

how to refute the constitutional defence for cocaine sales by licensees of the Canada Interactive Legislature's Controlled Drugs and Substances Committee of Canada

by Psamn Frank

You may be reading this document because you would prefer for me to be required by law to cease my [cocaine sales](#) or limit them in some way. I am, first and foremost, fundamentally committed to democracy. I consider it my duty to provide you with the assistance to engage the democratic process to most effectively pursue whatever agenda you feel strongly about, even if I disagree with it, even if it restricts me in some way that I would prefer not to be restricted. While I maintain that the present status I have achieved under the law is the license to [transact cocaine](#) subject to a set of concisely defined [regulations](#), I nonetheless will share everything that I have learned in my research to help you learn what elements of the democratic process you could use to your advantage so that you may have your wish (restrictions on my sales) considered by people authorized to amend the regulations that I am governed by. I want you to feel fully democratically enfranchised far more than I want to have things my way on a law that I am dissatisfied with. I believe that this can be called resolving our differences respectfully.

Two laws invoked in my constitutional defence for my cocaine sales are sections 3 and 24 of the *Constitution Act, 1982*, in the Part of that *Act* named the *Canadian Charter of Rights and Freedoms*, commonly referred to in Canada as “the *Charter*”.

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

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

I have made the argument to authorities, in my defence for my cocaine sales, that section 3 *Charter* rights (voting and pursuing candidacy) are not available to be exercised for several years at a time under the Crown's federal and provincial legislatures, and that this may qualify as a denial of these rights as per section 24. I don't know of any other reason why authorities may have declined from prosecuting me for trafficking cocaine, other than that they believe that my defence is sufficiently consistent with precedent that prosecution may be considered malicious. So if you would prefer to see these periods of time not regarded as denials of these rights, then I offer my sympathy that Canadian justice appears to perhaps not share your view.

With an interactive electoral system (IES), you have one vote that you can cast for any candidate any time you like and change to any other candidate any time after that, with no

deadline and no finish date. Section 3 *Charter* rights are available to be exercised at all times, never denied.

The Canada Interactive Legislature (CIL) uses the IES for its members to be chosen by citizens of Canada. The elected members of the CIL receive requests from CIL adherents for alterations to federal laws. This gives CIL adherents the ability to have laws made for them in a way that does not deny their fundamental constitutional democratic rights for several years at a time, or in fact ever. The present elected members of the CIL have enacted alternative laws for CIL adherents in Canada, to be held in force over them instead of the *Controlled Drugs and Substances Act*. Amendments to this Act require a resolution by the House of Commons, which denies section 3 *Charter* rights for several years at a time.

The Supreme Court of Canada (SCC) has stated that section 1 of the *Constitution Act, 1982* constitutes the exclusive criteria for limits on section 3 *Charter* rights.

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

I believe that the SCC's description, of when they consider it justifiable for limits to be placed on rights and freedoms, can be most briefly summed up by saying that you must describe a pressing and substantial objective that you can demonstrate, on a preponderance of probability, is achieved by limiting the right or freedom.

Some guidance that the SCC gives to help gain some context on what might be considered a valid pressing and substantial objective are some "values and principles essential to a free and democratic society". These include, "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".

One example of an objective that the SCC has agreed is sufficiently pressing and substantial that it may warrant a limit on a right or freedom is "to maintain and enhance the integrity of the electoral process". In *Harvey versus New Brunswick (Attorney General)*, an elected member of the New Brunswick provincial legislative assembly had induced a person to vote despite knowing that the person was underage and thus not legally eligible to vote, which was illegal under New Brunswick law, the punishment including disqualification from being a candidate for five years.

The court agreed that the law disqualifying a person from candidacy is a denial of the right in section 3 of the *Constitution Act, 1982*: "to be qualified for membership therein". However, the court found that it is a valid pressing and substantial objective in a free and democratic society "to maintain and enhance the integrity of the electoral process". So the court allowed the denial of the right and upheld the disqualification. This objective has been used in other cases to allow a right or freedom to be denied or infringed as well.

Once a valid objective has been presented to the court, then the next thing that the SCC requires before it allows the limit on the right or freedom to be upheld is that you show, on a preponderance of probability, that there is rational connection between the limit on the right and the achievement of the objective. There will generally be evidence required that the objective is achieved by denying the right, but in the absence of determinative scientific evidence, the court may accept logic, reason, and some social science evidence. You also must show the court that the minimum possible impairment of the right has been exercised to achieve the objective, and that the effects of the limit are proportional to the importance of the objective.

So one way that you might persuade courts to disregard my constitutional defence and convict me of trafficking cocaine would be to provide evidence, based on observations of the IES being used in practice to choose legislators, that the integrity of the electoral process is somehow detrimentally impacted by giving voters the ability to exercise their democratic rights whenever they each wish instead of denying them the right to vote for several years at a time.

There are people in Canada who have had their lives drastically impacted by being labelled criminals on national public record, and being required to reveal this to any potential employer where they seek work, all because of being in possession of far less drugs than I am presently in possession of. If you doubt the validity of my defence, then I think you would be acting in deplorable conscience to fail to demand that I be charged for my conduct. If my constitutional defence is absurd, or even just inadequately demonstrated to be valid, then it is an absolute injustice to those people that I have not been charged. If outrage is something you are capable of, then this situation should have you angry unless you are a hypocrite.

If, on the other hand, you see potential validity to my defence, then consider that if you look through Canadian court decisions where a party has claimed that their rights or freedoms were being denied or infringed by having a law enforced upon them, you may generally find that the government tries to persuade the court to allow the denial or infringement of the right by naming one or more objectives that the government claims are achieved as a result. In some cases, the court's response will be that the objective does not qualify as pressing and substantial, so it is not a valid justification for the denial or infringement. In other cases, the court's response will be that the objective does qualify as pressing and substantial, but the government has not provided evidence or reasoning to demonstrate that the objective is achieved as a result of the denial or infringement. But there are also cases where the court will agree that a valid objective has been demonstrated to be achieved and thus allows the government to enforce the law in question despite the rights or freedoms being denied or infringed.

Despite having most certainly not looked at every single objective that courts have ever approved as valid reasoning to deny or infringe a right or freedom, my research has led me to the sincere belief that integrity of the electoral process (which may include continuity and stability) is the most likely objective conceived by the government for section 1 justification thus far that might, with sufficient evidence, persuade courts to allow the government to deny democratic rights for several years at a time, and thus void my defence so that I would no longer be able to transact cocaine without intervention by authorities.

There are several other relevant objectives that I have found in court decisions involving section 1 of the *Charter*, some successful and some not. I will get back to them after discussing another way that my cocaine sales could be lawfully ordered to be restricted.

I am presently the only active candidate for the position of lead representative of the Canada Interactive Legislature (CIL). Someone could run against me with the agenda of completely revoking the CIL's exemption from the *Controlled Drugs and Substances Act*. However, it is not as simple as getting more votes than me and then changing the CIL's relevant laws.

First of all, I have a guaranteed term of office of three months. After a candidate gains more votes than me, I stay in office for three months. If I gain the lead back during that time, then I stay in office until another candidate gains the lead over me again, at which point my full three month guaranteed term of office begins again. So replacing me as lead representative requires gaining a lead over me in number of votes, and then, for three months, preventing me from regaining the lead.

Once you become lead representative, you then have to deal with vetoes. The second, third, and fourth place candidates have vetoes over any decision you wish to make to amend CIL legislation. However, the only allowable purpose of a veto is to delay the motion for a reasonable length of time to assure that any other suggested ways to amend the motion are considered, to assure any interests of any relevant minorities have some material influence on the verdict. If vetoes are being used beyond this purpose, then you can request a judicial panel to be assembled to consider ordering the veto lifted and a compromise reached.

Equal numbers of appointees are chosen for the judicial panel by both parties: the vetoing party (me in this hypothetical case) and the party seeking to put the legislative changes in force (revoking the exemption for CIL adherents from the *Controlled Drugs and Substances Act* in this case). There is a chair appointed from the judiciary whose main duty is to impartially facilitate the panel to hear everything that all relevant parties wish to present and then to facilitate a decision supported by at least 2/3 of the panel's members to rule on a compromise that includes the interests of all parties.

It is important to note that it may be impossible to persuade a court that a pressing and substantial objective had been observed to be detrimentally impacted by making the right to vote available to all citizens at all times unless one had first taken the above steps to pursue the alteration of the legislation enacted thus far by the CIL as alternative laws to the *Controlled Drugs and Substances Act*, because according to the SCC, "logic, reason, and some social science evidence" is a valid demonstration of such an impact "in the absence of determinative scientific evidence". If an available opportunity to acquire scientific evidence has not even been taken advantage of by a party seeking to limit a right, then courts may regard the request for the limit on the right to be made without constitutionally adequate due diligence.

So the overall strategy that I believe is necessary to refute my defence and have me ordered to stop selling cocaine or face prosecution is to find someone to run against me as a candidate for

lead representative of the CIL with the agenda of revoking the CIL's exemption for its adherents from the *Controlled Drugs and Substances Act*, while observing the electoral process to see if any evidence can be found of any deficiency caused to its integrity by allowing voters constant access to their rights, and if no such evidence comes available, then if supporters of this revocation of exemption from Crown drug laws for CIL adherents succeed, the CIL could still revoke my license (and any other adherents' licenses if any others have successfully applied for one at that point) so that the CIL would [withhold authentication](#) of my section 3 *Charter* defence for publicly selling cocaine, making it lawful for authorities to intervene. Well done.

You may also wish to look at other objectives previously recognized as valid by courts for section 1 *Charter* limits to be allowed, and later I will describe one more that I have found in previous court decisions, that I believe could succeed in courts to be found as sufficient justification for denials of section 3 *Charter* rights for several years at a time. You may also wish to conceive of objectives that you find pressing and substantial that you believe are detrimentally impacted. To do that, it might be useful to know some objectives that have been tried by the government that have not succeeded. I would like to offer my advice as to the best case of this sort that may help you with getting a feel for what to avoid while attempting to define an objective for denying section 3 *Charter* rights that would be regarded as valid by courts consistently with SCC precedent.

As I understand it, there are specific people with the authority to choose which objectives to provide to courts in an effort to allow the denial of a right, and they are all accredited lawyers hired as prosecutors by the government. So if you find an objective that you believe is compromised by allowing voters constant access to their democratic rights, and the prosecutors working for the Ministry of Justice are not willing to include your suggested objective in their arguments, or at least explain to you the principles of justice that might, in their opinion, actually cause their case to be diminished by including your suggestion, then they may be failing to uphold the democratic principle enshrined in the Crown's supreme law of Canada. The SCC states that democracy requires dissenting voices to be considered. The fact that there has been no action against me may indicate that prosecutors are in a position to be receptive to your suggestion.

Now, for an unsuccessful objective, in *Figueroa v. Canada (Attorney General)*, there was a law that disallowed candidates in federal elections from certain advantages if they weren't members of political parties that had a reasonable chance of forming a majority government, advantages like having the name of their party printed on ballots and being able to give tax deductible receipts for campaign donations. It was alleged that this was an unjustifiable infringement of section 3 *Charter* rights and should thus be struck down. As it turned out, for the most part, the SCC agreed: several of the disputed laws were declared to be of no force or effect as per section 52 of the *Constitution Act, 1982*, below.

52 (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

One of the objectives given by the government in their claim that the limits on section 3 *Charter* rights were demonstrably justifiable was “ensuring a viable outcome for our form of responsible government”. The government claimed that majority governments provide more effective governance than governments that consist of coalitions between or among various political parties. The SCC states that the Attorney General of Canada has provided no evidence of this.

The SCC states that it is difficult to accept this objective as valid. However, the SCC also states that even assuming hypothetically that there were collective benefits from majority governments such as continuity and stability, there may be no evidence that denying equal benefits in the electoral process from minority candidates achieves the objective of making majority governments more likely.

So even though the SCC does not outright deny any validity to this objective, their dissuasive reaction to this objective may be the reason that it has never been used by the government in any subsequent case, unlike the other objective I described earlier, “to maintain and enhance the integrity of the electoral process”, which has been used several times.

Two other objectives that have been unsuccessfully tried by the government to justify denying section 3 *Charter* rights are “(1) to enhance civic responsibility and respect for the rule of law; and (2) to provide additional punishment, or ‘enhanc[e] the general purposes of the criminal sanction’”. The SCC describes these objectives as vague and symbolic.

In *Sauvé v. Canada (Chief Electoral Officer)*, there was a law that prisoners in correctional institutions for two years or more not be allowed to vote in federal elections. This law was declared by the SCC to be of no force or effect in 2002. Prisoners have not been denied the right to vote ever since then. In addition to the above two objectives being vague and symbolic, the SCC states that even if there was some benefit to society gained by accomplishing these objectives, denying penitentiary inmates the right to vote is more likely to send messages that undermine respect for the law and democracy than messages that enhance those values. They further state that using the denial of rights as punishment is suspect, and denying the right to vote does not comply with the requirements for legitimate punishment established by Canadian jurisprudence.

Another objective that was successful at receiving the SCC’s permission for the government to deny a right or freedom is “electoral fairness”. In *Harper v. Canada (Attorney General)*, there was a law against any third party spending more than a specified maximum for election advertising. It was claimed that this is a violation of the freedom of expression, as protected in section 2(b) of the *Canadian Charter of Rights and Freedoms*. The SCC agrees that the law restricting funds spent on election advertising is a denial of freedom of expression; however, they find that electoral fairness is a valid pressing and substantial objective that has been demonstrated to be achieved through this denial. Section 2(b) *Charter* rights have been denied in this way ever since. If the evidence accepted by the SCC, that this denial helps makes elections more fair, is true, then elections have been more fair as a result.

The possibility has been suggested that the IES gives people with more spare time more power to influence public policy than people with less spare time. This might be considered a form of electoral unfairness. One argument I would make in response to this is that people with less spare time already have less power to influence public policy than people with more spare time under periodic elections, and they would continue to have less power to influence public policy under the IES, but both groups would have more power to influence public policy under the IES than under periodic elections, so overall, it makes the democratic process more fair for both groups. Furthermore, I would argue that people who sacrifice spare time out of their lives to become more informed about public policy decisions are performing a civic duty that should in fact be rewarded. To fail to provide a stronger influence over public policy to people who make this sacrifice may therefore in itself be unfair.

There may be other ways that electoral fairness could be argued to justify denying section 3 *Charter* rights for several years at a time. Like the integrity of the electoral process, the first objective discussed above, it has been successful more than once in court. It is certainly an objective to keep in mind while observing the IES in progress. If evidence is found that this objective is compromised because of all voters having constant access to their democratic rights, then it could be used to void my defence and thus terminate my ability to sell cocaine without intervention by authorities.

If anyone who would like to see me required to stop selling cocaine has read this far and wishes for me to continue to help them find legal ways to achieve this, and asks for me to continue to describe more objectives that have been used by the government to solicit courts to allow the denial of section 3 *Charter* rights, then there is certainly more research that I am willing to share. Please get in touch with me if that is the case at psamfrank@gmail.com or 604-765-1496 (you can also find my contact information on page 2 [here](#)) and I shall elaborate further on my research. It is an honour for me to have received your respectful attention to what I have written so far and I offer my humble gratitude for that.

If, on the other hand, your motive for your interest in my work is the desire to scrutinize whether the utmost care has been taken by the Canada Interactive Legislature to create [regulations](#) governing my sales that induce every possible effort to assure that I and any other CIL licensees are heavily incentivized to make the safety of users the paramount concern in our sales, and that we as licensees make a genuine effort to exhibit a dissuasive attitude toward users and try to assure that nobody is encouraged by us to use who might not otherwise have used without our influence, then your criticisms, ideas, and concerns are of the greatest importance to me and I urge you to please be in contact with me to communicate them. It is my great honour to be sufficiently worthy of your interest that you took the time to read this, and I thank you very kindly for it.

IN SUMMARY

Here are four objectives previously heard in courts in attempts to justify denying rights:

1. to maintain and enhance the integrity of the electoral process [justifies denial of candidacy rights for inducing ineligible voting],
2. ensuring a viable outcome for our form of responsible government [attempts to justify denying several electoral rights for non-majority-party candidates],
3. (1) to enhance civic responsibility and respect for the rule of law; and (2) to provide additional punishment, or “enhanc[e] the general purposes of the criminal sanction” [attempts to justify denying prisoners the right to vote], and
4. electoral fairness [justifies denying right to spend excessive funds on advertising for candidates].

Numbers 1 and 4 were accepted by courts. Numbers 2 and 3 were not accepted by courts.

To come up with objectives that justify denying rights, the Supreme Court of Canada (SCC) has given five values and principles, not a complete list but a start, that are essential to a free and democratic society:

1. respect for the inherent dignity of the human person,
2. commitment to social justice and equality,
3. accommodation of a wide variety of beliefs,
4. respect for cultural and group identity, and
5. faith in social and political institutions which enhance the participation of individuals and groups in society

As I understand from my research, if observations of the Canada Interactive Legislature (CIL) reveal evidence that objectives 1 or 4 (in the first list above) can be demonstrated, on a preponderance of probability, to be detrimentally impacted because the CIL makes fundamental democratic rights available at all times, instead of denying those rights for several years at a time, then my defence can be nullified and I can be threatened with prosecution if I do not discontinue my cocaine sales. If another objective is conceived that is not included in the first list above but is consistent with the values and principles in the second list above, then it is possible that courts could accept it as a justification for denying democratic rights for several years at a time, nullifying my defence and making it possible for me to be prosecuted.

Find a candidate to run against me for the position of lead representative of the CIL on the agenda of revoking the CIL’s exemption for its adherents from the *Controlled Drugs and Substances Act*, and watch for evidence that an objective, as described above, is detrimentally impacted because of giving voters freedom to make choices whenever they wish. If no such evidence becomes available, you may be able to influence the CIL to make these changes anyway, which would terminate my ability to sell cocaine without intervention.