Court File No. 35246

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR)

BETWEEN:

HER MAJESTY THE QUEEN

APPELLANT

AND

FREDERICK ANDERSON

RESPONDENT

FACTUM OF THE INTERVENER THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS

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PART I: OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. The David Asper Centre for Constitutional Rights (DAC) is dedicated to promoting "greater awareness, understanding and acceptance of constitutional rights in Canada". It intervenes by order of Abella J. dated January 22, 2014.

2. The Respondent Mr. Anderson is an Inuk person. At various times, he has sought treatment for alcohol addiction. The trial judge found that the Crown offered no explanation at trial for its decision to tender a s.727 notice despite the 12 years since his past convictions.[1] There were no aggravating circumstances such as injury or a high BAC as referenced in a Crown policy directive tendered in the Court of Appeal.[2] The directive made no reference to s.718.2(e) or the background circumstances and sentencing options available to Aboriginal offenders.[3]

PART II: STATEMENT OF POSITION WITH RESPECT TO THE APPELLANT'S QUESTIONS

Issues I and II – Onus of Proof and Standard of Review

3. The DAC submits that the Crown's decision to tender the s.727 notice, like all exercise of state authority, is subject to judicial review for compliance with the Charter. The notice decision lies outside of the core of prosecutorial discretion because it has the effect of limiting the trial judge's sentencing discretion by requiring a mandatory minimum term of imprisonment as opposed to a decision about the laying, maintenance or resolution of a charge. What matters most, however, is not the abstract categorization of different types of Crown decisions, but their effects and consequences in particular contexts. Regardless of whether the impugned decision is characterized as "core" or "non-core", all Crown decisions must remain subject to review not only for possible violations of s.7 but also s.15 of the Charter.[4] Contextual review must be sensitive to both the important role of Crown discretion and systemic discrimination against Aboriginal people in the criminal justice system. The Crown's s.727 notice that would effectively impose a sentence of imprisonment upon an Aboriginal offender imposed an

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[1] *R v Anderson*, 2011 NLPC 1709A00569 at para 24 [*Anderson*]; SCC File No. 35246.
[2] *R v Anderson*, 2013 NLCA 2 at para 19, 105 WCB (2d) 529 [*Anderson CA*]; SCC File No. 35246.
[3] *Ibid* at paras 19-20.
[4] *R v Nixon*, 2011 SCC 34 at para 64, [2011] 2 SCR 456 [*Nixon*]; *R v Gill*, 2012 ONCA 607 at para 76, 112 OR (3d) 423; *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at 455, 18 DLR (4th) 481 [*Operation Dismantle*].

evidential burden of explanation on the Crown. As in *Nixon*[5], such a burden does not reverse the onus of proof for a Charter violation.

Issue III – Mandatory Sentences, s.718(e) and ss.7 and 15 of the *Charter and Remedies*

4. The DAC supports the submissions made by the Respondent and the Intervener ALST that a failure to consider the Aboriginal status of the accused violated s.7 of the Charter. The DAC will submit that the Crown's failure to take account of the fact that the Respondent was Aboriginal violated s.15 by failing to take into account his disadvantaged position, thus perpetuating disadvantage and discrimination on the basis of race without any ameliorative purpose. The DAC will also submit that the trial judge's was an appropriate s.52 reading down remedy or alternatively a justified s.24(1) remedy.

PART III: STATEMENT OF ARGUMENT

A. The Dangers of Formalistic Formulas

5. There is uncertainty about the application of the core- non-core distinction[6] and of the relationship between abuse of process and s.7 review. The labels of "core and non-core," as well as "flagrant impropriety," "bad faith," and "improper motive," may have caused more problems than they have solved by distracting from the ultimate question of Charter compliance. Justice Rosenberg has observed extra-judicially that the scope of core prosecutorial functions is small.[7] Professor Code has criticized interpretations of *Krieger*[8] that would require courts to be deferential regardless of "the magnitude" of the Crown's decisions while at the same time might not give the Crown leeway when making minor or tactical decisions.[9] *Nixon*[10] demonstrates that in appropriate circumstances there can be quite searching judicial review of even prosecutorial

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[5] *R v Nixon*, 2011 SCC 34 at para 51, [2011] 2 SCR 456 [*Nixon*].
[6] For example the conflicting decisions in the Court of Appeal Case on Appeal.
[7] The Honourable Marc Rosenberg, "The Attorney General and the Prosecution Function on the Twenty-First Century" (2009) 34:2 Queen's LJ at page 840.
[8] *Krieger v Law Society of Alberta*, 2002 SCC 65, [2002] 3 SCR 372 [*Krieger*].
[9] Michael Code, "Judicial Review of Prosecutorial Decisions: A Short History of Costs and Benefits, in Response to Justice Rosenberg" (2009) 34:2 Queen's LJ at 886-887.
[10] *Supra,* note 5.

decisions that are characterized as core matters of prosecutorial discretion. None of the parties have vigorously defended the core-non-core distinction.

6. There is also confusion about the nature of the abuse of process. The Appellant seeks to confine the review of every Crown decision to abuse of process narrowly defined as "bad faith", "flagrant impropriety", "prosecutorial misconduct" or "improper motive" [11] while also admitting that courts can use less drastic remedies for abuses than stays of proceedings. The Respondent relies on authority from this Court suggesting an abuse of process can occur in the absence of bad faith.[12] In *R v Babos*[13], this Court has recently focused not on labels but on whether a prosecution offends "the integrity of the justice system". Much of the confusion about abuse of process lies in its traditional focus on the most drastic remedy of a stay of proceedings. This case demonstrates the availability of less drastic remedies. There is no need for the remedial tail to wag the dog and drive courts to a restrictive or formulaic approach to Charter review of Crown conduct.

7. The DAC submits that the most important point is not the categorization of particular decisions as "core" or "non-core" or the ability to attach labels such as "bad faith", "flagrant impropriety" or "prosecutorial misconduct" to Crown conduct, but the need to ensure that all acts of prosecutorial discretion, like all executive acts[14], are subject to Charter review. Verbal formulas should not shelter executive conduct from Charter review. The categories proposed by the Appellant, particularly "bad faith" and "improper motive", are in tension with key concepts of substantive equality under s.15, a right that the trial judge found to be violated.[15] Charter review should be flexible enough to include the full range of Charter rights and remedies. It should be informed by the same contextual, purposive and effects-based approach that informs the rest of the Charter including related developments in administrative law, which acknowledges "the existence of justification, transparency and intelligibility within the decision-

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[11] Factum of the Appellant at para 79.
[12] Factum of the Respondent at para 1.
[13] 2014 SCC 16 at para 38. See also paras 52, 57, 72.
[14] *Operation Dismantle*, *supra* note 4 at 455.
[15] *Anderson, supra* note 1. *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 56 DLR (4th) 1; *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 at para 46, 170 DLR (4th) 1; *R v Kapp*, 2008 SCC 41 at paras 15-16, [2008] 2 SCR 483.

making process"[16] and the importance of administrative decision-makers giving due consideration to Charter rights and reasonably balancing them with statutory obligations.[17]

B. The Context that Should Inform the Charter Review in this Case

Crown Discretion and Sentencing

8. Crown discretion is a fundamental feature of our justice system. Prosecutors, including the Attorney General, enjoy independence from political interference. Their decisions, indeed like decisions of other litigants in an adversarial system, should not be subject to judicial second-guessing. That said, their decisions should not be immune from judicial review in the absence of a "smoking gun" that reveals bad faith or improper motive or flagrant misconduct. The courts should not shrink from their duty to demand that prosecutors, like all state officials, justify their decisions. What is required for justification will vary with the circumstances.

9. As the trial judge found, the Crown's decision to serve the s.727 notice effectively transferred "what is a judicial function to the prosecutor, namely the setting of the floor or minimum sentence in a given case. This has great significance. Where there is a minimum sentence the court cannot consider other non-custodial sentences, such a suspended sentence, or a conditional sentence."[18] Whether the discretion is characterized as core or non-core, the prosecutorial decision in this case had the serious consequences of exposing Mr. Anderson to a mandatory term of imprisonment. It thus deprived both him and the trial judge of the range of creative and constructive sentencing options that may be particularly appropriate for Aboriginal offenders.

10. The Appellant accurately notes at para 145 an increasing number of instances where the exercise of prosecutorial discretion has the potential to limit the trial judge's sentencing options. Although it is within Parliament's power to allow prosecutors to decide whether to restrict a trial judge's sentencing options (within the boundaries of Charter compliance), such decisions can legitimately affect the intensity of judicial review of prosecutorial discretion by heightening the consequences of such decisions. For example, Crown election decisions might normally be an

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[16] *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.
[17] *Doré v Barreau du Québec*, 2012 SCC 12, [2012] 1 SCR 395 [*Doré*].
[18] *Anderson, supra* note 1 at para 21.

exercise of prosecutorial discretion entitled to considerable judicial deference[19], but the intensity of judicial review should depend on the circumstances. For example, Crown election decisions have been subject to more intensive review when made for abusive reasons.[20] The DAC submits that the Crown's exercise of discretion should be subject to more intense review if the consequences will seriously limit the trial judge's sentencing discretion.

11. *Doré v Barreau du Québec*[21] demonstrates how Charter review can accommodate an administrative decision-maker's (such as the Crown's) particular expertise and specialization. The Crown should be "empowered, and indeed required, to consider *Charter* values" in order to promote 'an institutional dialogue about the appropriate use and control of discretion, rather than the older command-and-control relationship'".[22]

12. Judicial review of the exercise of Crown discretion for compliance with the Charter should be "contextual"[23]. It is possible for the courts to require that the Crown reasonably and proportionally consider Charter rights without dismissing the importance of Crown discretion and expertise.

Systemic Discrimination Against Aboriginal People in the Criminal Justice System

13. The pervasive nature of systemic discrimination and overrepresentation of Aboriginal people is also relevant. In order to address this crisis, courts have found that the *Gladue* principles do not, as the Appellant suggests, simply apply to trial judges but to others in the justice system including prosecutors in the exercise of their discretion.[24]

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[19] *R v Smythe*, [1971] SCJ No 62, [1971] SCR 680; *R v Kumar*, [1993] BCJ No 2266 at para 62, 85 CCC (3d) 417; *R v Nur*, [2013] OJ No 5120 at para 190, 2013 ONCA 677.

[20] Fish J. held open the opportunity for an more searching review on a Crown re-election when he stated: "I agree with the Court of Appeal that it is not unfair to the accused to permit the Crown to proceed by indictment unless "the evidence discloses an abuse of process arising from improper Crown motive, or resulting prejudice to the accused sufficient to violate the community's sense of fair play and decency" (para. 1). On the record as we have it, nothing of the sort may be said to have occurred here." *R v Dudley* [2009] 3 SCR 570 at para 44, 2009 SCC 58. See also *R v Parkin*, [1986] OJ No 203 (CA), 28 CCC (3d) 252 [Leave to appeal to SCC refused]; R *v Boutilier*, [1995] NSJ No 540, 104 CCC (3d) 327 (NSCA).

[21] *Doré*, *supra* note 17.

[22] *Doré*, *supra* note 17 at para 35.

[23] *Doré*, *supra* note 17 at para 54.

[24] *United States v Leonard*, 2012 ONCA 622, 112 OR (3d) 496, leave to appeal to SCC refused, [2012] SCCA No 543 (March 07, 2013) [*Leonard*].

14. The trial judge found that the Crown did not attempt to explain how it balanced Mr. Anderson's status as an Inuk against other statutory factors before serving the s.727 notice. The Crown made no attempt to demonstrate that it considered or paid "due regard"[25] to the relevant Charter value -- Mr. Anderson's Inuk status -- and reasonably and proportionately balanced that factor with other public interest and statutory factors before deciding whether to serve the s.727 notice. Although the DAC acknowledges Crown expertise on matters such as deterrence of drunk driving, it submits that Crown counsel are not immune from the systemic and sometimes unconscious discrimination against Aboriginal people that plagues the justice system.[26]

15. As a result of the Crown's exercise of discretion Mr. Anderson faced a mandatory 120 days imprisonment and the trial judge would be precluded from using a broad range of community and treatment sanctions that might appropriately respond to Mr. Anderson's background circumstances as an Aboriginal offender.

16. A failure to consider a relevant and required factor, as distinct from evaluating the particular weight given to the factor, is a well-accepted ground for review of both administrative decisions as well as sentencing discretion.[27] The trial judge found that the Crown failed to consider a relevant factor -- Mr. Anderson's status as an Aboriginal offender -- before serving the s.727 notice triggering a mandatory sentence of imprisonment. Mere consideration of such factors will not necessarily ensure compliance with the Charter under the DAC's proposed contextual approach to Charter review. Nevertheless failure to consider them violates s.15 of the Charter.

C. The Violation of Section 15 of the Charter

17. The trial judge conducted an extensive s.15 analysis before finding that it was violated by a statutory scheme that "would impose a minimum mandatory sentence on an aboriginal accused without any opportunity to argue for a non-custodial sentence that may be appropriate for him."[28] There was no s.1 justification given the less drastic alternative of a shorter intermittent sentence.

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[25] *Doré*, *supra* note 17 at para 66.
[26] *R v Williams*, [1998] 1 SCR 1128, 159 DLR (4th) 493.
[27] *R v M (C.A.)*, [1996] 1 SCR 500 at para 90, [1996] SCJ No 28; *R v Ipeelee*, 2012 SCC 13 at para 39, [2012] 1 SCR 433 [*Ipeelee*]; Donald J. M. Brown et al., *Judicial Review of Administrative Action in Canada*, (Toronto: Canvasback Publishing, 1998) at pp.14-161.
[28] *Anderson*, *supra* note 1 at para 37.

18. As in *Eldridge v British Columbia*[29], the Crown violated substantive equality by failing to consider and accommodate difference and by treating a historically marginalized and excluded group in the identical manner as any other person. A s. 15 violation is not dependent on demonstrating a discriminatory purpose or intent.[30] Substantive equality can require the state to take positive actions of reasonable accommodation to assist disadvantaged groups.[31] The Court has in its recent equality jurisprudence stressed the importance of substantive equality.[32]

19. The Court has also elaborated on the consistency of giving special attention to the Aboriginal status of offenders as consistent with equality values. In *R v Gladue*[33], the Court noted "the fundamental purpose of s. 718.2(*e*) is to treat aboriginal offenders fairly by taking into account their difference." In *R v Ipeelee*[34] the Court quoted the following statement by the Manitoba Court of Appeal with approval: "to achieve real equality, sometimes different people must be treated differently". "A formalistic approach to parity"[35] would be inconsistent with substantive equality.

20. Sharpe J.A. has recognized the connection between *Gladue* and *Ipeelee* and substantive equality and its relevance to the exercise of Crown discretion by stating "the Gladue approach is intended to avoid the discrimination against Aboriginal offenders that flows from the failure of the justice system to address their special circumstances".[36] He explained:

> ..., Gladue stands for the proposition that insisting that Aboriginal defendants be treated as if they were exactly the same as non-Aboriginal defendants will only perpetuate the historical patterns of discrimination and neglect that have produced the crisis of criminality and over-representation of Aboriginals in our prisons. Yet it is on the idea of formal equality of treatment the minister rests

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[29] *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, 46 CRR (2d) 189 [*Eldridge*].
[30] *Ibid* at paras 60-62.
[31] "If we accept the concept of adverse effect discrimination, it seems inevitable, at least at the s. 15(1) stage of analysis, that the government will be required to take special measures to ensure that disadvantaged groups are able to benefit equally from government services. "*Ibid* at para 77.
[32] *Kapp*, *supra* note 15; *Withler v Canada (Attorney General)*, 2011 SCC 12, [2011] 1 SCR 396; *Quebec (Attorney General) v A*, 2013 SCC 5, [2013] 1 SCR 61.
[33] *R v Gladue*, [1999] 1 SCR 688 at para 87, 171 DLR (4th) 385 [*Gladue*].
[34] *Ipeelee*, *supra* note 27 at para 71, citing *R v Vermette*, 2001 MBCA 64 at para 39, 156 Man R (2d) 120.
[35] *Ibid* at para 79. The Court quoted with approval Professor Quigley's observations that "Uniformity hides inequity, impedes innovation and locks the system into its mindset of jail. It also prevents us from re-evaluating the value of our aims of sentencing and their efficacy. It is true that on the surface imposing the same penalty for the nearly identical offence is only fair. That might be closer to the truth in a society that is more equitable, more homogenous and more cohesive than ours. But in an ethnically and culturally diverse society, there is a differential impact from the same treatment. Indeed, that has been recognized in the jurisprudence on equality rights under the Charter. Thus, there is a constitutional imperative to avoiding excessive concern about sentence disparity."
[36] *Leonard*, *supra* note 24 at para 51.

> his Gladue analysis. That approach was soundly rejected by the Supreme Court in both Gladue and Ipeelee, which emphasize that consideration of the systemic wrongs inflicted on Aboriginals does not amount to discrimination in their favour or guarantee them an automatic reduction in sentence. Instead, Gladue factors must be considered in order to avoid the discrimination to which Aboriginal offenders are too often subjected and that so often flows from the failure of the justice system to address their special circumstances. Treating Gladue in this manner resonates with the principle of substantive equality grounded in the recognition that "equality does not necessarily mean identical treatment and that the formal 'like treatment' model of discrimination may in fact produce inequality.[37]

21. Sharpe J.A. recognized that treating offenders the same as other offenders could result in discrimination because "application of Gladue is intended to guard against and avoid the discrimination that, as experience demonstrates, will occur where decision-makers fail to advert to the specific and particular problems faced by Aboriginal Canadians in our system of justice:"[38]

Treating Aboriginal and non-Aboriginal Offenders the Same is not Substantive Equality

22. The Court of Appeal considered as fresh evidence the relevant Crown policy and found that it made no reference to the circumstances and overrepresentation of Aboriginal offenders. .[39] At best, this approach is an example of formal equality that by providing the same treatment to all offenders perpetuates discrimination against members of disadvantaged and enumerated groups. The failure of the Crown to consider the Gladue factors in a constitutionally sufficient manner, combined with the circumstances of the case (no accident or injury and a last prior offence 12 years earlier) support the trial judge's finding of an unjustified s.15 violation.[40]

23. This Court's prior jurisprudence on prosecutorial decisions has not addressed s.15. Review of prosecutorial decisions under s.15 should be sensitive to equality values and how disadvantaged groups can suffer discrimination and the denial of equality because of prosecutorial decisions.

D. The Appropriate Remedies

24. At trial the accused sought a s.52(1) remedy. The trial judge concluded that he would not make a "broad declaration" that the mandatory sentences in s.255 were unconstitutional. He

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[37] *Ibid* at para 60 citing *Kapp*, *supra* note 15 at para 15.
[38] *Ipeelee, supra* note 27 at para 63.
[39] As quoted in *Anderson CA*, *supra* note 2 at para 19.
[40] *Ibid* at paras 38-40 per Welsh J.A.

declared that "the statutory scheme is of no force and effect as it applies to aboriginal offenders..." and characterized this as a "reading down of the statutory scheme only to the extent necessary to alleviate the Charter breach".[41] This remedy effectively made the mandatory prison sentences for prior offences inapplicable for Aboriginal offenders. The DAC submits that this remedy reconciled Parliament's purpose in enacting the mandatory sentences with the relevant Charter rights including the trial judge's conclusion that the Crown had not justified the ss.7 and 15 violations. Such an approach follows the approach to s.52 remedies of respecting legislation within Charter limits.[42] Moreover, it avoids the concerns in *Ferguson*[43] of using constitutional exemptions in an uncertain and case-by-case fashion. Reading in remedies for defined classes are more certain than case-by-case constitutional exemptions. They are less drastic than declarations of invalidity even when suspended.[44]

25. A more limited alternative approach would be to characterize the trial judge's remedy as a s.24(1) remedy that responds not to unconstitutional laws but to Crown actions in this case. In *Nasogaluak*, Justice LeBel stated:

> I do not foreclose, but do not need to address in this case, the possibility that, in some exceptional cases, sentence reduction outside statutory limits, under s. 24(1) of the *Charter*, may be the sole effective remedy for some particularly egregious form of misconduct by state agents in relation to the offence and to the offender. In that case, the validity of the law would not be at stake, the sole concern being the specific conduct of those state agents.[45]

26. The DAC submits that this statement is in keeping with the Court's consistent emphasis on the breadth of remedial powers available to courts and tribunals of first instance in crafting effective and appropriate s.24(1) remedies.[46] The trial judge determined that in light of the unjustified violation of ss.7 and 15 that he found largely stemming from the Crown's conduct in the particular case that it was appropriate to sentence Mr. Anderson to a 90 day intermittent sentence. This sentence took into account his background circumstances as an Inuk and would allow him to retain his employment and receive treatment. [47]

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[41] *Anderson*, *supra* note 1 at paras 46-47.
[42] *Schachter v Canada*, [1992] 2 SCR 679, 93 DLR (4th) 1; *R v Sharpe*, [2001] 1 SCR 45, 2001 SCC 2.
[43] [2008]
[44] *Carter v Canada (Attorney General)*, [2013] BCJ No 2227, 2013 BCCA 435 per Newbury J.A.
[45] *R v Nasogaluak*, 2010 SCC 6, at para 64, [2010] 1 SCR 206 [*Nasogaluak*].
[46] *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003] 3 SCR 3, 2003 SCC 62; *R v Conway*, 2010 SCC 22, [2010] 1 SCR 765.
[47] *Anderson*, *supra* note 1 at paras 20-21, 25. See also *Gladue*, *supra* note 32; *Ipeelee*, *supra* note 26.

27. The trial judge's order of a 90 day intermittent sentence should receive the appellate deference due both to the exercise of a trial judge's remedial and sentencing discretion. Such an approach is consistent with *Nasogaluak* in blending sentence and s.24(1) remedies for unconstitutional acts.

PART IV: SUBMISSIONS ON COSTS

28. The DAC does not seek costs and asks that none be awarded against it.

PART V: NATURE OF THE ORDER REQUESTED

29. The DAC seeks leave to make oral submissions. The DAC takes no position on the outcome of the appeal but asks that it be determined in accordance with the foregoing submissions.

All of which is respectfully submitted this 4th day of March, 2014.

Per Kent Roach and Cheryl Milne
Counsel for the Intervener,
David Asper Centre for Constitutional Rights

PART VI: TABLE OF AUTHORITIES

PART VII: STATUTES AND REGULATIONS

Constitution Act, 1982 (Schedule B to the Canada Act 1982 (UK), 1982, c 11)	
Rights and Freedoms in Canada **1.** The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.	Droits et libertés au Canada **1.** La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
Life, liberty and security of person 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.	Vie, liberté et sécurité **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.
Equality before and under law and equal protection and benefit of law 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.	Égalité devant la loi, égalité de bénéfice et protection égale de la loi **15.** (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.
Enforcement of guaranteed rights and freedoms 24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.	Recours en cas d'atteinte aux droits et libertés **24.** (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.
Primacy of Constitution of Canada 52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the	Primauté de la Constitution du Canada 52. (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

inconsistency, of no force or effect.	
***Criminal Code* (RSC 1985, c C-46)**	***Lois du Canada* (RSC 1985, c C-46)**
Punishment 255. (1) Every one who commits an offence under section 253 or 254 is guilty of an indictable offence or an offence punishable on summary conviction and is liable, (a) whether the offence is prosecuted by indictment or punishable on summary conviction, to the following minimum punishment, namely, (i) for a first offence, to a fine of not less than $1,000, (ii) for a second offence, to imprisonment for not less than 30 days, and (iii) for each subsequent offence, to imprisonment for not less than 120 days; (b) where the offence is prosecuted by indictment, to imprisonment for a term not exceeding five years; and (c) if the offence is punishable on summary conviction, to imprisonment for a term of not more than 18 months.	Peine 255. (1) Quiconque commet une infraction prévue à l'article 253 ou 254 est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire ou par mise en accusation et est passible : a) que l'infraction soit poursuivie par mise en accusation ou par procédure sommaire, des peines minimales suivantes : (i) pour la première infraction, une amende minimale de mille dollars, (ii) pour la seconde infraction, un emprisonnement minimal de trente jours, (iii) pour chaque infraction subséquente, un emprisonnement minimal de cent vingt jours; b) si l'infraction est poursuivie par mise en accusation, d'un emprisonnement maximal de cinq ans; c) si l'infraction est poursuivie par procédure sommaire, d'un emprisonnement maximal de dix-huit mois.
Other sentencing principles 718.2 A court that imposes a sentence shall also take into consideration the following principles: [..] (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.	Principes de détermination de la peine 718.2 Le tribunal détermine la peine à infliger compte tenu également des principes suivants : [...] e) l'examen de toutes les sanctions substitutives applicables qui sont justifiées dans les circonstances, plus particulièrement en ce qui concerne les délinquants autochtones.
Previous conviction 727. (1) Subject to subsections (3) and (4), where an offender is convicted of an offence for which a greater punishment may be imposed by reason of previous convictions, no greater punishment shall be imposed on the	Condamnations antérieures 727. (1) Sous réserve des paragraphes (3) et (4), lorsque le délinquant est déclaré coupable d'une infraction pour laquelle une peine plus sévère peut être infligée du fait de condamnations antérieures, aucune peine plus

offender by reason thereof unless the prosecutor satisfies the court that the offender, before making a plea, was notified that a greater punishment would be sought by reason thereof.	sévère ne peut lui être infligée de ce fait à moins que le poursuivant ne convainque le tribunal que le délinquant, avant d'enregistrer son plaidoyer, a reçu avis qu'une peine plus sévère serait demandée de ce fait.