Canada Interactive Legislature supplementary arguments for section 3 *Charter* cases

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(1) The Canada Interactive Legislature (CIL) *Charter* describes (in Appendix A) the constitutional rationale by which it shall be argued that ISS members have the right to be subjected to CIL legislation in place of federal Crown legislation for any matters for which the CIL has enacted legislation as an alternative to the Crown's. The arguments are considered by the CIL to be sufficient to demonstrate the validity of the constitutional rationale. However, there are supplementary arguments to strengthen the case presented herein. Members are advised to include these arguments in any judicial matters involving Crown legislation for which the CIL has enacted alternative legislation.

(2) In *Hunter et al. v. Southam Inc.*, [1984] 2 S.C.R. 145, two years after the enactment of the Constitution of Canada, the Supreme Court of Canada (SCC) sets out fundamental principles for assessing allegations of denials of rights, at page 155.

> "The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a *Bill* or a *Charter of Rights*, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities <u>often unimagined by its framers</u>. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these

> considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American courts 'not to read the provisions of the Constitution like a last will and testament lest it become one'" (emphasis added).

(3) The IES may well not have existed at the time of the framing of the Constitution. The fact that it has now been experienced by a group of people since 2010 could then be described as a "new social, political, and historical reality". To construe periods of time when s. 3 *Charter* rights are conventionally not available to be exercised as denials according to s.24 may have been "unimagined by [the Constitution's] framers". The existence of the IES and its ability, by contrast, to show how conventional governments have denied a right of their citizens, possibly an injustice, may necessitate "growth and development" to update constitutional interpretation to present realities in potential for the "unremitting protection of individual rights and liberties".

A. relevant broad constitutional principles

(4) In contrast to the specific formulaic sections of the Constitution discussed in Appendix A of the CIL *Charter*, these supplementary arguments shall start by presenting broader constitutional principles relevant to the principle of democracy.

(5) The preamble of the *Constitution Act, 1867*, states that Canada was founded with the intention to have "a Constitution similar in Principle to that of the United Kingdom". Part of the Constitution of the United Kingdom is the *Bill of Rights*, 1689. One of the requirements incumbent upon the government that is stipulated in the *Bill of Rights* is "[t]hat election of members of Parliament ought to be free". Below is a quote of the SCC's summarized history of Canadian democratic constitutional principles in the *Reference re Secession of Quebec*, [1998] 2 SCR 217 ("*Secession Reference*" herein). The CIL shall contend that all of the steps in Canadian history and before, as illustrated in this quote, are consistent with the goal in the *Bill of Rights* to progressively provide broader universal freedom to all citizens in their access to democratic enfranchisement.

(6) "The evolution of our democratic tradition can be traced back to the *Magna Carta* (1215) and before, through the long struggle for Parliamentary supremacy which culminated in the English *Bill of Rights* of 1689, the emergence of representative political institutions in the colonial era, the development of responsible government in the 19th century, and eventually, the achievement of Confederation itself in 1867. '[T]he Canadian tradition', the majority of this Court held in *Reference re Provincial Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158, at p. 186, is 'one of evolutionary democracy moving in uneven steps toward the goal of universal suffrage and more effective representation'. Since Confederation, efforts to extend the franchise to those unjustly excluded from participation in our political system — such as women, minorities, and aboriginal peoples — have continued, with some success, to the present day" (*Secession Reference*, para. 63).

(7) To regard periods of time when fundamental democratic rights are not available to be exercised as denials of these rights ("unjust exclu[sion] from participation in our political

system”), and to provide a remedy for citizens who dissent to the denial of these rights so that they can receive more constant enfranchisement and potentially more effective representation, may be an “uneven step” in “evolutionary democracy”, as the *Secession Reference* states is “the Canadian tradition”. It may also provide freer elections, as the *Bill of Rights, 1689* states is constitutionally incumbent upon the government. Two principal foundational elements of democracy in Canadian constitutional rationale (free elections and the Canadian tradition) may appear to concur with the strict interpretation of the formula for determining the validity of basic allegations of denials of rights as argued in Appendix A of the CIL *Charter*.

(8) The following quote from the SCC may be interpreted to state that democracy is an independent constitutional principle with concurrent legitimacy as the strict literal wording of the Constitution itself. From the *Secession Reference* (para. 32):

> “The ‘Constitution of Canada’ certainly includes the constitutional texts enumerated in s. 52(2) of the *Constitution Act, 1982*. Although these texts have a primary place in determining constitutional rules, they are not exhaustive. The Constitution also ‘embraces unwritten, as well as written rules’, as we recently observed in the *Provincial Judges Reference*, *supra*, at para. 92. Finally, as was said in the *Patriation Reference*, *supra*, at p. 874, the Constitution of Canada includes ‘the global system of rules and principles which govern the exercise of constitutional authority in the whole and in every part of the Canadian state.’ These supporting principles and rules, which include constitutional conventions and the workings of Parliament, are a necessary part of our Constitution because problems or situations may arise which are not expressly dealt with by the text of the Constitution. In order to endure over time, a constitution must contain a comprehensive set of rules and principles which are capable of providing an exhaustive legal framework for our system of government. Such principles and rules emerge from an understanding of the constitutional text itself, the historical context, and previous judicial interpretations of constitutional meaning. In our view, there are four fundamental and organizing principles of the Constitution which are relevant to addressing the question before us (although this enumeration is by no means exhaustive): federalism; democracy; constitutionalism and the rule of law; and respect for minorities. The foundation and substance of these principles are addressed in the following paragraphs.”

The earlier quote from para. 63 of the *Secession Reference* is part of the “foundation and substance of these principles” introduced in the above quote.

(9) Part III.A.3.c of the *Secession Reference*, paras. 61-69, describes the foundation and substance of democracy as an extraconstitutionally legitimate principle. This may illustrate features of how democracy, and the rights that citizens have as members of a democratic society, apply under the law in parallel to the strict formulaic interpretations of the basic remedy involving sections 1, 3, 24, and 52 of the *Constitution Act, 1982*. Following are several quotes from part III.A.3.c of the *Secession Reference* to show consistency with the algorithmic analysis

presented in Appendix A of the CIL *Charter*. This may show that the remedy requested is consistent not just with the strict interpretation of a remedy for denied rights but also with enduring constitutional principles that the courts have ruled applicable.

(10) "Democracy is not simply concerned with the process of government. On the contrary, as suggested in *Switzman v. Elbling*, *supra*, at p. 306, democracy is fundamentally connected to substantive goals, most importantly, the promotion of self-government. Democracy accommodates cultural and group identities: *Reference re Provincial Electoral Boundaries*, at p. 188. Put another way, a sovereign people exercises its right to self-government through the democratic process. In considering the scope and purpose of the *Charter* , the Court in *R. v. Oakes*, [1986] 1 S.C.R. 103, articulated some of the values inherent in the notion of democracy (at p. 136): 'The Court must be guided by the values and principles essential to a free and democratic society which I believe to embody, to name but a few, respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society'" (*Secession Reference*, para. 64).

(11) To further illustrate the concept of "respect for the inherent dignity of the human person" and its relevance to democracy, in *Frank v. Canada (Attorney General)*, [2019] 1 SCR 3, 2019 SCC 1, while discussing how citizens who reside outside of Canada are affected by being denied the right to vote due to lack of residency, the SCC states (at para. 5) that "[t]he disenfranchisement of these citizens not only denies them a fundamental democratic right, but also comes at the expense of their sense of self-worth and their dignity".

(12) Not only does "respect for the inherent dignity of the human person" qualify as a principle valid under the law concurrently with the written text of the Constitution, but in fact, the right to vote itself is, according to the SCC, something without which an individual is deprived of their dignity. If this dignity is something protected under the law, then legitimizing an avenue to make the right to vote available at all times ceases extended periods of deprivation of dignity that have been rendered to all citizens except the ones who get elected, for the duration of Canada's history, and thus upholds the law.

(13) Also from para. 64 of the *Secession Reference*, *supra*, quoted above, "the promotion of self-government" is "fundamentally connected" to the extraconstitutional principle of democracy. If it is possible that the cessation of the denial of fundamental democratic rights for extended periods of years at a time could create a legislative process that would more closely resemble self-government, then legitimizing an avenue for citizens to cease being denied this right is also in accordance with this constitutionally authorized aspect of the democratic principle.

(14) Para. 66 of the *Secession Reference*, *supra*, states that "[i]t is, of course, true that democracy expresses the sovereign will of the people". It could be said that the sovereign will of the people is obscured when the means by which they each express their will is silenced in legitimate influence for sustained periods of time. The collective will of a constituency

represented by a member in a legislature, a component of the “people” endowed as sovereign, for the matters of jurisdiction applicable to the level of government for which that legislature is constituted, may be expressed in a way more resemblant of the collective will of that constituency if each member is provided with uninterrupted enfranchisement.

(15) Para. 67 of the *Secession Reference*, *supra*, states that democratic institutions “must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution”, and “[t]he system must be capable of reflecting the aspirations of the people”. It then goes on to say that there are “other constitutional values” that may, under some limited conditions, be ascribed higher force in the law than the “‘sovereign will’ or majority rule alone”. If there were reason to believe that cessation of periods of democratic disenfranchisement of citizens might impede avenues for the courts to curtail the sovereign will of the people to hold these other constitutional values in force, then it might be a pressing and substantial objective that would merit justification of the present conventional denials of s. 3 *Charter* rights as reasonable limits under s. 1. However, it would have to be demonstrated on a preponderance of probability that this diminution of judicial oversight of the legislative process would occur, according to *Oakes*, *supra*, para. 67. Furthermore, for a court to decide that denials of section 3 *Charter* rights are justified, despite it being possible to instead stay relevant decisions until more evidence (possibly with a larger electorate) becomes available (while still inherently retaining the prerogative to lift stays and enforce the impugned laws if the justification for the denial is demonstrated), might be considered not to be minimal impairment of the right, the second of the three stipulated requirements of the proportionality test that *Oakes*, para. 70, states must be fulfilled by the party seeking to limit a right.

(16) The aggregate result of the above reasoning being used to reinforce justification for alterations to legislation by an interactive legislature, and having these alterations held in force for that legislature’s adherents until such time as a pressing and substantial objective is observed to be compromised in comparison with periodically elected legislatures, is that the courts can reimpose the conventional limits of several years of denial of democratic rights if and when such a compromise is made evident to them. Therefore justifying the obscuration of the sovereign will of the people, by claiming that other constitutional values that sometimes preempt the rule of the majority under the law may possibly become less enforceable by courts, may not be a valid line of reasoning to justify the limits that exist on democratic rights as dissented to herein.

(17) One of the “other constitutional values” that might in some ways legitimately preempt the sovereign will of the people is described in para. 64 as “faith in social and political institutions which enhance the participation of individuals and groups in society”. If a remedy for denials of section 3 *Charter* rights may enhance the participation of individual voters in society, then it may be in keeping with the democratic principle to provide such a remedy even if it contravenes the will of the majority.

(18) Para. 68 of the *Secession Reference*, *supra*, states that the Court "highlight[s] that a functioning democracy requires a continuous process of discussion", and that "[a] democratic system of government is committed to considering dissenting voices". For a voter who dissents to a majority decision, with more constantly enfranchised fellow citizens who thus each have more influence in the legislative process, there is a larger pool of more influential people with whom to seek more frequent (if not continuous) discussion regarding the dissented decision or policy, and thus the dissenting voice has more incentivized listeners. Even listeners who strongly disagree with the dissenter may be more apt to take the time to hear the dissenting voice knowing that they have an avenue to tangibly impact the decision if the dissenter provides them a previously unconsidered perspective.

(19) The *Secession Reference* decision was rendered in 1998. Two subsequent decisions that present further perspective on the extraconstitutional principle of democracy are *Sauvé v. Canada (Chief Electoral Officer), 2002 SCC 68, [2002] 3 SCR 519*, and *Frank*, *supra*, in 2019.

(20) *Sauvé* describes "the idea that laws command obedience because they are made by those whose conduct they govern" as a requisite of democracy (at para. 44) and *Frank* states (at para. 1) that "[a]ny limit on the right to vote must be carefully scrutinized and cannot be tolerated without a compelling justification".

(21) A more generalized way of stating the quote from *Sauvé* is that greater enfranchisement in the participation in the making of laws, provided by an institution to its adherents, yields greater ethical justification for the institution to see enforcement of those laws upon those adherents. It may be extrapolated from this that it would be unethical for an institution to impose its legislation upon an individual who prefers to be governed by an alternative institution that provides its adherents greater enfranchisement in its legislative processes.

(22) The SCC is very clear in *Frank*: "any limit". It might be equivalently stated that anything that impedes the ability of a citizen to have optimal enfranchisement in the legislative processes of the society to whose laws the citizen is held accountable must be disallowed unless compelling justification is demonstrated. Compelling justification, as described in *Oakes*, requires a demonstration by preponderance of probability that some objective of pressing and substantial concern to a free and democratic society is detrimentally impacted by ceasing the limit on citizens' enfranchisement.

(23) Freedom and democracy are described in section 1 of the *Constitution Act, 1982* as the pivotal values that form the fulcrum upon which the balance between powers of government versus rights and liberties of individuals must be predicated. Optimal availability of enfranchisement to citizens and optimal freedom in their ability to make choices that contribute to the refinement of the moral values held in force by society may be seen, from available insight provided by the SCC as to the specific nature of the extraconstitutional principle of democracy, to be consistent with the values of freedom and democracy. The remedy requested herein, cessation of periods of denial of fundamental democratic rights, is an expression of

desire to experience a more free and democratic society than has previously been the enforced standard.

B. The Interactive Sovereign Society

(24) The Interactive Sovereign Society (ISS) was formed on December 21, 2010. Two determinative essential premises of the society that are presented in its *Constitution* are the usage of the interactive electoral system (IES) and the principle of the sovereignty of the individual. As stated in the preamble of the CIL *Charter*, the CIL is the Canada federal jurisdictional subcommittee of the External Legislation Committee (ELC) of the ISS.

(25) One implicit function of the ISS is that it provides its members the opportunity to collectively consider the question, "if our society's members could be exempted from existing governments and instead governed only by the laws of this society, then what would we want those laws to be?" The ISS prime representative is interactively elected by the members to preside over the process of the continual refinement of the society's answer to this question.

(26) The ISS Constitution refers to two other documents: the ISS *Charter* and *Summation of Principles*. The ISS *Charter*, according to its preamble, serves as "the lawful limits on the powers of the society as a whole over its individual members". The ISS *Summation of Principles* describes the constraints that individual members of the society agree to have their conduct governed by as a requisite of membership.

(27) The ISS *Charter* and *Summation of Principles* both refer to two further documents. One is the ISS's independent and impartial judicial system, *Inter-sovereign Relations*, and the other is the ISS *External Legislation Registry* (ELR), a list of laws made by governments external to the ISS that the ISS has asserted alterations to. The ELR states that "[a]ny member who refuses to follow a law that has been officially deemed inconsistent with ISS principles in the ELR has the right to the society's protection to the extent of its abilities if the member is prosecuted or otherwise imposed upon by an external government over that law". The most effective conceivable form of protection that the ISS may offer is if courts agree that periods of denial of constitutional democratic rights have not, thus far, been demonstrated to be justifiable in a free and democratic society, and thus courts hold members of the ISS to the criteria specified in the ELR rather than the criteria specified by the government that denies democratic rights.

(28) Following are three paragraphs taken from the principle of *Respect For Others' Laws* in the ISS *Summation of Principles* that members have agreed to have their conduct governed by.

> "People who exist in proximity to, or engage in community or social interaction with, those who live in different lawful states may find it challenging to feel respected by those others. This can cause distress to any who disagree on what kinds of behaviours they are willing to accept from each other. It is therefore pivotal that when in proximity to, or interacting with, those who are under the lawful authority of a government, Interactive Sovereign Society members show respect for the laws of that government. Members may nonetheless declare that they are not lawfully responsible to those laws if the

actions in question are not in violation of the principles of the Interactive Sovereign Society.

"There shall be an External Legislation Committee (ELC), whose purpose is to provide a definitive answer as to whether and to what extent a law of a government external to the ISS is consistent with ISS principles. Any member who would like an answer on such a question may consult with or request membership in the ELC. This committee shall record all such decisions in the *External Legislation Registry* (ELR).

"A member that knowingly refuses to follow a law of an existing government without first consulting the ELC for a definitive answer on whether the ISS views the law as consistent with ISS principles may be deemed as acting against the principle of Respect For Others' Laws."

(29) For any federal law of the Crown that has not been explicitly identified in the ELR as being inconsistent with ISS principles, if an ISS member is found to have contravened the law, the CIL may be expected to assert jurisdiction to withhold its authentication of any defence made under section 3 of the *Charter* as specified in Appendix A of the CIL *Charter*, and all available sanctions under the Crown law may then be enforceable just as if the person was not an ISS member and had no avenue by which to invoke denial of section 3 *Charter* rights as relevant to their case. See para. 73, on p. 18 in part F herein, for further clarification.

(30) All alterations made by the CIL to any Crown legislation are consolidated in the CIL's Part of the ELR. The CIL shall concur with the appropriateness of a requirement being placed upon an ISS member, who wishes to invoke the denial of their democratic rights by the Crown in response to matters involving Crown legislation, to demonstrate that they have engaged an alternative democratic process in which these rights are available to all participants without interruption, and this alternative democratic process has provided alternative legislation by which to have their conduct adjudicated instead of the Crown's. The alternative legislation listed in the CIL's Part of the ELR can be provided to a court in any such matter and described as legislation created in a manner that does not involve the denial of fundamental democratic constitutional rights for sustained periods of several years at a time.

(31) The CIL *Charter* respectfully asserts concurrent original jurisdiction for a judicial panel constituted under *Inter-sovereign Relations* for any judicial matter in which an ISS member is a party. If an ISS member is accused of any contravention of any law, then the member may ask to have their conduct adjudicated as per *Inter-sovereign Relations* as the first level of administration of justice. The CIL *Charter* also states that provincial superior courts are acknowledged by the CIL as appellate courts from decisions made through ISS *Inter-sovereign Relations*, as long as section 3 *Charter* rights are protected as asked in Appendix A of the CIL *Charter*.

(32) It might be posited that the principle of individual sovereignty enshrined in the ISS *Constitution* makes the ISS sufficiently incompatible with the principle of the rule of law in

Canada that using the ISS's legislative assemblies as remedial avenues for denials of section 3 *Charter* rights would not be an appropriate remedy.

(33) Two quotes by the SCC may be considered to contest this. "The consent of the governed is a value that is basic to our understanding of a free and democratic society" (*Secession Reference*, *supra*, at para. 67). "Denial of the right to vote on the basis of attributed moral unworthiness… runs counter to… the idea that laws command obedience because they are made by those whose conduct they govern" (*Sauvé*, *supra*, at para. 44). Being a participant in the making of laws is a manifestation of sovereignty. Including a consenting member of society in the making of laws is, definitively, the logical equivalent of claiming that that member of society is endowed with some measure of sovereignty.

(34) Section 15 of the *Constitution Act, 1982* states that "[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". This may mean that Her Majesty the Queen is equal before and under the law to any other citizen of Canada, unless there is demonstrable justification for the denial of this right of equality to every citizen of Canada. However, Her Majesty is described as "the sovereign", a title no other individual is ascribed. Section 9 of the *Constitution Act, 1867* states that "The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen." Section 15 of the same *Act* states that "The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen." These are powers granted to the Queen due to hereditary succession. This might not be considered "equal before and under the law".

(35) If it is posited that the goal of maintaining the rule of law in Canada is effectively served by designating one individual with the role of personification of the lawful state as its sovereign, and this infringement of equality is alleged to be justifiable due to royal lineage having shown proven effective service of the sovereign People of Canada, then this nonetheless must accommodate for the possibility that the sovereignty of the People of Canada is a composite of some measure of sovereignty endowed within each individual citizen and constituent who comprises the group of people that is described as wielding the sovereignty personified by the Queen.

(36) The SCC states in para. 66 of the *Secession Reference*, *supra*, that "[i]t is, of course, true that democracy expresses the sovereign will of the people". Clearly there is sovereignty endowed somewhere within "the people", according to the chief arbiter of "the supreme law of Canada", as the Constitution is described under the auspices of "principles that recognize the supremacy of God and the rule of law" (*Constitution Act, 1982*, s. 52 and preamble). The CIL shall suggest that this collective sovereignty is derived from the measure of sovereignty that is endowed within each individual citizen. The CIL shall suggest that every individual has the capacity to give reasonable consideration to the possibility that having concise laws written on behalf of society to be applicable to each individual member of society is an arrangement that

may produce substantial benefits for each individual's ability to live a contented life. The CIL shall contend that this capacity to comprehend these potential benefits is the root of the measure of sovereignty that resides in each individual.

(37) The CIL shall contend that the above illustrates some measure of compatibility between the principle of the sovereignty of the individual and the Constitution of Canada. The CIL also foresees the possibility that for any conflict found between the identification of this principle as a constitutional imperative in the ISS *Constitution* versus other constitutional values observed by the SCC, in any matter in which an ISS member is a party, courts may potentially decide upon a stronger balance toward those other constitutional values. Therefore any potential consequences of using the ISS as an avenue for remedying denials of s. 3 *Charter* rights that might conceivably be caused by the inclusion of the principle of the sovereignty of the individual in the ISS Constitution may be readily excluded from consideration or effect by courts; thus, any claim that the principle of individual sovereignty embraced by the ISS would make it an unsuitable remedial avenue for denials of s. 3 *Charter* rights may be unsustainable.

(38) For citizens who wish to be enfranchised in determining how ISS members are governed and yet prefer to remain under the governance of the Crown instead of ISS laws, there is a contingency in the ISS *Summation of Principles*, in the principle of Respect For Others' Laws, illustrated in the following two paragraphs.

> "In a territory where there is a prevailing lawful state, a member has the option of showing preference to that state's governance over ISS governance. This can allow the member to be to some extent exempted from ISS principles while also allowing them to be included in voting on the laws that govern ISS members.
>
> "The [External Legislation Committee] may exempt state governed members from requirements regarding conduct that contradicts an ISS principle if the conduct in question is not breaking the laws of the prevailing state. Such exemptions shall be published in the ELR."

(39) Information about the legislative processes of the ISS and the legislation asserted by the ISS may be found at http://issociety.org/principles-and-charter/.

C. other organizations using the IES

(40) Suppose another organization was found to exist in Canada, or was created, that uses the IES to choose its legislative assemblies, and the other organization was to also make alterations to legislation applicable to its members, relying on section 3 *Charter* arguments similar to those herein to legitimize those alterations.

(41) The CIL shall not dissent to the view that based on the principle of the rule of law in the preamble of the *Constitution Act, 1982*, only one such remedial organization should be available for this remedy. Between two such organizations, the one that is most consistent with the Constitution of Canada as per the opinion of the courts may be the only means by which a

citizen of Canada could make a valid claim to subjection to alternative legislation created in a manner that makes section 3 *Charter* rights available without interruption.

(42) "If the Crown creates a federally mandated interactively elected legislature, then the CIL shall relinquish legislative jurisdiction to that legislature and cease functioning. The CIL shall then become dormant unless and until the Crown's interactively elected legislature ceases functioning." This is from Part III of the CIL *Charter*, which is the Part that defines the nature and composition of the Legislature.

(43) The CIL *Charter* states, in Appendix A:

> "If the Crown creates a legislative assembly that uses the IES to choose its members, or modifies its existing legislative assemblies to cease its sustained periods of denial of section 3 *Charter* rights, or provides any other conceivable remedy so that section 3 *Charter* rights are no longer denied for periods of time, then the CIL shall disallow its members from inciting any dissent by ISS members to being required to abide by the legislation enacted by the Crown's legislatures."

A letter has previously been sent to the Governor General of Canada providing a suggested Constitution for such an organization, and suggesting the name "Interactive Canada" for the organization. The letter can be found at http://issociety.org/wp-content/uploads/Gov-Gen-Payette.pdf.

D. federalism

(44) The *Secession Reference*, *supra*, at para. 32, identifies four legitimate extraconstitutional principles, one of them being federalism, applicable under the law as unwritten rules holding concurrent force under the law with the written text of the Constitution itself. A section 3 *Charter* remedy that would undermine the principle of federalism may not qualify as an appropriate and just remedy for the denial of these rights.

(45) The definition of matters of jurisdiction as federated between the levels of government in the nation of Canada is laid out in Part VI of the *Constitution Act, 1867*, principally ss. 91 and 92. Part IV of the CIL *Charter* confines CIL jurisdiction within federal powers designated in Part VI of the *Constitution Act, 1867,* and also confines the CIL to respect the interpretation provided by courts in Canada for Part VI of the *Constitution Act, 1867*. In the CIL's own defining document, it is required to conform to the same federated jurisdiction as the federal legislature of Canada.

(46) The ISS *Charter* contains a section entitled "External Legislation Registry", outlining the ISS's concurrence with the principle of federalism as found in existing governments: "For territorial limits on a government's jurisdiction, the [External Legislation Committee (ELC)] will have a sub-committee to make rulings on that government's laws. No member that resides outside of the relevant territory may be included in a decision on how well a law conforms to ISS principles. No ISS member, other than a member deemed qualified to act as a judicial panel chair by the Chief of Justice, may be called upon to act in a judicial panel regarding any law

made by a government for which the member does not reside in the relevant territory of jurisdiction." The CIL is the Canada federal jurisdictional subcommittee of the ELC.

(47) If an organization such as Interactive Canada, as outlined in part C above, may be created, then the principle of federalism may be most effectively manifested in a remedy for section 3 *Charter* rights. However, no response was received from the Governor General after presenting this request for assistance with the cessation of sustained periods of denial of fundamental democratic rights. If any lack of consistency with the principle of federalism is found in using the CIL as the federal remedial avenue for denials of democratic rights, then it is not due to the CIL's, or the ISS's, lack of concurrency with the principle of federalism but rather the lack of assistance from the Crown in reducing the unjust disenfranchisement of citizens from inclusion in the political processes of society.

(48) If the Crown finds ways in which the CIL's conformity to the principle of federalism (as previously judicially expounded or implicitly accepted as applicable under the Constitution of Canada) is lacking, and suggests alterations in CIL or ISS principles or procedures to better suit this extraconstitutional principle, and the CIL or ISS was to then fail to agree to alter its principles or procedures accordingly, and the courts were to then find the Crown's assertion of inconsistency with the principle of federalism to be accurate, then the CIL may face the choice of either losing the ability to act as a legitimate remedy for the denial of section 3 *Charter* rights for its members or else altering its principles and procedures as suggested, which might conceivably include the need to severe its membership in the ISS, a contingency suggested in the preamble of the CIL *Charter*.

(49) Experience with the effect of democratic enfranchisement upon the general attitude of voters has demonstrated, in the CIL's view, that participants in the IES generally, prevalently show an increase in natural inclination toward deliberative reasoning. The participants who are resistant of inclinations toward deliberative reasoning, on the other hand, tend to detach from the democratic process and contemplate where they acquired this resistance. The CIL shall regard democratic acceptance by its members of adherence to federalism as expounded by the SCC to be further evidence of these views. If the legislative representatives of the CIL or ISS were to show unwillingness to adhere to sensible constitutional principles of federalism, the CIL shall view this as a possible detrimentally impacted objective caused by uninterrupted universal democratic enfranchisement. A more constantly enfranchised electorate showing aversion toward federalism may to some extent be equivalent to predisposition toward authoritarianism and/or demagoguery. The CIL shall view the SCC's description of the principle of federalism to be sufficiently dependably and consistently presented so that seeing an interactively elected legislative body refuse to abide by it would be viewed by the CIL as supportive evidence in favour of demonstrable justification for the denial of fundamental democratic rights for several years at a time.

(50) CIL legislative representatives are cautioned to accede to any requirement of more effective manifestation of the principle of federalism that the courts would find to be necessary

to affirm appropriateness and justness of the requested remedy for denials of section 3 *Charter* rights as presented in Appendix A of the CIL *Charter* and supplemented herein.

E. The Senate

(51) In *Reference re Senate Reform*, 2014 SCC 32, [2014] 1 SCR 704, the SCC affirms that the Senate is an "upper legislative chamber" that is intended "to provide 'sober second thought' on the legislation adopted by the popular representatives in the House of Commons". This *Reference* also states that "[o]ver time, the Senate also came to represent various groups that were under-represented in the House of Commons. It served as a forum for ethnic, gender, religious, linguistic, and Aboriginal groups that did not always have a meaningful opportunity to present their views through the popular democratic process".

(52) For an interactively elected legislature that purports to provide citizens of Canada a remedial means to have uninterrupted access to their section 3 *Charter* rights at the federal level of jurisdiction, the CIL shall view it as consistent with the Constitution of Canada that the resolutions of such a legislature should be subject to approval by the Senate prior to coming into force, just as with the conventional federal legislature that denies section 3 *Charter* rights for several years at a time: the House of Commons.

(53) As mentioned previously, the *Secession Reference*, *supra*, at para. 32, states that the "constitutional texts enumerated in s. 52(2) of the *Constitution Act, 1982*" are "not exhaustive". It goes on to say that there are "supporting principles and rules, which include constitutional conventions and the workings of Parliament". The *Rules of the Senate of Canada* may qualify as the workings of Parliament, thus potentially making these Rules as much a part of the Constitution as the framework for assessing demonstrable justification of infringements of rights and freedoms laid out in *Oakes*, *supra*.

(54) Two of the specific rules in the *Rules of the Senate* that are applicable to the remedy for denial of section 3 *Charter* rights described herein are rule 16-2(2), which states that "[t]he Speaker shall read messages received from the House of Commons at the earliest appropriate time" and rule 16-3(2), which states that "[w]hen the House of Commons disagrees with amendments proposed by the Senate to a bill that originated in the Commons, and the Senate insists on any of its amendments, the message accompanying the bill to the Commons shall state the reasons".

(55) If Rules of the Senate such as these, constitutional requirements incumbent upon the government, are not adhered to by the Senate with regard to communications of a federally mandated interactively elected legislative assembly, then requiring that legislature's decisions to be subjected to the approval of the Senate may fall short of being "a full, effective, and meaningful remedy" for the denial of section 3 *Charter* rights of Canadians, as is stated to be the appropriate response to unjustifiable limits upon rights and freedoms in *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3, at para. 25.

(56) In *Secession Reference*, *supra*, the SCC states that if the Provincial Legislature of Quebec was to show a majority in support of secession in a referendum, then two specific propositions can be rejected as inconsistent with the Constitution, one being “that there would be a legal obligation on the other provinces and federal government to accede to the secession of a province, subject only to negotiation of the logistical details of secession” and the other being “that a clear expression of self-determination by the people of Quebec would impose no obligations upon the other provinces or the federal government” (paras 90 & 92). An analogy to the present discussion would be that just because an ISS member denies consent to the governance of the Crown does not mean that the member is entitled under the law to a blanket exemption from all aspects of Crown governance, but on the other hand, if an ISS member does deny consent to Crown governance, then this does not mean that the Crown (nor any of its individual entities such as the Senate) has no relevant obligations whatsoever toward that person’s grievance at denials of constitutional rights for years at a time.

(57) Further from *Secession Reference* (para. 95): “Refusal of a party to conduct negotiations in a manner consistent with constitutional principles and values would seriously put at risk the legitimacy of that party's assertion of its rights, and perhaps the negotiation process as a whole. Those who quite legitimately insist upon the importance of upholding the rule of law cannot at the same time be oblivious to the need to act in conformity with constitutional principles and values, and so do their part to contribute to the maintenance and promotion of an environment in which the rule of law may flourish”. Similarly, if the Senate conducts negotiations with an interactively elected legislative assembly in a way that shows dismissal to the possibility of any injustice being inherent in denying s. 3 *Charter* rights for periods of time, then the legitimacy of the Senate’s rights may be called into question. This might particularly be the case if it appeared likely that the Senate was dismissing decisions of an interactively elected legislature simply due to the legislature’s support for enfranchisement of individuals through freedom of electoral choices for its citizens, rather than on the rational merits of those decisions.

(58) Two Senators have previously been contacted regarding dissent to the denial of fundamental democratic rights. Hon. Senator Mobina Jaffer, Chair of the Standing Senate Committee on Human Rights, was contacted in 2014. Hon. Senator Peter Harder was contacted in 2021. Neither of them responded.

(59) Senator Harder wrote a discussion paper entitled *Complementarity: The Constitutional Role of the Senate of Canada*, from 2018. It has been posted on the Senate website, indicating some level of affirmation of the validity of the descriptions presented therein.

(60) In Senator Harder’s paper, the Senate is described on p. 2 as “the most powerful unelected legislative body in the western world”, and on page 11, he states that the Senate’s “powers allow it to go farther than any other unelected legislative body in the democratic world”.

(61) Not only can the remedy requested herein be subsequently overturned if anyone shows the courts in the preponderance that a pressing and substantial objective in a free and democratic society is detrimentally impacted by the cessation of sustained periods of denial of fundamental

democratic rights. Additionally, the most powerful unelected body in the western world is available to scrutinize the functioning of an interactively elected legislative assembly to remain vigilant for any signs of any such compromised objectives. Perhaps still more compelling: the most powerful unelected body in the western world can preside over the growth in numbers of participants in an interactively elected legislative body by retaining a veto power over every single decision made by that interactive legislature.

(62) If the Senate responds to the request to have a remedy considered in Canada for those who dissent to the denial of fundamental democratic rights for sustained periods of several years at a time, and the Senate's response to this request shows evident intent to respect the same constitutional principles in its dealings with an interactively elected legislature as it does with a periodically elected legislature (as in the *Rules of the Senate*), then the CIL shall honour the same rules and conventions toward the Senate as are incumbent upon the House of Commons, except as explicitly agreed otherwise, any such exceptions being subject to judicial oversight and/or overrule.

(63) The CIL shall not express dissent to the denial of fundamental democratic rights of ISS members so as to imply entitlement to a rubber stamp from an upper legislative chamber of sober second thought.

(64) The ISS has written an entry in its *External Legislation Registry* regarding the Senate of Canada, as follows. Members of the ISS have agreed to be lawfully subject to the conditions specified in this ELR entry.

Senate

Following are several reasons which together illustrate why it may in some circumstances be consistent with ISS principles for decisions of the Canadian jurisdictional subcommittee of the ELC ("Canada Interactive Legislature") to require agreement by resolution of the Senate of Canada prior to enactment:

- the ISS's claim, that the interactive electoral system provides effective representation overall, as well as a meaningful role in the electoral process for each individual, for several dozen members, has not been rationally refuted, but it is possible that some detrimental impact upon an objective of pressing and substantial concern to a free and democratic society will become evident for some more numerous electorate; therefore, having a stable and experienced appointed upper legislative chamber to preside over the growth of the interactive electoral system may be an opportunity to prevent any such impacts if they become evident,
- the Senate of Canada, as an upper legislative chamber with generational stability, has shown consistent supportiveness and improvement to the decisions of elected federal legislative bodies throughout Canada's history,
- the Senate has been described by one of its members as "the most powerful unelected legislative body in the western world", claiming that its "powers allow it to go farther than any other unelected legislative body in the democratic world"; if this is true, then

the Senate is the most suitable officially constituted supervisory authority in the democratic world to maintain vigilant and deliberative scrutiny on the growth of the interactive electoral system,

- despite dissenting to denials of section 3 *Charter* rights, ISS members in Canada do not wish any remedy for these denials to have unforeseen detrimental impacts upon the rule of law in Canada; therefore, accepting the Senate as a legislative chamber of sober second thought is suitable to the growth and development of the interactive electoral system,
- the *Rules of the Senate* contain several duties that the Senate must fulfil toward the federal legislative assembly, notably:
  - 16-2. (2) The Speaker shall read messages received from the House of Commons at the earliest appropriate time, and
  - 16-3. (2) When the House of Commons disagrees with amendments proposed by the Senate to a bill that originated in the Commons, and the Senate insists on any of its amendments, the message accompanying the bill to the Commons shall state the reasons,
- if rules such as above are not honoured by the Senate with respect to an interactively elected legislative assembly designated to serve citizens of Canada, in matters of federal jurisdiction as per section 91 of the *Constitution Act, 1867*, for citizens who dissent to periods of denial of their section 3 *Charter* rights, then imposing the requirement of Senate approval upon decisions of that legislative assembly would not constitute "a full, effective and meaningful remedy for *Charter* violations", as the SCC stated in *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 S.C.R. 3 (at para 25) is consistent with the purposive interpretation of the Constitution that the SCC prescribes for Canadian courts,
- if the Senate does not respect the above rules toward an interactively elected legislative assembly, but the Canada Interactive Legislature, or another possibly more appropriate legislative assembly that does not deny section 3 Charter rights, is allowed to choose a member to be appointed to the Senate, then it would be a comparably effective guarantee of a full, effective and meaningful remedy.

With the above reasons in mind, the ISS therefore affirms that it is consistent with ISS principles for decisions of the Canada Interactive Legislature to require approval by resolution of the Senate prior to enactment if:

- the Senate agrees to uphold all of the requirements that the Rules of the Senate, or other relevant rules implicit in the Constitution of Canada, place upon the Senate toward the House of Commons, to a comparable extent for the Canada Interactive Legislature, or
- if the ISS agrees by resolution that the Senate is not, in the ISS's opinion, providing comparable treatment to the Canada Interactive Legislature as for the House of Commons, then the ISS would nonetheless respect the Senate's power of veto over legislation in federal matters if the Canada Interactive Legislature, or another appropriate legislative assembly with uninterrupted availability of section 3 *Charter*

rights, is given the opportunity to choose at least one member to be appointed to the Senate.

F. possible objectives detrimentally impacted by requested remedy

(65) It may be true that the Constitution of Canada requires the government to demonstrate an objective compromised by the cessation of denials of fundamental democratic rights before being allowed to impose its legislation upon an adherent of an interactively elected legislature with distinctly specified legislation on similar matters. One focus of ISS members, during the time of its existence, has been to discern every element of reasoning used to attempt to justify the continuation of these denials by any person who shows a preference against usage of the IES. As stated in Appendix A of the CIL *Charter*, the CIL shall candidly and freely offer the information acquired from these efforts to any constituent or party comprised in the sovereign People of Canada who is concerned about the possibility of any objective that may be detrimentally impacted by cessation of denials of rights described herein.

(66) Six broad objectives have been identified, from rough statistical analysis of the subset of the electorate of Canada that has been observed, that a substantial majority of Canadian voters who would oppose the IES upon having it described to them would cite, in some permutation, as their reasons for preferring to see democratic rights denied for periods of time. Clearly, additions or alterations to these suggested objectives may be conceived by a devoted staff of highly accomplished law professionals, but these six general objectives shall be offered by the CIL as a reasonable supposition of the apparent sovereign will of the majority in Canada regarding its prevailing wish to see fundamental democratic rights denied for sustained periods of time.

(67) In the analysis of these objectives, there may be a few constitutional principles regarding remedies for limits upon s. 3 *Charter* rights that could be helpful to remain cognizant of, in the following several paragraphs.

(68) "The <u>onus</u> of proving that a limit on a right or freedom guaranteed by the *Charter* is reasonable and demonstrably justified in a free and democratic society rests <u>upon the party seeking to uphold the limitation</u>" (*Oakes*, *supra*, at para. 66, emphases added). In order for the Crown to be allowed under the Constitution to impose legislation made by legislatures that deny democratic rights for periods of time upon an adherent of an interactively elected legislature, the onus is on the Crown to demonstrate on a preponderance of probability that an objective of pressing and substantial concern to a free and democratic society is detrimentally impacted by the cessation of denials of these rights.

(69) "Denial of the right to vote on the basis of <u>attributed moral unworthiness</u> is inconsistent with the respect for the dignity of every human being that lies at the heart of Canadian democracy and the *Charter*: compare *August*, *supra*. It also runs counter to the plain words of s. 3, its exclusion from the s. 33 override, and the idea that laws command obedience because they are made by those whose conduct they govern" (*Sauvé*, *supra*, at para. 44, emphasis added). If

attributed moral unworthiness is irrelevant to the legality of requiring that an individual be enfranchised with the right to vote, then the prior conduct or moral character of any adherent or participant in the IES is irrelevant to their right to have their conduct adjudicated based on the legislation of an interactively elected legislature instead of a periodically elected legislature so as to remedy the denial of their fundamental democratic rights. Any such allegations of prior conduct or moral character of any such participants may therefore be denied admissibility in proceedings relevant to any matter in which an ISS member is a party, involving Crown legislation for which the CIL has enacted alternative legislation.

(70) "When basic political rights are denied, proof of additional harm is not required" (*Sauvé*, *supra*, at para. 59). There is no onus upon the adherents of the IES to demonstrate any harm done to them by the denial of s. 3 *Charter* rights, nor by any existing, thusly elected institution of governance presided over by the Crown, in order to be constitutionally entitled to have the sustained periods of denial of their fundamental democratic rights ceased.

(71) "[S]. 1 [of the *Charter*] has two functions: first, it constitutionally <u>guarantees</u> the rights and freedoms set out in the provisions which follow; and, second, it states explicitly the <u>exclusive</u> justificatory criteria (outside of s. 33 of the *Constitution Act, 1982*) against which limitations on those rights and freedoms must be measured" (*Oakes*, *supra*, at para. 63, emphases added). S. 33 of the *Act* states that it is only applicable to s. 2 or ss. 7-15 of the *Charter*, not to s. 3. So s. 1 constitutes the **exclusive** criteria allowing infringements or denials of s. 3 *Charter* rights under the Constitution. If s. 1 is not fulfilled, then it may appear that the denial of these **guaranteed** rights must be remedied, according to the supreme law of Canada.

(72) S. 4(1) of the Charter states that "[n]o House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members". One might infer from this that it implies that the Constitution allows the denial of s. 3 *Charter* rights for up to five years. Alternatively, one might infer from this that at the time of the framing of the Constitution, there was no known way for s. 3 *Charter* rights to be provided **at all** unless these rights were denied for periods of time, and therefore it was necessary to put a limit on the duration between occasions when citizens were provided the means to exercise these rights by authorities. As stated in *Sauvé*, *supra*, at para. 11, the interpretation that provides the more broad and liberal view of the rights is the more applicable one when determining whether an allegation of denial of rights is constitutionally valid.

(73) *R v Crawford*, [1995] 1 SCR 858, affirms at para. 33 that "[w]hen the protected rights of two individuals come into conflict,… *Charter* principles require a balance to be achieved that fully respects the importance of both sets of rights". To favour the remedy sought herein being construed to imply that any citizen should receive any remedy for denial of s. 3 *Charter* rights without first consenting to governance by the laws of a legislative assembly that makes s. 3 *Charter* rights constantly available would be equivalent to seeking to deny the s. 3 *Charter* rights of every other citizen of Canada in relation to how the person receiving the remedy is being governed. Furthermore, the remedial interactive legislature must, in general, offer comparable

accessibility to necessities of democratic participation, such as voter registration, to all other citizens of Canada as is provided by the existing periodically renewable oligarchies. A member who does not abide by the laws of an interactively elected legislature after professing to use a section 3 *Charter* defence to be eligible for governance under alternative laws thus shows their invocation of this defence to have not been made in good faith and may thus be liable to all Crown laws from which the member had been exempted in good faith (possibly in some cases with stayed proceedings for contraventions of Crown law defended using section 3 *Charter* arguments) under the presumption that their invocation of section 3 of the *Charter* was a genuinely intended gesture.

(74) With these constitutional points in mind, the six most generally expressed objectives that are commonly alleged to justify the denial of fundamental democratic rights for sustained periods of several years at a time are: stability, preventing minority disenfranchisement, legislative feasibility, security, avoiding prohibitive cost, and mitigation of more pressing priorities.

(75) A description of each of these objectives will now follow. Even though it may have been established herein as the onus of the Crown to demonstrate that any of these objectives is proportionately achieved by denying democratic rights for periods of time in order for the Crown to be allowed to enforce legislation made by a periodically elected government upon an adherent of the IES, the CIL shall nonetheless offer anticipatory counter arguments to assist the Crown in avoiding devoting its resources to pursuing avenues of justification that may be expected to be dismissed by courts based on the existence of counter arguments more consistent with prior precedent.

1. stability

(76) There is a procedure designed to facilitate stability in the IES, known as a guaranteed term of office. Most participants who have ever experienced the IES have agreed from experience thus far that three months appears to be a reasonable duration for a guaranteed term of office. If the incumbent candidate loses the lead to another candidate, then the incumbent stays in office for the previously established duration of the guaranteed term of office. If the incumbent has not regained the lead by the end of that time, then the challenging candidate takes office. If the incumbent does regain the lead during that time, then the incumbent remains in office until another candidate gains a lead again, at which time the full duration of the guaranteed term of office begins again.

(77) Suppose that courts order a measure that includes a remedial component for denial of s. 3 *Charter* rights (such as staying proceedings pursuant to conduct contravening Crown legislation for which the CIL has enacted alternative legislation) but are then subsequently presented with evidence of a lack of stability in the legislative process of the IES. Courts could then order that a condition of the remedy staying in force is that the organization using the IES increase the duration of the guaranteed term of office applicable to its candidates. The interactive legislature would then, to the reasonable satisfaction of a majority of its voters, face the choice, of either

having any statutory jurisdiction conferred on it as a remedial avenue for s. 3 *Charter* rights or tacitly acquiesced by the Crown revoked, or else adopting the increased duration for its guaranteed term of office as prescribed by courts.

(78) No matter how evident it becomes that stability is an objective justifying denials of s. 3 *Charter* rights, it may nonetheless be possible to provide a remedy for these denials that accommodates for the achievement of this objective.

(79) A comparable objective that was previously accepted by courts as potentially sufficiently pressing and substantial to warrant limits on rights and freedoms is "ensuring a viable outcome for our form of responsible government", in *Figueroa*, *supra*, at paras. 79-89.

(80) Para. 80 of *Figueroa* states that "it is difficult to accept that the objective of ensuring that the electoral process results in a particular outcome is sufficiently pressing and substantial to warrant the violation of a *Charter* right". However, in para. 82, it states that "it is possible that the continuity and <u>stability</u> associated with majority governments results in better governance" (emphasis added). Later on, *Figueroa* states in para. 89 that "it is incumbent on the government to demonstrate, either through evidence or argument, that a majority government is likely to provide substantially better governance than a minority government. The government has failed to satisfy this burden. The government has not advanced sufficient evidence to demonstrate that the election of a majority government would result in benefits that outweigh the deleterious effects associated with legislation that violates s. 3 for the purpose of ensuring that the electoral process results in the election of a government that would not otherwise be elected. Nor has it provided a reasoned basis on which to conclude that this is the case".

(81) In summary, an objective that the government claims is served through limits on s. 3 *Charter* rights includes stability as a component of its alleged desirable effects. However, the SCC has sufficiently rigorous requirements, for the demonstration that stability is evidently improved by imposing the limit on the rights, that the government could not satisfy those requirements. The government's impugned legislation limiting s. 3 *Charter* rights was thus ruled lacking in demonstrable justification and thus unconstitutional.

(82) "<u>Any</u> limit on the right to vote must be carefully scrutinized and cannot be tolerated without a compelling justification" (*Frank*, *supra*, para. 1, emphasis added). Being provided no means to exercise a constitutional right for several years may qualify for inclusion in the implications of the phrase, "any limit".

(83) There have been candidates for legislatures in Canada who have served multiple terms of office spanning a decade, sometimes two, with constant comfortable margins of electoral superiority over contenders at every polling date. To claim that these candidates would fare with any less stable and solid representation on behalf of their constituents just because their voters were provided constant access to their s. 3 *Charter* rights would be to cast suspicion on the integrity and deliberative acumen of the voters (a portion of a group that has been described, in

its entirety, as sovereign, and possessing individual dignity among their members) who have, collectively, selected these candidates.

(84) *Sauvé*, *supra*, states in para. 44 that “attribut(ing) moral unworthiness” to voters as a justification for denying their fundamental democratic rights is not a constitutionally resonant position. Claiming that voters are, in a significant proportion, irresponsible in their deliberations upon their usage of their electoral choices to influence legislative decisions of their sovereign nation, may be seen as an equivalent to attributing them a form of moral unworthiness.

(85) If it is possible that representatives who have been observed to serve multiple terms in legislatures in Canada would procure the same stability of electoral support from constituents even if those constituents had constant access to their democratic rights, then calculations may show it to be a conservative estimate, based on analysis of general Canadian electoral history, that the average time that a candidate in Canada would stay in office with an interactive electoral system used to choose a legislature would be in excess of five years, even if the guaranteed term of office feature of the IES were disregarded altogether.

(86) To claim that any conjecture, that the stability observed thus far in a comparably small interactive electorate would be reduced for an electorate of greater size, could be regarded as fulfilling a preponderance of probability based on measured reasoning, may be seen by courts as an inadequate demonstration of justification.

(87) With a viable means of assuring that any observed lack of stability can be mitigated by provisions ordered by courts, it may be expected that courts will not find this objective to be rigorously demonstrated to be compromised by the cessation of denials of democratic rights.

2. preventing minority disenfranchisement

(88) Both the SCC and the Senate have it in their mandate to protect minorities from disenfranchisement.

(89) For the SCC, this mandate is affirmed in para. 32 of the *Secession Reference*, *supra*, where it states that in addition to enumerated texts, the Constitution “also ‘embraces unwritten, as well as written rules’”, and names “four fundamental and organizing principles” holding concurrent legitimate force with the written text of the Constitution, one of these being “respect for minorities”, rephrased later in para. 79 as “protection of minorities”.

(90) For the Senate, a discussion paper that has been written by one of its members and posted on behalf of the legislative body, entitled *Complementarity: the Constitutional Role of the Senate of Canada*, describes “the Senate’s role as a robust complement to the work of the House of Commons in a modern democracy” on pp. 4 to 6. One of the features presented in the description of the Senate’s role is to “strike a balanced approach to amending government legislation, with an outlook emphasizing — but not strictly limited to — the areas that are at the heart of the Senate’s institutional mission, including sober review of… the detrimental impact of legislation on minorities and economically disadvantaged groups”. Another of the features listed

in this description of the Senate's role describes one of the Senate's functions as "a safety valve to protect Canadians against the tyranny of the majority".

(91) Keeping minorities enfranchised, and keeping their interests included in the political processes of society, may appear to be a priority under the Constitution of Canada. If it were possible that a remedy for denials of s. 3 *Charter* rights might undermine the protections provided by either of the above organs of government, or any other forms of protection for minorities built into the architecture of government, or if hostilities toward minorities harboured by participants in the IES had a more direct route to affect legislation than when democratic rights are denied for periods of time, then the protection of minorities would be an objective that may justify the denials of s. 3 *Charter* rights dissented to herein.

(92) While it might be difficult for the government to demonstrate on a preponderance of probability that the IES is more predisposed to provide an avenue for voters with hostilities toward minorities to affect legislation, it may possibly become demonstrably evident if the IES is used with a larger electorate. At that point, any previously imposed conditional stay of proceedings, pending the discovery of an objective evidently detrimentally impacted by the uninterrupted availability of these rights, can be lifted and the provisions pursuant to the legislation of the periodically elected legislatures can be imposed.

(93) In considering this potential objective to justify denials of s. 3 *Charter* rights, it will be of note to observe that the IES has a built in mechanism to assure some extent of inclusion of minority interests in any decision: a minority veto. Following is a section from the ISS *Charter* entitled Representative Collaborators.

> This section adds a layer of accountability to the prime representative's decisions, as well as an explicit protection for minorities by the society's representatives.
>
> In addition to the prime representative, the society shall also have main collaborators and secondary collaborators. Main collaborators are defined as candidates that have the same number of votes as the prime representative, and during a guaranteed term of office, also candidates with more votes, or in such case as there is no such candidate, the main collaborator(s) shall be the candidate(s) with the second highest number of votes no matter how big the gap in electoral support. Secondary collaborators are defined as candidates that have one less vote than the prime representative, or in such a case as there are less than 3 people combined meeting the definitions of main collaborators and secondary collaborators, secondary collaborators shall be the third and/or fourth highest candidates in number of votes received, so that there are a minimum of 4 elected legislative officials including the Prime Representative, Main Collaborators, and Secondary Collaborators. When the prime representative decides to carry a motion on behalf of the membership, all main collaborators must unanimously agree with the decision for it to be valid. If the prime representative and all main collaborators agree to carry a motion, and one or more secondary collaborators disagree with the decision, then the decision must be delayed for the duration of the delay of enactment period.

> If any Main Collaborator, Secondary Collaborator, or any candidate with less votes, becomes aware that there is a minority that is opposed to a motion of the society, then that collaborator should use their veto power to delay the motion for a reasonable length of time to assure that any other suggested ways to amend the motion are considered. If the motion might possibly be amended so that it will be acceptable to that minority without unfairly compromising the interests of any other parties, then reasonable efforts should be made to accomplish that.
>
> The principle of Representative Collaborators applies to every interactively elected position that exists in the ISS.

(94) If a representative is alleged to be using a veto beyond the mandate of seeking a compromise on a decision, then the ISS judicial process, *Inter-sovereign Relations*, can be invoked to assemble a judicial panel to rule on a compromise of interests in the decision and lift the veto. Such a panel is comprised of a third of members chosen by each party and a third of members from the ISS judiciary, for whom a primary requirement of being accepted as members of the judiciary is devotion to impartiality as a primary component of any judicial decision.

(95) As mentioned earlier, the ELR states that the ISS recognizes superior provincial courts as appellate courts from decisions of ISS judicial panels, subject to a few specified conditions. If a ruling by an ISS judicial panel on a compromise to circumvent a legislative minority veto is alleged to be insufficiently inclusive of minority interests, then the decision can be appealed so that Canadian courts, with their inclusion of protection of minorities as a legitimate extraconstitutional principle concurrent to the written text of the Constitution, can enforce the standard of minority protection that is prescribed by the Constitution of Canada, whether explicitly stated or implicitly derived from the extraconstitutional principle of protection of minorities as affirmed by the SCC.

3. legislative feasibility

(96) The Canadian Encyclopedia has an entry regarding the Great Coalition of 1864, starting off as follows.

> “The politics of the Province of Canada in the early 1860s were marked by instability and deadlock. The Great Coalition of 1864 proved to be a turning point in Canadian history. It proved remarkably successful in breaking the logjam of central Canadian politics and in helping to create a new country. The coalition united Reformers and Conservatives in the cause of constitutional reform. It paved the way for the Charlottetown Conference and Confederation.”

(97) According to the Wikipedia entry for the Great Coalition, in June, 1864, there had been six governments in the previous six years. There had been a problematic perpetual political deadlock and the government was unable to pass any legislation.

(98) It may be expected that there would be no disagreement from participants in the IES that avoiding impediments to legislative feasibility such as deadlock is a pressing and substantial concern in a free and democratic society. Collective deliberative legislation serves an important purpose. It may be expected that people who wish to experience a revised electoral process with greater enfranchisement for each citizen would not wish to see previous serious shortfalls in electoral politics repeated. This would detract from the very goals that these citizens wish to see manifested through their greater enfranchisement.

(99) As mentioned earlier, the ISS has already established measures for judicial resolution of controversial legislative decisions. A judicial panel can order a specified compromise to be struck between the parties in such a disagreement, overruling the veto. Presently engaged participants in the IES generally believe that it will not be possible based on evidence available thus far to show that there is any detrimental impact upon legislative feasibility caused by having each member of an electorate constantly enfranchised with their democratic rights. The possibility remains that a larger electorate may experience detrimental impacts, in which case any judicial decisions based on remedying s. 3 *Charter* rights, such as a stay on proceedings regarding Crown legislation for which the CIL has enacted alternative legislation, can be reversed.

(100) Furthermore, there may be an extent to which partisanship incites political representatives to deliberately exacerbate polarization that exists in society regarding issues of contention. This may be a strategy for creating stronger overall sentiment among an electoral base for a political party. It would be more conducive to legislative feasibility if the democratic representatives portray a mutually conciliatory attitude toward such disagreements in the hopes that members of the electorate who are polarized over an issue may become more receptive to a common ground. There is some social science reasoning that may make the possibility that the IES may more commonly result in such relations between candidates with differing policies on an issue appear not to be unlikely.

(101) Candidates in the IES may be directly responsible to their electorate. The ability of a political party to pressure a candidate into maintaining a party line that is inconsistent with the wishes of the candidate's constituents may be drastically reduced in comparison to the existence of such dynamics under periodic elections, perhaps eliminated altogether. To the extent that partisanship is responsible for exacerbating divisions of political polarization through the public, the IES may be expected to show a reduction in potential for legislative deadlock.

(102) Another line of reasoning that may illustrate a reduction in potential for legislative deadlock in a society facilitating its representation through the IES, as compared to the respective potential for periodically elected legislatures, concerns the process through which a candidate publicizes plans and policies, intended as a part of their platform to be pursued once elected, during the process of accruing votes toward the sought after elected position.

(103) A candidate in the IES has the ability to offer support to another candidate with a substantially higher tally regarding a commonly shared policy or plan by suggesting to one's

supporters that they change their votes from oneself to the more highly supported candidate. It is thus possible to wield substantially more influence in the legislative process of the IES as a candidate with minimal support than it is for a minimally supported candidate in a periodic election. Once a periodic election is completed, a minimally supported candidate has no legitimately actionable influence whatsoever. Therefore it may be expected that some citizens who take up candidacy in the IES due to a conviction of some sort will not have any intentions of pursuing the elected office but rather simply exerting influence upon the legislative process regarding the issue(s) of concern to the candidate.

(104) Even if a challenging candidate achieves an electoral advantage, commencing a guaranteed term of office, it may in some circumstances be a strategy for persuading the incumbent candidate to take up a policy or plan that meets the conviction of a proportion of the electorate, with no actual desire to replace the incumbent candidate in office. If the incumbent candidate shows appropriate attention to the issue in contention, then the challenging candidate could advise voters to make sufficient changes to give the incumbent back the lead.

(105) These are dynamics that have been observed in practice among participants in the IES thus far. It is possible that opposing dynamics would become more prevalent in a larger electorate, but it may be that there is no preponderance of probability to show that this will be the case.

(106) For those candidates who do accrue sufficient electoral support to become intentional contenders for the elected position, though, the process of accruing those votes will likely have involved making their agenda explicitly clear in terms of prioritization of plans and policies as well as positions on issues. As their initial founding convictions gain support, they will be questioned about their position on other issues and make their position, even if their position is neutrality on some issues, publicly known. By the time a candidate achieves elected status, any issues upon which the candidate has not made a position, or neutrality, clear may be unimportant enough to a sufficient proportion of the electorate that decisions on those issues will not affect legislative feasibility of the legislature to which the candidate is elected, at least not within the electorate of the constituency represented by that candidate.

(107) For the issues that are contentious among the electorate, an electorate that perceives a candidate allowing an important issue to become a wedge point, in a deadlock due to other issues whose proponents are competing for greater attention, would not be likely to remain satisfied with the candidate's handling of the situation. This may precipitate a change of representation for the constituency.

(108) There is no way of assuring guaranteed legislative feasibility for an interactively elected legislature any more than there is for a periodically elected legislature. The pertinent question is whether it can be demonstrated on a preponderance of probability that the IES is substantially more prone to this than periodic elections.

(109) It may be expected that the onus will be placed upon the government to demonstrate that the IES has any reduction in potential for legislative feasibility as compared to periodically renewable oligarchies before the government may be allowed under the Constitution to deny s. 3 *Charter* rights for periods of time. If it is possible that legislative feasibility is an objective that could be invoked to justify the denial of s. 3 *Charter* rights for periods of time, it may not be possible to demonstrate this on a preponderance of probability to the satisfaction of the courts until the IES has been observed to be used with a much larger electorate than has experienced this electoral system thus far.

4. security

(110) Three critical aspects of security in any electoral system are as follows. One is the ability of a voter to avoid having anyone else know how they have cast their vote. A second is the ability of electoral officials to assure that tallies are not tampered with, so that the tally of votes disclosed for each candidate is a precisely accurate report of the number of people who have cast votes for that candidate. A third is the existence of measures to deter anyone from using any form of extortion to influence how any other voter casts their vote.

(111) For a voter to be able to change their vote at any time that they wish, a record must be kept of which candidate the vote stands for. When the vote is changed from one candidate to another, one vote must be deducted from the candidate previously voted for, and then one added to the candidate to whom the vote is changed. This cannot be done unless the voter's previous vote is on record.

(112) It is possible to give each voter a choice of a periodic secret ballot or an interactive confidential ballot. A voter for whom secrecy of their vote is more important than being able to change their mind about their vote may choose a periodic secret ballot, cast it on a periodically designated date for all voters choosing this option to cast their ballots, and then waive their s. 3 *Charter* rights for several years. On the other hand, a voter who prefers to have uninterrupted access to their s. 3 *Charter* rights may choose an interactive confidential ballot and accept that their vote is kept on record, just like account balance and transactions are kept on record for financial matters and previous diagnoses are kept on record for medical matters.

(113) The *Secession Reference*, *supra*, states that "faith in social and political institutions which enhance the participation of individuals and groups in society" (para. 64) is one of the "values and principles essential to a free and democratic society" (para. 64) that comprises "other constitutional values" (para. 67) that can preempt "the 'sovereign will' [of the people] or majority rule alone" (para. 67) in the interests of upholding the extraconstitutional principle of democracy with legitimacy. Courts may agree that it is thus appropriate to give an individual the opportunity to exercise their faith in the ability of political institutions to maintain confidentiality in electoral records as a necessary part of receiving uninterrupted democratic enfranchisement as a basic manifestation of their inherent dignity.

(114) There are many IES participants who prefer to have their vote be completely transparent, known to every other voter — public knowledge. They believe that using a vote to influence the creation of laws that others will be held responsible to, and yet being unwilling to openly discuss how one uses one's vote with the people who will be held responsible to those laws, is disrespectful or even unconscionable. Most IES participants thus far agree that it is a good idea to give voters an option to choose a transparent interactive vote, published by the electoral institution for all other voters to see.

(115) If more voters choose transparent ballots, then it may become more likely that anyone who tampers with tallies will become known to justice and administered severe sanctions as public deterrent, denunciation, and/or retribution for this crime. Alterations of tallies, whether deliberate or not, can be repaired much more quickly for accurate administration of candidacy. The security of the tallying process in an election may simply be superior when voters let their votes be known publicly. However, does the objective of dependable and secure tallies in the electoral process merit the deprivation of individual voters of the ability to have their choices be guaranteed the utmost possible secrecy if that is their preference? Participants in the IES thus far support the availability of periodic secret ballots for voters who prefer them.

(116) It has appeared from experience thus far that people who wish to be participants in the IES also prefer to have their votes be transparent. If that continues to be the case, then perhaps an informed prediction can be made about how security is impacted by offering each voter the choice to have a vote that is (1) secret and periodic, (2) confidential and interactive, or (3) transparent and interactive.

(117) If the existence of an interactive confidential ballot as an available option to voters is believed to compromise the ability to assure that tallies are reported accurately, then it is possible that voters could instead only be offered two options: a periodic secret ballot or an interactive transparent ballot. From looking at the results so far of voters involved in the interactive electoral system, there would not be any complaint about this by voters who choose to have a vote that they can change at any time that they wish. In fact, courts could explicitly affirm their authority to order the usage of interactive confidential ballots discontinued if security becomes a pressing and substantial concern as the IES is used with a larger electorate. Voters who would prefer to avoid having their decisions become public knowledge would then have to revert to the use of a periodic secret ballot, waiving their s. 3 *Charter* rights the rest of the time.

(118) The third aspect of security discussed in this section is the prevention of extortion of voters to influence their choices. Any example of a voter in the IES having been unwillingly induced to cast their vote differently from their genuine personal choice may strengthen the probability that security could be a pressing and substantial objective that would justify the periods of denial of democratic rights that are necessary to provide the utmost secrecy in a voter's usage of their ballot.

(119) A voter who foresees the possibility of being extorted in their electoral choices can choose a periodic secret ballot, waive their right to vote for the specified times, and then receive entirely

comparable protections as are offered in periodic elections of conventional governments. Extorting a voter's electoral choice would need to include pressure to choose an interactive ballot.

(120) In order for the potential for voter extortion to serve as justification for the denial of democratic rights, it may have to be demonstrated on a preponderance of probability that the ability of existing authorities to respond to complaints of extortion by individuals, and to provide protections to cease any such extortion, is sufficiently ineffective that decisions of a legislature may be expected to be altered due to a different composition of members than if all voters had been free to make their own personal choices without any unwelcome influence by anyone else.

(121) At the time of the enactment of the CIL *Charter*, the CIL holds the view that Canadian enforcement authorities are sufficiently effective at protecting individuals from extortion that it may be expected that tallies of interactive votes will always be accurate representations of the aggregate genuine tallies of voters making free choices. However, if it is argued that protections from extortion in Canada are lacking in effectiveness, then the CIL shall not dissent to the view that sufficient evidence of such ineffectiveness may serve as justification for courts to order the provision of interactive ballots discontinued until such time as authorities have re-established the capacity to provide protection from extortion. The CIL shall, in such a case, assert the view that the ineffectiveness of periodically elected legislative assemblies at directing the administration of the rule of law so as to provide these protections may be sufficient that even with the existing potential for coercion in society, an interactively elected legislative assembly may nonetheless provide more effective democratic legislative representation than conventional periodically elected governments.

(122) If any conceivable security concerns prompted by the cessation of denials of s. 3 *Charter* rights can be provided dependable measures for mitigation of those concerns, then unless it can be demonstrated on a preponderance of probability that those measures are proportionately ineffective, security will not be a pressing and substantial concern that would merit justification of the denial of s. 3 *Charter* rights as per the exclusive limits specified in s. 1.

5. avoiding prohibitive cost

(123) Courts may agree that a demonstration that the IES costs more public funds to operate than periodic elections would not in itself qualify as demonstrable justification for the sustained periods of denial of s.3 *Charter* rights that comprise periodic elections. In order for the cost to justify these denials of fundamental democratic rights, the cost may have to be demonstrated to be prohibitive, not simply more expensive. Specifically, since *Crawford*, *supra*, states that conflicting rights "require a balance to be achieved that fully respects the importance of both sets of rights", an allegation of increased costs of elections under the IES would have to show that the depletion of public funds due to the additional possible expense of elections would prevent the provision of some other remedial provision of rights and freedoms to members of society to justify expense as an objective that would warrant denial of s. 3 *Charter* rights.

(124) However, as presented in the previous section describing the objective of security, each voter can be given two options as to how to cast their vote: a ballot that is periodic and secret or else a ballot that is interactive and transparent (published by the electoral institution for the scrutiny of all other voters). It is conceivable that the maintenance of the electoral tallies would then be substantially less expensive to operate than the present system of periodic elections.

(125) It may be far less clear that costs of maintenance of the electoral system would remain low if a third option were available to each voter: a ballot that is interactive and confidential. It is possible that even if this option were included, the costs of operation would not approach a range that might be viewed as prohibitive by courts. Nonetheless, if it were demonstrated that providing this third option came with prohibitive costs, then there would still be an available option for voters who dissent to periods of denial of their fundamental democratic rights: the interactive transparent option described above.

(126) The CIL shall not dissent to any decision made by courts to order the provision of interactive confidential ballots discontinued if costs of providing this option become evidently prohibitive in the opinion of courts.

(127) The CIL expects that any attempt to argue that the electoral costs incurred by providing each member of an electorate the choice of a periodic secret ballot or an interactive transparent ballot may be expected to exceed the costs incurred by providing only a periodic secret ballot would be trivial to refute. The CIL shall invite transparent scrutiny of its legislative processes so that any evidence to this end available thus far, based on observation of participants in the IES, is available to any person who suspects that such a situation would lead to prohibitive costs. Unless and until a demonstration is made based on such evidence, cost might not succeed as an objective that courts find to satisfy s. 1 of the *Charter* to allow the government to maintain sustained periods of denial of s. 3 *Charter* rights.

6. mitigation of more pressing priorities

(128) If the Canadian electorate, and existing legislative authorities, focus on evaluating an interactive electoral system, to remain vigilant for evidence of collective objectives detrimentally impacted by constant availability of democratic rights, then this might have the potential to detract from the ability to deal with more pressing priorities of general public concern.

(129) Two examples of pressing priorities existing at the time of enactment of the CIL *Charter* are, for one, impacts upon the ecological capacities of humanity's home, Earth, caused by human activities, and for another, a pandemic on a scale not seen in a century, but with drastic increase in transmissibility due to the increase in worldwide transportation facilities.

(130) The CIL shall argue that the perpetuation of the IES may actually improve the ability of humanity to deal with more pressing priorities such as the examples given above based on two factors.

(131) Two factors that may commonly influence the success of mitigation measures for priorities such as the examples above include, first, a sufficient proportion of the populace trusting public information so as to believe such a priority exists, to be supportive of the measures in response, and to be compliant with the measures, and second, a sufficient proportion of the populace trusting public authorities, who are presiding over the measures, to do so in a way that does not provide special benefits for their affiliated interests nor manipulate state mechanisms to give government more powers over its citizens than is warranted by the severity of the situation. If either of these two aspects of mitigation measures are augmented, then the ability of the public to manifest strong measures of mitigation against situations of public distress may be improved. The improvement may be to the extent that the focus necessary by public authorities and citizens on how to respond to seeing their fellow citizens no longer denied their fundamental democratic rights, to the extent that this detracts from the abilities of public authorities and citizens to collaborate on other pressing priorities of society, may be subsequently surpassed by the ability of the IES to elicit stronger measures serving those other pressing priorities.

(132) If it cannot be proven on a preponderance of probability that the availability of the IES would not aid in mitigating situations of public concern that are more pressing priorities, then courts may not agree that such priorities justify a failure to provide a remedy for the denials of democratic rights.

G. responses by authorities

(133) If an ISS member contravenes federal Crown legislation for which the CIL has enacted alternative legislation, and it can be confirmed that relevant authorities are aware of the contravention and do not intend to intervene, then section 9 of the *Constitution Act, 1982* may be invoked by any other member who subsequently contravenes the same legislation. S. 9 states that “[e]veryone has the right not to be arbitrarily detained or imprisoned”. The CIL shall assert that it would be arbitrary for one person to contravene legislation in view of authorities with an expressed constitutional defence without intervention, while another person contravenes the same legislation and with the same defence but is then detained.

(134) The Public Prosecution Service of Canada (PPSC) is the federally mandated body to advise law enforcement agencies or investigative bodies on general matters relating to prosecutions and on particular investigations that may lead to prosecutions. An ISS member who wishes to ascertain whether a contravention of Crown legislation for which the CIL has enacted alternative legislation would receive intervention from authorities may, **after considering cautionary statements later herein**, send correspondence, including a notice of intention to contravene the legislation, to the most appropriate enforcement authority as well as the PPSC. If neither the enforcement authority nor the PPSC responds, then this may be considered due diligence in affirming that authorities are willing to uphold the Constitution by allowing ISS members to be subjected to CIL legislation in place of Crown legislation as a remedy for the denial of their democratic rights by the Crown.

(135) According to section 53(1)(a) of the Canada *Supreme Court Act,* "[t]he Governor in Council may refer to the Court for hearing and consideration important questions of law or fact concerning the interpretation of the Constitution Acts".

(136) Section 13 of the *Constitution Act, 1867* states that "[t]he Provisions of this Act referring to the Governor General in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada". No clarification or alteration on this interpretation is made in the *Supreme Court Act*.

(137) According to section 4 of the *Department of Justice Act*, "[t]he Minister [of Justice] is the official legal adviser of the Governor General".

(138) If the Minister of Justice, aka Attorney General, advises the Governor General to refer questions about the CIL's section 3 *Charter* arguments to the courts, and Her or His Excellency assents to the advice, then the CIL shall be grateful for the integrity and responsiveness of Her Majesty's government for a new reason, in addition to several other reasons for such gratitude.

(139) The CIL shall suggest the following questions to be asked of the courts.

1. With observations now available, since December 2010, of existence of an independently conceived organization in Canada that uses an interactive electoral system — meaning each voter has one vote that can be cast for any candidate for an elected position at any time that the voter wishes and changed to any other candidate at any time after that, with no deadline or finish date — do the periods of time under the Crown's legislative assemblies when fundamental democratic rights in s.3 of the *Constitution Act, 1982* are not available to be exercised qualify as denials of these rights as per s.24?
2. If the first question is answered in the affirmative, then can the denials of these rights be saved under s.1 as reasonable limits, demonstrably justified in a free and democratic society?
3. If the second question is answered in the negative, and a remedy for these denials is considered —to allow an organization that uses the interactive electoral system to alter laws applicable to its members, such laws initially being held in force by legislatures of the Crown that do deny section 3 *Charter* rights for periods of time, if the interactively elected legislative assembly of the organization makes a resolution to do so in accordance with its legislative process— then can the conditions be exhaustively stated that would be necessary for this remedy to be considered appropriate and just?

(140) ISS members who intend to contravene federal Crown legislation for which the CIL has enacted alternative legislation are advised to direct the attention of authorities and the PPSC to the possibility of reference questions being directed to the courts as per the *Supreme Court Act* s. 53(1)(a). This may potentially provide an answer to any questions about constitutional

protection for ISS members from Crown laws without the need of concern for imperilment of one's liberty due to intervention by authorities for actions that the ISS member may have believed were protected based upon a reasonable interpretation of the Constitution of Canada.

(141) If reference questions are not initiated by the designated authorities, then ISS members are advised to consider the words of Master Peter Keighley, of the Supreme Court of British Columbia. An ISS member was seeking a ruling from the courts on the applicability of the denial of section 3 *Charter* rights to potential future judicial proceedings, but without specifying any particular existing proceedings underway such as criminal charges or a law suit. Master Keighley therefore referred to the ISS member's petition as an "abstract" claim.

(142) Master Keighley was asked if, in the event that a person is denied their rights as guaranteed in the *Charter*, but the remedy asked by the person is not appropriate or just, it is within the court's realm to suggest a remedy that would be appropriate and just. Master Keighley's response was that "If the court's prepared to move into that realm, it then has to consider whether your claims are frivolous, vexatious, scandalous, or an abuse of process. Then the court is going to get into a consideration of whether claims should be considered in the abstract. Should the court, which is an expensive operation to run at this level and the various appellate levels all the way up to the Supreme Court of Canada, get engaged in deciding issues in the abstract. Should it not, the argument will go, confine itself to situations where an individual's rights are being put into question by a particular operation of the law. In other words, say a charge under the income tax act, a charge under federal drug legislation, a charge under the criminal code or provincial quasi criminal statutes, in those circumstances the court will probably find it far more convincing that *Charter* issues could be invoked and argued. But if you want to bring a *Charter* application so to speak in the abstract saying look I'm not being subjected to the sharp end of any particular provincial or federal legislation, I'm not being charged with anything, I'm not being prosecuted, I'm not being sued, but I would like to have this issue resolved, I think I have a *Charter* right which in the abstract is being infringed by the existence of this legislation. That's starting to sound like frivolous, vexatious, scandalous, in the legal sense, an abuse of process of the court."

(143) This hearing was conducted on October 17, 2014, in New Westminster, BC, in matter number 106942. A transcript is available of the hearing, and the above quoted text can be found on pp. 11 and 12.

(144) The CIL shall advise ISS members to be deliberative and conscientious in balancing their pragmatic benefits from avoiding adverse attention from enforcement authorities against the idealistic wish to avoid forgoing liberties that a reasonable interpretation of the Crown's supreme law of Canada appears to allow. To be more specific, if an ISS member contravenes Crown legislation that is legislated otherwise by the CIL, believing in good faith that the Constitution protects their right to be subjected to legislation enacted in a manner that does not deny fundamental democratic rights for sustained periods of time, but courts subsequently rule that periods of time when democratic rights are not available to be exercised do not qualify as

denials of these rights, then the ISS member may be subjected to punitive measures that could have a substantially detrimental impact upon their life, such as a criminal record, fines, and/or time in prison. A member who is not pragmatically willing to risk this eventuality may wish to avoid indulging in the liberties that the Constitution of Canada might appear, as described in the arguments in Appendix A of the CIL *Charter* and supplemented herein, to lawfully protect. If authorities refuse to exercise appropriate channels to provide a clear judicial interpretation on a constitutional matter for which differing reasonable interpretations would lead to different outcomes (such as stayed proceedings versus a criminal sentence), then the risk of the less desirable outcome may regrettably make it more desirable to assume that the respective liberties shall not be protected under the Constitution. The CIL shall be supportive of the view that it would qualify, legally, as fraud to lead an ISS member to believe with certainty that contravening Crown legislation for which the CIL has enacted alternative legislation would lead to a stay of proceedings rather than a conviction, until such time as courts have made a ruling specifying an extent of validity to the claims made in Appendix A of the CIL *Charter* and herein.

(145) **An ISS member who contravenes Crown legislation for which the CIL has enacted alternative legislation does so exclusively at the member's own personal risk, relinquishing any right to hold the CIL, its members, or other ISS members in any way responsible for any measures taken by the Crown in response to the contravention.** The CIL shall oppose the view that a pre-requisite of ethical entitlement to a human right is the willingness to take on personal risk to aid, or act in solidarity with, another person who is attempting to assert what they believe are, ethically, their human rights. However, if the constitutional reference questions herein are not brought before courts, then the only way to know for certain whether the constitutional arguments herein hold judicial merit under the Constitution of Canada is for an ISS member to contravene the Crown's legislation and make these arguments in defence to any resulting charges. If no member takes this risk, then what appears from a reasonable interpretation of the Constitution of Canada to be a continuing unlawful injustice by the Crown may continue.