

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FOR THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

**LEE CARTER, HOLLIS JOHNSON, DR. WILLIAM SHOICHET, THE BRITISH
COLUMBIA CIVIL LIBERTIES ASSOCIATION and GLORIA TAYLOR**

Appellants

- and -

**THE ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL OF
BRITISH COLUMBIA**

Respondents

- and -

**THE ATTORNEY GENERAL OF ONTARIO, THE ATTORNEY GENERAL OF
QUEBEC, COUNSEL OF CANADIANS WITH DISABILITIES AND THE CANADIAN
ASSOCIATION FOR COMMUNITY LIVING, CHRISTIAN LEGAL FELLOWSHIP,
CANADIAN HIV/AIDS LEGAL NETWORK AND THE HIV & AIDS LEGAL CLINIC OF
ONTARIO, ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA,
PHYSICIANS' ALLIANCE AGAINST EUTHANASIA, EVANGELICAL FELLOWSHIP
OF CANADA, CHRISTIAN MEDICAL AND DENTAL SOCIETY OF CANADA,
CANADIAN FEDERATION OF CATHOLIC PHYSICIANS' SOCIETIES, DYING
WITH DIGNITY, CANADIAN MEDICAL ASSOCIATION, CATHOLIC HEALTH
ALLIANCE OF CANADA, CRIMINAL LAWYERS' ASSOCIATION (ONTARIO),
FAREWELL FOUNDATION FOR THE RIGHT TO DIE, ASSOCIATION
QUEBECOISE POUR LE DROIT DE MOURIR DANS LA DIGNITE, CANADIAN
CIVIL LIBERTIES ASSOCIATION, CATHOLIC CIVIL RIGHTS LEAGUE, FAITH
AND FREEDOM ALLIANCE AND PROTECTION OF CONSCIENCE PROJECT,
ALLIANCE OF PEOPLE WITH DISABILITIES WHO ARE SUPPORTIVE OF LEGAL
ASSISTED DYING SOCIETY, CANADIAN UNITARIAN COUNSEL, and
EUTHANASIA PREVENTION COALITION AND EUTHANASIA PREVENTION
COALITION – BRITISH COLUMBIA**

Interveners

FACTUM OF THE INTERVENER CRIMINAL LAWYERS' ASSOCIATION
(Rule 42 of the *Rules of the Supreme Court of Canada*)

SACK GOLDBLATT MITCHELL LLP
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Marlys Edwardh
Tel: 416-979-4380
Fax: 416-979-4430
Email: medwardh@sgmlaw.com

Daniel Sheppard
Tel: 416-979-9442
Fax: 416-979-4430
Email: dsheppard@sgmlaw.com

**Counsel for the Intervener
Criminal Lawyers' Association (Ontario)**

GOWLING LAFLEUR HENDERSON LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel: 613-786-8695
Fax: 613-788-3509
Email: lynne.watt@gowlings.com

**Ottawa Agent for the Intervener
Criminal Lawyers' Association (Ontario)**

ORIGINAL TO: THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

COPIES TO:

**FARRIS, VAUGHAN, WILLS & MURPHY
LLP**
25th Floor, 700 West Georgia Street
Vancouver BC, V7Y 1B3

Joseph J. Arvay, Q.C.
Alison Latimer
Shelia M. Tucker
Tel: 604-684-9151
Fax: 604-661-9349
Email: jarvay@farris.com

Counsel for the Appellants

GOWLING LAFLEUR HENDERSON LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel: 613-786-0171
Fax: 613-788-3587
Email: jeff.beedell@gowlings.com

Ottawa Agent for the Appellants

ATTORNEY GENERAL OF CANADA

50 O'Connor Street, Suite 500
Ottawa ON, K1A 0H8

Robert J. Frater

Melissa Nichols

BJ Wray

Donnaree Nygard

Tel: 613-670-6289

Fax: 316-954-1920

Email: robert.frater@justice.gc.ca

**Counsel for the Respondent Attorney
General of Canada**

**ATTORNEY GENERAL OF BRITISH
COLUMBIA**

Legal Services Branch

6th Floor – 1001 Douglas Street

PO Box 9280 Stn. Prov. Govt.

Victoria BC, V8W 9J7

Bryant A. Mackey

Christina Drake

Tel: 250-356-9280

Fax: 250-356-9154

Email: bryant.mackey@gov.bc.ca

christia.drake@gov.bc.ca

**Counsel for the Respondent Attorney
General of British Columbia**

ATTORNEY GENERAL OF ONTARIO

720 Bay Street, 4th Floor

Toronto, ON M5G 2K1

Zachary Green

Tel: 416-326-4460

Fax: 416-326-4015

Email: zachary.green@ontario.ca

**Counsel for the Intervener Attorney
General of Ontario**

ATTORNEY GENERAL OF CANADA

50 O'Connor Street, Suite 500
Ottawa ON, K1A 0H8

Robert Frater

Tel: 613-670-6289

Fax: 613-954-1920

Email: robert.frater@justice.gc.ca

**Ottawa Agent for the Respondent Attorney
General of Canada**

BURKE-ROBERTSON

441 MacLaren Street, Suite 200

Ottawa ON, K2P 2H3

Robert E. Houston, Q.C.

Tel: 613-236-9665

Fax: 613-235-4430

Email: rhouston@burkerobertson.com

**Ottawa Agent for the Respondent Attorney
General of British Columbia**

BURKE-ROBERTSON

441 MacLaren Street, Suite 200

Ottawa ON, K2P 2H3

Robert E. Houston, Q.C.

Tel: 613-236-9665

Fax: 613-235-4430

Email: rhouston@burkerobertson.com

**Ottawa Agent for the Intervener Attorney
General of Ontario**

ATTORNEY GENERAL OF QUEBEC

1200, Route de l'Église, 2ème étage
Quebec QC, G1V 4M1

Sylvain Leboeuf

Sylviane Goulet

Tel: 418-643-1477

Fax: 418-644-7030

Email: sylvain.leboeuf@justice.gouv.qc.ca

**Counsel for the Intervener Attorney
General of Quebec**

BORDEN LADNER GERVAIS LLP

1200 – 200 Burrard Street
Vancouver, B.C. V7X 1T2

Agnus M. Gunn, Q.C.

Tel: 604-687-5744

Fax: 604-687-1415

**Counsel for the Intervener Alliance of
People with Disabilities who are Supportive
of Legal Assisted Dying Society**

**FARRIS, VAUGHAN, WILLS & MURPHY
LLP**

25th Floor, 700 West Georgia Street
Vancouver BC, V7Y 1B3

Tim A. Dickson

R.J.M. Andersoff

Tel: 604-661-9341

Fax: 604-661-9349

Email: tdickson@farris.com

**Counsel for the Intervener Canadian
Unitarian Council**

NOËL & ASSOCIÉS

111 Champlain Street
Gatineau QC, J8X 3R1

Pierre Landry

Tel: 819-771-7393

Fax: 819-771-5397

Email: p.landry@noelassociés.com

**Ottawa Agent for the Intervener Attorney
General of Quebec**

BORDEN LADNER GERVAIS LLP

World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: 613-237-5160

Fax: 613-230-8842

Email: neffendi@blg.com

**Ottawa Agent for the Intervener Alliance of
People with Disabilities who are Supportive
of Legal Assisted Dying Society**

BORDEN LADNER GERVAIS LLP

World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: 613-237-5160

Fax: 613-230-8842

Email: neffendi@blg.com

**Ottawa Agent for the Intervener Canadian
Unitarian Council**

GRATL & COMPANY
302-560 Beatty Street
Vancouver, BC V6B 2L3

Jason B. Gratl
Alison M. Latimer
Tel: 604-697-1919
Fax: 604-608-1919

**Counsel for the Intervener Farwell
Foundation for the Right to Die**

MILLER THOMPSON LLP
3000, 700 – 9th Avenue SW
Calgary, AB T2P 3V4

Gerald D. Chipeur, Q.C.
Tel: 403-298-2425
Fax: 403-262-0007

**Counsel for the Intervener Christian Legal
Fellowship**

GEOFFREY TROTTER LAW CORP.
Suite 1700 – 1185 West Georgia Street
Vancouver, BC V6E 4E6

Geoffrey Trotter
Tel: 604-678-9190
Fax: 604-259-2459
Email: gt@gtlawcorp.com

**Counsel for the Intervener Evangelical
Fellowship of Canada**

GOWLING LAFLEUR HENDERSON
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Guy Régimbald
Tel: 613-786-0197
Fax: 613-563-9869
Email: guy.regimbald@gowlings.com

**Ottawa Agent for the Intervener Farwell
Foundation for the Right to Die**

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: 613-695-8855 x102
Fax: 613-695-8580
Email: mfmajor@supremeadvocacy.ca

**Ottawa Agent for the Intervener Christian
Legal Fellowship**

VINCENT DAGENAIS GIBSON LLP
260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos
Tel: 613-241-2701
Fax: 316-241-2599
Email: albertons@vdg.ca

**Ottawa Agent for the Intervener
Evangelical Fellowship of Canada**

SCHER LAW PROFESSIONAL CORP.

69 Bloor Street East, Suite 210
Toronto, ON M4W 1A9

Hugh R. Scher

Geoff Cowper, Q.C.

Tel: 416-515-9686

Fax: 416-969-1815

Email: hugh@sdllaw.ca

**Counsel for the Intervener Euthanasia
Prevention Coalition and Euthanasia
Prevention Coalition – British Columbia**

FASKIN MARTINEAU DUMOULIN LLP

55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5

Yael Wexler

Tel: 613-236-3882

Fax: 613-230-6423

Email: ywexler@faskin.com

**Ottawa Agent for the Intervener Euthanasia
Prevention Coalition and Euthanasia
Prevention Coalition – British Columbia**

BAKERLAW

4711 Young Street, Suite 509
Toronto ON M2N 6K8

David Baker

Sarah Mohamed

Tel: 416-533-0040

Fax: 416-553-0050

Email: dbaker@bakerlaw.ca

**Counsel for the Interveners Council of
Canadians with Disabilities and the
Canadian Association for Community
Living**

SUPREME ADVOCACY LLP

100 – 340 Gilnour Street
Ottawa, ON K2P 0R3

Marie-France Major

Tel: 613-695-8855 x102

Fax: 613-695-8580

Email: mfmajor@supremeadvocacy.ca

**Ottawa Agent for the Interveners Council of
Canadians with Disabilities and the
Canadian Association for Community
Living**

**NORTON ROSE FULBRIGHT CANADA
LLP**

1, Place Ville Marie, Bureau 2500
Montreal, QC H3B 1R1

Pierre Bienvenu

Andres C. Garin

Vincent Rochette

Tel: 514-847-4452

Fax: 514-286-5474

Email: pierre.bienvenu@nortonrose.com

**Counsel for the Intervener Physicians'
Alliance Against Euthanasia**

**NORTON ROSE FULBRIGHT CANADA
LLP**

1500-45 O'Connor Street
Ottawa, ON K1P 1A4

Sally Gomery

Tel: 613-780-8604

Fax: 613-230-5459

Email: sally.gomery@nortonrose.com

**Ottawa Agent for the Intervener Physicians'
Alliance Against Euthanasia**

VINCENT DAGENAIS GIBSON LLP

260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos

Tel: 613-241-2701

Fax: 316-241-2599

Email: albertons@vdg.ca

**Counsel for the Interveners Christian
Medical and Dental Society of Canada**

VINCENT DAGENAIS GIBSON LLP

260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Albertos Polizogopoulos

Tel: 613-241-2701

Fax: 316-241-2599

Email: albertons@vdg.ca

**Counsel for the Intervener Canadian
Federation of Catholic Physicians' Societies**

**ASSOCIATION FOR REFORMED
POLITICAL ACTION (ARPA) CANADA**

1 Rideau Street, Suite 700
Ottawa, ON K1N 8S7

Andre Schutten

Tel: 613-297-5172

Fax: 613-670-5701

Email: andre@arpacanada.ca

**Counsel for the Intervener Association for
Reformed Political Action Canada**

**PALIARE, ROLAND, ROSENBERG,
ROTHSTEIN LLP**

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Gordon Capern

Michael Fenrick

Tel: 416-646-4311

Fax: 416-646-4301

Email: gordon.capern@paliareroland.com

**Counsel for the Interveners Canadian
HIV/AIDS Legal Network and the HIV &
AIDS Legal Clinic of Ontario**

SACK GOLDBLATT MITCHELL LLP

20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Cynthia Petersen

Kelly Doctor

Tel: 416-977-6070

Fax: 416-591-7333

Email: cpetersen@sgmlaw.com

**Counsel for the Intervener Dying with
Dignity**

POLLY FAITH LLP

80 Richmond Street West, Suite 1300
Toronto, ON M5H 2A4

Harry Underwood

Tel: 416-365-6446

Fax: 416-365-1601

Email: hunderwood@polleyfaith.com

**Counsel for the Intervener Canadian
Medical Association**

SUPREME ADVOCACY LLP

100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Tel: 613-695-8855 x102

Fax: 613-695-8580

Email: mfmajor@supremeadvocacy.ca

**Ottawa Agent for the Interveners Canadian
HIV/AIDS Legal Network and the HIV &
AIDS Legal Clinic of Ontario**

SACK GOLDBLATT MITCHELL LLP

500 – 30 Metcalfe Street
Ottawa, ON K1P 5L4

Raija Pulkkinen

Tel: 613-235-5327

Fax: 613-235-3041

Email: rpulkkinen@sgmlaw.com

**Ottawa Agent for the Intervener Dying with
Dignity**

GOWLING LAFLEUR HENDERSON LLP

160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel: 613-786-8695

Fax: 613-788-3509

Email: lynne.watt@gowlings.com

**Ottawa Agent for the Intervener Canadian
Medical Association**

VINCENT DAGENAIS GIBSON LLP

260 Dalhousie Street, Suite 400
Ottawa, ON K1N 7E4

Russell G. Gibson

Albertos Polizogopoulos

Tel: 613-241-2701 x229

Fax: 316-241-2599

Email: russell.gibson@vdg.ca

**Counsel to the Intervener Catholic Health
Alliance of Canada**

GRATL & COMPANY

302-560 Beatty Street
Vancouver, BC V6B 2L3

Jason B. Gratl

Alison M. Latimer

Tel: 604-697-1919

Fax: 604-608-1919

**Counsel for the Intervener Association
québécoise pour le droit de mourir dans la
dignité**

BORDEN LADNER GERVAIS LLP

Scotia Plaza, 40 King Street West
Toronto, ON M5H 3Y4

Christopher D. Bredt

Ewa Krajewska

Margot Finley

Tel: 416-367-6165

Fax: 416-361-7063

Email: cbredt@blg.com

**Counsel for the Intervener Canadian Civil
Liberties Association**

GOWLING LAFLEUR HENDERSON

160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Guy Régimbald

Tel: 613-786-0197

Fax: 613-563-9869

Email: guy.regimbald@gowlings.com

**Ottawa Agent for the Intervener Association
québécoise pour le droit de mourir dans la
dignité**

BORDEN LADNER GERVAIS LLP

World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi

Tel: 613-237-5160

Fax: 613-230-8842

Email: neffendi@blg.com

**Ottawa Agent for the Intervener Canadian
Civil Liberties Association**

BENNETT JONES LLP

Suite 3400, PO Box 130
One First Canadian Place
Toronto, ON M5X 1A4

Robert W. Staley

Ranjan K. Agarwal

Jack R. Maslen

Tel: 416-777-4857

Fax: 416-863-1716

Email: staleyr@bennettjones.ca

**Counsel for the Interveners Catholic Civil
Rights League**

BENNETT JONES LLP

Suite 3400, PO Box 130
One First Canadian Place
Toronto, ON M5X 1A4

Robert W. Staley

Ranjan K. Agarwal

Jack R. Maslen

Tel: 416-777-4857

Fax: 416-863-1716

Email: staleyr@bennettjones.ca

**Faith and Freedom Alliance and Protection
of Conscience Project**

BENNET JONES LLP

1900 – 45 O'Connor Street
World Exchange Plaza
Ottawa, ON K1P 1A4

Sheridan Scott

Tel: 613-683-2302

Fax: 613-683-2323

Email: scotts@bennettjones.com

**Ottawa Agent for the Interveners Catholic
Civil Rights League**

BENNET JONES LLP

1900 – 45 O'Connor Street
World Exchange Plaza
Ottawa, ON K1P 1A4

Sheridan Scott

Tel: 613-683-2302

Fax: 613-683-2323

Email: scotts@bennettjones.com

**Faith and Freedom Alliance and Protection
of Conscience Project**

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I. OVERVIEW

1. Every day, millions of Canadians aid, abet and counsel others to engage in lawful conduct. In the overwhelming majority of cases, this is no crime, nor should it be. A foundational principle of the criminal law's general part is that aiding, abetting or counselling ("accessorial acts") is only criminal if what is being aided, abetted or counselled ("principal acts") are themselves prohibited. The purpose in imposing liability on accessories derives from the purpose animating the principal prohibition. Even where Parliament has defined the *actus reus* of an offence in terms of accessorial acts, this model of derivative liability almost always holds true.
2. Section 241 of the *Criminal Code* is one of only seven provisions in Canadian law that fail to adhere to this approach by way of criminalizing being an accessory to lawful conduct. The purpose of these laws cannot be explained by reference to primary conduct like with most accessorial offences. Their purpose must rest elsewhere, and to be compliant with the *Charter*, the elements that define these offences must appropriately capture this substitute purpose.
3. The Criminal Lawyers' Association (Ontario) ("CLA") intervenes in this appeal to situate s. 241 into the broader criminal law approach to the treatment of accessorial acts. Examining s. 241 through this lens helps explain the provision's constitutional frailty: in order to protect the vulnerable, the section criminalizes accessorial acts directed at lawful conduct, and fails to narrow its application to conduct that corresponds to its purpose. As a result, the law is overbroad, violating s. 7 of the *Charter*.
4. The CLA accepts the findings of fact as made by the trial judge.

II. INTERVENER'S POSITION ON QUESTIONS IN ISSUE

5. The CLA's intervention is restricted to the third question raised by the Appellants. It submits that s. 241 of the *Criminal Code* violates s. 7 of the *Charter* because it impacts the liberty interest in a manner that is inconsistent with the principle of overbreadth.

III. STATEMENT OF ARGUMENT

A. THE GENERAL RULE: CRIMINALIZING ACCESSORIAL ACTS IS EXPLAINED BY THE PROHIBITION AGAINST PRINCIPAL CONDUCT

6. The criminal law's "general part" provides rules that guide how liability is attributed. Its most basic principle is that those who actually commit a criminal offence are liable to be

punished for doing so. The general part also contains rules that narrow and broaden this principle. It narrows liability through the provision of defences, and broadens it through rules of attribution that extend beyond those to actually commit a specific offence. The most far-reaching of these rules of attribution is accessorial liability. Accessorial acts fix criminal liability on individuals who do not personally commit any criminal offence, but whose acts are nevertheless sufficiently connected to the criminal conduct of others to justify the imposition of punishment.

7. As for why the criminal law expands liability in this way, there are two related ways of thinking about this the question. From a theoretical perspective, it does so because liability for accessorial acts is *derivative*. From a purposive perspective, it does so because the purpose of accessorial liability is *the same* as the purpose animating any given specific principal offence.

8. Criminal law theory understands liability for accessorial acts to be derivative of the liability inherent in the principal conduct.¹ The wrongfulness that is being punished when an aider, abettor, or counsellor is convicted is founded in the wrongfulness that exists in the conduct being aided, abetted or counselled. While all forms of accessorial conduct have their own *actus reus* and *mens rea* elements, these are not the ultimate sources of culpability for the accessorial actor. Rather, they constitute the necessary link between principal and accessory that justifies transplanting the liability of the former onto the latter.²

9. If the elements of accessorial conduct were what housed liability (as opposed to serving a linking function) then this Court's acceptance of the constitutionality of convicting accessories based on a lesser degree of *mens rea* than required to convict a principal would be conceptually unsound.³ An accessory is guilty of the crime of the principal not necessarily because they have a mental state as culpable as the principal, but because the mental state that they have uniquely links them to whatever liability rests in the principal's conduct.

10. The derivative nature of liability for accessorial acts also helps answer the purposive question: what is Parliament's purpose in criminalizing accessorial acts. As ss. 21 and 22 of the

¹ George P. Fletcher, *Rethinking Criminal Law* (OUP, 2000), at 636, **Intervener's Book of Authorities** ["BoA"], **Tab 10**; The Law Commission, *Participating in Crime*, Law Com. No. 305 (Cmd. 7084)(2007), at para. 2.7 ["*Participating in Crime*"], **BoA, Tab 12**.

² *R. v. Dooley* (2009), 249 C.C.C. (3d) 449 (Ont. C.A.), at para. 117 (per Doherty J.A.), **BoA, Tab 3**; Sanford H. Kadish, "Complicity, Cause and Blame: A Study in the Interpretation of Doctrine" (1985) 73 Cal. L. Rev. 323, at 337, 354-355, **BoA, Tab 11**.

³ *R. v. Logan*, [1990] 2 S.C.R. 731, at 741, **BoA, Tab 5**.

Criminal Code state, an accessory actor is a “party” to a criminal offence just as is the one who “actually commits it”.⁴ As this court noted in *Thatcher*, the modern approach to accessory conduct is to treat all parties to an offence equally: not only are all guilty of *a* crime, but all are guilty of *the same* crime.⁵ Thus, whatever purpose animates Parliament’s choice to criminalize a particular form of conduct also animates the prohibition against aiding, abetting or counselling it.

11. This observation has constitutionally significant implications, since several doctrines under s. 7 are defined in terms of legislative purpose. Arbitrariness, overbreadth and gross-disproportionality all address issues of “instrumental rationality” and involve examining the relationship between Parliament’s objectives and the means it chooses to pursue them.⁶ If a principal offence were to be found unconstitutional under any of these doctrines, it would no longer be criminal to be a party to them. Theoretically, this is because there is no longer any principal liability that can be transferred to the accessory; constitutionally this is because the same constitutional vice would apply to principal offence would apply to the accessory act.

12. From either a theoretical or purposive perspective, it is clear that the criminal law’s treatment of liability for accessory acts has always been tied to the existence of unlawful primary conduct. In 1598 the Court of Kings Bench announced that “every felon is either principal or accessory, and if there is no principal, there is no accessory.”⁷ Four hundred and fifteen years later, this Court reiterated the same fundamental principle: “In order for the Crown to rely on party liability, the underlying offence must have been committed by the principal.”⁸ Absent some culpable act committed by a principal, there is no liability to transplant onto one who aids, abets or counsels, and the criminal law, as a general matter, does not punish them.

B. IN MOST CASES WHERE ACCESSORIAL CONDUCT IS DIRECTLY CRIMINALIZED, IT CONTINUES TO ADHERE TO THE MODEL OF DERIVATIVE LIABILITY

13. From time to time Parliament has defined specific offences in terms of forms of conduct that are usually addressed within the general part. For example, the crime of obstructing justice is

⁴ *Criminal Code*, R.S.C. 1985, c. C-46, s. 21(1)(a).

⁵ *R. v. Thatcher*, [1987] 1 S.C.R. 652, at 689-690, **BoA Tab 7**.

⁶ *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101, at para. 107 [“*Bedford*”], **BoA, Tab 1**.

⁷ *Vaux’s Case* (1598), 40 Co. Rep. 44, 76 E.R. 992 (K.B.), at 993 E.R., **BoA, Tab 8**.

⁸ *R. v. J.F.*, [2013] 1 S.C.R. 565, at para. 24, **BoA, Tab 4**. See also *Participating in Crime*, *supra* at para. 2.7, **BoA, Tab 12**.

committed when a person “willfully *attempts*” to pervert or defeat the course of justice.⁹ What is normally an inchoate form of liability that is defined by the general part of the criminal law is transformed by Parliament into part of the *actus reus* of a substantive offence.

14. Parliament has also chosen in some cases to define the *actus reus* of some offences in terms of accessory acts. These offences blur the lines between principal and accessory liability since there is no legal need to identify some “other” crime that is being aided, abetted or counselled in those cases. The aiding, abetting or counselling is the culpable conduct that results in criminal liability. Yet in most cases where Parliament has defined crimes in terms of accessory acts it has maintained the traditional model of derivative liability by defining such offences in a way that the accessory acts remain directed at other unlawful conduct.

15. Counsel for the CLA is aware of 44 domestic criminal offences¹⁰ that Parliament has defined at least partially in terms of aiding, abetting, counselling or assisting: 24 within the *Criminal Code*, 19 under other federal statutes, and one contained within a regulation.¹¹ Of these offences, 37 are consistent with how accessory liability is traditionally understood and justified, and so do not raise any conceptual problems. These offences can be divided into four categories.

16. The first group involve offences under the *Criminal Code* that are essentially duplicative of the general part’s rules on aiding, abetting or counselling since they prohibit both principal and accessory acts at the same time.¹² If the references to accessory acts in these provisions were eliminated, the conduct currently covered by the substantive offences would remain criminal under ss. 21 or 22 of the *Code*. Thus, for example s. 292(1) criminalizes anyone who “procures or knowingly aids in procuring a feigned marriage between himself and another person”. If the italicized portion were removed from the definition of the offence, a person who

⁹ *Criminal Code*, *supra*, s. 139.

¹⁰ Counsel has not included federal offences that are described as non-criminal. For example *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, s. 9 prohibits aiding in the commission of conduct prohibited under ss. 6-8. A contravention of these provisions is subject to an administrative monetary penalty that is intended “to promote compliance with [the] Act and not to punish”: s. 20. Counsel has also excluded international crimes, which are largely implemented domestically though the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24. The reason for this exclusion is that the *actus reus* of most of these offences are not defined by domestic legislation, but are rather a matters of customary and conventional international law.

¹¹ See the Appendix attached to this factum.

¹² See Appendix, Category I.

knowingly aided in procuring a feigned marriage between himself and another person would still guilty of an offence under s. 292 by operation of s. 21(1)(b).

17. Why Parliament has defined these offences in this way is difficult to discern. Many of the offences are codifications of old common law crimes which pre-date the modern approach to accessorial liability; under the common law rules that distinguished between different types of principals and accessories¹³ which influenced trial procedures and punishment,¹⁴ defining an offence in terms of accessorial acts versus relying on general accessorial liability rules made a real difference. Today, however, the accessorial elements of these definitions are redundant. In some cases the reference to accessorial acts may provide greater certainty in the law¹⁵ or create presumptions or deeming rules,¹⁶ but even then these sections are likely unnecessary.

18. A smaller category of offences relate to acts that assist or encourage misconduct in military and federal police forces.¹⁷ These provisions adhere to derivative liability principles since the conduct that is being encouraged is still unlawful, just under other legislation. The *Code* directly prohibits civilians from aiding desertion from the Canadian Forces because desertion is a military offence that exists only under the *National Defence Act*¹⁸ and could not be captured under the *Code*'s general aiding and abetting provisions. These provisions are different in form, but not in substance from general rules of derivative liability.

19. A third set of offences relate to assisting enemy powers or soldiers during times of armed conflict.¹⁹ The simple act of waging war against Canada cannot be a domestic criminal offence,²⁰

¹³ Sir James Fitzjames Stephen, *A Digest of the Criminal Law (Crimes and Punishments)*, 3d ed. (London: MacMillan & Co., 1883), Arts. 35, 37, 39, 45, **BoA, Tab 13**.

¹⁴ John Frederick Archbold, *A Summary of the Law Relative to Pleading and Evidence in Criminal Cases* (London: S. Sweet, 1822), at 395-403, **BoA, Tab 9**.

¹⁵ This is the best explanation for s. 358, which clarifies that the "having in possession" element in ss. 342, 354 and 356(1)(b) can be satisfied by aiding another in the concealment or disposal of property. This provision appears to reiterate the common law rule recognized in *The Queen v. Campbell* (1899), 2 C.C.C. 357 (Que. Q.B.) at 361, **BoA, Tab 2** and *R. v. Soloway* (1975), 28 C.C.C. (2d) 212 (Alta. S.C.A.D.), at 218, **BoA, Tab 6**, that such conduct can render someone guilty of aiding or abetting simple theft. Given the similarity between the theft offence and the three offences covered by s. 358, even absent this provision the result ought to be the same.

¹⁶ For example, s. 445.1(1)(b) criminalizes encouraging, aiding or assisting in animal fighting or baiting under the rubric of prohibiting unnecessary suffering to animals. Presumably this is done on the theory that dog fights and bear baiting are presumed to involve criminally culpable suffering of animals. In other cases, Parliament is more explicit by placing accessorial forms of conduct in express deeming or onus provisions: see *Criminal Code*, s. 383(2).

¹⁷ See Appendix, Category II.

¹⁸ *National Defence Act*, R.S.C. 1985, c. N-5, s. 88(1) ["NDA"]. Aiding or abetting desertion is also directly criminalized by s. 299(1) of the *National Defence Act* with respect to members of the forces, a Category IV offence.

¹⁹ See Appendix, Category III.

and so cannot be dealt with through general part concepts of accessorial liability. But there is no question that such acts against the state are still seen as wrongful, and being an accessory to such conduct is wrongful on the same theory as more traditional forms of accessorial liability.

20. The final category encompasses offences outside of the *Code*. Some statutes contain general liability provisions similar to ss. 21-22 of the *Code*,²¹ but in most cases Parliament has enacted narrower prohibitions against accessorial acts, creating specific prohibitions against aiding or abetting other particular offences.²² For example, under the *Immigration and Refugee Protection Act*, s. 131 makes it an offence to aid or abet a person to commit an offence under six other specified sections of the Act. Although this is a different approach than a general accessorial liability provision, all of these provisions adhere to the model of derivative liability since all of them link aiding, abetting or counselling to conduct that is also prohibited by law.

21. For the offences in these four categories, despite a difference in form, all continue to adhere to the criminal law's general approach to accessorial liability: individuals are liable to be punished for these acts because they are linked to principal conduct that is also unlawful. The purpose in criminalizing the accessories is the same as the purpose in criminalizing principals.

C. WHERE PARLIAMENT CRIMINALIZES BEING AN ACCESSORY TO LAWFUL CONDUCT, LIABILITY AND PURPOSE MUST BE FOUND ELSEWHERE

22. Federal legislation includes seven provisions, including the assisted suicide provision, that are not consistent with the general approach to accessorial liability.²³ These provisions criminalize aiding, abetting or counselling acts that are themselves lawful. Such an approach cannot be reconciled with models of derivative liability since there is no principal offence.

23. Criminalizing being an accessory to lawful conduct raises serious concerns about the instrumental rationality of the law. If Parliament has chosen not to prohibit a certain form of conduct, it is difficult to understand why they might employ the blunt tool of the criminal law to suppress and punish aiding, abetting or counselling it. The logic of the criminal law dictates that

²⁰ A foreign state would have sovereign immunity and its soldiers would be privileged combatants under rules of International Humanitarian Law. The provisions of the *Criminal Code* contained in Category III do not speak to violations of either international humanitarian law or international criminal law, which represent a special cases and are dealt with elsewhere in the statute book.

²¹ *Export and Import Permits Act*, R.S.C. 1985, c. E-19, s. 18; *Security of Information Act*, R.S.C. 1985, c. O-5, s. 23, *NDA*, *supra*, s. 72(1).

²² See Appendix, Category IV.

²³ See Appendix, Category V.

both principal and accessorial conduct should either be lawful or unlawful. Mixing and matching liability raises the very real risk of legislation that is either under-inclusive, overbroad, or, in the most extreme circumstances, arbitrary. In the latter two cases, there is a s. 7 violation.

24. In the absence of unlawful principal conduct, which grounds the objective for most accessorial prohibitions, Parliament must have some alternative purpose in enacting this unusual type of offence. Its purpose ought to emerge from the terms of the provisions themselves, and in six of the seven provisions in question, it does. The assisted suicide provision is the sole outlier.

25. The provisions that fall within this small category all share a common purpose: in criminalizing being an accessory to lawful conduct, the provisions are directed at preventing exploitation, particularly of vulnerable groups. This is most obviously seen with ss. 152, 153(1)(b) and 153.1(1) of the *Code*, all of which prohibit forms of sexual exploitation of children or the disabled. The same can be said for s. 212(2.1)(a), which is the aggravated form of living on the avails of prostitution of a person under the age of 18. While one may commit all of these offences solely by aiding, abetting or counselling another to do a non-criminal act, the characteristics of the person being aided, abetted or counselled and the sexual nature of the conduct involved convert these acts to ones of sexual exploitation.

26. Section 6(4) of the *Assisted Human Reproduction Act*, which prohibits counselling a person under the age of 21 to be a surrogate, follows a similar logic. Surrogacy is lawful, but the age element serves as a proxy for vulnerability; the provision is directed at protecting the vulnerable from pressure to use their reproductive systems for the benefit of another. While one may question the particular age selected by Parliament, the use of some age cut-off clearly evidences an intention to protect vulnerable persons from exploitation or manipulation.

27. Section 212(1)(h) of the *Code* is more problematic than the previous 5 offences, since none of the elements speak directly to vulnerability. However, its elements clearly do speak to enhanced forms of exploitation. In prohibiting aiding prostitution, this offence also requires proof that the accused acts “for the purposes of gain” and that they “exercise[] control” over the victim. Taken together these elements focus the offence on parasitic exploitation of sex workers.

28. What all six of these provisions have in common is a clear legislative purpose to protect persons, usually viewed as vulnerable, from exploitation or manipulation of their bodily integrity by others. This purpose is made clear because Parliament has chosen to include elements of these

offences in addition to accessorial acts that specifically target exploitation. The instrumental rationality of these provisions is enhanced by including *actus reus* (eg. ‘exercise control’), *mens rea* (eg. ‘for a sexual purpose’) or contextual (eg. ‘person under the age of 16 years’) elements that narrow the scope of liability for the accessorial acts that define the offences. This focuses these provisions more narrowly on Parliament’s purpose, and avoids the most serious concerns respecting overbreadth. Viewed more theoretically, these additional elements serve as substitutes for the liability that would otherwise be provided by the unlawful nature of the principal conduct.

D. SECTION 241 UNIQUELY CRIMINALIZES BEING AN ACCESSORY TO LAWFUL CONDUCT WITHOUT PROVIDING SUBSTITUTE ELEMENTS TO GROUND LIABILITY OR FOCUS ON LEGISLATIVE PURPOSE

29. Section 241 of the *Criminal Code*, which criminalizes aiding, abetting or counselling suicide, is unique in all of the law of Canada. It is the only provision known to law that criminalizes being an accessory to a lawful act without proof of any additional conduct.

30. The trial judge found that the purpose of the s. 241 is “to protect vulnerable persons from being induced to commit suicide at a time of weakness”²⁴ a purpose that notably coincides with the purposes behind the six other laws criminalizing being an accessory to lawful conduct. But where these other provisions include additional elements that focus the offence towards its purpose, s. 241 does not. This is where the unconstitutional overbreadth of the provision arises.

31. If one accepts – as the trial judge did²⁵ – that an autonomous moral agent may rationally seek to end their own life in certain circumstances, then the fact that one has suicide as a goal cannot rationally be a proxy for vulnerability. A person seeking assistance to end their own life may or may not be in need of protection from exploitation. This is not to say that s. 241 fails to capture any culpable conduct, but only that as framed it inevitably captures conduct beyond its underlying purpose. In some, or perhaps even most applications s. 241 will target conduct that is contrary to Parliament’s intention, but all this means is that the law is not arbitrary.

32. The doctrine of overbreadth is violated where a law “is so broad in scope that it includes *some* conduct that bears no relation to its purpose”.²⁶ Because of the absence of additional elements that focus s. 241 on vulnerability, as the other six provisions criminalizing being an

²⁴ *TJ Reasons*, *supra* at para. 1190, AR, Vol. II, p. 140.

²⁵ *Carter v. Canada (Attorney General)*, 2012 BCSC 886, at para. 339 [“*TJ Reasons*”], Appellant’s Record [“AR”], Vol. I, p. 106.

²⁶ *Bedford*, *supra* at para. 112, BoA, Tab 1.

accessory to lawful conduct do, s. 241 captures some conduct that has no relationship to protecting the vulnerable from exploitation. It criminalizes the genuinely loving spouse who supports her partner's decision to manage his own death just as it does the greedy heir who pushes the idea of suicide in order to gain speedy access to an inheritance. Because the former conduct is not captured by the purpose of s. 241, the section violates the doctrine of overbreadth.

33. The fact that s. 241 lacks the additional elements that are present in the other six provisions is not evidence that it has some distinct purpose, contrary to the findings of the Trial Judge. The absence of additional elements in s. 241 that fill in for the missing unlawful principal conduct is a function of historical accident rather than grand legislative design.

34. At common law, suicide was viewed as self-murder. An accessory to suicide was simply a murderer under the general rules of accessorial liability in criminal law.²⁷ The concept of self-murder was abandoned in Canada's 1892 *Code*. Recognizing that a successful suicide could not be prosecuted, the special offence of attempted suicide was introduced. General aiding and abetting provisions could still make an accessory a party to this offence, but in the absence of the notion of self-murder, one who aided, abetted or counselled a *successful* suicide could not be prosecuted. This necessitated some special offence that criminalized this conduct directly.

35. Up until the 1972 repeal of the attempted suicide offence, the prohibition against assisting suicide adhered to traditional rules of accessorial liability, as suicide was still conceived of as criminal conduct, albeit unprosecutable due to its unique character. The repeal of the attempted suicide law signalled a new conception of suicide as a matter that was not suited for being dealt with by the criminal law. The assisted suicide provision could no longer be understood by reference to the traditional account of accessorial liability, but rather remained on the statute book to target something other than suicide *per se*. With the decriminalization of suicide, what remained was, as the trial judge found, an intention to protect the vulnerable who might feel compelled to end their own lives for reasons other than rational autonomous choice.

36. Parliament simply failed to introduce new elements into what is now s. 241 in order to focus the provision towards this new goal as part of these amendments. This is not entirely surprising, both because the amending legislation was an omnibus bill that spread Parliament's

²⁷ Henri Elzéar Taschereau, *The Criminal Code of the Dominion of Canada as amended in 1893* (Toronto: The Carswell Company Ltd., 1893), at 226-228, **BoA, Tab 14**; Glanville Williams, *Criminal Law – The General Part* (London: Stevens & Sons Ltd., 1953), at 212-213, **BoA, Tab 15**.

attention across many areas, and because the amendments were made in the pre-*Charter* era, when there was no constitutional imperative to adhere to the fine-tuning between purpose and means that the overbreadth doctrine now demands. However, with the enactment of the *Charter*, the failure of Parliament to have insured this instrumental rationality has resulted in a serious constitutional defect that now requires this Court to intervene in order to correct.

37. The Appellants' submit that the impugned provisions of the *Criminal Code* are overbroad from the perspective of the rational moral agents who have a genuine desire to manage their own suffering, and the timing and means of their own death. The CLA respectfully submits that s. 241 is also overbroad when examined from the perspective of individuals who have a *bona fide* desire to assist and support those same people. Examining s. 241 through the lens of how the criminal law addresses accessory acts brings this into sharp relief. The law may once have operated in accordance with the principle of derivative liability, but it no longer does. Rather, it belongs to a small residual class of offences that targets being an accessory to lawful conduct out of a desire to protect the vulnerable from exploitation or coercion. However, unlike every other criminal law in this category, s. 241 fails to include additional elements that replace the unlawful principal conduct, and focus the provision towards its intended purpose. It captures conduct that has no relationship with the legislative purpose animating the law, and as a result, it is overbroad.

IV. SUBMISSIONS RESPECTING COSTS

38. The CLA does not seek its costs, and asks that no costs be ordered against it.

V. ORDER REQUESTED

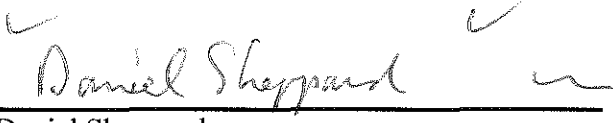
39. The CLA requests leave to make oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DONE at the City of Toronto, this 26th day of August, 2014


Marlys A. Edwardh

Counsel for the Intervener, Criminal Lawyers'
Association (Ontario)


Daniel Sheppard

Counsel for the Intervener, Criminal Lawyers'
Association (Ontario)

VI. TABLE OF AUTHORITIES

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VII. STATUTES CITED

<i>Canadian Charter of Rights and Freedoms</i>	
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.
<i>An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23</i>	
9. It is prohibited to aid, induce, procure or cause to be procured the doing of any act contrary to any of sections 6 to 8.	9. Il est interdit de faire accomplir, même indirectement, tout acte contraire à l'un des articles 6 à 8, ou d'aider ou d'encourager quiconque à accomplir un tel acte.
20. (1) Every person who contravenes any of sections 6 to 9 commits a violation for which they are liable to an administrative monetary penalty. (2) The purpose of a penalty is to promote compliance with this Act and not to punish.	20. (1) Toute contravention à l'un des articles 6 à 9 constitue une violation exposant son auteur à une sanction administrative pécuniaire. (2) L'imposition de la sanction vise non pas à punir, mais plutôt à favoriser le respect de la présente loi.
<i>Criminal Code of Canada, R.S.C. 1985, c. C-46</i>	
21. (1) Every one is a party to an offence who (a) actually commits it; (b) does or omits to do anything for the purpose of aiding any person to commit it; or (c) abets any person in committing it.	21. (1) Participant à une infraction : a) quiconque la commet réellement; b) quiconque accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre; c) quiconque encourage quelqu'un à la commettre.
22. (1) Where a person counsels another person to be a party to an offence and that other person is afterwards a party to that offence, the person who counselled is a party to that offence, notwithstanding that the offence was committed in a way different from that which was counselled.	22. (1) Lorsqu'une personne conseille à une autre personne de participer à une infraction et que cette dernière y participe subséquemment, la personne qui a conseillé participe à cette infraction, même si l'infraction a été commise d'une manière différente de celle qui avait été conseillée.

139. (1) Every one who wilfully attempts in any manner to obstruct, pervert or defeat the course of justice in a judicial proceeding, (a) by indemnifying or agreeing to indemnify a surety, in any way and either in whole or in part, or (b) where he is a surety, by accepting or agreeing to accept a fee or any form of indemnity whether in whole or in part from or in respect of a person who is released or is to be released from custody, is guilty of (c) an indictable offence and is liable to imprisonment for a term not exceeding two years, or (d) an offence punishable on summary conviction.	139. (1) Quiconque volontairement tente de quelque manière d'entraver, de détourner ou de contrecarrer le cours de la justice dans une procédure judiciaire : a) soit en indemnisant ou en convenant d'indemniser une caution de quelque façon que ce soit, en totalité ou en partie; b) soit étant une caution, en acceptant ou convenant d'accepter des honoraires ou toute forme d'indemnité, que ce soit en totalité ou en partie, de la part d'une personne qui est ou doit être mise en liberté ou à l'égard d'une telle personne, est coupable : c) soit d'un acte criminel et passible d'un emprisonnement maximal de deux ans; d) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.
383. (2) Where, in proceedings under this section, it is established that the accused made or signed a contract or an agreement for the sale or purchase of shares of stock or goods, wares or merchandise, or acted, aided or abetted in the making or signing thereof, the burden of proof of a bona fide intention to acquire or to sell the shares, goods, wares or merchandise or to deliver or to receive delivery thereof, as the case may be, lies on the accused.	383. (2) Lorsque, dans des poursuites engagées en vertu du présent article, il est établi que le prévenu a conclu ou signé un marché ou une convention pour la vente ou l'achat d'actions ou d'effets, de denrées ou de marchandises, ou qu'il a participé, aidé ou incité à la conclusion ou signature d'un tel marché ou d'une telle convention, la preuve de la bonne foi de son intention d'acquérir ou de vendre ces actions, effets, denrées ou marchandises, ou de les livrer ou d'en recevoir livraison, selon le cas, incombe au prévenu.
<i>Export and Import Permits Act, R.S.C. 1985, c. E-19</i>	
18. No person shall knowingly induce, aid or abet any person to contravene any of the provisions of this Act or the regulations.	18. Nul ne doit, en connaissance de cause, engager, aider ou encourager quiconque à enfreindre une disposition de la présente loi ou de ses règlements.

<i>National Defence Act, R.S.C. 1985, c. N-5</i>	
72. (1) Every person is a party to and guilty of an offence who (a) actually commits it; (b) does or omits to do anything for the purpose of aiding any person to commit it; (c) abets any person in committing it; or (d) counsels or procures any person to commit it.	72. (1) Participe à une infraction et en est coupable quiconque, selon le cas : a) la commet réellement; b) accomplit ou omet d'accomplir quelque chose en vue d'aider quelqu'un à la commettre; c) encourage quelqu'un à la commettre; d) conseille à quelqu'un de la commettre ou l'y incite.
88. (1) Every person who deserts or attempts to desert is guilty of an offence and on conviction, if the person committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment and, in any other case, is liable to imprisonment for a term not exceeding five years or to less punishment.	88. (1) Quiconque déserte ou tente de désérer commet une infraction et, sur déclaration de culpabilité, encourt comme peine maximale l'emprisonnement à perpétuité, s'il a agi alors qu'il était en service actif ou tenu de s'y présenter, ou un emprisonnement de cinq ans, dans le cas contraire.
<i>Security of Information Act, R.S.C. 1985, c. O-5</i>	
23. Every person commits an offence who conspires or attempts to commit, is an accessory after the fact in relation to or counsels in relation to an offence under this Act and is liable to the same punishment and to be proceeded against in the same manner as if he or she had committed the offence.	23. Quiconque se rend coupable de complot, de tentative ou de complicité après le fait à l'égard d'une infraction à la présente loi, ou en conseille la perpétration commet une infraction et est passible des mêmes peines et sujet aux mêmes poursuites que s'il avait commis l'infraction.

APPENDIX

Substantive Federal Criminal Offences Defined in terms of Accessorial Acts

Category I Provisions that are Duplicative Because the Prohibited Conduct Would be Captured under ss. 21, 22 or 464 of the <i>Criminal Code</i> in Any Event		
<i>Criminal Code of Canada, R.S.C. 1985, c. C-46</i>		
1	Piratical acts 75. Every one who, while in or out of Canada, (a) steals a Canadian ship, (b) steals or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Canadian ship, (c) does or attempts to do a mutinous act on a Canadian ship, or (d) <i>counsels a person to do anything mentioned in paragraph (a), (b) or (c),</i> is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.	Actes de piraterie 75. Quiconque, étant au Canada ou à l'étranger, selon le cas : a) vole un navire canadien; b) vole ou sans autorisation légale jette par-dessus bord, endommage ou détruit quelque chose qui fait partie de la cargaison, des approvisionnements ou des installations d'un navire canadien; c) commet ou tente de commettre un acte de mutinerie à bord d'un navire canadien; d) conseille à quelqu'un de commettre un des actes mentionnés aux alinéas a), b) ou c), est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans.
2	Engaging in prize fight 83. (1) Every one who (a) engages as a prinipal in a prize fight, (b) advises, <i>encourages</i> or promotes a prize fight, or (c) is present at a prize fight as an aid, second, surgeon, umpire, backer or reporter, is guilty of an offence punishable on summary conviction	Fait de se livrer à un combat concerté 83. (1) Est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire quiconque, selon le cas: a) se livre, comme adversaire, à un combat concerté; b) recommande ou <i>encourage</i> un combat concerté, ou en est promoteur; c) assiste à un combat concerté en qualité d'aide, second, médecin, arbitre, soutien ou reporter.

3	Rescue or permitting escape 147. Every one who (a) rescues any person from lawful custody <i>or assists any person in escaping or attempting to escape from lawful custody,</i> (b) being a peace officer, willfully permits a person in his lawful custody to escape, or (c) being an officer or an employee in a prison, willfully permits a person to escape from lawful custody therein, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. [Compare s. 145]	Délivrance illégale 147. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque, selon le cas : a) délivre une personne d'une garde légale <i>ou aide une personne à s'évader ou à tenter de s'évader d'une telle garde;</i> b) étant un agent de la paix, permet volontairement à une personne confiée à sa garde légale de s'évader; c) étant fonctionnaire d'une prison ou y étant employé, permet volontairement à une personne de s'évader d'une garde légale dans cette prison.
4	Betting, pool-selling, book-making, etc. 202. (1) Every one commits an offence who ... (j) <i>aids or assists in any manner in anything that is an offence under this section.</i>	Gageure, bookmaking, etc. 202. (1) Commet une infraction quiconque, selon le cas : ... j) <i>aide ou assiste, de quelque façon, à une chose qui constitue une infraction visée par le présent article.</i>
5	Offence in relation to lotteries and games of chance 206. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who ... (b) sells, barter, exchanges or otherwise disposes of, or causes or procures, <i>or aids or assists in,</i> the sale, barter, exchange or other disposal of, or offers for sale, barter or exchange, any lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property by lots, tickets or any mode of chance whatever;	Loteries et jeux de hasard 206. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans quiconque, selon le cas : ... b) vend, troque, échange ou autrement aliène, ou fait vendre, troquer, échanger ou autrement aliéner, ou amène à vendre, troquer, échanger ou autrement aliéner, <i>ou y aide ou y contribue,</i> ou offre de vendre, de troquer ou d'échanger un lot, une carte, un billet ou autre moyen ou système pour céder par avance, prêter, donner, vendre ou autrement aliéner quelque bien par lots ou billets ou par tout mode de tirage;

6	Procuring feigned marriage 292. (1) Every person who procures <i>or knowingly aids in procuring</i> a feigned marriage between himself and another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.	Mariage feint 292. (1) Quiconque obtient <i>ou sciemment aide à obtenir</i> un mariage feint entre lui-même et une autre personne est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans.
7	Polygamy 293. (1) Every one who (a) practises or enters into or in any manner agrees or consents to practise or enter into (i) any form of polygamy, or (ii) any kind of conjugal union with more than one person at the same time whether or not it is by law recognized as a binding form or marriage, or (b) celebrates, <i>assists or is a party to</i> a rite, ceremony, contract or consent that purports to sanction a relationship mentioned in subparagraph (a)(i) or (ii), is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.	Polygamie 293. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque, selon le cas : a) pratique ou contracte, ou d'une façon quelconque accepte ou convient de pratiquer ou de contracter : (i) soit la polygamie sous une forme quelconque, (ii) soit une sorte d'union conjugale avec plus d'une personne à la fois, qu'elle soit ou non reconnue par la loi comme une formalité de mariage qui lie; b) célèbre un rite, une cérémonie, un contrat ou un consentement tendant à sanctionner un lien mentionné aux sous-alinéas a)(i) ou (ii), <i>ou y aide ou participe</i>.
8-10	Having in possession when complete 358. For the purposes of sections 342 and 354 and paragraph 356(1)(b), the offence of having in possession is complete when a person has, alone or jointly with another person, possession of or control over anything mentioned in those sections or when he <i>aids in</i> concealing or disposing of it, as the case may be.	Possession 358. Pour l'application des articles 342 et 354 et de l'alinéa 356(1)b), l'infraction consistant à avoir en sa possession est consommée lorsqu'une personne a, seule ou conjointement avec une autre, la possession ou le contrôle d'une chose mentionnée dans ces articles ou lorsqu'elle <i>aide à la cacher</i> ou à en disposer, selon le cas.

11	Fraudulent disposal of goods on which money advanced 389. (1) Every one who (a) having shipped or delivered to the keeper of a warehouse or to a factor, an agent or a carrier anything on which the consignee thereof has advanced money or has given valuable security, thereafter, with intent to deceive, defraud or injure the consignee, disposes of it in a manner that is different from and inconsistent with any agreement that has been made in that behalf between him and the consignee, or <i>(b) knowingly and wilfully aids or assists any person to make a disposition of anything to which paragraph (a) applies for the purpose of deceiving, defrauding or injuring the consignee,</i> is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.	Aliénation frauduleuse de marchandises sur lesquelles on a avancé de l'argent 389. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de deux ans quiconque, selon le cas : a) ayant expédié ou livré au gardien d'un entrepôt ou à un facteur, agent ou voiturier, une chose sur laquelle le consignataire a avancé des deniers ou donné une valeur, dispose ensuite de cette chose, avec l'intention de tromper, de frauder ou de léser le consignataire, d'une manière différente d'une convention faite à cet égard entre lui et le consignataire, et incompatible avec cette convention; <i>b) sciemment et volontairement aide ou assiste une personne à disposer d'une chose que vise l'alinéa a) dans le dessein de tromper, frauder ou léser le consignataire.</i>
12	Causing unnecessary suffering 445.1 (1) Every one commits an offence who ... <i>(b) in any manner encourages, aids or assists at the fighting or baiting of animals or birds;</i> ... (d) promotes, arranges, conducts, <i>assists in</i>, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or ...	Faire souffrir inutilement un animal 445.1 (1) Commet une infraction quiconque, selon le cas : ... <i>b) de quelque façon encourage le combat ou le harcèlement d'animaux ou d'oiseaux ou y aide ou assiste;</i> ... d) organise, prépare, dirige, <i>facilite</i> quelque réunion, concours, exposition, divertissement, exercice, démonstration ou événement au cours duquel des oiseaux captifs sont mis en liberté avec la main ou par une trappe, un dispositif ou autre moyen pour essayer un coup de feu au moment de leur libération, ou y prend part ou reçoit de l'argent à cet égard; ...

Category II Provisions Relating to Being an Accessory to Military or Quasi-Military Misconduct Prohibited Under Other Legislation		
<i>Criminal Code of Canada, R.S.C. 1985, c. C-46</i>		
13	Assisting deserter 54. Every one who <i>aids, assists</i>, harbours or conceals a person who he knows is a deserter or absentee without leave from the Canadian Forces is guilty of an offence punishable on summary conviction, but no proceedings shall be instituted under this section without the consent of the Attorney General of Canada. [Compare <i>National Defence Act</i>, R.S.C. 1985 c. N-5, ss. 88(1), 90(1)]	Aider un déserteur 54. Quiconque <i>aide, assiste</i>, recèle ou cache un individu qu'il sait être un déserteur ou un absent sans permission des Forces canadiennes, est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire. Aucune poursuite ne peut cependant être intentée aux termes du présent article sans le consentement du procureur général du Canada.
14	Offences in relation to members of the R.C.M.P. 56. Every one who wilfully (a) persuades or <i>counsels</i> a member of the Royal Canadian Mounted Police to desert or absent himself without leave, (b) <i>aids, assists</i>, harbours or conceals a member of the Royal Canadian Mounted Police who he knows is a deserter or absentee without leave, or (c) <i>aids or assists</i> a member of the Royal Canadian Mounted Police to desert or absent himself without leave, knowing that the member is about to desert or absent himself without leave, is guilty of an offence punishable on summary conviction. [Compare <i>Royal Canadian Mounted Police Regulations, 1988, SOR/88-361, s. 49</i>]	Infractions relatives aux membres de la Gendarmerie royale du Canada 56. Est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire quiconque, de propos délibéré : a) soit <i>conseille</i> à un membre de la Gendarmerie royale du Canada de désertir ou de s'absenter sans permission, ou l'en persuade; b) soit <i>aide, assiste</i>, recèle ou cache un membre de la Gendarmerie royale du Canada qu'il sait être un déserteur ou absent sans permission; c) soit <i>aide ou assiste</i> un membre de la Gendarmerie royale du Canada à désertir ou à s'absenter sans permission, sachant que ce membre est sur le point de désertir ou de s'absenter sans permission.

15	Offences in relation to military forces 62. (1) Every one who wilfully ... (c) advises, <i>counsels</i>, urges or in any manner causes insubordination, disloyalty, mutiny or refusal of duty by a member of a force, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. [Compare <i>National Defence Act</i>, R.S.C. 1985, c. N-5, ss. 79-81, 83, 94]	Infractions relatives aux forces militaires 62. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque, volontairement : ... c) soit <i>conseille</i>, recommande, encourage ou, de quelque manière, provoque, chez un membre d'une force, l'insubordination, la déloyauté, la mutinerie ou le refus de servir.
Category III Provisions Relating to Assisting Enemy Powers During Times of War		
<i>Criminal Code of Canada</i>, R.S.C. 1985, c. C-46		
16	High treason 46. (1) Every one commits high treason who, in Canada, ... (c) <i>assists</i> an enemy at war with Canada, or any armed forces against whom Canadian Forces are engaged in hostilities, whether or not a state of war exists between Canada and the country whose forces they are.	Haute trahison 46. (1) Commet une haute trahison quiconque, au Canada, selon le cas : ... c) <i>aide</i> un ennemi en guerre contre le Canada, ou des forces armées contre lesquelles les Forces canadiennes sont engagées dans des hostilités, qu'un état de guerre existe ou non entre le Canada et le pays auquel ces autres forces appartiennent.

17	Assisting alien enemy to leave Canada, or omitting to prevent treason 50. (1) Every one commits an offence who (a) incites or <i>wilfully assists</i> a subject of (i) a state that is at war with Canada, or (ii) a state against whose forces Canadian Forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are, to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby; ...	Aider un ressortissant ennemi à quitter le Canada ou ne pas empêcher la trahison 50. (1) Commet une infraction quiconque, selon le cas : a) incite ou <i>volontairement aide</i> un sujet : (i) soit d'un État en guerre contre le Canada, (ii) soit d'un État contre les forces duquel les Forces canadiennes sont engagées dans des hostilités, qu'un état de guerre existe ou non entre le Canada et l'État auquel ces autres forces appartiennent, à quitter le Canada sans le consentement de la Couronne, à moins que l'accusé n'établisse qu'on n'entendait pas aider, par là, l'État mentionné au sous-alinéa (i) ou les forces de l'État mentionné au sous-alinéa (ii), selon le cas; ...
18	Assisting prisoner of war to escape 148. Every one who knowingly and wilfully (a) <i>assists</i> a prisoner of war in Canada to escape from a place where he is detained, or (b) <i>assists</i> a prisoner of war, who is permitted to be at large on parole in Canada, to escape from the place where he is at large on parole, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. [Compare Article 92 of the <i>Third Geneva Convention relative to the Treatment of Prisoners of War</i>, being Schedule III to the <i>Geneva Conventions Act</i>, R.S.C. 1985, c. G-3]	Fait d'aider un prisonnier de guerre à s'évader 148. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans quiconque, sciemment et volontairement : a) <i>aide</i> un prisonnier de guerre au Canada à s'évader d'un endroit où il est détenu; b) <i>aide</i> un prisonnier de guerre, auquel il est permis d'être en liberté conditionnelle au Canada, à s'évader de l'endroit où il se trouve en liberté conditionnelle.

National Defence Act, R.S.C. 1985, c. N-5

19 Offences related to prisoners of war 76. Every person who (a) by want of due precaution, or through disobedience of orders or wilful neglect of duty, is made a prisoner of war, (b) having been made a prisoner of war, fails to rejoin Her Majesty's service when able to do so, or (c) having been made a prisoner of war, serves with <i>or aids the enemy</i>, is guilty of an offence and on conviction, if the person acted traitorously, shall be sentenced to imprisonment for life, and in any other case, is liable to imprisonment for life or to less punishment.	Prisonniers de guerre 76. Commet une infraction quiconque : a) est fait prisonnier de guerre, faute de précautions suffisantes ou par suite de désobéissance aux ordres ou de négligence volontaire dans l'accomplissement de son devoir; b) ayant été fait prisonnier de guerre, ne réintègre pas le service de Sa Majesté quand il est en mesure de le faire; c) ayant été fait prisonnier de guerre, se met au service de l'ennemi ou l'aide. Déclaré coupable, il doit être condamné à l'emprisonnement à perpétuité s'il s'est conduit en traître, et encourt l'emprisonnement à perpétuité comme peine maximale dans tout autre cas.
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Category IV

Offences Outside of the *Criminal Code* That Specifically Prohibit Being an Accessory to Conduct Also Prohibited by Statute

Access to Information Act, R.S.C. 1985, c. A-1

20 Obstructing right of access 67.1 (1) No person shall, with intent to deny a right of access under this Act, (a) destroy, mutilate or alter a record; (b) falsify a record or make a false record; (c) conceal a record; or (d) direct, propose, <i>counsel</i> or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).	Entrave au droit d'accès 67.1 (1) Nul ne peut, dans l'intention d'entraver le droit d'accès prévu par la présente loi : a) détruire, tronquer ou modifier un document; b) falsifier un document ou faire un faux document; c) cacher un document; d) ordonner, proposer, <i>conseiller</i> ou amener de n'importe quelle façon une autre personne à commettre un acte visé à l'un des alinéas a) à c).
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Canada Elections Act, S.C. 2000, c. 9

21 Prohibition — use of broadcasting station outside Canada 330. (1) No person shall, with intent to influence persons to vote or refrain from voting or vote or refrain from voting for a particular candidate at an election, use, <i>aid, abet, counsel</i> or procure the use of a broadcasting station outside Canada, during an election period, for the broadcasting of any matter having reference to an election. 495. (4) Every person is guilty of an offence who ... (e) willfully contravenes subsection 330(1) or (2)	Interdiction d'utiliser une station de radiodiffusion à l'étranger 330. (1) Il est interdit à quiconque, avec l'intention d'inciter des personnes à voter ou à s'abstenir de voter ou à voter ou à s'abstenir de voter pour un candidat donné, d'utiliser une station de radiodiffusion à l'étranger, ou <i>d'aider, d'encourager ou d'inciter</i> quelqu'un à utiliser ou de lui conseiller d'utiliser une telle station, pendant la période électorale, pour la diffusion de toute matière se rapportant à une élection. 495. (4) Commet une infraction : ... e) quiconque contrevient volontairement aux paragraphes 330(1) ou (2)
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Excise Act, R.S.C. 1985, c. E-14

22 Sale, removal, etc. 179. Every person who sells, removes, receives or purchases <i>or in any way aids in the sale, removal, receipt or purchase</i> of any beer on which the duties of excise imposed by this Act have not been paid is guilty of an indictable offence and liable (a) for a first offence, to a fine of not more than two hundred dollars and not less than fifty dollars or to imprisonment, with or without hard labour, for a term of not more than three months and not less than one month or to both fine and imprisonment; and (b) for each subsequent offence, to a fine of not more than two hundred dollars and not less than one hundred dollars or to imprisonment for a term of not more than six months and not less than three months or to both fine and imprisonment.	Vente, enlèvement, etc. 179. Quiconque vend, enlève, reçoit ou achète <i>ou de quelque manière aide à vendre, enlever, recevoir ou acheter</i> de la bière sur laquelle les droits d'accise imposés par la présente loi n'ont pas été acquittés commet un acte criminel et encourt : a) pour la première infraction, une amende de cinquante à deux cents dollars et un emprisonnement de un à trois mois, avec ou sans travaux forcés, ou l'une de ces peines; b) pour chaque récidive, une amende de cent à deux cents dollars et un emprisonnement de trois à six mois, ou l'une de ces peines.
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<i>Fish Inspection Act, R.S.C. 1985, c. F-12</i>		
23	Interference with inspector 4. (2) No person shall obstruct, impede or refuse to admit an inspector or other person acting in execution of this Part or any regulation made thereunder <i>and no person shall aid or assist any person in obstructing, impeding or refusing to admit such an inspector or other person.</i>	Entrave 4. (2) Lorsque l'inspecteur ou une autre personne agit dans le cadre de la présente partie ou de ses règlements, il est interdit soit d'entraver son action ou de lui refuser l'accès, soit de concourir à de telles fins.
<i>Immigration and Refugee Protection Act, S.C. 2001, c. 27</i>		
24	Organizing entry into Canada 117. (1) No person shall organize, induce, <i>aid or abet</i> the coming into Canada of one or more persons knowing that, or being reckless as to whether, their coming into Canada is or would be in contravention of this Act.	Entrée illégale 117. (1) Il est interdit à quiconque d'organiser l'entrée au Canada d'une ou de plusieurs personnes ou de les inciter, <i>aider ou encourager</i> à y entrer en sachant que leur entrée est ou serait en contravention avec la présente loi ou en ne se souciant pas de ce fait.
25	Disembarking persons at sea 119. person shall not disembark a person or group of persons at sea for the purpose of inducing, <i>aiding or abetting</i> them to come into Canada in contravention of this Act.	Débarquement de personnes en mer 119. Commet une infraction celui qui débarque en mer une ou plusieurs personnes, en vue d'inciter, <i>d'aider ou d'encourager</i> leur entrée au Canada en contravention avec la présente loi.
26	Counselling misrepresentation 126. Every person who <i>knowingly counsels, induces, aids or abets or attempts to counsel, induce, aid or abet</i> any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act is guilty of an offence. [Compare s. 127(a)]	Infraction en matière de fausses présentations 126. Commet une infraction quiconque, sciemment, <i>incite, aide ou encourage ou tente d'inciter, d'aider ou d'encourager</i> une personne à faire des présentations erronées sur un fait important quant à un objet pertinent ou de réticence sur ce fait, et de ce fait entraîne ou risque d'entraîner une erreur dans l'application de la présente loi.

27	Counselling offence 131. Every person who knowingly <i>induces, aids or abets or attempts to induce, aid or abet</i> any person to contravene section 117, 118, 119, 122, 124 or 129, or who counsels a person to do so, commits an offence and is liable to the same penalty as that person.	Aide 131. Commet une infraction quiconque, sciemment, incite, aide ou encourage ou tente d'inciter, d'aider ou d'encourager une personne à commettre toute infraction visée aux articles 117, 118, 119, 122, 124 ou 129 ou lui conseille de la commettre; l'auteur est passible, sur déclaration de culpabilité, de la peine prévue à la disposition en cause.
<i>National Defence Act, R.S.C. 1985, c. N-5</i>		
28	Accessories to desertion and absence without leave 299. (1) Every person who (a) <i>procures, persuades, aids, assists or counsels</i> an officer or non-commissioned member to desert or absent himself without leave, or (b) in an emergency, <i>aids, assists</i>, harbours or conceals an officer or non-commissioned member who is a deserter or an absentee without leave and who does not satisfy the court that he did not know that the officer or non-commissioned member was a deserter or an absentee without leave, is guilty of an offence and liable, on summary conviction, to a fine not exceeding one thousand dollars and not less than one hundred dollars or to imprisonment for any term not exceeding twelve months or to both.	Complicité dans les cas de désertion 299. (1) Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende de cent à mille dollars et un emprisonnement maximal de douze mois, ou l'une de ces peines, quiconque : a) concourt à la désertion ou à l'absence sans permission d'un officier ou militaire du rang aussi bien par ses conseils ou encouragements que par son aide matérielle; b) pendant un état d'urgence, aide ou recèle un officier ou militaire du rang qui a déserté ou s'est absenté sans permission et ne parvient pas à convaincre le tribunal qu'il ignorait la désertion ou l'absence sans permission.

29	Aid to intending deserters or absentees 300. Every person who, knowing that an officer or non-commissioned member is about to desert or absent himself without leave, <i>aids or assists</i> the officer or non-commissioned member in attempting to desert or absent himself without leave is guilty of an offence and liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both.	Assistance à tentative de désertion ou d'absence sans permission 300. Quiconque, sachant qu'un officier ou militaire du rang est sur le point de désertir ou de s'absenter sans permission, l'aide dans sa tentative commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de mille dollars et un emprisonnement maximal de douze mois, ou l'une de ces peines.
30	Miscellaneous offences 301. Every person who... (b) <i>counsels</i> any other person not to perform any duty that, under this Act or regulations, the other person is required to perform... is guilty of an offence and liable, on summary conviction, to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding twelve months or to both.	Infractions diverses 301. Commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de mille dollars et un emprisonnement maximal de douze mois, ou l'une de ces peines, quiconque : b) dissuade une personne d'exercer une fonction que lui imposent la présente loi ou ses règlements;
<i>Parliamentary Employment and Staff Relations Act, R.S.C. 1985, c. 33 (2d Supp.)</i>		
31	Declaration or authorization of strike 74. No employee organization shall declare or authorize a strike of employees and no officer or representative of an employee organization shall <i>counsel or procure</i> the declaration or authorization of a strike of employees or the participation of employees in a strike, the effect of which is or would be to involve the participation of an employee in a strike in contravention of section 73.	Déclaration ou autorisation de grève 74. Il est interdit à une organisation syndicale de déclarer ou d'autoriser une grève des employés et à un dirigeant ou représentant de l'organisation de conseiller ou susciter la déclaration ou l'autorisation d'une telle grève, ou encore la participation d'employés à celle-ci, quand elle a ou aurait pour effet de placer ces employés en situation d'infraction à l'article 73.

Public Sector Compensation Act, S.C. 1991, c. 30

32 Prohibitions 14. (1) During the period beginning on the day on which this Act comes into force in which a compensation plan, as extended under section 5 or 6, or in respect of which section 11 applies, is in force, (a) no bargaining agent shall declare, authorize or direct, or condone or acquiesce in the continuation of, a strike of employees to whom the compensation plan applies; (b) no representative or officer of a bargaining agent shall <i>counsel or procure</i> the declaration, authorization or direction of, or condone or acquiesce in the continuation of, a strike of those employees; and (c) no employee to whom the compensation plan applies shall participate in a strike.	Interdiction 14. (1) Pendant la durée du régime de rémunération prorogé en vertu des articles 5 ou 6 ou visé à l'article 11, il est interdit, à compter de l'entrée en vigueur de la présente loi : a) à tout agent négociateur de déclarer, d'autoriser ou d'ordonner une grève de salariés visés par ce régime ou de tolérer la continuation d'une telle grève ou d'y consentir; b) à tout dirigeant ou représentant d'un agent négociateur de <i>recommander ou d'obtenir</i> une déclaration, une autorisation ou un ordre de grève de ces salariés ou de tolérer la continuation d'une telle grève ou d'y consentir; c) à tout salarié visé par ce régime de participer à une grève.
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Public Servants Disclosure Protection Act, S.C. 2005, c. 46

33 Destroying documents and things, etc. 42. No person shall (a) destroy, mutilate or alter the document or thing; (b) falsify the document or make a false document; (c) conceal the document or thing; or (d) direct, <i>counsel</i> or cause, in any manner, any person to do anything mentioned in any of paragraphs (a) to (c), or propose, in any manner, to any person that they do anything mentioned in any of those paragraphs.	Destruction, falsification, etc. 42. Il est interdit à quiconque sait qu'un document ou une chose sera vraisemblablement utile dans le cadre d'une enquête ouverte au titre de la présente loi : a) de détruire, de tronquer ou de modifier le document ou la chose; b) de falsifier le document ou de faire un faux document; c) de cacher le document ou la chose; d) d'ordonner, de proposer ou de conseiller à une personne de commettre un acte visé à l'un des alinéas a) à c), ou de l'amener de n'importe quelle façon à le faire.
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Public Service Labour Relations Act, S.C. 2003, c. 22

34 - 35	Declaration of unauthorized strike prohibited 194. (1) No employee organization shall declare or authorize a strike in respect of a bargaining unit, and <i>no officer or representative of an employee organization shall counsel or procure</i> the declaration or authorization of a strike in respect of a bargaining unit or the participation of employees in such a strike, if ...[14 specified circumstances are set out] (2) No employee organization shall declare or authorize a strike the effect of which is or would be to involve the participation of any employee who occupies a position that is designated under section 120, <i>and no officer or representative of an employee organization shall counsel or procure</i> the declaration or authorization of a strike in respect of a bargaining unit or the participation of those employees in a strike.	Déclaration ou autorisation de grève 194. (1) Il est interdit à toute organisation syndicale de déclarer ou d'autoriser une grève à l'égard d'une unité de négociation donnée, et à tout dirigeant ou représentant de l'organisation de conseiller ou susciter la déclaration ou l'autorisation d'une telle grève, ou encore la participation de fonctionnaires à une telle grève : ... (2) Il est interdit à toute organisation syndicale de déclarer ou d'autoriser une grève à l'égard d'une unité de négociation donnée, et à tout dirigeant ou représentant d'une telle organisation de conseiller ou susciter la déclaration ou l'autorisation d'une telle grève, ou encore la participation de fonctionnaires à une telle grève, quand celle-ci a ou aurait pour effet d'y faire participer tout fonctionnaire qui occupe un poste désigné en vertu de l'article 120.
36	Declaration or authorization of strike prohibited during deferral period 197. (3) No employee organization shall declare or authorize, and no officer or representative of an employee organization shall <i>counsel or procure</i> the declaration or authorization of, a strike in respect of a bargaining unit in the period during which the strike is deferred by an order made under subsection (1).	Suspension de la grève 197. (3) Il est interdit à toute organisation syndicale de déclarer ou d'autoriser une grève à l'égard d'une unité de négociation donnée, et à tout dirigeant ou représentant d'une telle organisation de conseiller ou susciter la déclaration ou l'autorisation d'une telle grève, pendant la période visée par le décret pris au titre du paragraphe (1).

**Regulation Adapting the Canada Elections Act for the Purposes of a Referendum,
SOR/2010-20**

37	Prohibition — use of broadcasting station outside Canada 330. (1) No person shall, with intent to influence persons to vote or refrain from voting or vote or refrain from voting for a particular answer to a referendum question, use, <i>aid, abet, counsel or procure</i> the use of a broadcasting station outside Canada, during a referendum period, for the broadcasting of any matter having reference to a referendum. 495. (4) Every person is guilty of an offence who ... (e) wilfully contravenes subsection 330(1) or (2)	Interdiction d'utiliser une station de radiodiffusion à l'étranger 330. (1) Il est interdit à quiconque, avec l'intention d'inciter des personnes à voter ou à s'abstenir de voter ou à voter ou à s'abstenir de voter pour une réponse à une question référendaire, d'utiliser une station de radiodiffusion à l'étranger, ou d'aider, d'encourager ou d'inciter quelqu'un à utiliser ou de lui conseiller d'utiliser une telle station, pendant la période référendaire, pour la diffusion de toute matière se rapportant à un référendum. 495. (4) Commet une infraction : ... e) quiconque contrevient volontairement aux paragraphes 330(1) ou (2)
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Category V

Offences that Prohibit Accessorial Acts Directed to Conduct not Prohibited by Law

Assisted Human Reproduction Act, S.C. 2004, c. 2

38	Surrogate mother — minimum age 6. (4) No person shall <i>counsel</i> or induce a female person to become a surrogate mother, or perform any medical procedure to <i>assist</i> a female person to become a surrogate mother, knowing or having reason to believe <u>that the female person is under 21 years of age.</u>	Mère porteuse — âge minimum 6. (4) Nul ne peut <i>induire</i> une personne de sexe féminin à devenir mère porteuse ni lui conseiller de le devenir, ni pratiquer un acte médical pour <i>aider</i> une personne de sexe féminin à devenir mère porteuse, s'il sait ou a des motifs de croire <u>qu'elle a moins de vingt et un ans.</u>
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Criminal Code of Canada, R.S.C. 1985, c. C-46

39

Invitation to sexual touching

152. Every person who, for a sexual purpose, invites, *counsels* or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years,

(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

Incitation à des contacts sexuels

152. Toute personne qui, à des fins d'ordre sexuel, invite, engage ou incite un enfant âgé de moins de seize ans à la toucher, à se toucher ou à toucher un tiers, directement ou indirectement, avec une partie du corps ou avec un objet est coupable :

a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans, la peine minimale étant de un an;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois, la peine minimale étant de quatre-vingt-dix jours.

40

Sexual exploitation

153. (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

...

(b) for a sexual purpose, invites, *counsels* or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

Exploitation sexuelle

153. (1) Commet une infraction toute personne qui est en situation d'autorité ou de confiance vis-à-vis d'un adolescent, à l'égard de laquelle l'adolescent est en situation de dépendance ou qui est dans une relation où elle exploite l'adolescent et qui, selon le cas :

a) à des fins d'ordre sexuel, touche, directement ou indirectement, avec une partie de son corps ou avec un objet, une partie du corps de l'adolescent;

b) à des fins d'ordre sexuel, invite, engage ou incite un adolescent à la toucher, à se toucher ou à toucher un tiers, directement ou indirectement, avec une partie du corps ou avec un objet.

41	Sexual exploitation of person with disability 153.1. (1) Every person who is in a <u>position of trust or authority towards a person with a mental or physical disability</u> or who is a <u>person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels</u> or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of (a) an indictable offence and liable to imprisonment for a term not exceeding five years; or (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.	Personnes en situation d'autorité 153.1 (1) Est coupable soit d'un acte criminel et passible d'un emprisonnement maximal de cinq ans, soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire et passible d'un emprisonnement maximal de dix-huit mois, toute personne qui est en situation d'autorité ou de confiance vis-à-vis d'une personne ayant une déficience mentale ou physique ou à l'égard de laquelle celle-ci est en situation de dépendance et qui, à des fins d'ordre sexuel, engage ou incite la personne handicapée à la toucher, à se toucher ou à toucher un tiers, sans son consentement, directement ou indirectement, avec une partie du corps ou avec un objet.
42	Procuring 212. (1) Every one who ... (h) <u>for the purposes of gain, exercises control, direction or influence over the movements of a person in such manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person or generally</u> ... is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.	Proxénétisme 212. (1) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans quiconque, selon le cas : ... h) aux fins de lucre, exerce un contrôle, une direction ou une influence sur les mouvements d'une personne de façon à démontrer qu'il l'aide, l'encourage ou la force à s'adonner ou à se livrer à la prostitution avec une personne en particulier ou d'une manière générale;

43	Aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years 212. (2.1) Notwithstanding paragraph (1)(j) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person <u>under the age of eighteen years</u>, and who (a) <u>for the purposes of profit, aids, abets, counsels</u> or compels the person under that age to engage in or carry on prostitution with any person or generally, and (b) <u>uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age</u>, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.	Infraction grave — vivre des produits de la prostitution d'une personne âgée de moins de dix-huit ans (2.1) Par dérogation à l'alinéa (1)j) et au paragraphe (2), est coupable d'un acte criminel et passible d'un emprisonnement minimal de cinq ans et maximal de quatorze ans quiconque vit entièrement ou en partie des produits de la prostitution d'une autre personne âgée de moins de dix-huit ans si, à la fois : a) aux fins de profit, il l'aide, l'encourage ou la force à s'adonner ou à se livrer à la prostitution avec une personne en particulier ou d'une manière générale, ou lui conseille de le faire; b) il use de violence envers elle, l'intimide ou la contraint, ou tente ou menace de le faire.
44	Counselling or aiding suicide 241. Every one who (a) <i>counsels</i> a person to commit suicide, or (b) <i>aids or abets</i> a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.	Fait de conseiller le suicide ou d'y aider 241. Est coupable d'un acte criminel et passible d'un emprisonnement maximal de quatorze ans quiconque, selon le cas : a) conseille à une personne de se donner la mort; b) aide ou encourage quelqu'un à se donner la mort, que le suicide s'ensuive ou non.

