

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

GILLIAN FRANK AND JAMIE DUONG

Applicants

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA**

Respondents

REPLY FACTUM

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PART I: OVERVIEW

1. The Applicants make the following submissions in reply to the Respondent's factum.

PART II: FACTS

A. Residence is Not Required by Section 3

2. The Applicants deny that residence is a condition of voting in Canada, as asserted in the Respondent's factum. The plain words of section 3 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") do not require residence in Canada in order to vote. The framers of the *Charter* included citizenship as a requirement to vote but did not include residence. The framers could well have included residence under the s. 3 right if they intended it to be a voting requirement. Thus, in *Sauvé v. Canada*,¹ the Chief Justice (majority reasons) repeatedly spoke of the right to vote in terms of "citizens" – not citizens who met certain procedural requirements of the *Canada Elections Act* (the "*Act*") (such as being registered, voting in electoral districts, etc.).²

3. In 1983, when members of the House of Commons were considering potential conflicts between the *Act* and the *Charter*, Member of Parliament Crosby (from Halifax West) summarized the view that residence was not required by the words of the *Charter*:

Now, it would have been awfully easy in the Charter to say that every citizen has a right to vote in an election of member of the House of Commons for the constituency in which he or she resides. We, the framers of the Charter of Rights, knew federal

¹ *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519 (*Sauvé #2*).

² *Sauvé #2*, for example, at paras 13, 33, 34.

elections were conducted constituency by constituency; we knew you did not vote at large for the Prime Minister; we knew all about elections. Yet we gave every citizen the right to vote without restriction. So we must have intended to give citizens the right to vote if they are out of the country...³

4. Residence is not required in order to vote but it is a procedural mechanism which assists in effectuating the right to vote. Jean-Pierre Kingsley has stated that, considering the entirety of the Act and Canada's voting system, including the Act's Special Voting Rules, residence in Canada is not required in order to vote. In his evidence, Mr. Kingsley described residence as a "procedural aspect of the vote which designates where one exercises one's entitlement". He notes that s. 3 of the Act, which provides the "qualifications" required to vote (that is, being a Canadian citizen and 18 years of age or older) makes no reference to residence. Section 6 of the Act then sets out where a qualified person may vote. While on cross-examination, Mr. Kingsley did agree that residency could be a basic requirement of voting in Canada, it was not required in order to vote under the Special Voting Rules. Moreover, Mr. Kingsley did not consider residence essential to voting given that (1) he views residence as a principle which is broadly compromised in our system in order to effectuate the right to vote; and (2) in 2006 he recommended to Parliament that it remove the limitation on voting for Canadians residing abroad.⁴

³ Standing Committee on Privileges and Elections respecting the 1983 Statutory Report of the Chief Electoral Officer of Canada, Legislative History, Volume 9, Tab 17, p. 5139

⁴ Reply Affidavit of Jean-Pierre Kingsley sworn May 7, 2013, Joint Application Record, Tab 8, at paras 21-23; Affidavit of Jean-Pierre Kingsley sworn May 11, 2012, Joint Application Record, Tab 7, at para 52; Cross-examination of Jean-Pierre Kingsley June 6, 2013, Joint Application Record, Tab 9, p. 18, l. 8 to p.24, l. 13.

5. Section 6 of the Act, which the Respondent claims "sets" residence as the "condition or requirement"⁵ of the right to vote, provides:

6. Subject to this Act, every person who is qualified as an elector is entitled to have his or her name included in the list of electors for the polling division in which he or she is ordinarily resident and to vote at the polling station for that polling division.⁶ (emphasis added)

6. The Applicants deny that s. 6 can or does act as a limit on their right to vote. First, this provision is subject to the remainder of the Act, which includes the rules allowing citizens to vote from outside the country – the Special Voting Rules. It cannot, therefore, be considered to establish an unqualified requirement. Second, this provision provides for an entitlement but does not act as a limit. It states that qualified electors are "entitled" to vote in their polling divisions; it does not prevent non-resident citizens from voting in a polling division. The Applicants did not challenge the constitutionality of s. 6 because there was no need to do so; the section provides a mechanism to vote but does not limit the right to vote.

7. Finally, even if s. 6 did act as a condition or requirement (which the Applicants firmly deny), it cannot limit the full meaning of the *Charter* right. While it is helpful to look to the Act, including the Special Voting Rules, to understand that voting from outside the country can and has been implemented (particularly for the purposes of s. 1 of the *Charter*), it goes without saying that it is only the *Charter* which can limit the provisions of the Act, and not the other way around. Section 6 of the Act, even if read in

⁵ Respondent's factum, paras 98-99

⁶ *Canada Elections Act*, s. 6.

the manner proposed by the Respondent, cannot be used to read a limitation into the scope of the constitutional right to vote.

B. No Evidence of Fraud

8. The Respondent's factum makes repeated reference to "fraud" as a justification for the limitation on voting rights for citizens residing outside Canada. This is notwithstanding that the Respondent has provided not a shred of evidence to suggest that the current system of external voting, now in place for over 20 years, has led to any concerns of fraud. The Respondent has implemented an effective system for external voting which can be easily extended to the Applicants and to others in their situation.

9. The Respondent's materials raise only one concrete problem that could be linked to improper behaviour. This is the suggestion that there is no ability to enforce the Act's electoral financing regime. Leaving aside that this would be an equal concern with respect to existing external voters, Jean-Pierre Kingsley, who administered the Act for 17 years, directly dismissed this concern. Candidates for federal election are required to report all expenditures, wherever they are made, which are incurred as part of a campaign. Mr. Kingsley was not aware of any issues that had arisen with election spending relating to Canadian citizens living outside Canada who are currently permitted to vote. No doubt, the opposition would quickly hold parties and candidates to account for advertisements or other expenses outside the country which were not reported.⁷ In any event, Canada has enacted legislation in other spheres to regulate

⁷ Affidavit of Jean-Pierre Kingsley sworn May 7, 2013, Joint Application Record, Tab 8, at para 52.

the conduct of Canadian residents abroad;⁸ presumably, enforcement mechanisms can be similarly developed in the electoral sphere.

C. Grassroots Not Primary Point of Contact

10. The Applicants reject the Respondents' suggestion that, in spite of modernization, the grassroots of the Canadian system is the primary point of contact for citizens with the system of government. Jean-Pierre Kingsley's uncontested evidence is that a very small proportion of electors have direct, personal contact with a Member of Parliament, particularly during an election campaign. Federal electoral districts have, on average, a population of 100,000 each. The Chief Electoral Officer issues the writ 36 days before polling day (s. 57 of the Act). Candidates then have until 21 days before polling day to file their nomination papers (s. 69 of the Act). This means that candidates have between 21 and 36 days to campaign for a federal election. This is a short period of time to reach approximately 100,000 persons.⁹

11. In the Applicants' submission, the primary point of contact for Canadians during an election is not in-person contact but, rather, through the media which is widely available around the world.

D. Establishing Boundaries Not Dependent on Residence

12. Contrary to the Respondent's contention that residence is "key" for drawing electoral boundary maps, electoral boundaries are not based on the residence of

⁸ See, for example, the *Corruption of Foreign Public Officials Act*, SC 1998, c. 34, and provisions of section 7 of the *Criminal Code*, RSC. 1985, c.C-46.

⁹ Affidavit of Jean-Pierre Kingsley sworn May 7, 2013, Joint Application Record, Tab 8, at para 50;

electors. In any event, electoral districts vary widely in their populations and external voters are only a miniscule proportion of any electoral district.

13. The population of a constituency can vary by 25% above or below the quotient for the province. Moreover, a boundary commission can decide to exceed that 25% either way in circumstances considered to be justified. The 25% potential variation in a constituency calculates to a potential population variation from one riding to the next of 40%. Considering the comparatively small numbers of voters expected to vote from outside Canada (as set out in the Applicants' factum), and considering in any event the vast variation of population among constituencies, the impact of voters from outside of Canada on numbers in a constituency would be minimal.¹⁰ The numbers of citizens who vote from outside of Canada can vary by several thousand voters from one election to the next in any event.¹¹

14. Importantly, though, decisions with respect to the boundaries of a constituency are based on Statistics Canada population counts and not on the number of electors. This means that they include residents who are not Canadian citizens and not entitled to vote (e.g. recent immigrants) and those under the age of 18 who are not entitled to vote. Because the boundaries are not determined on the basis of the number of electors, electors living outside the country who currently are entitled to vote by the Special Voting Rules are not counted for the purpose of determining these boundaries.¹²

¹⁰ Affidavit of Jean-Pierre Kingsley sworn May 7, 2013, Joint Application Record, Tab 8, at para 40.

¹¹ See para 100 of Applicants' factum dated September 23, 2013.

¹² Affidavit of Jean-Pierre Kingsley sworn May 7, 2013, Joint Application Record, Tab 8, at para 43.

15. However, if Canada determined that it wished to draw boundaries on the basis of eligible electors, it easily could account for external voters considering that Elections Canada maintains a list of the names and contact information of external voters.¹³

PART III: LAW

A. Cases re Provincial Residency Requirements Do Not Assist the Respondent

16. The Respondent has relied heavily on cases which address residency requirements prior to voting in a Canadian province or territory. However, those cases do not assist with the case at bar. The concern in those cases, which all deal with residency in a province for a limited period prior to voting, is that it is quite possible to be a Canadian citizen but have no attachment to a particular province. A Canadian citizen who has lived his whole life in Alberta but finds himself in Quebec on voting day may have no attachment to Quebec. By contrast, it is not possible to be a Canadian citizen and have no particular attachment to Canada. The very fact of being a citizen creates and is the attachment to Canada which forms the foundation of the s. 3 *Charter* right. There is no need to create a test for attachment; unlike in the provincial and territorial cases, the attachment is generated by citizenship in the country.

B. Cases re International Residency Requirements do not Assist the Respondent

17. The Respondent's reliance on international law, specifically decisions of the European Court of Human Rights (the "ECHR"), is misguided for two reasons. First, the circumstances under scrutiny by the ECHR are materially different than the Canadian

¹³ Affidavit of Jean-Pierre Kingsley sworn May 7, 2013, Joint Application Record, Tab 8, at paras 45-48.

situation. Secondly, the ECHR lags behind Canada in its recognition of the importance of individual electoral rights.

18. In the United Kingdom, citizens residing abroad may vote in domestic elections for 15 years after they leave the country. In *Shindler*, the ECHR was considering a challenge to these voting laws by a U.K. citizen who had retired to Italy in 1982, 27 years before he filed his challenge.

19. The U.K. legislation had undergone a series of amendments from 1985 onwards. Originally, like Canada, the law had permitted voting for 5 years after leaving the country. Four years later, in 1989, the law was amended to permit voting for 20 years. In 2000, the period was reduced to 15 years and has remained at that level since, although proposals both increasing and decreasing the level continue to be made.¹⁴

20. Accordingly, the ECHR was considering a residency requirement three times longer than that of Canada. At best, the ECHR has found that a 15 year limit is acceptable under the *European Convention for the Protection of Human Rights and Fundamental Freedoms*; this has limited application to a 5 year limit under the *Charter*.¹⁵ As the ECHR itself as said:

...any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that

¹⁴ *Shindler v. The United Kingdom*, (dec.), no. 19840/09, ECHR 2013-II, paras 17-28.

¹⁵ The ECHR has also considered the one month residency for Liechtenstein and declared the complaint regarding it inadmissible: *Hilbe v Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI. Roughly 16% of Liechtenstein nationals live abroad (see p. 2) The other cases cited by the Respondent and in *Shindler* either involve the UK restriction, or, in the case of *Melnychenko v. Ukraine*, no. 17707/02, ECHR 2004-X, a challenge to residency requirements for standing for office.

would be unacceptable in the context of one system may be justified in the context of another.¹⁶

21. In other words, "the Canadian vision of democracy embodied in the Charter"¹⁷ is different than that recognized by the ECHR. Second and relatedly, the ECHR lags behind Canada in its appreciation of the importance of individual voting rights. Most notably, the ECHR does not, as the Supreme Court of Canada does in *Sauvé #2*, recognize the paramount importance of individual voting rights. The ECHR has held that, for example, voting rights for prisoners may be curtailed where the decision on disenfranchisement is taken by a judge or limited in some other manner (such as all prisoners sentenced to at least three years' imprisonment.)¹⁸ This is directly in conflict with the Supreme Court of Canada's decision in *Sauvé #2*, and demonstrates the dangers of reliance on the ECHR's jurisprudence on electoral matters.

C. The Respondent has Demonstrated no Reason to Depart from the Remedial Norm

22. The Respondent seeks "maximum flexibility" for Parliament to remedy the unconstitutional nature of the legislation. Its complaint appears to be founded on the basis that severing the part of the legislation in question will extend the right to vote by mail to all non-resident citizens; in other words, it will extend a benefit.

23. In *Schachter*, the Supreme Court of Canada recognized that where a benefit (in that case, a protection) is "constitutionally encouraged", an assumption can be made

¹⁶ *Py v. France*, no. 66289/01, § 46, ECHR 2005, quoted in *Doyle v. the United Kingdom (dec.)*, no. 30158/06.

¹⁷ *Sauvé #2*, at para. 41.

¹⁸ *Scoppola (No. 3) v. Italy*, Application no. 126/05, 22 May 2012.

that the extension of the permissible portion is a choice that could have been made by Parliament.

The fact that the permissible part of a provision is encouraged by the purposes of the Constitution, even if not mandated by it, strengthens the assumption that the legislature would have enacted it without the impermissible portion.¹⁹

24. There is no question that the Charter encourages the protection of democratic rights, including voting rights, for all citizens. Accordingly, extending these constitutionally protected rights to non-residents cannot be considered a choice the legislature would inevitably not have made. In other words, this Court will not be making a choice the legislature would not; it can be assumed that Parliament would legislate in compliance with the Charter.

25. Moreover, the consideration of the suspension of invalidity should be informed by the effect of an immediate declaration on the public.²⁰ The question to be asked is whether the striking down of the legislation will put the public in immediate danger, or otherwise threaten the rule of law.²¹ The Respondent has demonstrated neither.

26. This is not a situation where, as in *Dixon*, Parliament will be unable to hold an election due to the decision of the court.²² This is not a dispute about electoral boundaries, where the court may decline to interfere in the complex, nuanced, and evidence-based legislative process in setting those boundaries. Instead, this is a

¹⁹ *Schachter v Canada*, [1992] 2 S.C.R. 670 at p. 714.

²⁰ *Schachter* at p. 717.

²¹ *Schachter* at p. 715.

²² *Dixon v. British Columbia (Attorney General)*, 1989 CanLII 248 (BC SC) at pp. 59-61.

dispute about Parliament failing to honour the *Charter* in restricting the ability of its citizens to vote. No flexibility to fashion a response is required.

27. Indeed, in the cases regarding the voting rights of Canadian citizens which have come before, Parliament has not been given the flexibility that the Respondent now submits is essential. In those cases, no delay or any other "flexible" remedy was granted.²³ In the case of prisoners in federal institutions, the Act had no express way for prisoners to vote, but that did not stop the Supreme Court of Canada from striking down the provision in question.²⁴ In short, Parliament should not be afforded flexibility when it comes to these essential rights.

28. The Respondents rely on the words of Sir John A. MacDonald in 1870, where he stated that the "great question" to be asked was whether a man had a "sufficient stake in the country" in order to be entrusted in a share of its government.²⁵ At the time, in order to have such a "sufficient stake", an individual in Canada had to be a male property owner, a requirement championed by Prime Minister MacDonald in his Dominion Franchise bill in 1885, and not completely abandoned in all Canadian provinces until 1936.²⁶ The definition of a "sufficient stake" has evolved in Canada.

²³ See, e.g., *Canadian Disability Rights Council v. Canada*, [1988] 3 F.C. 622 (T.D.) at paras 9 and 10; *Muldoon v. Canada*, [1988] 3 F.C. 628 (T.D.); *Sauvé #2* at para 63.

²⁴ *Sauvé #2*, at para 63; see the Act, s. 4(c). Indeed, there still is no express way for prisoners to vote under the Act and their ability to vote depends on the Chief Electoral Officer making an alteration to the Act by direction with every election.

²⁵ Respondent's Factum at para. 171.


²⁶ W.L. Morton, *The Extension of the Franchise in Canada: A Study in Democratic Nationalism*, *Report of the Annual Meeting of the Canadian Historical Association*, vol. 22, no. 1, 1943, p. 72-81 at pp. 77 and 80.

Voting is no longer the entitlement of male property owners; it is a right shared by and constitutionally guaranteed to all Canadian citizens, wherever they may reside.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF JANUARY, 2014.



Shaun O'Brien



Amanda Darrach

SCHEDULE A – LIST OF AUTHORITIES

1. *Shindler v. The United Kingdom*, (dec.), no. 19840/09, EHCR 2013-II
2. *Hilbe v Liechtenstein* (dec.), no. 31981/96, EHCR 1999-VI
3. *Melnychenko v. Ukraine*, no. 17707/02, EHCR 2004-X
4. *Doyle v. the United Kingdom* (dec.), no. 30158/06
5. *Sauvé v. Canada* (Chief Electoral Officer), [2002] 3 S.C.R. 519
6. *Scoppola (No. 3) v. Italy*, Application no. 126/05
7. *Schachter v Canada*, [1992] 2 S.C.R. 670
8. *Dixon v. British Columbia* (Attorney General), 1989 CanLII 248 (BC SC)
9. *Canadian Disability Rights Council v. Canada*, [1988] 3 F.C. 622 (T.D.)
10. *Muldoon v. Canada*, [1988] 3 F.C. 628 (T.D.)
11. W.L. Morton, The Extension of the Franchise in Canada: A Study in Democratic Nationalism, *Report of the Annual Meeting of the Canadian Historical Association*, vol. 22, no. 1, 1943

SCHEDULE B – TEXT OF RELEVANT STATUTORY PROVISIONS

1. *Canada Elections Act*, S.C. 2000, c. 9
2. *Corruption of Foreign Public Officials Act*, SC 1998, c. 34
3. *Criminal Code*, RSC. 1985, c.C-46, s. 7

1. ***Canada Elections Act, S.C. 2000, c. 9, s. 4 & 6***

Disentitlement from voting

4. The following persons are not entitled to vote at an election:

(a) the Chief Electoral Officer;

(b) the Assistant Chief Electoral Officer; and

(c) every person who is imprisoned in a correctional institution serving a sentence of two years or more.

.....

Persons entitled to vote

6. Subject to this Act, every person who is qualified as an elector is entitled to have his or her name included in the list of electors for the polling division in which he or she is ordinarily resident and to vote at the polling station for that polling division.

2. ***Corruption of Foreign Public Officials Act, SC 1998, c. 34***



CANADA

CONSOLIDATION

CODIFICATION

Corruption of Foreign Public Officials Act

Loi sur la corruption d'agents publics étrangers

S.C. 1998, c. 34

L.C. 1998, ch. 34

Current to December 9, 2013

À jour au 9 décembre 2013

Last amended on June 19, 2013

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OFFICIAL STATUS
OF CONSOLIDATIONS

CARACTÈRE OFFICIEL
DES CODIFICATIONS

Subsections 31(1) and (2) of the Legislation Revision and Consolidation Act, in force on June 1, 2009, provide as follows:

Les paragraphes 31(1) et (2) de la Loi sur la révision et la codification des textes législatifs, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Published consolidation is evidence

31. (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

31. (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Codifications comme élément de preuve

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the Publication of Statutes Act, the original statute or amendment prevails to the extent of the inconsistency.

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la Loi sur la publication des lois l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

Incompatibilité — lois

NOTE

This consolidation is current to December 9, 2013. The last amendments came into force on June 19, 2013. Any amendments that were not in force as of December 9, 2013 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 9 décembre 2013. Les dernières modifications sont entrées en vigueur le 19 juin 2013. Toutes modifications qui n'étaient pas en vigueur au 9 décembre 2013 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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An Act respecting the corruption of foreign public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to make related amendments to other Acts

Loi concernant la corruption d'agents publics étrangers et la mise en oeuvre de la Convention sur la lutte contre la corruption d'agents publics étrangers dans les transactions commerciales internationales, et modifiant d'autres lois en conséquence

[Assented to 10th December 1998]

[Sanctionné le 10 décembre 1998]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the Corruption of Foreign Public Officials Act.

1. Loi sur la corruption d'agents publics étrangers.

Titre abrégé

INTERPRETATION

DÉFINITIONS

Definitions

2. The definitions in this section apply in this Act.

2. Les définitions qui suivent s'appliquent à la présente loi.

Définitions

"business"
« affaires »

"business" means any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere.

« affaires » Commerce, métier, profession, industrie ou entreprise de quelque nature que ce soit exploités ou exercés au Canada ou à l'étranger.

« affaires »
"business"

"foreign public official"
« agent public étranger »

"foreign public official" means
(a) a person who holds a legislative, administrative or judicial position of a foreign state;
(b) a person who performs public duties or functions for a foreign state, including a person employed by a board, commission, corporation or other body or authority that is established to perform a duty or function on behalf of the foreign state, or is performing such a duty or function; and
(c) an official or agent of a public international organization that is formed by two or

« agent de la paix » [Abrogée, 2013, ch. 26, art. 2]
« agent public étranger » Personne qui détient un mandat législatif, administratif ou judiciaire d'un État étranger ou qui exerce une fonction publique d'un État étranger, y compris une personne employée par un conseil, une commission, une société ou un autre organisme établi par l'État étranger pour y exercer une telle fonction ou qui exerce une telle fonction, et un fonctionnaire ou agent d'une organisation internationale publique constituée par des États, des

« agent public étranger »
"foreign public official"

Corruption of Foreign Public Officials — December 9, 2013

	more states or governments, or by two or more such public international organizations.	gouvernements ou d'autres organisations internationales publiques.	
"foreign state" « État étranger »	"foreign state" means a country other than Canada, and includes (a) any political subdivision of that country; (b) the government, and any department or branch, of that country or of a political subdivision of that country; and (c) any agency of that country or of a political subdivision of that country.	«État étranger» Pays autre que le Canada. Sont assimilés à un État étranger : a) ses subdivisions politiques; b) son gouvernement, ses ministères, ses directions ou ceux de ses subdivisions politiques; c) ses organismes ou ceux de ses subdivisions politiques.	«Etat étranger» "foreign state"
	"peace officer" [Repealed, 2013, c. 26, s. 2]	« quiconque » [Abrogée, 2013, ch. 26, art. 2]	
"person" « quiconque »	"person" means a person as defined in section 2 of the Criminal Code. 1998, c. 34, s. 2; 2013, c. 26, s. 2.	« quiconque » ou « personne » S'entend au sens de l'article 2 du Code criminel. 1998, ch. 34, art. 2; 2013, ch. 26, art. 2.	« quiconque » ou « personne » "person"
	GENERAL	DISPOSITIONS GÉNÉRALES	
Bribing a foreign public official	3. (1) Every person commits an offence who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official (a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or (b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.	3. (1) Commet une infraction quiconque, directement ou indirectement, dans le but d'obtenir ou de conserver un avantage dans le cours de ses affaires, donne, offre ou convient de donner ou d'offrir à un agent public étranger ou à toute personne au profit d'un agent public étranger un prêt, une récompense ou un avantage de quelque nature que ce soit : a) en contrepartie d'un acte ou d'une omission dans le cadre de l'exécution des fonctions officielles de cet agent; b) pour convaincre ce dernier d'utiliser sa position pour influencer les actes ou les décisions de l'État étranger ou de l'organisation internationale publique pour lequel il exerce ses fonctions officielles.	Corruption d'agents publics étrangers
Punishment	(2) Every person who contravenes subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.	(2) Quiconque commet une infraction prévue au paragraphe (1) est coupable d'un acte criminel passible d'un emprisonnement maximal de quatorze ans.	Peine
Saving provision	(3) No person is guilty of an offence under subsection (1) if the loan, reward, advantage or benefit (a) is permitted or required under the laws of the foreign state or public international organization for which the foreign public official performs duties or functions; or (b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public official that are directly related to	(3) Nul ne peut être déclaré coupable d'une infraction prévue au paragraphe (1) si le prêt, la récompense ou l'avantage : a) est permis ou exigé par le droit de l'État étranger ou de l'organisation internationale publique pour lequel l'agent public étranger exerce ses fonctions officielles; b) vise à compenser des frais réels et raisonnables faits par un agent public étranger, ou pour son compte, et liés directement à la promotion, la démonstration ou l'explication des	Défense

	<p>(i) the promotion, demonstration or explanation of the person's products and services, or</p> <p>(ii) the execution or performance of a contract between the person and the foreign state for which the official performs duties or functions.</p>	<p>produits et services de la personne, ou à l'exécution d'un contrat entre la personne et l'État étranger pour lequel il exerce ses fonctions officielles.</p>	
Facilitation payments	<p>(4) For the purpose of subsection (1), a payment is not a loan, reward, advantage or benefit to obtain or retain an advantage in the course of business, if it is made to expedite or secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official's duties or functions, including</p> <p>(a) the issuance of a permit, licence or other document to qualify a person to do business;</p> <p>(b) the processing of official documents, such as visas and work permits;</p> <p>(c) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and</p> <p>(d) the provision of services normally provided as required, such as police protection, loading and unloading of cargo, the protection of perishable products or commodities from deterioration or the scheduling of inspections related to contract performance or transit of goods.</p>	<p>(4) Ne constitue pas un prêt, une récompense ou un avantage visé au paragraphe (1) le paiement visant à hâter ou à garantir l'exécution par un agent public étranger d'un acte de nature courante qui est partie de ses fonctions officielles, notamment :</p> <p>a) la délivrance d'un permis, d'une licence ou d'un autre document qui habilite la personne à exercer une activité commerciale;</p> <p>b) la délivrance ou l'obtention d'un document officiel tel un visa ou un permis de travail;</p> <p>c) la fourniture de services publics tels que la collecte et la livraison du courrier, les services de télécommunication, la fourniture d'électricité et les services d'aqueduc;</p> <p>d) la fourniture de services occasionnels tels que la protection policière, le débardage, la protection des produits périssables contre la détérioration ou les inspections relatives à l'exécution de contrats ou au transit de marchandises.</p>	Exception
Greater certainty	<p>(5) For greater certainty, an "act of a routine nature" does not include a decision to award new business or to continue business with a particular party, including a decision on the terms of that business, or encouraging another person to make any such decision.</p> <p>1998, c. 34, s. 3; 2013, c. 26, s. 3.</p>	<p>(5) Il est entendu que l'expression « acte de nature courante » ne vise ni une décision d'octroyer de nouvelles affaires ou de reconduire des affaires avec la même partie — notamment ses conditions — ni le fait d'encourager une autre personne à prendre une telle décision.</p> <p>1998, ch. 34, art. 3; 2013, ch. 26, art. 3.</p>	Précision
Accounting	<p>4. (1) Every person commits an offence who, for the purpose of bribing a foreign public official in order to obtain or retain an advantage in the course of business or for the purpose of hiding that bribery,</p> <p>(a) establishes or maintains accounts which do not appear in any of the books and records that they are required to keep in accordance with applicable accounting and auditing standards;</p>	<p>4. (1) Commet une infraction quiconque, dans le but de corrompre un agent public étranger afin d'obtenir ou de conserver un avantage dans le cours de ses affaires ou dans le but de dissimuler cette corruption :</p> <p>a) établit ou tient des comptes qui n'apparaissent pas dans les livres comptables qu'il doit tenir selon les normes de comptabilité et de vérification applicables;</p> <p>b) effectue des opérations qui ne sont pas enregistrées dans ces livres ou qui y sont insuffisamment identifiées;</p>	Comptabilité

	<p>(b) makes transactions that are not recorded in those books and records or that are inadequately identified in them;</p> <p>(c) records non-existent expenditures in those books and records;</p> <p>(d) enters liabilities with incorrect identification of their object in those books and records;</p> <p>(e) knowingly uses false documents; or</p> <p>(f) intentionally destroys accounting books and records earlier than permitted by law.</p>	<p>c) enregistre dans ceux-ci des dépenses in-existantes;</p> <p>d) enregistre dans ceux-ci des éléments de passif dont l'objet n'est pas correctement identifié;</p> <p>e) utilise sciemment des faux documents;</p> <p>f) détruit intentionnellement des livres comptables plus tôt que ne le prévoit la loi.</p>	
Punishment	<p>(2) Every person who contravenes subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.</p> <p>1998, c. 34, s. 4; 2001, c. 32, s. 58; 2013, c. 26, s. 4.</p>	<p>(2) Quiconque commet une infraction prévue au paragraphe (1) est coupable d'un acte criminel passible d'un emprisonnement maximal de quatorze ans.</p> <p>1998, ch. 34, art. 4; 2001, ch. 32, art. 58; 2013, ch. 26, art. 4.</p>	Peine
Offence committed outside Canada	<p>5. (1) Every person who commits an act or omission outside Canada that, if committed in Canada, would constitute an offence under section 3 or 4 — or a conspiracy to commit, an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence under that section — is deemed to have committed that act or omission in Canada if the person is</p> <p>(a) a Canadian citizen;</p> <p>(b) a permanent resident as defined in subsection 2(1) of the Immigration and Refugee Protection Act who, after the commission of the act or omission, is present in Canada; or</p> <p>(c) a public body, corporation, society, company, firm or partnership that is incorporated, formed or otherwise organized under the laws of Canada or a province.</p>	<p>5. (1) Quiconque commet à l'étranger tout acte — action ou omission — qui, s'il était commis au Canada, constituerait une infraction prévue aux articles 3 ou 4, un complot en vue de commettre une telle infraction, une tentative de la commettre, une complicité après le fait à son égard ou le fait d'en conseiller la perpétration, est réputé commettre l'acte au Canada si, selon le cas :</p> <p>a) il a la citoyenneté canadienne;</p> <p>b) il est un résident permanent au sens du paragraphe 2(1) de la Loi sur l'immigration et la protection des réfugiés et se trouve au Canada après la commission de l'acte;</p> <p>c) il est un organisme public, une personne morale, une société, une compagnie, une entreprise ou une société de personnes constitués, formés ou autrement organisés au Canada en vertu d'une loi fédérale ou provinciale.</p>	Infraction commise à l'étranger
Jurisdiction	<p>(2) If a person is alleged to have committed an act or omission that is deemed to have been committed in Canada under subsection (1), proceedings for an offence in respect of that act or omission may, whether or not that person is in Canada, be commenced in any territorial division in Canada. The person may be tried and punished for that offence as if the offence had been committed in that territorial division.</p>	<p>(2) Dans le cas où, par application du paragraphe (1), une personne est réputée avoir commis un acte au Canada constituant une infraction, les poursuites peuvent être engagées à l'égard de cette infraction dans toute circonscription territoriale au Canada, que la personne soit ou non présente au Canada. Elle peut subir son procès et être punie comme si l'infraction avait été commise dans cette circonscription territoriale.</p>	Compétence

Appearance of accused at trial	<p>(3) For greater certainty, the provisions of the Criminal Code relating to the requirements that an accused appear at and be present during proceedings and the exceptions to those requirements apply to proceedings commenced in any territorial division under subsection (2).</p>	<p>(3) Il est entendu que les dispositions du Code criminel concernant l'obligation pour un accusé d'être présent et de demeurer présent lors des procédures et les exceptions à cette obligation s'appliquent aux poursuites engagées dans une circonscription territoriale au titre du paragraphe (2).</p>	Comparution de l'accusé lors du procès
Person previously tried outside Canada	<p>(4) If a person is alleged to have committed an act or omission that is deemed to have been committed in Canada under subsection (1) and they have been tried and dealt with outside Canada for an offence in respect of the act or omission so that, if they had been tried and dealt with in Canada, they would be able to plead autrefois acquit, autrefois convict or pardon, they are deemed to have been so tried and dealt with in Canada.</p>	<p>(4) Est réputée avoir été poursuivie et jugée au Canada la personne accusée d'avoir commis un acte réputé avoir été commis au Canada aux termes du paragraphe (1) qui, à cet égard, a été poursuivie et jugée à l'étranger de telle manière que, si elle l'avait été au Canada, elle aurait pu invoquer les moyens de défense d'autrefois acquit, d'autrefois convict ou de pardon.</p>	Jugement antérieur rendu à l'étranger
Exception for foreign trials in absentia	<p>(5) Despite subsection (4), a person may not plead autrefois convict to a count that charges an offence in respect of the act or omission if</p> <p>(a) the person was not present and was not represented by counsel acting under the person's instructions at the trial outside Canada; and</p> <p>(b) the person was not punished in accordance with the sentence imposed on conviction in respect of the act or omission.</p> <p>1998, c. 34, s. 5; 2001, c. 32, s. 58; 2013, c. 26, s. 4.</p>	<p>(5) Malgré le paragraphe (4), la personne ne peut invoquer le moyen de défense d'autrefois convict à l'égard d'un chef d'accusation relatif à l'acte si :</p> <p>a) d'une part, elle n'était pas présente au procès ni représentée par l'avocat qu'elle avait mandaté;</p> <p>b) d'autre part, la peine infligée à l'égard de l'acte n'a pas été purgée.</p> <p>1998, ch. 34, art. 5; 2001, ch. 32, art. 58; 2013, ch. 26, art. 4.</p>	Exception : procès à l'étranger
Laying an information	<p>6. An information may be laid under section 504 of the Criminal Code in respect of an offence under this Act — or a conspiracy to commit, an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence under this Act — only by an officer of the Royal Canadian Mounted Police or any person designated as a peace officer under the Royal Canadian Mounted Police Act.</p> <p>1998, c. 34, s. 6; 2001, c. 32, s. 58; 2013, c. 26, s. 4.</p> <p>7. [Repealed, 2001, c. 32, s. 58]</p> <p style="text-align: center;">RELATED AMENDMENTS</p> <p>8. to 10. [Amendments]</p> <p style="text-align: center;">CONDITIONAL AMENDMENT</p> <p>11. [Amendment]</p>	<p>6. Seuls les officiers de la Gendarmerie royale du Canada ou les personnes désignées comme agent de la paix en vertu de la Loi sur la Gendarmerie royale du Canada sont autorisés à faire une dénonciation en vertu de l'article 504 du Code criminel à l'égard d'une infraction prévue par la présente loi ou à l'égard d'un complot en vue de commettre une telle infraction, d'une tentative de la commettre, d'une complicité après le fait à son égard ou du fait d'en conseiller la perpétration.</p> <p>1998, ch. 34, art. 6; 2001, ch. 32, art. 58; 2013, ch. 26, art. 4.</p> <p>7. [Abrogé, 2001, ch. 32, art. 58]</p> <p style="text-align: center;">MODIFICATIONS CORRÉLATIVES</p> <p>8. 10. [Modifications]</p> <p style="text-align: center;">MODIFICATION CONDITIONNELLE</p> <p>11. [Modification]</p>	Dénonciation

Corruption d'agents publics étrangers — 9 décembre 2013

AMENDMENTS NOT IN FORCE

— 2013, c. 26, s. 3(2)

3. (2) Subsections 3(4) and (5) of the Act are repealed.

MODIFICATIONS NON EN VIGUEUR

— 2013, ch. 26, par. 3(2)

3. (2) Les paragraphes 3(4) et (5) de la même loi sont abrogés.

3. ***Criminal Code, RSC. 1985, c.C-46, s. 7***

Offences committed on aircraft

7. (1) Notwithstanding anything in this Act or any other Act, every one who

(a) on or in respect of an aircraft

(i) registered in Canada under regulations made under the Aeronautics Act, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft registered in Canada under those regulations,

while the aircraft is in flight, or

(b) on any aircraft, while the aircraft is in flight if the flight terminated in Canada,

commits an act or omission in or outside Canada that if committed in Canada would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

(2) Notwithstanding this Act or any other Act, every one who

(a) on an aircraft, while the aircraft is in flight, commits an act or omission outside Canada that if committed in Canada or on an aircraft registered in Canada under regulations made under the Aeronautics Act would be an offence against section 76 or paragraph 77(a),

(b) in relation to an aircraft in service, commits an act or omission outside Canada that if committed in Canada would be an offence against any of paragraphs 77(c), (d) or (g),

(c) in relation to an air navigation facility used in international air navigation, commits an act or omission outside Canada that if committed in Canada would be an offence against paragraph 77(e),

(d) at or in relation to an airport serving international civil aviation, commits an act or omission outside Canada that if committed in Canada would be an offence against paragraph 77(b) or (f), or

(e) commits an act or omission outside Canada that if committed in Canada would constitute a conspiracy or an attempt to commit an offence referred to in this subsection, or being an accessory after the fact or counselling in relation to such an offence,

shall be deemed to have committed that act or omission in Canada if the person is, after the commission thereof, present in Canada.

Offences in relation to cultural property

(2.01) Despite anything in this Act or any other Act, a person who commits an act or omission outside Canada that if committed in Canada would constitute an offence under section 322, 341, 344, 380, 430 or 434 in relation to cultural property as defined in Article 1 of the Convention, or a conspiracy or an attempt to commit such an offence, or being an accessory after the fact or counselling in relation to such an offence, is deemed to have committed that act or omission in Canada if the person

(a) is a Canadian citizen;

(b) is not a citizen of any state and ordinarily resides in Canada; or

(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act and is, after the commission of the act or omission, present in Canada.

Definition of “Convention”

(2.02) For the purpose of subsection (2.01), “Convention” means the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on May 14, 1954. Article 1 of the Convention is set out in the schedule to the Cultural Property Export and Import Act.

Offences against fixed platforms or international maritime navigation

(2.1) Notwithstanding anything in this Act or any other Act, every one who commits an act or omission outside Canada against or on board a fixed platform attached to the continental shelf of any state or against or on board a ship navigating or scheduled to navigate beyond the territorial sea of any state, that if committed in Canada would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 78.1, shall be deemed to commit that act or omission in Canada if it is committed

(a) against or on board a fixed platform attached to the continental shelf of Canada;

(b) against or on board a ship registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

(c) by a Canadian citizen;

(d) by a person who is not a citizen of any state and who ordinarily resides in Canada;

(e) by a person who is, after the commission of the offence, present in Canada;

(f) in such a way as to seize, injure or kill, or threaten to injure or kill, a Canadian citizen;
or

(g) in an attempt to compel the Government of Canada to do or refrain from doing any act.

Offences against fixed platforms or navigation in the internal waters or territorial sea of another state

(2.2) Notwithstanding anything in this Act or any other Act, every one who commits an act or omission outside Canada against or on board a fixed platform not attached to the continental shelf of any state or against or on board a ship not navigating or scheduled to navigate beyond the territorial sea of any state, that if committed in Canada would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 78.1, shall be deemed to commit that act or omission in Canada

(a) if it is committed as described in any of paragraphs (2.1)(b) to (g); and

(b) if the offender is found in the territory of a state, other than the state in which the act or omission was committed, that is

(i) a party to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988, in respect of an offence committed against or on board a ship, or

(ii) a party to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988, in respect of an offence committed against or on board a fixed platform.

Nuclear terrorism offence committed outside Canada

(2.21) Despite anything in this Act or any other Act, everyone who commits an act or omission outside Canada that if committed in Canada would constitute an offence under any of sections 82.3 to 82.6, or a conspiracy or attempt to commit such an offence, or being an accessory after the fact or counselling in relation to such an offence, is deemed to have committed that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament;

(b) the act or omission is committed on an aircraft that

(i) is registered in Canada under regulations made under the Aeronautics Act, or

(ii) is leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft in Canada under those regulations;

(c) the person who commits the act or omission is a Canadian citizen; or

(d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada.

Station — Canadian crew members

(2.3) Despite anything in this Act or any other Act, a Canadian crew member who, during a space flight, commits an act or omission outside Canada that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission is committed

(a) on, or in relation to, a flight element of the Space Station; or

(b) on any means of transportation to or from the Space Station.

Station — crew members of Partner States

(2.31) Despite anything in this Act or any other Act, a crew member of a Partner State who commits an act or omission outside Canada during a space flight on, or in relation to, a flight element of the Space Station or on any means of transportation to and from the Space Station that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission

(a) threatens the life or security of a Canadian crew member; or

(b) is committed on or in relation to, or damages, a flight element provided by Canada.

Proceedings by Attorney General of Canada

(2.32) Despite the definition "Attorney General" in section 2, the Attorney General of Canada may conduct proceedings in relation to an offence referred to in subsection (2.3) or (2.31). For that purpose, the Attorney General of Canada may exercise all the powers and perform all the duties and functions assigned to the Attorney General by or under this Act.

Consent of Attorney General of Canada

(2.33) No proceedings in relation to an offence referred to in subsection (2.3) or (2.31) may be instituted without the consent of the Attorney General of Canada.

Definitions

(2.34) The definitions in this subsection apply in this subsection and in subsections (2.3) and (2.31).

"Agreement"

"Agreement" has the same meaning as in section 2 of the Civil International Space Station Agreement Implementation Act.

"Canadian crew member"

"Canadian crew member" means a crew member of the Space Station who is

(a) a Canadian citizen; or

(b) a citizen of a foreign state, other than a Partner State, who is authorized by Canada to act as a crew member for a space flight on, or in relation to, a flight element.

"crew member of a Partner State"

"crew member of a Partner State" means a crew member of the Space Station who is

(a) a citizen of a Partner State; or

(b) a citizen of a state, other than that Partner State, who is authorized by that Partner State to act as a crew member for a space flight on, or in relation to, a flight element.

"flight element"

"flight element" means a Space Station element provided by Canada or by a Partner State under the Agreement and under any memorandum of understanding or other implementing arrangement entered into to carry out the Agreement.

"Partner State"

"Partner State" means a State, other than Canada, who contracted to enter into the Agreement and for which the Agreement has entered into force in accordance with article 25 of the Agreement.

"space flight"

"space flight" means the period that begins with the launching of a crew member of the Space Station, continues during their stay in orbit and ends with their landing on earth.

"Space Station"

"Space Station" means the civil international Space Station that is a multi-use facility in low-earth orbit, with flight elements and dedicated ground elements provided by, or on behalf of, the Partner States.

Offence against internationally protected person

(3) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against the person of an internationally protected person or against any property referred to in section 431 used by that person that, if committed in Canada, would be an offence against any of sections 235, 236, 266, 267,

268, 269, 269.1, 271, 272, 273, 279, 279.1, 280 to 283, 424 and 431 is deemed to commit that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

(b) the act or omission is committed on an aircraft

(i) registered in Canada under regulations made under the Aeronautics Act, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft in Canada under those regulations;

(c) the person who commits the act or omission is a Canadian citizen or is, after the act or omission has been committed, present in Canada; or

(d) the act or omission is against

(i) a person who enjoys the status of an internationally protected person by virtue of the functions that person performs on behalf of Canada, or

(ii) a member of the family of a person described in subparagraph (i) who qualifies under paragraph (b) or (d) of the definition "internationally protected person" in section 2.

Offence of hostage taking

(3.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.1 shall be deemed to commit that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

(b) the act or omission is committed on an aircraft

(i) registered in Canada under regulations made under the Aeronautics Act, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft in Canada under such regulations;

(c) the person who commits the act or omission

(i) is a Canadian citizen, or

(ii) is not a citizen of any state and ordinarily resides in Canada;

(d) the act or omission is committed with intent to induce Her Majesty in right of Canada or of a province to commit or cause to be committed any act or omission;

(e) a person taken hostage by the act or omission is a Canadian citizen; or

(f) the person who commits the act or omission is, after the commission thereof, present in Canada.

3.2) to (3.6) [Repealed, 2013, c. 13, s. 3]

Jurisdiction

(3.7) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 shall be deemed to commit that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;

(b) the act or omission is committed on an aircraft

(i) registered in Canada under regulations made under the Aeronautics Act, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft in Canada under those regulations;

(c) the person who commits the act or omission is a Canadian citizen;

(d) the complainant is a Canadian citizen; or

(e) the person who commits the act or omission is, after the commission thereof, present in Canada.

Offence against United Nations or associated personnel

(3.71) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against a member of United Nations personnel or associated personnel or against property referred to in section 431.1 that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 235, 236, 266, 267, 268, 269, 269.1, 271, 272, 273, 279, 279.1, 424.1 or 431.1 is deemed to commit that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under an Act of Parliament;

(b) the act or omission is committed on an aircraft

(i) registered in Canada under regulations made under the Aeronautics Act, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft in Canada under those regulations;

(c) the person who commits the act or omission

(i) is a Canadian citizen, or

(ii) is not a citizen of any state and ordinarily resides in Canada;

(d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada;

(e) the act or omission is committed against a Canadian citizen; or

(f) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act.

Offence involving explosive or other lethal device

(3.72) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 431.2 is deemed to commit that act or omission in Canada if

(a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament;

(b) the act or omission is committed on an aircraft

(i) registered in Canada under regulations made under the Aeronautics Act,

(ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as owner of an aircraft in Canada under those regulations, or

(iii) operated for or on behalf of the Government of Canada;

(c) the person who commits the act or omission

- (i) is a Canadian citizen, or
- (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada;
- (e) the act or omission is committed against a Canadian citizen;
- (f) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act; or
- (g) the act or omission is committed against a Canadian government or public facility located outside Canada.

Offence relating to financing of terrorism

(3.73) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 83.02 is deemed to commit the act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under an Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the Aeronautics Act, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the Aeronautics Act to be registered as the owner of an aircraft in Canada under those regulations;
- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the person who commits the act or omission is, after its commission, present in Canada;
- (e) the act or omission is committed for the purpose of committing an act or omission referred to in paragraph 83.02(a) or (b) in order to compel the Government of Canada or of a province to do or refrain from doing any act;

(f) the act or omission is committed for the purpose of committing an act or omission referred to in paragraph 83.02(a) or (b) against a Canadian government or public facility located outside Canada; or

(g) the act or omission is committed for the purpose of committing an act or omission referred to in paragraph 83.02(a) or (b) in Canada or against a Canadian citizen.

Terrorism offence committed outside Canada

(3.74) Notwithstanding anything in this Act or any other Act, every one who commits an act or omission outside Canada that, if committed in Canada, would be a terrorism offence, other than an offence under section 83.02 or an offence referred to in paragraph (a) of the definition "terrorist activity" in subsection 83.01(1), is deemed to have committed that act or omission in Canada if the person

(a) is a Canadian citizen;

(b) is not a citizen of any state and ordinarily resides in Canada; or

(c) is a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act and is, after the commission of the act or omission, present in Canada.

Terrorist activity committed outside Canada

(3.75) Notwithstanding anything in this Act or any other Act, every one who commits an act or omission outside Canada that, if committed in Canada, would be an indictable offence and would also constitute a terrorist activity referred to in paragraph (b) of the definition "terrorist activity" in subsection 83.01(1) is deemed to commit that act or omission in Canada if

(a) the act or omission is committed against a Canadian citizen;

(b) the act or omission is committed against a Canadian government or public facility located outside Canada; or

(c) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act.

(3.76) and (3.77) [Repealed, 2000, c. 24, s. 42]

Offences by Public Service employees

(4) Every one who, while employed as an employee within the meaning of the Public Service Employment Act in a place outside Canada, commits an act or omission in that place that is an offence under the laws of that place and that, if committed in Canada, would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

Offence in relation to sexual offences against children

(4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 212(4) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act.

Offence in relation to trafficking in persons

(4.11) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.01, 279.011, 279.02 or 279.03 shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act.

(4.2) [Repealed, 2002, c. 13, s. 3]

Consent of Attorney General

(4.3) Proceedings with respect to an act or omission deemed to have been committed in Canada under subsection (4.1) may only be instituted with the consent of the Attorney General.

Jurisdiction

(5) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section, proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

Appearance of accused at trial

(5.1) For greater certainty, the provisions of this Act relating to

- (a) requirements that an accused appear at and be present during proceedings, and
- (b) the exceptions to those requirements,

apply to proceedings commenced in any territorial division pursuant to subsection (5).

Where previously tried outside Canada

(6) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if that person had been tried and dealt with in Canada, he would be able to plead autrefois acquit, autrefois convict or pardon, that person shall be deemed to have been so tried and dealt with in Canada.

If accused not Canadian citizen

(7) If the accused is not a Canadian citizen, no proceedings in respect of which courts have jurisdiction by virtue of this section shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced.

Definition of “flight” and “in flight”

(8) For the purposes of this section, of the definition “peace officer” in section 2 and of sections 27.1, 76 and 77, “flight” means the act of flying or moving through the air and an aircraft is deemed to be in flight from the time when all external doors are closed following embarkation until the later of

(a) the time at which any such door is opened for the purpose of disembarkation, and

(b) where the aircraft makes a forced landing in circumstances in which the owner or operator thereof or a person acting on behalf of either of them is not in control of the aircraft, the time at which control of the aircraft is restored to the owner or operator thereof or a person acting on behalf of either of them.

Definition of “in service”

(9) For the purposes of this section and section 77, an aircraft shall be deemed to be in service from the time when pre-flight preparation of the aircraft by ground personnel or the crew thereof begins for a specific flight until

(a) the flight is cancelled before the aircraft is in flight,

(b) twenty-four hours after the aircraft, having commenced the flight, lands, or

(c) the aircraft, having commenced the flight, ceases to be in flight,

whichever is the latest.

Certificate as evidence

(10) In any proceedings under this Act, a certificate purporting to have been issued by or under the authority of the Minister of Foreign Affairs is admissible in evidence without proof of the signature or authority of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the facts it states that are relevant to the question of whether any person is a member of United Nations personnel, a member of

associated personnel or a person who is entitled under international law to protection from attack or threat of attack against his or her person, freedom or dignity.

Idem

(11) A certificate purporting to have been issued by or under the authority of the Minister of Foreign Affairs stating

(a) that at a certain time any state was engaged in an armed conflict against Canada or was allied with Canada in an armed conflict,

(b) that at a certain time any convention, treaty or other international agreement was or was not in force and that Canada was or was not a party thereto, or

(c) that Canada agreed or did not agree to accept and apply the provisions of any convention, treaty or other international agreement in an armed conflict in which Canada was involved,

is admissible in evidence in any proceedings without proof of the signature or authority of the person appearing to have issued it, and is proof of the facts so stated.

GILLIAN FRANK AND JAMIE DUONG

and HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE ATTORNEY GENERAL OF
CANADA

Applicants

Respondents

Court File No.: CV-12-453976

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Toronto

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