S.C.C. File No. 35475

IN THE SUPREME COURT OF CANADA
[On Appeal from the Court of Appeal for Ontario]

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

CLIFFORD KOKOPENACE

Respondent

- and -

ABORIGINAL LEGAL SERVICES OF TORONTO INC., THE ADVOCATES' SOCIETY, CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES, THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, NATIVE WOMEN'S ASSOCIATION OF CANADA, NISHNAWBE ASKI NATION and WOMEN'S LEGAL EDUCATION AND ACTION FUND INC.

Interveners

REPLY FACTUM OF THE APPELLANT
(Pursuant to Rule 29(4) of the *Rules of the Supreme Court of Canada*)

ATTORNEY GENERAL OF ONTARIO
Crown Law Office – Criminal
10th Floor, 720 Bay Street
Toronto, ON   M7A 2S9

Gillian Roberts and Deborah Calderwood
Counsel for the Appellant

Tel: (416) 326-2304/2276
Fax: (416) 326-4656
Email: gillian.roberts@ontario.ca
deborah.calderwood@ontario.ca

BURKE-ROBERTSON LLP
Barristers & Solicitors
441 MacLaren Street, Suite 200
Ottawa, ON   K2P 2H3

Robert E. Houston, Q.C.
Agent for the Appellant

Tel: (613) 236-3665
Fax: (613) 235-4430
Email: rhouston@burkerobertson.com

DOUCETTE BONI SANTORO FURGIUELE
20 Dundas Street West, Suite 1100
Toronto, ON M5G 2G8

Delmar Doucette
Counsel for the Respondent

Tel: (416) 597-6907
Fax: (416) 342-1766
Email: doucette@dbsfcounsel.com

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

Brian A. Crane, Q.C.
Agent for the Respondent

Tel: (613) 233-1781
Fax: (613) 563-9869
Email: brian.crane@gowlings.com

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

Jessica Orkin
Counsel for the Respondent

Tel: (416) 979-4381
Fax: (416) 979-4430
Email: jorkin@sgmlaw.com

ABORIGINAL LEGAL SERVICES OF TORONTO INC.
415 Yonge Street, Suite 803
Toronto, ON M5B 2E7

Christa Big Canoe
Jonathan Rudin
Counsel for the Intervener, Aboriginal Legal Services of Toronto

Tel: (416) 408-4041 ext.225
Fax: (416) 408-4268
Email: canoecd@lao.on.ca
rudinj@lao.on.ca

COMMUNITY LEGAL SERVICES CENTRE
1 Nicholas Street, Suite 422
Ottawa, ON K1N 7B7

Charles McDonald
Agent for the Intervener, Aboriginal Legal Services of Toronto

Tel: (613) 241-7008
Fax: (613) 241-8680
Email: turcottea@lao.ca

GREENSPAN HUMPHREY LAVINE
15 Bedford Road
Toronto, ON M5R 2J7

Brian H. Greenspan
Counsel for the Intervener, The Advocates' Society

Tel: (416) 868-1755 ext.222
Fax: (416) 868-1990
Email: gbhg@15bedford.com

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

D. Lynne Watt
Agent for the Intervener, The Advocates' Society

Tel: (613) 233-1781
Fax: (613) 563-9869
Email: lynne.watt@gowlings.com

HENSEL BARRISTERS
160 John Street, Suite 300
Toronto, ON   M5V 2E5

Katherine Hensel
Counsel for the Intervener, The Advocates' Society

Tel: (416) 966-0404
Fax: (416) 966-2999
Email: katherine@henselbarristers.com

THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS
University of Toronto, Faculty of Law
39 Queen's Park Cres. East
Toronto, ON   M5S 2C3

Cheryl Milne
Counsel for the Interveners, The David Asper Centre of Constitutional Rights and the Women's Legal Education and Action Fund

Tel: (416) 978-0092
Fax: (416) 978-8894
Email: cheryl.milne@utoronto.ca

NORTON ROSE FULBRIGHT CANADA LLP
45 O'Connor Street, Suite 1500
Ottawa, ON   K1P 1A4

Martha A. Healey
Agent for the Interveners, The David Asper Centre of Constitutional Rights and the Women's Legal Education and Action Fund

Tel: (613) 780-8638
Fax: (613) 230-5459
Email: martha.healey@nortonrosefulbright.com

WOMEN'S LEGAL EDUCATION AND ACTION FUND (LEAF)
260 Spadina Avenue, Suite 401
Toronto, ON   M5T 2E4

Kim Stanton
Counsel for the Interveners, The David Asper Centre of Constitutional Rights and the Women's Legal Education and Action Fund

Tel: (416) 595-7170 ext.223
Fax: (416) 595-7191
Email: k.stanton@leaf.ca

LAW OFFICE OF MARY EBERTS
95 Howland Avenue
Toronto, ON M5R 3B4

Mary Eberts
Counsel for the Intervener, Native Women's Association of Canada (NWAC) and Canadian Association of Elizabeth Fry Societies (CAEFS)

Tel: (416) 923-5215

Email: eberts@ebertslaw.com

BORDEN LADNER GERVAIS LLP
100 Queen Street, Suite 1300
Ottawa, ON K1P 1J9

Nadia Effendi
Agent for the Intervener, Native Women's Association of Canada (NWAC) and Canadian Association of Elizabeth Fry Societies (CAEFS)

Tel: (613) 237-5160
Fax: (613) 230-8842
Email: neffendi@blg.com

FALCONERS LLP
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Julian N. Falconer
Julian K. Roy
Marc E. Gibson
Counsel for the Intervener, Nishnawbe Aski Nation (NAN)

Tel: (416) 964-3408
Fax: (416) 929-8179
Email: julianf@falconers.ca
julianr@falconers.ca
marcg@falconers.ca

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

Matthew S. Estabrooks
Agent for the Intervener, Nishnawbe Aski Nation (NAN)

Tel: (613) 786-0171
Fax: (613) 788-3587
Email: matthew.estabrooks@gowlings.com

S.C.C. File No. 35475

IN THE SUPREME COURT OF CANADA

[On Appeal from the Court of Appeal for Ontario]

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant

- and -

CLIFFORD KOKOPENACE

Respondent

- and -

ABORIGINAL LEGAL SERVICES OF TORONTO INC., THE ADVOCATES' SOCIETY, CANADIAN ASSOCIATION OF ELIZABETH FRY SOCIETIES, THE DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, NATIVE WOMEN'S ASSOCIATION OF CANADA, NISHNAWBE ASKI NATION and WOMEN'S LEGAL EDUCATION AND ACTION FUND INC.

Interveners

REPLY FACTUM OF THE APPELLANT

(Pursuant to Rule 29(4) of the *Rules of the Supreme Court of Canada*)

INDEX

PARTS I/II – OVERVIEW OF APPELLANT'S POSITION

A. Overview of appellant's position on section 15

1. This factum is submitted pursuant to Rule 29(4) of the *Supreme Court Act*, and Justice Lebel's order dated June 17, 2014, in response to the additional issue raised by the respondent, pursuant to section 29(3) of the *Supreme Court Act*,[1] and relied on by a number of the interveners. The additional issue is described by the respondent as follows:

> **Does the exclusion of Aboriginal people resident on-reserve from the jury rolls constitute a violation of section 15 of the Charter?**

2. The respondent asserts, in both his personal capacity and on behalf of potential jurors, that section 15 of the *Charter* was violated by state conduct in relation to the compilation of the 2008 Kenora jury roll (specifically in respect of the state's fulfilment of duties under section 6(8) of the Ontario *Juries Act*). The appellant's position, in response, is as follows:

- To the extent that the respondent asserts a section 15 violation based on the rights of potential jurors to participate on a jury, he should not be granted public interest standing to advance this claim.

- In respect of the personal rights claim advanced by the respondent, there is no need for this Court to engage in a section 15 analysis in this case. If this court finds a section 11 violation and grants an appropriate remedy, an additional section 15 analysis is not required to resolve the appeal, and should not be undertaken, particularly in the face of a deficient evidentiary record upon which to entertain the section 15 claim as it is now framed. Even if this Court finds no section 11 breach, this Court should dismiss the section 15 personal rights claim because it depends upon an initial finding that the state failed to meet its section 11 obligations (ie. the failure to meet the section 11 requirements is essential to the "distinction" and "discrimination" steps of the section 15 test). Put another way, without a section 11 breach, there is no section 15 violation here.

- In the alternative, if the merits of section 15 are considered by this Court in respect of the respondent's personal rights claim, the respondent has not demonstrated a violation. At the first step, he has failed to make out a "distinction" as well as the requisite nexus between the alleged "distinction" and conduct of the state. At the second stage, the respondent has failed to prove a "disadvantage" that is attributable to state conduct.

[1] See paragraph 40 of the respondent's factum raising section 15 as an additional issue.

Part III – BRIEF OF ARGUMENT

A. The respondent should not be granted public interest standing

3. The right to equality is a personal right – "it does not provide for equality between individuals or groups within society in a general or abstract sense" but focuses on the *claimant* as compared to others.[2] It cannot be raised by someone on another's behalf.[3] An accused cannot assert the rights of potential jurors as his/her own.[4] Where public interest standing is sought, as here, a court must consider three factors: whether the case raises a serious justiciable issue; whether the party bringing the case has a real stake in the proceedings or is engaged with the issues it raises; and whether the proposed suit, in all of the circumstances, is a reasonable and effective way to bring the matter before the court.[5]

4. In the present case, the third factor is the determinative factor against the granting of public interest standing: this proceeding is not a reasonable and effective means for the matter to be brought before the Court. This is so for the following reasons:

- An accused person has different, potentially conflicting, interests from a prospective juror in relation to participation in the jury process. While both may share an interest in reducing systemic racism within the criminal justice system, beyond this, their interests diverge. The respondent's interest, merging with his section 11 interest, is focused on a fair trial and the desire to select from a jury roll that includes people who may share his views and experiences. In contrast, prospective jurors form a highly diverse group, with an enormous range of interests, some of which may conflict with that of the accused. The respondent is <u>not</u> a member of this group, and indeed can <u>never</u> be a member by virtue of his criminal record. The *Iacobucci Report* provides evidence that some First Nations people do not want to sit on criminal juries for a variety of understandable reasons ranging from the very practical to the very principled.[6] As noted in *Downtown*

---

[2] *Andrews v. Law Society of British Columbia*, [1989] S.C.J. No. 6 at para 25; *R. v. Swain*, [1991] 1 S.C.R. 933 at p. 992; *R. v. Church of Scientology of Toronto*, [1997] O.J. No. 1548 (C.A.) at paras 119-120.
[3] *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at para. 78; *Borowski v. Canada (Attorney General)*, [1989] S.C.J. No. 14 at para. 54; *R. v. Nur*, [2011] O.J. No. 3878 (S.C.J.) at paras. 135-143; aff'd by a five-member panel of the Court of Appeal in *R. v. Nur*, 2013 ONCA 677 at para. 182, appeal pending in this Court.
[4] *R. v. Gayle*, [2001] O.J. No. 1559 (C.A.) at para. 73; *R. v. Fowler*, [2005] B.C.J. 3035 (S.C.) at paras. 54 and 55.
[5] *Canada (Attorney General) v. Downtown Eastside Sex Workers*, [2012] S.C.J. No. 45 at para. 37.
[6] *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci* (Toronto: February 2013), Appellant's Record, Vol. XLII, p. 27.

Eastside, courts are interested in “the benefit of contending points of view of the persons most directly affected by the issue”.[7] Prospective jurors themselves – and not the respondent - are best placed to provide the range of views from their perspective.

- The only remedy sought by the respondent is one which benefits his own interest – a stay under section 24(1) of the *Charter*[8]. He does not seek a public interest remedy. While this remedy is available for a personal rights violation, it is not a remedy for an infringement of the equality rights of persons who may have been excluded from the jury pool. Public interest claims are rooted in section 52(1) of the *Constitution Act, 1982* and generally seek declaratory relief that a law is invalid or inoperative.[9] The interests of prospective jurors will not be served by a stay or a new trial. Public interest standing should not be granted where the sole remedy sought is a personal remedy based on section 24(1).

- There is no evidence to support the respondent’s assertion that the "practical realities" of alienation and disadvantage indicate that a prospective juror resident on-reserve would be disinclined to launch a constitutional claim. Such a challenge could well be brought with the support of an Aboriginal Band, groups or organizations, such as those that have intervened in this case, and have brought similar challenges in the past.[10] Therefore, there is a realistic and more appropriate alternative available. The fact that this alternative has not been pursued may, in and of itself, be significant. As this Court held in *Canada (Attorney General) v. Downtown Eastside Sex Workers:* “If those with a more direct and personal stake in the matter have deliberately refrained from suing, this may argue against exercising discretion in favour of standing”.[11]

- There is no basis for any concern about immunizing the government’s conduct in this case (the purpose of public interest standing[12]) because that conduct is subject to section 11 review.

---

[7] *Canada (Attorney General) v. Downtown Eastside Sex Workers, supra* at paras. 29 and 49.

[8] Before the Court of Appeal, the respondent sought a new trial but before this Court he seeks a stay at paragraph 89 of his factum.

[9] *Borowski v. Canada (Attorney General), supra* at paras. 53-56. In *Benner v. Canada (Secretary of State), supra* at para. 78, Justice Iacobucci described the principle that a “party cannot generally rely upon the violation of a third party’s rights” to obtain a personal remedy under s. 24(1) as “settled law”. See also *R. v. Church of Scientology, supra* at para. 114. As noted by McLachlin C.J.C. in *R. v. Ferguson*, [2008] S.C.J. No. 6 at para. 61: “[…] s.s 52(1) and 24(1) serve different remedial purposes. Section 52(1) provides a remedy for laws that violate *Charter* rights either in purpose or in effect. Section 24(1), by contrast, provides a remedy for government acts that violate *Charter* rights. It provides a *personal remedy* against unconstitutional government action and so, unlike s. 52(1), can be invoked only by a party alleging a violation of that party’s own constitutional rights”.

[10] See for example *Nishnawbe Aski Nation v. Eden* (“*Pierre v. McRae”)*, (2011) 104 O.R. (3d) 321 (C.A.) (“*Pierre v. McRae)* where one of the interveners in this case brought a challenge to the way juries were assembled for Coroner’s inquests.

[11] *Canada (Attorney General) v. Downtown Eastside Sex Workers, supra* at para. 51.

[12] *Canadian Council of Churches v. Canada (Minister of Employment and Immigration*, [1992] S.C.J. No. 5 at para 36.

5. The Court of Appeal's analysis and decision to deny public interest standing to the respondent reflects the flexible approach prescribed by this Court and careful consideration of relevant factors, including that a challenge could be brought by those who are more directly impacted by the impugned conduct: prospective jurors.[13] For all these reasons, this Court should not interfere with the Court of Appeal's exercise of its discretion not to grant the respondent public interest standing to raise a section 15 claim on behalf of prospective jurors.

<u>B. With respect to the respondent's personal rights claim, there is no need to engage in a section 15 analysis in this case</u>

6. Constitutional issues should not be determined where it is not necessary to resolve the case. This is particularly true in circumstances like the present appeal, in which the case was developed and argued primarily in relation to section 11 - the section which bears most directly upon jury representativeness. As this Court reiterated in *Phillips v. Nova Scotia (Commission of Inquiry in the Westray Mine Tragedy)*:

> This Court has said on numerous occasions that it should not decide issues of law that are not necessary to a resolution of an appeal. This is particularly true with respect to constitutional issues and the principle applies with even greater emphasis in circumstances in which the foundation upon which the proceedings were launched has ceased to exist. [14]

7. An analysis under section 15 should therefore not be undertaken if this Court finds a violation under section 11 and grants a remedy in relation thereto. No benefit would be gained by addressing this additional complex issue.

8. This is particularly so given the absence of a sufficient record to deal with the argument as it is now being framed before this Court. While the focus of the

---

[13] *R. v. Kokopenace*, 2013 ONCA 389 at paras. 200-222.
[14] [1995] S.C.J. No. 36 at para. 6. See also *Moysa* v. *Alberta (Labour Relations Board*, [1989] 1 S.C.J. No. 54 at paras. 15-17. By way of example, this Court in *Canada (Attorney General) v. Bedford* [2013] S.C.J. No. 72 at para 47 recently held it was "not necessary to determine whether this Court can depart from its s. 2(b) conclusion in the Prostitution Reference, since it is possible to resolve the case entirely on section 7 grounds".

respondent's section 15 argument before the Court of Appeal was on the statistically disproportionate result of the jury roll process vis-a-vis on-reserve residents (with respect to which there was ample evidence before the Court), it has now fundamentally changed course. Both the respondent and DAC/LEAF now point to a different distinction, focussing on the respondent's differential opportunity to have his own distinctive "perspective" reflected in the jury roll. This appears to flow from the "fair opportunity" test adopted by the Court of Appeal.

9. This shift in focus is a significant one and explains why the appellant takes the position that a section 15 analysis should not be undertaken in this Court. While the statistical evidence in the record provided a sufficient platform for analysis before the Court of Appeal, there is a dearth of evidence to assess the section 15 argument as it is now framed. Indeed, the respondent's current argument makes a number of assumptions for which there is no proof. First, it assumes that people living off-reserve are a uniform group when in reality they are composed of many "distinct perspectives", including Aboriginal ones. Second, it assumes that this entire group is given a better opportunity than on-reserve residents to have their particular distinct perspective reflected in the jury roll. This Court has emphasized the need for a sufficient factual record in order to fairly and properly consider constitutional issues, even where the parties are content to litigate the issue on minimal or no facts.[15] There is no need to depart from this important principle in this case, especially where the issue has already been resolved in favour of the claimant on other grounds.

10. If this Court finds no section 11 breach, the respondent's personal section 15 claim should, in any event, be dismissed. The concern relating to the absence of a sufficient evidentiary foundation applies equally in these circumstances. In addition, if the Court finds that there is no section 11 breach, the section 15 claim should be dismissed because it is dependent upon an initial finding that the state failed to meet its section 11 obligations (i.e. it is essential to the "distinction" requirement in the section 15

[15] *MacKay v. Manitoba*, [1989] S.C.J. No. 88 at paras 8-9.

test). Put another way, without a section 11 breach, section 15 simply cannot be met in the circumstances of this case.[16]

11. The respondent's section 15 personal rights claim, as articulated in his factum, rests upon the assertion that state action:

> materially decreased the likelihood that the respondent's jury would include the perspectives of Aboriginal people and thereby deprived him of the ameliorative effects that the more proportionate inclusion of Aboriginal people in the jury pool would have had in combatting the widespread racism that infects the criminal justice system.[17]

In essence, the argument seems to be that the respondent was denied the benefit (given to off-reserve residents) to be tried by a jury that included jurors who would share his distinct perspective.

12. If this Court concludes that the state fulfilled its jury representativeness obligations under section 11, it cannot then be that the state action created a "distinction" between on and off-reserve residents in this manner. Both on-reserve and off-reserve residents equally face trial before juries that meet constitutional standards of impartiality and representativeness, arising from reasonable efforts of the state in all of the circumstances.

13. For these reasons, this Court should not engage in a section 15 personal rights analysis.

C. In any event, the respondent has failed to show a section 15 personal right violation

14. In any event, even upon an analysis of the merits of the issue, the respondent has not made out a personal section 15 violation in this case. This conclusion is apparent when the record is considered in the context of the applicable section 15 analytical

---

[16] This is not to say that the reverse would also be true. You could fail to establish a section 15 claim (on the basis of a lack of disadvantage for example) but still succeed on a section 11 claim, as the Court of Appeal found to be the case here.

[17] Factum filed by the respondent at para. 88.

framework. Importantly, care must be taken throughout this analysis to remain focussed on the particular nature of the personal rights claim (as opposed to the public interest claim) as different interests are engaged. The submissions of the intervener DAC/LEAF erroneously conflate the separate section 15 analyses relevant to the accused and to potential jurors.

(a) *Section 15 analytical framework*

15. Section 15(1) of the *Canadian Charter of Rights and Freedoms* provides that:

> 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.[18]

16. From the very outset, this Court has held that section 15 provides for substantive and not mere formal equality and that a section 15 complainant must show not only unequal treatment before or under the law or that the law has a differential impact but "that the impact of the law is discriminatory".[19] Writing for the majority in *Andrews v. Law Society of British Columbia*, Justice McIntyre defined discrimination as follows:

> [D]iscrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed.[20]

---

[18] *Canadian Charter of Rights and Freedoms*, section 15(1).

[19] *Andrews v. Law Society of British Columbia*, *supra* at para. 44. See also, *R. v. Kapp,* [2008] S.C.J. No. 42 at para. 28; *Withler v. Canada (Attorney General)*, [2011] 1 S.C.R. 396 at para. 31; *Quebec (Attorney General) v. A.*, [2013] S.C.J. No. 5 at para 322 per Abella J.; *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital general de Montréal*, [2007] S.C.J. No. 4 at para. 49 (per Abella J. in concurring reasons, but affirmed by the majority of the Court in *Honda Canada Inc. v. Keays*, [2008] S.C.J. 40 at para. 71).

[20] *Andrews v. Law Society of British Columbia*, *supra* at para. 37.

17. Section 15 is not an overall guarantee of equality, and does not impose a positive obligation on the state to eradicate all social and economic inequalities. Rather, it focuses upon state action and requires that the state action be non-discriminatory.[21]

18. This Court has articulated a two-part analytical framework to determine whether a legislative provision or state conduct[22] is discriminatory and therefore violates section 15(1) of the *Charter*. The claimant bears the burden of proof with respect to both aspects of the framework and a claim will fail if the claimant does not adduce a sufficient factual record to prove the requisite elements. The subjective views and feelings of the claimant are not determinative of the inquiry.[23] The two steps of the test are as follows:

> **(i) Does the law (or conduct) create a distinction based on an enumerated or analogous ground?**
>
> **(ii) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?[24]**

19. In relation to the first step, this Court has consistently confirmed that equality is a comparative concept, and that a "distinction" is established by the claimant proving that he is treated differently than others on the basis of one of the grounds protected by section 15:

> Inherent in the word "distinction" is the idea that the claimant asserts that he or she is denied the benefit that others are granted or carries a burden that others do

---

[21] *Andrews v. Law Society of British Columbia, supra* at para 25; *Aleksic v. Canada (A.G.)*, [2002] O.J. No. 2754 (Div. Ct.) at para 72; *Lovelace v Ontario* (1997), 33 O.R. (3d) 735 (CA) at 755, aff'd at [2000] S.C.J. No. 36; *Thibaudeau v Canada (Minister of National Revenue)*, [1995] 2 S.C.R. 627 at para 38 (L'Heureux-Dubé dissenting, but not on this point); *Service Employees International Union, Local 204 v Ontario (AG)*, [1997] O.J. No 3563 (Gen. Div.) at para 70; *Auton (Guardian ad litem of) v British Columbia (AG)*, [2004] S.C.J. No. 71 at para 41; *Ferrel v. Ontario (Attorney General)*, [1998] O.J No. 5074 (C.A.) at paras. 58 and 64.

[22] Where there is an allegation that government conduct, as opposed to legislation violates section 15, the Court has, essentially, used the same approach: *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, [2000] S.C.J. No. 66 at paras. 110 and 125.

[23] *Gosselin v. Quebec (Attorney General)*, [2002] S.C.J. No. 85 at paras 17-19, 66; *Withler v. Canada (Attorney General), supra* at para 31; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at paras 59-60; *MacKay v. Manitoba, supra* at paras. 8-10.

[24] *R. v. Kapp*, supra at para.17; *Withler v. Canada (Attorney General), supra* at para. 30. *Quebec (Attorney General) v. A, supra* at paras. 171 and 185 per LeBel J., at para. 324 per Abella J., and at paras. 416 and 418 per McLachlin C.J.C.

> not by reason of personal characteristic that falls within the enumerated or analogous grounds of s. 15(1).[25]

20. Courts must be cautious in assessing this first step where discrimination claims are based on allegations of disproportionate impact on the claimant group, noting that "adverse effects" discrimination is particularly difficult to establish:

> In other cases, establishing the distinction will be more difficult, because what is alleged is indirect discrimination: that although the law purports to treat everyone the same, it has a disproportionately negative impact on a group or individual that can be identified by factors relating to enumerated or analogous grounds…. In that kind of case, the claimant will have more work to do at the first step. Historical or sociological disadvantage may assist in demonstrating that the law imposes a burden or denies a benefit to the claimant that is not imposed on or denied to others. The focus will be on the effect of the law and the situation of the claimant group.[26]

21. In relation to the second step, this Court has held that proof of a distinction on an enumerated or analogous ground is not sufficient to establish a section 15 violation. The Court must additionally assess whether the distinction is substantively discriminatory.[27] The assessment of whether a distinction is discriminatory is flexible and contextual and takes into account all relevant factors, including the contextual factors highlighted by this Court in *Law v. Canada*, as well as consideration of the concepts of prejudice and stereotyping described in *Kapp*, supra and *Withler*, supra. As Justice Abella held in *Quebec v. A.*:

> *Kapp* and *Withler* guide us, as a result, to a flexible and contextual inquiry into whether a distinction has the effect of perpetuating <u>arbitrary disadvantage</u> on the claimant because of his or her membership in an enumerated or analogous group. [Emphasis added].[28]

Chief Justice McLachlin elaborated as follows:

> While the promotion or the perpetuation of prejudice, on the one hand, and false stereotyping, on the other, are useful guides [to whether a disadvantage is discriminatory] what constitutes discrimination requires a contextual analysis,

---

[25] *Withler v. Canada (Attorney General), supra* at para. 62.
[26] *Withler v. Canada (Attorney General), supra* at para. 64. *Moore v. British Columbia (Education)*, [2012] S.C.J. No. 61 at para. 59. *Symes v. Canada*, [1993] S.C.J. No. 131 at paras. 134-135.
[27] See paragraph 17 of this factum, and cases cited in relation thereto.
[28] *Quebec (Attorney General) v. A*, *supra* at paras. 331 (per Abella J.).

> taking into account matters such as pre-existing disadvantage of the claimant group, the degree of correspondence between the differential treatment and the claimant group's reality, the ameliorative impact or purpose of the law, and the nature of the interests affected.[29]

22. In *Withler*, this Court indicated that deference will be shown to the government's reasonable policy choices when considering the correspondence factor:

> It will ask whether the lines drawn are generally appropriate, having regard to the circumstance of the persons impacted and the objects of the scheme. Perfect correspondence between a benefit program and the actual needs and circumstances of the claimant group is not required. Allocation of resources and particular policy goals that the legislature may be seeking to achieve may also be considered.[30]

23. Importantly, in considering all aspects of the section 15 test in the context of equality rights claims affecting Aboriginal people, this Court's direction in *Corbiere* applies:

> [I]n the case of equality rights affecting Aboriginal people and communities, the legislation in question must be evaluated with special attention to the rights of Aboriginal peoples, the protection of the Aboriginal and treaty rights guaranteed in the Constitution, the history of Aboriginal people in Canada, and with respect of and in consideration of the cultural attachment and background of all Aboriginal women and men.[31]

(b) <u>Application of the analytical framework to the personal rights claim</u>

24. The differential treatment and disadvantage the respondent identifies with respect to his personal section 15 rights is, effectively, that he was deprived of his rights under section 11. As noted above, he says the state's inaction:

> […] materially decreased the likelihood that the respondent's jury would include perspectives of Aboriginal people, and thereby deprived him of the ameliorative effects that more proportionate inclusion of the Aboriginal people in the jury pool would have had in combatting the widespread racism that infects the justice system.[32]

---

[29] *Quebec (Attorney General) v. A*, *supra* per McLachlin C.J. at para. 418, citing *Withler v. Canada (Attorney General)* at para. 38; *R. v. Kapp*, *supra* at para. 19. See also LeBel J. at paras. 154-159, 162, 166, 183, 191.

[30] *Withler v. Canada (Attorney General)*, *supra* at para. 67.

[31] See *Corbiere v. Canada*, [1999] S.C.J. No. 24 at para 67, per L'Heureux-Dubé J. concurring.

[32] See respondent's factum at para. 88.

25. However, the respondent does not clearly articulate the distinction being relied upon under the first step in his submissions to this Court. Instead, he states – incorrectly – that the Court of Appeal accepted that the first step of section 15 had been satisfied. To the contrary, Justice LaForme stated that there was no dispute about what the first step was, but did not address whether it was met in this case. Instead, Justice LaForme's decision was based on his finding that the second step was not made out on the evidence because the claimant had failed to identify or prove a disadvantage. Justice LaForme's analysis is as follows:

> There is no dispute that [section 15] requires the appellant to show that the state's actions created a distinction based on an enumerated or analogous ground that imposes a disadvantage by perpetuating prejudice or stereotyping. There is also little dispute, and I accept, that Aboriginal on-reserve residence is an analogous ground.
>
> In addressing his personal equality rights, the appellant argues that the state's actions significantly diminished the likelihood of Aboriginal persons appearing on the jury panel of the appellant, thereby "exacerbating [his] existing disadvantage". The nature of that disadvantage is not articulated, nor is there anything in the record that suggests what that might be. There can be no doubt about the general systemic discrimination suffered by Aboriginal people in the criminal justice system. However, without evidence, I cannot conclude that this appellant suffered disadvantage because of the make-up of his petit jury or of the jury roll from which it was derived.[33]

26. The appellant submits that Justice LaForme was correct in his analysis of the requirements of the second step of the section 15 test and that the respondent failed to meet those requirements. For reasons elaborated upon below, the respondent has not demonstrated any disadvantage. Moreover, he has also failed to satisfy the first step of the section 15 test by not establishing that the state created a distinction (which includes a denial of a benefit) based on his Aboriginal reserve-residency (an admitted analogous ground).

[33] *R. v. Kokopenace*, *supra* at paras. 217-18.

(i) A closer look at the first step

27. The distinction that appears to be the basis of the respondent's claim is as follows: because the state failed to ensure that a fair opportunity was provided to First Nations reserve residents to be on the jury roll (as compared to the off-reserve population), the respondent – as a reserve resident – was denied the benefit that an off-reserve accused would have in terms of the opportunity to be tried by a jury that included jurors who would share their distinct perspective. If this is the distinction advanced, it is flawed for two reasons.

28. First, the respondent has failed to prove that accused persons living off-reserve (from an array of distinctive groups including Aboriginals) have any better opportunity to have members of their particular distinctive group included in a jury than he does. There is simply nothing in the record to speak to how the jury roll process plays out, off-reserve, in relation to various distinct groups in the community. (Moreover, as argued in the appellant's main factum, this is not how we approach juries in Canada.) The off-reserve population includes people from a broad range of backgrounds and cannot be collectively lumped together as single group that shares a similar perspective. That being the case, the mere fact that an off-reserve accused has a better chance of securing off-reserve jurors – broadly speaking - cannot lead to the conclusion that this equates to a benefit in the form of greater opportunity for jurors with that accused's distinct perspective.

29. Secondly, implicit in the respondent's distinction argument is the idea that an off-reserve accused is somehow not impacted by the inclusion or exclusion of reserve residents from the jury roll. This thinking is flawed. Off-reserve residents include, of course, Aboriginal people. In Kenora District, this is especially true. Those off-reserve residents may well have come from reserves. They may go back and forth over the course of their lives. No doubt, they too would value the inclusion of the distinct perspective of reserve residents. Non-aboriginal off-reserve residents from other groups may equally benefit from the distinct perspectives that may be brought by this important and distinct group. In some cases, the potential benefit may be heightened where the

nature of the case involves particular issues, witnesses, or evidence. In effect, both on and off-reserve residents are impacted if a lesser opportunity is given to on-reserve residents to participate in the jury roll. This reality undermines the distinction claim.

30. Even if a distinction is established, the evidence does not show a sufficient nexus between the impugned state conduct and the "reduced opportunity" distinction. As explained in the Iacobucci Report, the underrepresentation of on-reserve jurors on the jury roll is a complex problem, stemming in large part from factors outside of the state's immediate control.[34]

31. A fundamental "nexus" between the impugned distinction and conduct by the state creating that distinction is essential. It is imbedded in the very wording of section 15 and in the analytical framework developed to analyze section 15. As set out above, the well-established two-step test makes it clear that both the distinction and the disadvantage it gives rise to must be <u>created</u> by the state.

32. The necessary link to government conduct is usually obvious as it is often on the face of the legislation. Where it is not, such as may be the case with adverse effects discrimination, this Court has made it clear that the effects must be due to government conduct, and not something else.[35] In *Symes*, for example, where it was complained that excluding child care expense from tax deductible business expenses discriminated against women, Justice Iacobucci concluded that the evidence did not establish that payment for child-care expenses came predominantly from women. He warned:

> We must take care to distinguish between effects which are wholly caused, or are contributed to, by an impugned provision, and those social circumstances which exist independently or such a provision.[36]

33. In *R. v. Nur*, a decision affirmed by a panel of five judges at the Court of Appeal, Justice Code considered the issue of nexus in the context of a claim that mandatory

---

[34] *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci, supra*, Appellant's Record, Vol. XLII, p. 27.
[35] In the case of adverse effect discrimination, this Court in *Withler v. Canada (Attorney General), supra* emphasized how a distinction created by the state will be more difficult to prove (at para. 64).
[36] *Symes v. Canada, supra,* at para. 134.

minimum sentences for gun charges had a discriminatory adverse effect on members of the black population. He explained that the section 15 claim foundered at the first stage of the analysis as the basic nexus was not established:

> The fundamental flaw in the s.15 argument is that the Applicant and the Intervener have not established that the discriminatory effect of over-representation and over-incarceration of blacks, amongst those charged with s.95 offences, is caused by the law itself. It is not difficult to establish that poverty, unemployment, poor housing and weak family structures contribute to the proliferation of gang culture and gun crime. It is also not difficult to establish that these phenomena will attract heavy police attention and will lead to the laying olarge numbers of s.95 charges. Finally, it is not difficult to establish that anti-black discrimination undoubtedly contributes to many of these underlying societal causes. However, none of this establishes that s.95 itself violates s.15 of the Charter…
>
> …
>
> I am not satisfied that the sentencing provision in s. 95 are the cause of any discriminatory effect or disproportionate impact on blacks. Those causes and effects exist independently of the legislative provisions. Accordingly, the s.15 Charter argument must be rejected. [emphasis in original][37]

34. While the intervener for DAC/LEAF disputes the existence of any "nexus" requirement (suggesting that this would pose an undue burden on complainants and reduce section 15 to concerns about direct discrimination), the intervener's reliance on a single passage from this Court to support this proposition is misplaced. The passage in question, drawn from *Quebec v. A*, relates to why there is no requirement on a section 15 claimant, as part of the second step of the test, to prove that a distinction will perpetuate prejudice or stereotypical *attitudes* as this would improperly focus "attention on whether a discriminatory attitude exists not a discriminatory impact."[38] It has nothing to do with the fundamental need to link the discriminatory distinction at issue to legislation or government conduct. Furthermore, insofar as the intervener DAC/LEAF also claims that the above cases "fail to acknowledge that a law neutral on its face may have disparate effects on certain groups", the appellant disagrees. These cases recognize exactly that. The nexus analysis is simply about assessing the extent to which those effects are attributable to the state.

---

[37] *R. v. Nur, supra* at paras.74-82.
[38] *Quebec (Attorney General) v. A., supra,* per Abella J. at paras. 327- 332.

35. The nexus requirement is essential to ensuring that courts remain within their role as reviewers of government conduct and legislation, and not step into the realm of government actors.[39]

36. For these reasons, the first step of the section 15 personal right analysis is not met here.

(ii) <u>A closer look at the second step</u>

37. The respondent did not articulate the nature of the disadvantage he alleges in the Court below. The Court of Appeal was unanimous in finding there was none. In the personal rights context, it appears to be that the disadvantage alleged is that the accused suffered from a reduced opportunity to have people on his jury that will understand, or share, his views, experiences or perspective.

38. While there is no question that First Nations participation in juries (from both on and off-reserve populations) is important and valuable, it has never been the law that such participation is required for an impartial hearing or in order to properly understand the evidence and render verdicts in relation thereto. Indeed, it is well established (and accepted by the respondent) that there is no entitlement to any particular jury, or jury members. As the Ontario Court of Appeal noted, in rejecting a similar claim of prejudice under section 15:

> There is no empirical data to support [an argument that jurors of the same race as the accused are necessary to evaluate the evidence]. If…correct then every jury should include one or more members of the same race of the accused if equality rights are to be protected. In order to accomplish this, it would be necessary to completely restructure the jury selection process. It would also require the abandonment of the principle of the random selection of jurors. Furthermore, in our opinion, it would also reinforce the very type of racial stereotyping that the author apparently abhors.
> …

[39] *Auton*, *supra* at para 41; *M. v. H.*, [1999] S.C.J. No. 23 at para. 79; and *Chaoulli v. Quebec*, [2005] S.C.J. No. 33 at paras. 94-95. As noted earlier, section 15 is not an overall guarantee of equality (see paragraph 17 and related footnote).

> [J]ury impartiality and jury representativeness should not be confused. Partiality arises where there exists a realistic potential that the jury would not be indifferent to the result. Representativeness is a different concept in that it does not focus on the "state of mind" of the jurors but rather on whether they are drawn from a fair cross-section of the community.[40]

39. The Court of Appeal concluded that the trial in this case was fair and there has been no suggestion at any time that the jury was impartial or that there was any appearance of impartiality.[41] There was no challenge for cause and no evidence of widespread or general prejudice against Aboriginal people in the jurisdiction, nor was there any application requesting that judicial notice be taken of this fact.[42] The offence took place on the Sandy Lake reserve, about a two hour drive from Kenora, and all the witnesses, the accused, and the victim, were Aboriginal. In any event, evidence of widespread bias which gives rise to a realistic potential for partiality provides a reason to challenge for cause, not to require a particular composition of jury.[43] It is an enormous leap from one to the other, a leap not supported by our current approach to juries.

40. Even if a disadvantage is established, it has not been shown to be created by the impugned government conduct. As explained above and in the appellant's main factum, the reasons for low First Nations participation in the jury roll are complex. There is not a sufficient nexus between any disadvantage arising from underrepresentation in the jury roll and government conduct. The majority of the Court of Appeal agreed only that the government should have done more to address low response rates, not that the low response rate was due to government conduct.[44]

41. If a disadvantage could be established that is attributable to the state, an examination of contextual factors demonstrates that it was not discriminatory. These

---

[40] *R. v. Laws, supra* at paras. 58-68.
[41] *R. v. Kokopenace*, *supra* per LaForme J.A. at para. 226.
[42] First Supplementary Transcript, May 27, 2008 (not included in the record before this Court).
[43] See *R. v. Williams*, [1998] S.C.J. No. 49 at paras. 35-43.
[44] Justice Goudge did not agree with Justice LaForme that poor source lists affected the outcome of the First Nations jury process. Specifically, Justice Goudge concluded that Court Services Division efforts "were sufficient" in relation to the lists, and "if this were the only challenge to the 2008 jury roll, I would not find that the state fell short of its constitutional obligation". *R. v. Kokopenace, supra,* per Goudge J.A. at para. 257.

include whether the distinction gives rise to *arbitrary* disadvantage, and whether there exists a correspondence between the ground of discrimination.[45]

42. The correspondence factor looks at the legislative scheme or conduct and asks whether it is generally tailored to the actual "needs, capacity and circumstances" of the claimant group under consideration.[46] The correspondence need not be perfect, but only "generally appropriate".[47]

43. Here, the First Nations jury process provided in s.6(8) of the *Juries Act*, and the way it was implemented, corresponded to the situation and circumstances of the First Nations communities in Kenora. This separate process afforded flexibility and meant that First Nations reserves could be singled out for extra efforts. These additional efforts were particularly significant in 2007 (for the 2008 roll). In January of 2007, Court Services Division (CSD) learned of the response rates for the first time since *A.F.* was decided in 1993, at which time a "fix" had been put in place.[48] As a result, CSD made

---

[45] *Law v. Canada (Minister of Employment and Immigration), supra* at paras. 63-75; *R. v. Kapp, supra* at paras. 19 and 23. In *Withler v. Canada (Attorney General), supra* at para. 66, this Court recognized that each fact need not be addressed in each case, an approach recently confirmed in *Quebec (Attorney General) v. A., supra*, per Abella J. at paras. 325-346, per McLachlin C.J.C. at para. 418, where Abella J. refers to the concept of arbitrary disadvantage.

[46] *Law v. Canada (Minister of Employment and Immigration, supra* at paras. 59, 69-70, 75; *Withler v. Canada (Attorney General), supra* at paras. 45 and 54; *Quebec (Attorney General) v. A, supra* per Abella J. at paras. 346 and 356, and per McLachlin C.J.C. at para. 418.

[47] *Law v. Canada (Minister of Employment and Immigration), supra* at para. 105; *Canadian Foundation for Children, Youth and the Law v. Canada*, [2004] S.C.J. No. 6 per McLachlin C.J. at para. 67; *Withler v. Canada (Attorney General, supra* at paras. 67 and 71.

[48] In *R. v. A.F.*, [1994] O.J. No.1392, aff'd *R. v. A.F.*, [1997] O.J. No. 2521, Justice Stach described the "fix" as follows in 1993, at paragraphs 53 and 54:

> In 1993, the return rate for completed questionnaires was 60% to 70% for the non-aboriginal community compared to a return rate of approximately 33% for aboriginal peoples. The reason for the differential rate of return is undetermined. In an attempt to remedy this discrepancy, a number of extraordinary measures were undertaken.
>
> The deputy sheriff wrote to the Chiefs of each of the Bands to ascertain the aboriginal language spoken at each reserve. He now sends an explanatory letter in aboriginal syllabics in the appropriate language with each of the questionnaires. Also in 1994 an educational programme was implemented through the office of the Crown Attorney. When Assistant Crown Attorneys attend sessions of the Ontario Court (Provincial Division) in aboriginal communities, the nature of the process and its importance is explained through an aboriginal interpreter. [The deputy sheriff] also intends to continue his practice of having travel and accommodation expenses billed directly to his office for payment, if a potential juror is unable to pay those expenses or to await reimbursement.

additional efforts to address this, including substantially increasing the number of questionnaires being sent to First Nations, and attempting to visit as many First Nations reserves as possible to discuss the importance of participating on juries.[49] Justice Rouleau, in dissent at the Court of Appeal, found the state efforts to be reasonable and sufficiently responsive having regard to the complexity of the issue and the unique context.[50]

44. The section 6(8) process also involves engaging the First Nations directly and attempts to build trust and foster respect, understanding, and a shared commitment to the justice system. The process is consistent with this Court's decisions in *Ermineskin* and *Cunningham*, which emphasize that the Aboriginal context is unique and government interactions with Aboriginal communities may well require different approaches.[51]

45. The fact that mistakes were made, or the process could have been more centralized with greater oversight, or could have been entirely different, does not mean there was insufficient correspondence in the system used. The correspondence factor does not require the ideal. As with other *Charter* rights, s.15 does not demand perfection.[52]

46. The disadvantage, and requisite nexus to state conduct, under step 2 of the section 15 test has not been met.

[49] See paragraphs 76 and 77 of the appellant's main factum on this appeal and the analysis of Justice Rouleau in *R. v. Kokopenace*, supra. at paras 306-326. See also Affidavit of Laura Loohuizen, sworn July 18, 2011, Appellant's Record, Vol XI at paras. 27, 50, 66, 82-101.

[50] *R. v. Kokopenace, supra* at paras. 301-324.

[51] *Ermineskin Indian Band and Nation v. Canada*, [2009] S.C.J. No. 9 at paras. 191-195; *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, [2011] S.C.J. No. 37 at paras. 59-87.

[52] For example, section 7 entitles an accused to a fair hearing, not the most favourable procedures that could be imagined: *R. v. Lyons*, [1987] S.C.J. No. 62 at para. 88 and reiterated more recently by this Court in *R. v. Quesnelle*, 2014 SCC 46 at para. 64. Section 11(d) does not guarantee "the ideal" and a statutory provision that falls short may nonetheless comply with the *Charter*: *R. v. Valente* (1985), 23 C.C.C. (3d) 193 at 207-212 (S.C.C.).

D. Conclusion

47. The respondent’s section 15 claims should be dismissed.

PART IV – SUBMISSIONS AS TO COSTS

48. The appellant makes no submissions as to costs.

PART V – ORDER SOUGHT

49. The appellant submits that the section 15 claims made by the respondent be dismissed.

ALL OF WHICH is respectfully submitted by

______________________________	______________________________
Gillian Roberts Of Counsel for the Appellant	Deborah Calderwood Of Counsel for the Appellant

Date: August , 2014

PART VI – AUTHORITIES

Para(s)

Jurisprudence

Alberta (Aboriginal Affairs and Northern Development) v. Cunningham, [2011] S.C.J. No. 37.....44

Aleksic v. Canada (A.G.), [2002] O.J. No. 2754 (Div. Ct.).....17

Andrews v. Law Society of British Columbia, [1989] S.C.J. No. 6.....3; 16; 17

Auton (Guardian ad litem of) v British Columbia (AG), [2004] S.C.J. No. 51.....17; 35

Benner v. Canada (Secretary of State), [1997] 1 S.C.R. 358.....3; 4

Borowski v. Canda (Attorney General), [1989] S.C.J. No. 14.....3; 4

Canada (Attorney General) v. Bedford, [2013] S.C.J. No. 72.....6

Canada (Attorney General) v. Downtown Eastside Sex Workers, [2012] S.C.J. No. 45.....3; 4

Canadian Council of Churches v. Canada (Minister of Employment and Immigration, [1992] S.C.J. No. 5.....4

Canadian Foundation for Children, Youth and the Law v. Canada, [2004] S.C.J. No. 6.....42

Chaoulli v Quebec, [2005] S.C.J. No. 33.....35

Corbiere v. Canada, [1999] S.C.J. No. 24.....23

Ermineskin Indian Band and Nation v. Canada, [2009] S.C.J. No. 9.....44

Ferrel v. Ontario (Attorney General), [1998] O.J No. 5074 (C.A.).....17

Gosselin v. Quebec (Attorney General), [2002] S.C.J. No. 85.....18

Honda Canada Inc. v Keays, [2008] S.C.J. 40.....16

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497.....21; 41; 42

PART VII - STATUTORY PROVISIONS

Juries Act

R.S.O. 1990, CHAPTER J.3

Consolidation Period: From June 30, 2010 to the e-Laws currency date.

Last amendment: 2009, c. 33, Sched. 2, s. 38.

Jury service notices

Indian reserves

6(8) In the selecting of persons for entry in the jury roll in a county or district in which an Indian reserve is situate, the sheriff shall select names of eligible persons inhabiting the reserve in the same manner as if the reserve were a municipality and, for the purpose, the sheriff may obtain the names of inhabitants of the reserve from any record available. R.S.O. 1990, c. J.3, s. 6 (8).

Loi sur les jurys

L.R.O. 1990, CHAPITRE J.3

Période de codification : Du 30 juin 2010 à la date à laquelle Lois-en-ligne est à jour.

Dernière modification : 2009, chap. 33, annexe 2, art. 38.

Avis de sélection de juré

Réserve indienne

6(8) Pour dresser une liste de jurés pour un comté ou un district où se trouve une réserve indienne, le shérif sélectionne le nom des habitants de la réserve habiles à être membres d’un jury comme si la réserve était une municipalité et, à cette fin, il peut obtenir le nom des habitants de la réserve en consultant tout registre disponible. L.R.O. 1990, chap. J.3, par. 6 (8).

Canadian Charter of Rights and Freedoms

Equality Rights

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.

Charte canadienne des droits et libertés

Droits à l'égalité

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.