Court File # 35246

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal for the Province of Newfoundland and Labrador)

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

AND:

FREDERICK ANDERSON

Respondent

AND:

DIRECTOR OF PUBLIC PROSECUTIONS OF CANADA, ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF BRITISH COLUMBIA, DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, and ABORIGINAL LEGAL SERVICES OF TORONTO INC.

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PART I – OVERVIEW

1. Aboriginal Legal Services of Toronto (ALST) is a non-profit organization that was incorporated to assist Aboriginal people gain access to, and control over, justice related issues that affect them.

2. ALST adopts the position of the Appellant on the facts of the case.

PART II – STATEMENT OF THE POSITION

3. ALST submits that the trial judge and the Newfoundland Court of Appeal were correct in finding that the application of this Honourable Court's decision in *R v Ipeelee*[1] meant that the decision by the crown attorney to seek an increased penalty for a subsequent impaired driving conviction required consideration of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*[2] and that the decision by the trial judge to substitute a lesser sentence was justified under s. 24(1) and 52 of the *Constitution Act*, *1982*.[3]

PART III – LEGAL ARGUMENT

a) Significance of the case at bar

4. *R v Gladue*[4] and *Ipeelee* both decried levels of Aboriginal over-representation in prison and called upon judges to do what was in their power to address the problem. In both cases however, given the significance of the specific offences involved, a non-custodial sentence was not an option. In this case we are dealing with impaired driving. Impaired driving is the most common offence in adult courts in Canada.[5] Aboriginal people are significantly over-represented among those sentenced to jail for impaired driving. A recent Statistics Canada

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[1] *R v Ipeelee*, [2012] 1 SCR 433 [*Ipeelee*], in Intervener's Book of Authorities, Tab 14 [IBA].
[2] *Canadian Charter of Rights and Freedom*, ss 7, 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 [the *Charter*].
[3] *Constitution Act*, *1982*, ss24(1), 52, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.
[4] *R v Gladue*, [1999] 1 SCR 688 [*Gladue*] in IBA, Tab 6.
[5] Samuel Perrault, "Impaired Driving in Canada" *Statistics Canada* (2 September 2010) at 13, online: Statistics Canada http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11739-eng.pdf in IBA, Tab17.

report, “Impaired Driving in Canada, 2011” found, “for the jurisdictions that provided detailed data on Aboriginal identity, Aboriginal people accounted for 3% of the overall population in 2006. However, they accounted for 16% of admissions to correctional services for impaired driving in 2010/11.”[6]

5. The decision in this case, and the Ontario decision of *R v Stone*,[7] show that when judges apply the directions of this Honourable Court to determine a proportionate sentence for an Aboriginal offender charged with impaired driving, non-custodial sentences are a realistic option. The use of non-custodial sentences for impaired driving for Aboriginal offenders however can by stymied, even when they are the appropriate and proportionate response, by decisions of crown attorneys to show proof of a prior impaired driving conviction. The issue for this court to resolve is whether this unfettered and unilateral action of the crown, made for whatever reason that they wish, accords with the *Charter* guarantees of fundamental justice and of equality.

b) This is a case about Aboriginal offenders

6. In their factum, the Appellant looks primarily at what has been characterized as the quasi-judicial role of the crown in the wake of this Honourable Court’s decision in *Krieger v The Law Society of Alberta*.[8] The focus of the Appellant’s submissions is the appropriate standard of review for exercises of crown discretion.[9] The fact that Mr. Anderson is an Aboriginal person, and that this Court issued important decisions on the sentencing of Aboriginal offenders in *Gladue* and *Ipeelee* is totally absent from the Appellant’s factum. The circumstances of Aboriginal offenders were not raised as an issue to be addressed by any of the crown interveners in their motions for leave to intervene in this case. It is our submission that the resolution of this issue cannot be undertaken in such a limited manner.

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[6] *Ibid* at 19.
[7] *R v Stone*, 2013 ONCJ 490, currently under appeal to the Ont CA in IBA at Tab 12.
[8] *Krieger v The Law Society of Alberta*, 2002 SCC 65, [*Krieger*] in IBA at Tab 3.
[9] See Factum of the Appellant, at 52-133.

c) Findings of appellate courts regarding Aboriginal offenders

7. To properly consider the application of the principles of fundamental justice as they relate to Aboriginal people, it is submitted that there are four findings by this Honourable Court and by appellate courts across the country that must be acknowledged and considered. They are: i) the discrimination faced by Aboriginal people in the criminal justice system; ii) that the *Gladue* principles are not restricted to sentencing and, in fact, encompass a wide range of decisions and decision-makers including crown attorneys; iii) that proportionality is a principle of fundamental justice and that the backgrounds of Aboriginal offenders are relevant to determining the proportionality of their sentences; and iv) the specific role of judges in combating systemic discrimination when sentencing Aboriginal offenders.

i) Discrimination faced by Aboriginal people in the justice system

8. This Honourable Court in *R v Williams,*[10] *Gladue,*[11] and *Ipeelee*[12] found that Aboriginal people were subject to direct and systemic discrimination in the criminal justice system.

9. In *Williams*, the Court found that "[t]here is evidence that this widespread racism [towards Aboriginal people] has translated into systemic discrimination in the criminal justice system."[13]

10. In *Gladue* the Court found:

> It is clear that sentencing innovation by itself cannot remove the causes of aboriginal offending and the greater problem of aboriginal alienation from the criminal justice system. The unbalanced ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education, and the lack of employment opportunities for aboriginal people. It arises also from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders. …
> Moreover, as has been emphasized repeatedly in studies and commission reports, aboriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be "rehabilitated" thereby,

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[10] *R v Williams*, [1998] 1 SCR 1128, [*Williams*] in IBA, Tab 13.
[11] *Gladue, supra* note 4.
[12] *Ipeelee, supra* note 1.
[13] *Williams*, [1998] *supra* note 10 at 58 in IBA, Tab 13.

> because the internment milieu is often culturally inappropriate and regrettably discrimination towards them is so often rampant in penal institutions.[14]

11. In *Ipeelee* this Court agreed with the finding of the Aboriginal Justice Inquiry of Manitoba that Aboriginal people are "victims of a discriminatory justice system."[15]

12. The Ontario Court of Appeal in *United States of America v Leonard*[16] found that "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."[17] The Court expanded on how the principles of substantive equality animate the *Gladue* analysis:

> *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…*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": *R v Kapp*, 2008 SCC 41, [2008] 2 SCR 483, at para 15.[18]

ii) *Gladue* Principles apply beyond sentencing

13. While *Gladue* and *Ipeelee* focused on the application of s. 718.2(e) of the *Criminal Code*,[19] the principles from those cases have been explicitly applied by appellate courts to address issues of bail,[20] civil contempt,[21] the review by provincial boards of those found to be NCR[22] and extradition.[23] Correctional Services of Canada,[24] the National Parole Board[25] and the

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[14] *Gladue, supra* note 4 at 61, 65 in IBA, Tab 6 and 68 in Appellant's Book of Authority [ABA], Tab 18.
[15] *Ipeelee, supra* note 1 at 65 in IBA, Tab 14.
[16] *United States of America v Leonard*, 2012 ONCA 622, [2012] OJ No 4366, leave to appeal dismissed, [2012] SCCA No 490 in IBA, Tabs 10 and 11.
[17] *Ibid* at 51.
[18] *Ibid* at 60.
[19] *Criminal Code of Canada*, RS, 1985, c C-46, s 718.2(e) [*Criminal Code*].
[20] *R v Robinson*, 2009 ONCA 205 in IBA at Tab 7.
[21] *Frontenac Ventures v Ardoch Algonquin First Nation*, 2008 ONCA 534 at 59 in IBA, Tab 2.
[22] *R v Sim*, [2005] 78 OR (3d) 183, (Ont CA) at 16 in IBA, Tab 8.
[23] *Leonard*, *supra* note 16 at 55 in IBA, Tab 10.
[24] Strategic Plan for Aboriginal Corrections, *Innovation, Learning & Adjustment 2006-07 to 2010-11*, online: Correctional Services of Canada http://www.csc-scc.gc.ca/aboriginal/002003-1001-eng.shtml#7 at page 11 in IBA, Tab 15.
[25] *Aboriginal and Diversity Initiatives*, online: Parole Board of Canada http://www.pbc-clcc.gc.ca/infocntr/ethno-eng.shtml in IBA, Tab 16.

Law Society of Upper Canada's Appeal Panel,[26] among others, have also acknowledged that this Court's reasoning in *Gladue* and *Ipeelee* apply to their decisions as well.

14. In *Leonard*, after reviewing cases that applied the *Gladue* factors beyond sentencing, a unanimous Court found that those factors also applied to decisions of crown attorneys:

> The sound exercise of prosecutorial discretion is fundamental to the fair administration of criminal justice. The decisions of prosecutors have enormous implications for accused persons and for the justice system. Discretionary decision-making was identified in the *Report of the Aboriginal Justice Inquiry of Manitoba*, vol. 1, ch. 4 (Winnipeg: Aboriginal Justice Implementation Commission, 1999), as a source of injustice to Aboriginal people in the criminal justice system:
>
> > Many opportunities for subjective decision making exist within the justice system and there are few checks on the subjective criteria being used to make those decisions. We believe that part of the problem is that while Aboriginal people are the objects of such discretion within the justice system, they do not "benefit" from discretionary decision making, and that even the well-intentioned exercise of discretion can lead to inappropriate results because of cultural or value differences.
>
> Given the central importance of prosecutorial discretion to the administration of Canadian justice and to the extradition process, I cannot accept the proposition that the *Gladue* principles have no bearing upon its exercise… [27]

iii) Proportionality is a principle of fundamental justice

15. In *Ipeelee*, this Court made it clear that proportionality - in particular the consideration of the moral blameworthiness of the offender - is a principle of fundamental justice distinct from the concept of gross disproportionality:

> The *Criminal Code* goes on to list a number of principles to guide sentencing judges. The fundamental principle of sentencing is that the sentence must be proportionate to both the gravity of the offence and the degree of responsibility of the offender. As this Court has previously indicated, this principle was not borne out of the 1996 amendments to the *Code* but, instead, has long been a central tenet of the sentencing process…It also has a constitutional dimension, in that s. 12 of the *Canadian Charter of Rights and Freedoms* forbids the imposition of a grossly disproportionate sentence that would outrage society's standards of decency. In a similar vein, proportionality in sentencing could aptly be described as a principle of fundamental justice under s. 7 of the *Charter*.[28]

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[26] *Law Society of Upper Canada v Terence John Robinson* (2013), ONLSAP 18 (available on CanLII) at 74 in IBA, Tab 4.
[27] *Leonard, supra* note 16 at 85 – 87 in IBA, Tab 10.
[28] *Ipeelee, supra* note 1 at 36 and see also *Ipeelee, supra* note 1 at 87 in IBA, Tab 14.

iv) The Role of the judge when sentencing Aboriginal offenders

16. In *Ipeelee*, this Court found that in light of the systemic discrimination faced by Aboriginal people in the criminal justice system, judges had a particular role: "…judges can ensure that systemic factors do not lead inadvertently to discrimination in sentencing … Sentencing judges, as front-line workers in the criminal justice system, are in the best position to re-evaluate these criteria to ensure that they are not contributing to ongoing systemic racial discrimination."[29]

d) Application of the findings regarding Aboriginal people and criminal justice system to the constitutional question

17. This case raises a constitutional challenge to those few offences where, after the decision has been made by the crown about what offence to prosecute, the exercise of crown discretion will determine whether a mandatory minimum sentence will be applied to an Aboriginal offender.[30]

18. The imposition of a mandatory minimum sentence for impaired driving will affect the liberty of an Aboriginal offender where the crown relies on a previous conviction for a similar offence. The questions for this Honourable Court are whether or not this deprivation of liberty is consistent with the principles of fundamental justice and if it upholds the equality guarantee of the *Charter*.

19. The Appellant argues that the crown's decision to require a mandatory minimum sentence for a subsequent impaired driving conviction is unreviewable by the court. It is submitted that this usurps the ability of the judge to determine a proportionate sentence and thus results in a violation of s. 7 of the *Charter*.

20. While it is submitted that this case can be resolved by reference to s. 7 of the *Charter*, the s. 7 analysis must be informed by an awareness of the equality issues raised in the sentencing of

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[29] *Ipeelee*, *supra* note 1 at 67 and see also *Ipeelee, supra* note 1 at 86 in IBA, Tab 14.
[30] See *Criminal Code* ss 92(3), 202(2), 203, 253, 254(5), 255, *supra* note 19.

Aboriginal offenders discussed earlier. The s. 15 *Charter* guarantee of equality applies to and supports all other rights guaranteed by the *Charter*.[31] ALST adopts the arguments of the David Asper Centre for Constitutional Rights on the application of s. 15.

e) Crown discretion must be subject to judicial oversight

21. As has been noted by all parties in this case, discretion is an important feature of the criminal justice system and ensures that the system does not become “unworkably complex and rigid.”[32] Like administrative decisions that become the subject of judicial review, decisions of crown attorneys are subject to deference. The deference accorded to both arises from their respective spheres of knowledge and expertise and the need for each to make numerous decisions in order that the systems in which they operate function efficiently.

22. However, just as administrative decisions are subject to judicial review, so must crown discretion be subject to judicial oversight. Justice Marc Rosenberg, in his article “The Attorney General in the 21st Century” addresses the important reasons why this is a necessary role for the courts:

> Mr. Ramsay…overstates the case against judicial supervision by asserting that the Ministry "exercises careful supervision of prosecutions for which it is responsible." If the Ministry does so, it is only on the basis of the information supplied by the players within its own system. It is in the nature of any institution to discount the views of outsiders and especially those opposed to it. The one thing courts do bring to the table is the ability to adjudicate with an open mind based on the information supplied by all interested parties, not just those aligned with the prosecution.
>
> Used appropriately and with restraint, judicial scrutiny of prosecutorial discretion can improve confidence in the administration of criminal justice and the role of the Attorney General.[33]

23. Mr. Anderson had no related offences for twelve years, had attended alcohol treatment, and not breached any of his bail conditions.[34] The reasonable person, aware of the decisions by this Honourable Court in *Williams*, *Gladue* and *Ipeelee*, would be justified in concluding that the decision by the crown in this case to prove a prior conviction for the purposes of

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[31] *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 52 in IBA, Tab 1.
[32] *Kreiger*, *supra* note 8 at 48 quoting *R. v. Beare*, [1988] 2 SCR 387, *per* La Forest J, at p. 410 in IBA, Tab 3.
[33] The Honourable Marc Rosenberg, “The Attorney General in the 21st Century: A Tribute to Ian Scott: The Attorney General and the Administration of Criminal Justice” (2009) 34: 2 Queen’s LJ 813 at 89 in IBA, Tab 18.
[34] *R v Anderson* (2 Dec 2011), Sentencing Judge's Reasons for Sentence in Appellant's Record, Tab 3 at 20 and 24.

obtaining the imposition of a mandatory minimum sentence may well have been influenced by stereotypical views of Aboriginal people and systemic discrimination. The judicial oversight of such decisions is the only way in which these reasonable conclusions can be addressed and the confidence of Aboriginal people in the Canadian criminal justice system restored.

24. As this Court discussed in *Ipeelee*, the way in which systemic discrimination occurs in practice is bound up in assumptions that are made about which individuals are or are not worthy of having particular discretion exercised in their favour.[35] One of the reasons that judges are best suited as "front-line workers in the criminal justice system"[36] is that not only are they best able to determine what a proportionate sentence would be based on all the relevant information and submissions from counsel, but their decisions are public and subject to appellate review. The decisions of crown attorneys are not public and have generally only been subject to review for abuse of process.

25. Adopting this approach to the review of the exercise of crown discretion would not lead to judicial reviews of every crown decision. For example, absent any *Charter* challenges on other grounds, there is no need for judges to review the decisions of the crown as to what charge to prosecute. The judicial oversight of that function is already achieved by the fact that the trial judge comes to a determination as to whether, on the facts as found, the essential elements of the offence are made out.

f) Guidelines do not remedy breaches of fundamental justice and equality

26. The Newfoundland and Labrador Court of Appeal determined that the s. 7 violation could be addressed by guidelines which require crown attorneys to consider an offender's Aboriginal background prior to deciding to rely on prior convictions.[37] It is respectfully submitted that this does not adequately address the s. 7 concerns of proportionality and arbitrariness raised in this case. Given the finding in *Leonard* that Aboriginal people tend not to benefit from the

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[35] *Ipeelee*, *supra* note 1 at 67 in IBA, Tab 14.
[36] *Ibid* at 67..
[37] *R v Anderson*, 2013 NLCA 2; in Appellant's Record, Tab 4 at 37- 38.

exercise of crown discretion,[38] the concerns expressed in *Ipeelee* regarding the impact of systemic discrimination on Aboriginal over-representation and, most importantly, the role of the judge as the front-line worker to combat such discrimination, the final arbiter of fundamental justice in cases such as these must be the sentencing judge and not a crown attorney.[39]

g) The trial judge's approach was correct

27. It is submitted that the approach taken by the trial judge in this case was correct and is consistent with the approach taken by the Ontario Court of Appeal in *Leonard.* That case was concerned with the Minister of Justice's decision to allow the extradition of two Aboriginal offenders to the United States. The Court found that this decision by the Minister was an administrative decision and one that was discretionary and therefore entitled to "substantial deference."[40] Nevertheless, the Court unanimously found that the manner in which the Minister exercised his discretion in that case violated the s. 7 rights of the Aboriginal offenders by failing to properly consider the *Gladue* principles in arriving at his decision.

28. In considering the appropriate remedy, Sharpe J.A., writing for the majority, noted that when an administrative decision is set aside because of error and there is a possibility of more than one reasonable disposition, it is appropriate for the court to remit the matter back to the decision-maker for reconsideration. However, he concluded that there are cases where it is more appropriate for the court instead to substitute its own decision. He said setting aside a discretionary decision is appropriate where "remitting the case for reconsideration would be 'pointless' because, 'in light of the circumstances and the evidence in the record, only one interpretation or solution is possible, that is, where any other interpretation or solution would be unreasonable.'"[41]

[38] *Leonard*, *supra* note 16 at 86-87 in IBA, Tab 10.
[39] This is supported by American research which suggests that judicial discretion may mitigate racial disparities in sentencing. See: Joshua B Fischman & Max M Schanzenbach, "Racial Disparities Under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums" (2012), 9 Journal of Empirical Legal Studies 729 at 757-761in IBA, Tab 19.
[40] *Leonard*, *supra* note 16 at 4 in IBA, Tab 10.
[41] *Ibid* at 92.

29. The authority for this principle emerges from a number of decisions where courts decided that that it would be unfair to return the matter to the original decision-maker and, instead, remedied the decision themselves.[42]

30. Administrative decisions of crown attorneys can result in the violation of the *Charter* rights of Aboriginal offenders. Therefore judicial oversight is not only permissible, it is necessary. In such cases, judges should consider if the decision they are examining is one where, like in *Leonard*, only one solution is possible. If it is, they should substitute their own decision to ensure that the sentence they impose is proportionate and upholds principles of fundamental justice and equality.

PART IV – POSITION ON COSTS

31. ALST seeks no costs and respectfully submits that no costs be ordered against it.

PART V – INTERVENER'S POSITION

32. It is respectfully submitted that the appeal should be dismissed. ALST adopts the position of the David Asper Centre for Constitutional Rights on the appropriate remedies.

33. ALST respectfully requests that it be granted 15 minutes to make oral argument at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of February, 2014.

Jonathan Rudin
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Emily Hill
Counsel for the Intervenor, ALST

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[42] *Stetler v The Ontario Flue-Cured Tobacco Growers' Marketing Board* 2009 ONCA 234 at 41-47 in IBA, Tab 9 and *Giguère v Chambre des notaires du Québec,* 2004 SCC 1 at 66 in IBA, Tab 5.

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PART VII – STATUTES AND REGULATIONS

1) *Canadian Charter of Rights and Freedoms*, ss 7, and 15, Part I of the Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11

2) *Criminal Code of Canada*, RS, 1985, c C-46, ss 92(3), 202(2), 203, 253, 254(5), 255 and 718.2(e)

Canadian Charter of Rights and Freedoms, ss. 1, 7, and 15(1), Part I of the Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11	Charte canadienne des droits et libertés, art. 1, 2(b), 7 et 15(1), partie I de la Loi Constitutionnelle de 1982, constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 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	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

without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.	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.

Criminal Code, RSC 1985, c C-46	*Code criminel*, LRC 1985, ch C-46.
92. (1) Subject to subsection (4), every person commits an offence who possesses a firearm knowing that the person is not the holder of (*a*) a licence under which the person may possess it; and (*b*) in the case of a prohibited firearm or a restricted firearm, a registration certificate for it. (2) Subject to subsection (4), every person commits an offence who possesses a prohibited weapon, a restricted weapon, a prohibited device, other than a replica firearm, or any prohibited ammunition knowing that the person is not the holder of a licence under which the person may possess it. (3) Every person who commits an offence under subsection (1) or (2) is guilty of an indictable offence and liable (*a*) in the case of a first offence, to imprisonment for a term not exceeding ten	**92.** (1) Sous réserve du paragraphe (4), commet une infraction quiconque a en sa possession une arme à feu sachant qu'il n'est pas titulaire : *a*) d'une part, d'un permis qui l'y autorise; *b*) d'autre part, s'il s'agit d'une arme à feu prohibée ou d'une arme à feu à autorisation restreinte, du certificat d'enregistrement de cette arme (2) Sous réserve du paragraphe (4), commet une infraction quiconque a en sa possession une arme prohibée, une arme à autorisation restreinte, un dispositif prohibé — autre qu'une réplique — ou des munitions prohibées sachant qu'il n'est pas titulaire d'un permis qui l'y autorise. (3) Quiconque commet l'infraction prévue au paragraphe (1) ou (2) est coupable d'un acte criminel passible des peines suivantes : *a*) pour une première infraction, un emprisonnement maximal de dix ans;

years; (*b*) in the case of a second offence, to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; and (*c*) in the case of a third or subsequent offence, to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of two years less a day.	*b*) pour la deuxième infraction, un emprisonnement maximal de dix ans, la peine minimale étant de un an; *c*) pour chaque récidive subséquente, un emprisonnement maximal de dix ans, la peine minimale étant de deux ans moins un jour.
202. (1) Every one commits an offence who (*a*) uses or knowingly allows a place under his control to be used for the purpose of recording or registering bets or selling a pool; (*b*) imports, makes, buys, sells, rents, leases, hires or keeps, exhibits, employs or knowingly allows to be kept, exhibited or employed in any place under his control any device or apparatus for the purpose of recording or registering bets or selling a pool, or any machine or device for gambling or betting; (*c*) has under his control any money or other property relating to a transaction that is an offence under this section; (*d*) records or registers bets or sells a pool; (*e*) engages in book-making or pool-selling, or in the business or occupation of betting, or makes any agreement for the purchase or sale of betting or gaming privileges, or for the purchase or sale of information that is intended to assist in book-making, pool-selling or	**202.** (1) Commet une infraction quiconque, selon le cas : *a*) emploie ou sciemment permet qu'on emploie un local sous son contrôle dans le dessein d'inscrire ou d'enregistrer des paris ou de vendre une mise collective; *b*) importe, fait, achète, vend, loue, prend à bail ou garde, expose, emploie ou sciemment permet que soit gardé, exposé ou employé, dans quelque endroit sous son contrôle, un dispositif ou appareil destiné à inscrire ou à enregistrer des paris ou la vente d'une mise collective, ou une machine ou un dispositif de jeu ou de pari; *c*) a sous son contrôle une somme d'argent ou d'autres biens relativement à une opération qui constitue une infraction visée par le présent article; *d*) inscrit ou enregistre les paris ou vend une mise collective; *e*) se livre au bookmaking ou à la vente d'une mise collective, ou à l'entreprise ou à la

betting; (*f*) prints, provides or offers to print or provide information intended for use in connection with book-making, pool-selling or betting on any horse-race, fight, game or sport, whether or not it takes place in or outside Canada or has or has not taken place; (*g*) imports or brings into Canada any information or writing that is intended or is likely to promote or be of use in gambling, bookmaking, pool-selling or betting on a horserace, fight, game or sport, and where this paragraph applies it is immaterial before, during or after the race, fight game or sport, or (ii) whether the race, fight, game or sport takes place in Canada or elsewhere, but this paragraph does not apply to a newspaper, magazine or other periodical published in good faith primarily for a purpose other than the publication of such information; (*h*) advertises, prints, publishes, exhibits, posts up, or otherwise gives notice of any offer, invitation or inducement to bet on, to guess or to foretell the result of a contest, or a result of or contingency relating to any contest; (*i*) wilfully and knowingly sends, transmits, delivers or receives any message that conveys any information relating to book-making, pool-selling, betting or wagering, or that is intended to assist in book-making, pool-	profession de parieur, ou fait quelque convention pour l'achat ou la vente de privilèges de pari ou de jeu, ou pour l'achat ou la vente de renseignements destinés à aider au bookmaking, à la vente d'une mise collective ou au pari; *f*) imprime, fournit ou offre d'imprimer ou de fournir des renseignements destinés à servir au bookmaking, à la vente d'une mise collective ou au pari sur quelque course de chevaux, combat, jeu ou sport, que cette course, ce combat, jeu ou sport ait lieu au Canada ou à l'étranger, ou qu'il ait eu lieu ou non; *g*) importe ou introduit au Canada tout renseignement ou écrit destiné ou de nature à favoriser ou servir le jeu, le bookmaking, la vente d'une mise collective ou les paris sur une course de chevaux, un combat, un jeu ou un sport, et, lorsque le présent alinéa s'applique, il est sans conséquence : (i) que le renseignement soit publié avant, pendant ou après la course, le combat, le jeu ou le sport, (ii) que la course, le combat, le jeu ou le sport ait lieu au Canada ou à l'étranger; toutefois, le présent alinéa ne s'applique pas à un journal, magazine ou autre périodique publié de bonne foi principalement pour un autre objet que la publication de ces renseignements; *h*) annonce, imprime, publie, expose, affiche ou

selling, betting or wagering; or (*j*) aids or assists in any manner in anything that is an offence under this section. (2) Every one who commits an offence under this section is guilty of an indictable offence and liable (*a*) for a first offence, to imprisonment for not more than two years; (*b*) for a second offence, to imprisonment for not more than two years and not less than fourteen days; and (*c*) for each subsequent offence, to imprisonment for not more than two years and not less than three months.	autrement fait connaître une offre, invitation ou incitation à parier sur le résultat d'une partie disputée, ou sur un résultat ou une éventualité concernant une partie disputée, ou à conjecturer ce résultat ou à le prédire; *i*) volontairement et sciemment envoie, transmet, livre ou reçoit quelque message donnant quelque renseignement sur le bookmaking, la vente d'une mise collective ou les paris ou gageures, ou destiné à aider au bookmaking, à la vente d'une mise collective ou aux paris ou gageures; *j*) aide ou assiste, de quelque façon, à une chose qui constitue une infraction visée par le présent article. (2) Quiconque commet une infraction prévue par le présent article est coupable d'un acte criminel et passible : *a*) d'un emprisonnement maximal de deux ans pour la première infraction; *b*) d'un emprisonnement de quatorze jours à deux ans pour la deuxième infraction; *c*) d'un emprisonnement de trois mois à deux ans pour chaque récidive.
203. Every one who (*a*) places or offers or agrees to place a bet on behalf of another person for a consideration paid or to be paid by or on behalf of that other person, (*b*) engages in the business or practice of placing or agreeing to place bets on behalf of	**203.** Quiconque, selon le cas : *a*) place, offre ou convient de placer un pari pour le compte d'une autre personne moyennant paiement d'une contrepartie par elle ou en son nom; *b*) se livre à l'activité ou la pratique qui consiste à placer ou à convenir de placer des paris pour

other persons, whether for a consideration or otherwise, or (*c*) holds himself out or allows himself to be held out as engaging in the business or practice of placing or agreeing to place bets on behalf of other persons, whether for a consideration or otherwise, is guilty of an indictable offence and liable (*d*) for a first offence, to imprisonment for not more than two years, (*e*) for a second offence, to imprisonment for not more than two years and not less than fourteen days, and (*f*) for each subsequent offence, to imprisonment for not more than two years and not less than three months.	le compte d'autres personnes, même sans contrepartie; *c*) prétend ou laisse croire qu'il se livre à l'activité ou à la pratique qui consiste à placer ou à convenir de placer des paris pour le compte d'autres personnes, même sans contrepartie, est coupable d'un acte criminel et passible : *d*) d'un emprisonnement maximal de deux ans, pour la première infraction; *e*) d'un emprisonnement de quatorze jours à deux ans, pour la deuxième infraction; *f*) d'un emprisonnement de trois mois à deux ans, pour chaque récidive.
253. (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not, (*a*) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or (*b*) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.	**253.** (1) Commet une infraction quiconque conduit un véhicule à moteur, un bateau, un aéronef ou du matériel ferroviaire, ou aide à conduire un aéronef ou du matériel ferroviaire, ou a la garde ou le contrôle d'un véhicule à moteur, d'un bateau, d'un aéronef ou de matériel ferroviaire, que ceux-ci soient en mouvement ou non, dans les cas suivants : *a*) lorsque sa capacité de conduire ce véhicule, ce bateau, cet aéronef ou ce matériel ferroviaire est affaiblie par l'effet de l'alcool ou d'une drogue; *b*) lorsqu'il a consommé une quantité d'alcool telle que son alcoolémie dépasse quatrevingts milligrammes d'alcool par cent millilitres

	de sang.
254. (5) Everyone commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made under this section.	**254.** (5) Commet une infraction quiconque, sans excuse raisonnable, omet ou refuse d'obtempérer à un ordre donné en vertu du présent article.
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.	**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 inimale 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.
718.2 A court that imposes a sentence shall also take into consideration the following principles:	**718.2** Le tribunal détermine la peine à infliger compte tenu également des principes suivants : *e*) l'examen de toutes les sanctions substitutives

(*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.	applicables qui sont justifiées dans les circonstances, plus particulièrement en ce qui concerne les délinquants autochtones.

HER MAJESTY THE QUEEN	FREDERICK ANDERSON	Court File No. 35246
Appellant	Respondent	

Supreme Court of Canada
on Appeal from the
Court of Appeal for Newfoundland and Labrador

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