THE TOP FIVE 2004
5 RECENT SIGNIFICANT CASES IDENTIFIED BY JUSTICE S. GOUDGE, 2004

SUMMER LAW INSTITUTE FOR SECONDARY SCHOOL TEACHERS

A Note to Teachers: *These are unofficial case summaries for the assistance of the classroom teacher. They do not represent the text of the Court decision. For the actual reasoning, please refer to the full Court decision.*

1. ***Bouzari v. Islamic Republic of Iran*, 2004 (Ont. C.A.)**
http://www.ontariocourts.on.ca/decisions/2004/june/bouzariC38295.htm

Seeking Damages for Torture from a Foreign Country

(Recommended for senior students)

In June 1993 while Houshang Bouzari was on business in Tehran, agents of the state of Iran entered his apartment, robbed and abducted him at gunpoint. Mr. Bouzari, an Iranian citizen who had moved to Italy with his wife and children, was repeatedly subjected to brutal physical and psychological torture until his release in January 1994, when his family promised to pay the remaining $2 million of the $5 million ransom demanded by his captors. Mr. Bouzari was dumped on the streets of Tehran and, in July of 1994, he was able to flee the country to rejoin his family in Italy. During the years that followed, Mr. Bouzari's safety and that of his family was frequently threatened by Iranian state agents. In July 1998 Mr. Bouzari and his family emigrated to Canada.

In November 2000, Mr. Bouzari attempted to sue the Islamic Republic of Iran for compensation for his kidnapping, false imprisonment, assault, torture, and death threats, as well as a return of the paid ransom money. He also wanted the Court to award punitive damages (money awarded by a court when the defendant's malicious actions warrant punishment).

Before the start of the trial the Ontario Superior Court of Justice had to determine whether or not it had the authority ("jurisdiction") to hear the case because the defendant was a foreign country. The laws of Ontario prohibit a court from hearing a case unless the parties have a *real and substantial connection* to Ontario. Even where such a connection can be established, the court has the discretion to decline to hear the action if there is another more appropriate court in which to bring the action. Death threats against Mr. Bouzari made it impossible to bring the case before an Iranian court. The motion judge noted that there was no real and substantial connection between Mr. Bouzari and Ontario because he was not a citizen of Ontario at the time he was abducted, unlawfully confined and tortured. In the end, however, the judge did not apply the real and substantial connection analysis because she noted that in the future the laws might be modified to permit Ontario courts to hear a claim resulting from torture by a foreign state in that foreign country.

The judge instead found that the relevant legal principle was that of sovereign (or state) immunity. The Ontario Court of Appeal unanimously agreed with her. Under the federal *State Immunity Act* (*SIA*) a foreign country is exempt from being a defendant in a legal proceeding started in a Canadian court, except in three circumstances: first, the Act does not apply to criminal proceedings or proceedings in the nature of criminal proceedings; second, immunity is not granted to a state in any proceedings related to any death or bodily injury or loss of property that occurs in Canada; and third, immunity does not apply to proceedings related to commercial activity. Mr. Bouzari argued that the facts of his case fit within these three exceptions. The Court of Appeal agreed with the motion judge who rejected Mr. Bouzari's arguments. Notably, the motion judge found that Mr. Bouzari was seeking punitive damages, which are only available in civil proceedings, not in criminal proceedings; that the injuries were inflicted on Mr. Bouzari in Iran, not in Canada; and that the torture to which Mr. Bouzari was subjected was not commercial in nature.

Mr. Bouzari also argued that Canada has signed treaties that create international law obligations and that there are customary international laws that it has agreed to follow. (One of these is a prohibition on torture.) The Court of Appeal affirmed the motion judge's reasoning saying that it struck a balance between condemning torture as a crime against humanity and the legal principle that countries must not be taken to court for not observing each others' laws.

Mr. Bouzari also argued that the *SIA*, which creates state immunity, violated his "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" under s. 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*). The motion judge found that Mr. Bouzari's life, liberty and security of the person was not threatened because the *Charter* applies to Canadian government activity and the Canadian government had nothing to do with Mr. Bouzari's detainment. Although the Court of Appeal noted this, the bench also noted that sometimes the *Charter* may apply to non-government activities, but only where there is a connection between the actions of the defendant and the Canadian government.

The Court of Appeal ultimately found the decision and reasons of the motion judge to be reasonable and erudite. The appeal was dismissed without an order for costs.

An interesting aspect of this case was that the Court of Appeal was troubled that the Superior Court lacked the authority to hear the case because the action was perpetrated by a foreign state in violation of international human rights. The Court of Appeal found that if Ontario did not take jurisdiction, no alternative existed for hearing the case. Like the motion judge, the Court of Appeal declined to decide the question of whether or not the case could be heard in an Ontario court on the basis of the *real and substantial connection test*, noting that the suitability of its application would have to be resolved in another case that could not be resolved on any other basis. This suggests that in the future it may be possible to sue a foreign country in Ontario for torture inflicted by agents of that foreign country within its own borders.

---

2. ***R.*** **v. *Mann* 2004 CSC 52**
http://scc.lexum.org/en/2004/2004scc52/2004scc52.html

The Powers of the Police When Detaining Someone as Part of an Investigation

While on their way to investigate a break and enter, two police officers stopped an individual (Mann) who matched the description of the suspect. The police officers stopped him, asked his name and "patted him down" in search of weapons hidden on his person. One of the police officers felt something soft in Mann's pocket. He reached in and brought out a baggie containing marijuana. He also found several empty baggies in another pocket. Mann was arrested and charged with possession of marijuana for the purposes of trafficking. At trial, the judge found that the search of Mann's pockets violated his right to be secure from unreasonable search or seizure, which is set out in s.8 of the *Canadian Charter of Rights and Freedoms* (*Charter*). The trial judge ruled that he would apply s. 24 of the *Charter* which permits a judge to refuse to admit evidence where to do so would interfere with the fairness of the trial or bring the justice system into disrepute. The trial judge found that police officers are entitled to search for hidden weapons for security reasons, but that it was unreasonable for the officer to have gone into the pocket.

The Manitoba Court of Appeal disagreed with the trial judge and ordered a new trial. The Court of Appeal found that the detention and the pat-down were conducted without malicious intent, and in the circumstances were reasonable, particularly in light of the police's duty to preserve the peace.

The Supreme Court of Canada was asked to decide whether police have the power to detain someone for investigatory purposes and if they do, whether the police also have the power to conduct a search as part of or ancillary to an investigative detention.

The majority of the Supreme Court distinguished between individuals who are detained by the police when under arrest and those who are not under arrest but are delayed while the police perform investigations. It decided that the test for whether an investigatory detention violates a person's right to unreasonable search and seizure is the *Waterfield* test, set out in *R. v. Waterfield*, [1963] 3 All E.R.659 (English Court of Appeal) rather than the *articulable cause* test, an American legal test. The *Waterfield* test is comprised of two parts, the first recognizing that police have a duty to preserve the peace and to prevent crime. For a search to be found reasonable, the purpose of the detention must fall within those duties. The majority of the Court incorporated the *articulable cause* test, permitting a search only where an officer can articulate a specific cause for the search, into the first part of the *Waterfield* test. It noted that the police, after assessing all of the circumstances, must have reasonable grounds to suspect that an individual is linked to a crime. The second prong of the *Waterfield* test is that there must be a balance between the conflict between police duties and an individual's right to liberty.

Having articulated the test for determining whether a detention is reasonable, the majority of the Supreme Court then found that a search incident to detention may be conducted if it is "reasonably necessary". The majority indicated that one must consider the reasonableness of the search in light of the police duty being performed as well as the extent of interference with that individual's liberty. The search cannot be conducted on a hunch or intuition. The officer must have more than a vague concern for safety. Where the police believe personal safety is at risk based on the circumstances, they may perform a pat-down search. Both the detention and the pat-down search must be conducted in a reasonable manner. The investigative detention should be brief and does not impose an obligation on the detained person to answer questions posed by the police.

The majority found that the police had reasonable grounds to detain and investigate Mann as he fit the description of the suspect and was two or three blocks from the crime scene. The judges also found that the police had the right to conduct a search of Mann's person because of their concern that he might be hiding weapons. However, the majority found that when the officer found the soft baggie in Mann's pocket, the search was no longer being conducted for the purpose of safety but rather, the purpose changed to collecting evidence. The Court's majority ruled that this was unreasonable because there was nothing in the circumstances from which it could be inferred that it was reasonable to go beyond a pat-down search for security reasons. Individuals have a reasonable expectation of privacy in their pockets. The majority noted that the bag of marijuana and the baggies were the key evidence against Mann. It found that to permit a new trial and to use the evidence could damage the reputation of the justice system. The majority of the Supreme Court set aside the Manitoba Court of Appeal's order for a new trial and restored the trial judge's acquittal.

Two judges of the Supreme Court disagreed with the majority's decision that to admit the evidence would bring the administration of justice into disrepute (i.e. harm the reputation of the justice system). The minority believed that the correct test to apply is the *articulable cause* test rather than the "reasonable grounds" test used in *Waterfield*. Police officers are required

to show reasonable grounds when justifying a detention of a suspect upon arrest. The minority held that the standard used to justify a search and ought to be different from that used to justify a detention.

On the issue of whether police officers have a right to conduct a search incidental to arrest, the minority agreed with the majority of the Court, but only on the condition that the detention itself is lawful. The minority said that the search must be reasonably necessary to secure evidence of a crime, to protect the police or the public, or to discover anything that could endanger the police or facilitate escape. The minority concluded that the officer's search of the pocket was a minor violation of Mann's rights, particularly in light of the fact that since he was in an area with a high rate of crime, he should have had a lower expectation of privacy. The minority argued that since possession for the purposes of trafficking is a serious crime, it would bring the justice system into disrepute if the evidence were not allowed and the conviction did not stand.

---

3. *R. v. Malmo-Levine*; *R. v. Caine* 2003 SCC 74 (Supreme Court of Canada)
http://scc.lexum.org/en/2003/2003scc74/2003scc74.html

Possession of Marijuana for Personal Use, the *Narcotic Control Act* and the *Charter*

(Recommended for senior students)

In 2003, the Supreme Court of Canada was asked to decide whether Parliament has the authority to criminalize simple possession of marijuana and if so, whether that power violates s. 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*). (Section 7 states that "every person has a 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.")

The Appellant, Caine, argued that since prison is a possible sentence for conviction, the principles of fundamental justice are violated in the case of activity that causes little or no harm to others. The Appellant, Malmo-Levine, asked the court to find that the prohibition against possession for the purposes of trafficking in marijuana violates peoples' constitutional rights. In both cases, the British Columbia Court of Appeal decided that certain sections of the Schedule to the *Narcotic Control Act*, R.S.C. 1985, c. N-1 (*NCA*) are constitutionally valid legislation and that the prohibition on simple possession and possession for the purposes of trafficking in marijuana is good law. The Supreme Court of Canada upheld both these decisions.

A brief history of the facts of the two cases are as follows:

Malmo-Levine described himself as a "marijuana/ freedom activist" who operated an organization in Vancouver called the "Harm Reduction Club". The Club's objective was to

educate the public so as "to minimize any harm from the use of marijuana." In December of 1996, police entered the Harm Reduction Club and seized 316g of marijuana, mostly in the form of joints. At trial, the judge would not allow Malmo-Levine to present evidence in support of his argument that freedom to use marijuana was a matter of fundamental personal importance protected by s. 7 of the *Charter*. Malmo-Levine was convicted under s. 4(2) of the *NCA* for possession of marijuana for the purpose of trafficking.

In 1993, Caine and a friend were in a van near the ocean in British Columbia when they were approached by two RCMP officers on regular patrol. One of the officers smelled the strong odour of recently smoked marijuana. Caine produced a partially smoked "joint" of marijuana which was for his use and no other purpose. At trial, the judge heard extensive evidence about the alleged harm of marijuana use. She concluded that she was bound by the decision in Malmo-Levine's case, that the *NCA* was not contrary to s. 7 of the *Charter*, and Caine was convicted under s. 3 of the *NCA* for simple possession.

Caine and Malmo-Levine appealed. The British Columbia Court of Appeal dismissed the appeals, albeit with one judge dissenting.

Nine judges heard the appeals at the Supreme Court of Canada. The majority decision for the Caine case was written by Justices Gonthier and Binnie, with three judges each writing a dissent. In the Malmo-Levine case, all nine judges agreed in the result and Justices Gonthier and Binnie wrote the majority decision.

The majority of the Supreme Court of Canada agreed with the British Columbia Court of Appeal's finding that the trial judge was mistaken not to consider the evidence that Malmo-Levine wished to present at his trial. This evidence included government reports and documents as well as testimony of expert evidence on the debatable and controversial aspects of marijuana use. The majority of the Supreme Court ruled that the Caine trial judge followed the correct procedure in taking notice of this "legislative fact" evidence as it was essential to deciding the issue of "harm" and required testing on cross-examination. (Legislative fact evidence is evidence that establishes the purpose and background of legislation. It is usually of a general nature and subject to lesser scrutiny.) However, on appeal, Malmo-Levine agreed that the Court of Appeal could consider the same legislative fact evidence that was considered in the Caine case. The Court considered the evidence and upheld Malmo-Levine's conviction.

The parties before the Supreme Court agreed that smoking marijuana has some harmful effects**.** The Court also accepted the findings of the lower courts that there is a general risk of substantial harm to vulnerable persons such as pregnant women and persons with schizophrenia. The Supreme Court recognized that Parliament has the power to create laws that protect vulnerable people.

The majority of the Supreme Court found that the *NCA* fell within Parliament's power to make laws related to criminal law, particularly where the legislation promotes peace, order and

good government. The Supreme Court also observed that the availability of imprisonment as a potential sentence automatically triggers judicial scrutiny of a law to see whether it is contrary to s. 7 of the *Charter*.

Malmo-Levine argued that smoking marijuana is an integral part of his lifestyle and that the prohibition on possession for personal use and for trafficking violates his s. 7 *Charter* rights. The Supreme Court found no infringement of his life-style-related liberty interests because liberty "grants the individual a degree of autonomy in making decisions of fundamental personal importance" The Court held there is no free-standing right to smoke pot for recreational purposes. Malmo-Levine argued that by depriving him of marijuana his security of the person would be violated. However, the Supreme Court noted that the appellants had argued that marijuana is non-addictive, so to deprive someone of its use would not cause serious physical or psychological state-imposed stress that is associated with deprivation of security of the person. The Court did, however, recognize that the availability of imprisonment engaged an individual's liberty interest but it determined that the infringement is justifiable.

The majority of the Supreme Court concluded that the issue of punishment should not be considered as a violation of s. 7 but should be analyzed in light of s. 12 of the *Charter*, which guarantees the right to be free from cruel and unusual treatment or punishment. The legal test for determining whether punishment is "cruel and unusual" is whether the punishment is *grossly disproportional* to the harm caused by the offence. The majority of the court noted that since the *NCA* did not set out a mandatory minimum sentence and since prison time is usually not used as a punishment, then the legal principle of gross proportionality is not violated. The majority of the Court found that it is the *use* of a prison sentence as a punishment, not its *availability* that violates the *Charter*.

In light of Parliament's objectives and the Court's decision that the *NCA* provisions do not violate the *Charter*, both Malmo-Levine's and Caine's convictions were upheld.
One Supreme Court judge, Arbour J, who dissented from the majority opinion in Caine's appeal found that the limited harm associated with marijuana use does not justify a potential prison sentence as punishment or its use as a way to deter people from using it.

Another judge who dissented on Caine's appeal, Lebel J, argued that since few people are jailed for simple possession of marijuana, it should be taken off the books as a possible punishment. He also argued that the stigma of a criminal record affects individual's liberty rights disproportionately to the harm that is caused by the activity.

A third judge who dissented from the majority's decision in the Caine appeal, Deschamps J, decided that moderate use of marijuana is relatively harmless and that using the possibility of a jail sentence to deter people from using it is a punishment disproportionate to the harm caused by the offence.

4. *R. v. Hamilton*, [2004] (Ont. C.A.)
http://www.ontariocourts.on.ca/decisions/2004/august/C39716.htm

Considering Personal Circumstances When Sentencing

This was an appeal to the Ontario Court of Appeal from the trial judge's sentences for two women (Hamilton and Mason) found guilty of smuggling cocaine into Canada from Jamaica. Both women were young, black, single mothers who, at trial, pleaded guilty. The charges were unrelated but since they wanted to rely on the same expert evidence, Hamilton and Mason elected to have a joint sentencing hearing following their convictions.

The Criminal Code sets out the purpose of sentencing and guidelines for determining the appropriate sentence for an offence. Additionally, over the years, the courts have developed guidelines for determining an appropriate sentence. A sentence is considered to be 'fit' if it "reflects the circumstances of the *specific* offence and the attributes (i.e. characteristics) of the *specific* offender" as revealed by the evidence in the proceedings. [Doherty J.A. for a unanimous Court of Appeal at paragraph 2.] Furthermore, the Criminal Code provides that the purposes include making the public aware that certain types of behaviour are not acceptable, deterring would be offenders, separating offenders from society, rehabilitating offenders and in some cases, permitting the offender to make reparation to the victim, and promoting the offender's sense of responsibility and acknowledgement of harm done to the victim. A sentence is not an opportunity to address societal issues such as racism and poverty.

The trial judge imposed conditional sentences on Hamilton and Mason. A conditional sentence is usually imposed for offences requiring minimum punishment. If the offender fulfills all the conditions at the end of the sentence, they will not have a conviction entered on their criminal record. Typically a conditional sentence is comprised of probation or house arrest but not imprisonment. The Crown appealed on the basis that the sentences were inadequate given the seriousness of the offence. The Crown was also concerned that the trial judge based his sentencing on his finding that because of their gender, race and poverty, Hamilton and Mason were vulnerable targets of those seeking to enlist drug smugglers. The judge relied heavily on material that he produced during the hearing and on his professional experiences.

The Ontario Court of Appeal found that the trial judge overstepped his position as a judge and became an advocate on behalf of Hamilton and Mason. The Court of Appeal did not disagree with the length of the sentences but did find that the judge made an error in handing out conditional sentences.

The Court of Appeal noted that the Criminal Code permits a judge to raise any issue relevant to determining a fit sentence. However, the judge must first determine from counsel their positions as to the relevance of that issue. If counsel take the position that the issue is relevant, then it should be left to them to produce whatever evidence is appropriate, although the judge may make them aware of materials known to the judge which are

relevant. If counsel take the position that the issue raised by the judge is not relevant on sentencing, it will be a rare case where the judge will pursue that issue. The trial judge invited counsel to comment on the materials that he had produced. The Crown did not object but did indicate that he was concerned that the judge had introduced the issue of race when the defence lawyer had not brought it up.

The Court of Appeal also observed that the judge's invitation to the parties to comment was an attempt to be fair but he erred in taking on multiple roles - those of advocate, witness and judge. The Court ruled that the judge also erred because he spoke generally of the characteristics of cocaine couriers instead of relying on the specific characteristics of Hamilton and Mason. The Court also found the judge's fact-finding inaccurate. The judge relied on reports and statistics reporting the number of black women in Canadian prisons however, the material was not analyzed or tested in any way. This information should not have informed the determination of a fit sentence. Finally, the judge conducted an inquiry into an issue which had little influence on his final sentencing decision. The Court of Appeal ruled that the judge erred in conducting an inquiry into matters that concerned him rather than conducting a sentencing hearing for the purposes of determining an appropriate sentence.

The Court of Appeal reiterated established principles of sentencing, including the principle that sentencing must result from the circumstances of the specific offence and the specific offender. The appropriateness of the sentence is also determined in light of the gravity of the offence. The degree of the offender's responsibility must be considered, as should the sections of the Criminal Code that provide that an offender should not be imprisoned if a less restrictive punishment would be appropriate.

In reviewing the trial judge's sentences, the Court of Appeal found that the judge erred in concluding that conditional sentences were appropriate on the basis that Hamilton and Mason's responsibility was diminished because of the effects of systemic racism and bias against women. The Court of Appeal stated unequivocally that an offender's membership in a group that has historically been discriminated against does not justify a lesser sentence.

The Court of Appeal found that the judge made other serious errors during the sentencing trial. The judge made several 'findings of fact' that influenced his choice of sentence. The Court of Appeal found that there was no evidence submitted to support these findings. He also relied on personal experience and the relative poverty of Hamilton and Mason to influence his decision. The judge ignored the sentencing precedents in previous cases with similar facts. In doing all of these things, the Court of Appeal ruled that the judge overstepped his role as an impartial decision maker.

Ultimately, although the Court of Appeal found that the conditional sentences were inappropriately light, the judges decided that imprisoning Hamilton and Mason for the remainder of their sentences would serve no purpose.

5. *Harper v. Canada (Attorney General)* 2004 SCC 33
http://scc.lexum.org/en/2004/2004scc33/2004scc33.html

Third Party Election Advertising and *Charter* Rights

In *Harper*, the Supreme Court of Canada was asked to decide whether specific sections of the *Canada Elections Act* relating to election advertising spending limits infringed individuals' right to vote, right to freedom of expression or right to freedom of association, all of which are rights guaranteed under the *Canadian Charter of Rights and Freedoms* (*Charter*). As in the case with any consideration of *Charter* infringement, if the court determines that the provisions limit people's rights, then that court also has to decide whether the limits on those rights can be justified in a free and democratic society.

One provision of the *Canada Elections Act* challenged by Stephen Harper (Stephen Harper, current leader of the Opposition, started this court action prior to being elected to the federal parliament), was the section that limits anyone other than a political candidate or a political party (i.e. a "third party") from spending more than $3000 per electoral district and $150,000 nationally on advertising during an election campaign. In effect, this provision limits third parties from effectively communicating with voters during an election campaign. The legislation does not limit editorials, debates, interviews, commentary, distribution of books (if the book was planned to be released regardless of the election campaign), documents sent by a person or group to other members of their group, and Internet posting of personal opinions. Harper argued that this provision limits freedom of expression, which is a right guaranteed under the *Charter*. Harper also argued that by limiting his freedom of expression, his right to participate in the voting process in a meaningful way was limited.

At trial, the judge found that the *Canada Elections Act* provisions violated individuals' *Charter* rights. The judge then asked whether that violation could be justified in a free and democratic society and found that it could not. He noted that the Attorney General did not produce enough evidence to convince him that the law was necessary to maintain electoral fairness (the purpose of the *Canada Elections Act*). The Attorney General appealed the trial judge's decision.

The Alberta Court of Appeal dismissed the Attorney General's appeal but allowed Harper to counter-appeal. Two of the Court of Appeal judges ruled that all the sections of the *Canada Elections Act* in question ought to be treated as unseverable (i.e. treated as a whole rather than as distinct and individual parts) and that the sections violated people's constitutionally guaranteed rights. As a result, the Court of Appeal ruled that those sections of the *Canada Elections Act* were of no force and effect and should be struck down. One judge disagreed, stating that although the spending limits infringed people's rights, the limits were justifiable under s. 1 of the *Charter*. The Attorney General appealed the majority decision to the Supreme Court of Canada.

Before deciding the main issue before them, the Supreme Court judges found that the Alberta Court of Appeal was wrong to rule that all the provisions had to be considered together. The Supreme Court found that Part 17 of the Act creates a scheme that limits third party election advertising expenses. The regime can be divided into four parts. The Supreme Court ruled that each part stood on its own and, therefore, the constitutionality of each set of provisions had to be considered separately.

The members of the Supreme Court did not reach a unanimous decision when asked to decide whether the provisions infringed rights guaranteed by the *Charter*. To reach its decision, the Court considered an earlier case that it had decided in 1997. (See *Libman v. Quebec (Attorney General)*, [1997] 3 S.C.R. 569.) In that case, the Supreme Court found that the spending limits set out in Quebec's referendum legislation were meant to ensure fairness in the election process. The Court noted that spending limits were necessary to prevent the wealthiest citizens from being the only people who could advertise their opinions. Additionally, the Court found that spending limits were necessary to ensure that the right of all electors to be informed of all political positions was preserved. The Court observed that Parliament had the right to create laws that ensured that voters had equal participation in the electoral process.

Harper argued that voters could not meaningfully participate in the election process if their right to political expression was curtailed. The majority rejected this argument stating that if only wealthy citizens were permitted to dominate political advertising, the voter may not be adequately informed of all the parties' views. The majority of the Supreme Court ruled that the spending limits do infringe the right to freedom of political expression but they do not infringe the right to vote in an informed manner because the purpose of the legislation is to promote electoral fairness.

Because the majority found that the provisions of the *Canada Elections Act* did not infringe on the right to vote, it did not need to consider whether that infringement was justifiable in a free and democratic society under s. 1 of the *Charter*. However, the Court had to conduct this analysis for the issue of the infringement of freedom of expression. In the end, the court ruled that the spending limit provisions could be justified under s. 1 of the *Charter*. The majority ruled that Parliament has the right to make laws that will protect people from manipulation. The Court's majority found that the laws on spending limits were connected to the purpose of the legislation, which is to ensure a fair electoral process. The Court also found that the limit on freedom of expression was minimal since it only limits spending for the duration of the election campaign. Finally, the majority found that the provisions increase Canadians' confidence in the fairness of the electoral process.

The majority also found that the provision that prevents third parties from advertising on election day does infringe the right to freedom of expression. However, that infringement is justified under s. 1 because misleading advertising on election day can be damaging to the election process.

On the issue of whether having to report election advertising expenses to the Chief Electoral Officer infringed a person's *Charter* rights, the Court unanimously ruled that these provisions do not violate *Charter* rights because the procedure actually enhances confidence in the election process. This is because reporting the amount of spending on advertising makes the process transparent. (Citizens can see that everyone is treated equally and subjected to the same spending limits.)

Two Supreme Court judges dissented with the majority, finding that the provisions of the *Canada Election Act* are unconstitutional. The judges found that the spending limits reduce a person's freedom of expression and therefore are invalid. The dissenting judges also found that there is no connection between spending limits and unfairness in the electoral process. The spending limits prevent citizens from fully participating in political debates. The minority would have struck the spending limit provision down for being invalid.