to in paragraphs 36(1)(*c*) and (2)(*c*) of the Act, if the person has not been convicted of a subsequent offence other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act*.	*b*) dans le cas des faits visés aux alinéas 36(1)*c*) ou (2)*c*) de la Loi, du moment de la commission de l'infraction, pourvu que la personne n'ait pas été déclarée coupable d'une infraction subséquente autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur les jeunes contrevenants*.
Section 18	**La section 18**
Rehabilitation	Réadaptation

18. (1) For the purposes of paragraph 36(3)(*c*) of the Act, the class of persons deemed to have been rehabilitated is a prescribed class.	**18.** (1) Pour l'application de l'alinéa 36(3)*c*) de la Loi, la catégorie des personnes présumées réadaptées est une catégorie réglementaire.
Members of the Class	Qualité
(2) The following persons are members of the class of persons deemed to have been rehabilitated:	(2) Font partie de la catégorie des personnes présumées réadaptées les personnes suivantes :
(*a*) persons who have been convicted outside Canada of no more than one offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, if all of the following conditions apply, namely,	*a*) la personne déclarée coupable, à l'extérieur du Canada, d'au plus une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation si les conditions suivantes sont réunies :
(i) the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years,	(i) l'infraction est punissable au Canada d'un emprisonnement maximal de moins de dix ans,
(ii) at least 10 years have elapsed since the day after the completion of the imposed sentence,	(ii) au moins dix ans se sont écoulés depuis le moment où la peine imposée a été purgée,
(iii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament,	(iii) la personne n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation,
(iv) the person has not been convicted in Canada of any summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,	(iv) elle n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par procédure sommaire dans les dix dernières années ou de plus d'une telle infraction avant les dix dernières années, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice*

	pénale pour les adolescents,
(v) the person has not within the last 10 years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,	(v) elle n'a pas, dans les dix dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,
(vi) the person has not before the last 10 years been convicted outside Canada of more than one offence that, if committed in Canada, would constitute a summary conviction offence under an Act of Parliament, and	(vi) elle n'a pas, avant les dix dernières années, été déclarée coupable, à l'extérieur du Canada, de plus d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par procédure sommaire,
(vii) the person has not committed an act described in paragraph 36(2)(*c*) of the Act;	(vii) elle n'a pas commis l'infraction visée à l'alinéa 36(2)*c*) de la Loi;
(*b*) persons convicted outside Canada of two or more offences that, if committed in Canada, would constitute summary conviction offences under any Act of Parliament, if all of the following conditions apply, namely,	*b*) la personne déclarée coupable, à l'extérieur du Canada, de deux infractions ou plus qui, commises au Canada, constitueraient des infractions à une loi fédérale punissables par procédure sommaire si les conditions suivantes sont réunies :
(i) at least five years have elapsed since the day after the completion of the imposed sentences,	(i) au moins cinq ans se sont écoulés depuis le moment où les peines imposées ont été purgées,
(ii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament,	(ii) la personne n'a pas été déclarée coupable au Canada d'une
(iii) the person has not within the last five years been convicted in Canada of an offence under an Act of Parliament, other than an offence designated as a contravention under	

the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,	infraction à une loi fédérale punissable par mise en accusation,
(iv) the person has not within the last five years been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,	(iii) elle n'a pas, dans les cinq dernières années, été déclarée coupable au Canada d'une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,
(v) the person has not before the last five years been convicted in Canada of more than one summary conviction offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*,	(iv) elle n'a pas, dans les cinq dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,
(vi) the person has not been convicted of an offence referred to in paragraph 36(2)(*b*) of the Act that, if committed in Canada, would constitute an indictable offence, and	(v) elle n'a pas, avant les cinq dernières années, été déclarée coupable au Canada de plus d'une infraction à une loi fédérale punissable par procédure sommaire, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*,
(vii) the person has not committed an act described in paragraph 36(2)(*c*) of the Act; and	(vi) elle n'a pas été déclarée coupable d'une infraction visée à l'alinéa 36(2)*b*) de la Loi qui, commise au Canada, constituerait une infraction punissable par mise
(*c*) persons who have committed no more than one act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, if all of the following conditions apply, namely,	

(i) the offence is punishable in Canada by a maximum term of imprisonment of less than 10 years, (ii) at least 10 years have elapsed since the day after the commission of the offence, (iii) the person has not been convicted in Canada of an indictable offence under an Act of Parliament, (iv) the person has not been convicted in Canada of any summary conviction offence within the last 10 years under an Act of Parliament or of more than one summary conviction offence before the last 10 years, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*, (v) the person has not within the last 10 years been convicted outside of Canada of an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, other than an offence designated as a contravention under the *Contraventions Act* or an offence under the *Youth Criminal Justice Act*, (vi) the person has not before the last 10 years been convicted outside Canada of more than one offence that, if committed in Canada, would constitute a summary conviction offence under an Act of Parliament, and	en accusation, (vii) elle n'a pas commis l'infraction visée à l'alinéa 36(2)*c*) de la Loi; *c*) la personne qui a commis, à l'extérieur du Canada, au plus une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation si les conditions suivantes sont réunies : (i) l'infraction est punissable au Canada d'un emprisonnement maximal de moins de dix ans, (ii) au moins dix ans se sont écoulés depuis le moment de la commission de l'infraction, (iii) la personne n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par mise en accusation, (iv) elle n'a pas été déclarée coupable au Canada d'une infraction à une loi fédérale punissable par procédure sommaire dans les dix dernières années ou de plus d'une telle infraction avant les dix dernières années, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*, (v) elle n'a pas, dans les dix

(vii) the person has not been convicted outside of Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.	dernières années, été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la *Loi sur les contraventions* ou une infraction à la *Loi sur le système de justice pénale pour les adolescents*, (vi) elle n'a pas, avant les dix dernières années, été déclarée coupable, à l'extérieur du Canada, de plus d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par procédure sommaire, (vii) elle n'a pas été déclarée coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable par mise en accusation.