Court 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
(RESPONDENT)

-and-

CLIFFORD KOKOPENACE

RESPONDENT
(APPELLANT)

FACTUM OF THE INTERVENERS DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS AND WOMEN'S LEGAL EDUCATION AND ACTION FUND, INC. (LEAF)

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PART I: OVERVIEW OF POSITION AND STATEMENT OF FACTS

Overview

1. Fundamental criminal law principles must always be interpreted and applied in a manner consistent with substantive equality; that is, without exacerbating or perpetuating systemic disadvantage. LEAF and the Asper Centre intervene to assert that s. 15 of the *Charter* must continue to play a constitutive role in the Court's analysis of criminal law issues. LEAF and the Asper Centre submit that criminal justice practices and procedures can violate individual and group equality rights, as occurred in this case, if attention is not paid to this analysis. LEAF and the Asper Centre urge the Court to find that the exclusion of Aboriginal people resident on-reserve from the jury rolls constitutes a violation of s. 15 for both the Respondent and for potential jurors.

2. The findings made by the Ontario Court of Appeal with relation to ss. 11(d) and (f) of the *Charter* must be considered contextually, in light of the history of systemic discrimination against Aboriginal peoples, and consistent with the substantive equality and non-discrimination values protected in s. 15. The Appellant's discriminatory failure to take reasonable steps to include on-reserve residents in the jury roll perpetuates the historic disadvantage of Aboriginal accused persons and prospective on-reserve jurors. The larger context of systemic, persistent, pervasive discrimination against these populations cannot be ignored, and the Crown's failure here must not be excused.

3. The proper administration of justice requires a fair and non-discriminatory process.[1] The question here is not whether the jury's representativeness would have affected the outcome of the trial, but whether the failure of the government to take the steps to create a representative jury roll for the trial resulted in a discriminatory effect on the accused and potential jurors.[2]

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[1] See *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at paras 63-64, 173 DLR (4th) 1, per L'Heureux-Dubé J, dissenting but not on this point.

[2] *R v Kokopenace*, 2013 ONCA 389, at para. 44, 115 OR (3D) 481, per LaForme JA [*Kokopenace*]. See also Ontario, Commission on Systemic Racism *The Report of the Commission on Systemic Racism* (Toronto: Government of Ontario, 1995) at 3.

Facts

4. LEAF and the Asper Centre adopt the facts as stated in the Respondent's factum, particularly as they relate to the context of historical disadvantage experienced by Aboriginal people and the implications of that context with respect to the criminal justice system.

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

7. LEAF and the Asper Centre take the following positions with respect to the issues raised by the Appellants at page 7 of their factum:

(A) Equality is a fundamental tenet of the criminal justice system. Jury representativeness is an embodiment of our commitment to the value of equality in society more broadly and to the *Charter* right of equality. Jury representativeness is an essential safeguard of the s. 15 right to an impartial jury and must be assessed through a substantive equality lens. It is a crucial part of the criminal justice framework to ensure a fair trial and thereby to promote public confidence in the administration of justice.

(B) The Crown's policies and practices with respect to jury roll composition in the Kenora district effectively discriminated against both the Respondent and prospective Aboriginal jurors living on-reserve. The exclusion of Aboriginal people resident on-reserve from the jury rolls violates s. 15 of the *Charter*.

(C) A new trial is an available and appropriate remedy under s. 24(1) of the *Charter*, but LEAF and the Asper Centre support the remedy of a declaration in respect of the obligations of the Crown to ameliorate prospectively the lack of representativeness by Aboriginal persons resident on-reserve.

PART III: ARGUMENT

Discriminatory Context of the Jury System for Aboriginal Peoples

8. In 1982, the Law Reform Commission of Canada recognized the jury as a crucial safeguard against oppressive law and law enforcement and as a way of increasing the public's trust in the criminal justice system.[3] The right to trial by jury is especially important in the context of Aboriginal communities, since the jury can be seen as a bridge between Aboriginal and Canadian systems of criminal justice providing Aboriginal communities a significant avenue

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[3] Canada, Law Reform Commission, *Report on the Jury*, No 16 (Ottawa: Law Reform Commission of Canada, 1982) at 5.

for participation and control.[4] However, Aboriginal persons in Ontario have long experienced systemic exclusion from juries.[5]

9. LEAF and the Asper Centre adopt the contextual history enunciated by the interveners, Aboriginal Legal Services Toronto, and the Native Women's Association of Canada and the Canadian Association of Elizabeth Fry Societies, in their facta. It is against this backdrop that the failure of the government to address the inadequate means of compiling a representative jury list in the communities in question should be reviewed and deemed wanting in respect of the constitutional rights and values at issue in this appeal.

Equality is Essential to the Right to an Impartial and Representative Jury

10. Jury representativeness is at the heart of the s. 15 right to an impartial jury. The exclusion of on-reserve Aboriginal persons from the jury roll prevents the possibility of creating a representative jury. The differential treatment on the basis of Aboriginality-residence removes a condition of institutional impartiality to which Aboriginal persons are equally entitled in a way that perpetuates disadvantage.[6] In this case, the effect of failing to include on-reserve Aboriginal people from the jury roll exacerbates the disadvantage of the Respondent and constitutes a violation of s. 15 both for him as an individual and to prospective jurors. LEAF and the Asper Centre rely upon and adopt the Respondent's arguments clearly setting out the appropriate test as well as these violations of s. 15.[7]

11. Equality is a fundamentally important *Charter* value and interpretive lens that applies to and supports all other rights guaranteed by the *Charter*.[8] The claimed breach of the Respondent's

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[4] Christopher Gora, "Jury Trials in the Small Communities of the Northwest Territories" (1993) 13 *Windsor YB of Access to Just* 156 at 158, 180.

[5] See: Wendy Moss, *Aboriginal People: History of Discriminatory Laws,* (Ottawa: Library of Parliament, 1987) at 6; Mark Israel, "The Underrepresentation of Aboriginal Peoples on Canadian Jury Panels" (2003) 25 Law & Policy 37 at 40, 42; Gora, *ibid* at 161 and 166; and Perry Schulman & Edward Myers, "Jury Selection," in Canada, Law Reform Commission, ed. *Studies on the Jury* (Ottawa: the Commission, 1979) at 429. See also *Kokopenace, supra,* note 2 at paras 149-150 per LaForme JA; and Frank Iacobucci, *First Nations Representation on Ontario Juries: Report of the Independent Review Conducted by the Honourable Frank Iacobucci* (Toronto: February 2013), at paras. 79-84, and 204 [the "Iacobucci Report"].

[6] *Law v Canada (Minister of Employment and Immigration),* [1999] 1 SCR 497 at para 88, 170 DLR (4th) 1 [*Law*]; *Quebec (Attorney General) v A.*, 2013 SCC 5, [2013] 1 SCR 61, per Abella J., at paras 323, 327-329 [*Quebec v A*]; *Corbiere, supra,* note 1at para 14

[7] Respondent's factum, paras. 79-88.

[8] *New Brunswick (Minister of Health and Community Services) v JG*, [1999] 3 SCR 46 at paras. 112-115, per L'Heureux-Dubé, Gonthier and McLachlin JJ. citing McIntyre J. in *Andrews v Law Society of British Columbia,*

right to a representative jury selection process and an impartial jury under sections 11(d) and (f) of the Charter is inextricably linked to the equality analysis under s. 15 through the systematic exclusion of on-reserve residents.[9]

12. The interpretation of the Respondent's rights under sections 11(d) and (f) must be informed by the values embodied by the *Charter* as a whole, including "liberty, human dignity, *equality*, autonomy, and the enhancement of democracy [emphasis added]."[10] These *Charter* values support an application of s. 15 that acknowledges and remediates the historic mistreatment of Aboriginal persons under the criminal justice system.

13. The right to an impartial jury is protected by s. 15 and promoted by jury representativeness. In *Laws*, the Ontario Court of Appeal cited this Court's decision in *Williams*:

> The accused's right to be tried by an impartial jury under s. 11(d) of the *Charter* is a fair trial right. But it may also be seen as an anti-discrimination right. The application, intentional or unintentional, of racial stereotypes to the detriment of an accused person ranks among the most destructive forms of discrimination. The result of the discrimination may not be the loss of a benefit or a job or housing in the area of choice, but the loss of the accused's very liberty.[11]

14. This Court in *Williams* then stated that this anti-discrimination right "must fall at the core of the guarantee in s. 15 of the *Charter*".[12] The Court cited L'Heureux-Dubé J.'s reasons in *Sherratt*, when she emphasized "the need for guarantees, as opposed to presumptions, of impartiality if *Charter* rights are to be respected". She stated that the anti-discrimination right is meaningless without appropriate representativeness.[13]

15. LEAF and the Asper Centre reject the Appellant's argument that a concern for equal treatment does not sit easily within s. 11. A fair adjudicative process is impossible without a concern for equality. Canadian law starts from the presumption of juror impartiality. In *Williams* the Court stated that a representative jury pool is one of several "essential safeguards" of the accused's s. 11(d) *Charter* rights. The Court identified "the fundamental rights to a fair trial by

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[1989] 1 S.C.R. 143, at p. 185. See also Kerri A. Froc, "Constitutional Coalescence: Substantive Equality as a Principle of Fundamental Justice" (2010-2011) 42 *Ottawa L Rev* 411 at para 56.

[9] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295 at 344.

[10] *Hutterian Brethren of Wilson County v Alberta*, [2009] 2 SCR 567 at para 88, per McLachlin CJ. See also: *R v Advance Cutting & Coring Ltd*, [2001] 3 SCR 209 at para 8, per Bastarache J.; *R v Oakes*, [1986] 1 SCR 103 at 136.

[11] *R v Laws* (1998), 41 OR (3d) 499 (ONCA) at para 65 [emphasis added.], citing *R v Williams*, [1998] 1 SCR 1128 at para 48, per McLachlin J (as she then was) [*Williams*].

[12] *Williams*, *ibid*, at para 48.

[13] *Williams*, *ibid*, at para. 46, citing *R v Sherratt* [1991] 1 SCR 509 at 525.

an impartial jury and to equality before and under the law" as requiring a principled exercise of discretion in accordance with *Charter* values.[14]

16. Sharpe JA noted the important link between jury representativeness and jury impartiality in *Gayle,* when he held for the Ontario Court of Appeal that representativeness is a means to ensure the s. 15 right to jury impartiality. Sharpe JA addressed the "concern about the exclusion of jurors on racial grounds" both before and after a jury array is assembled in reference to the risk of partiality. He averred that the *Charter* right of equality must be considered in the process of assembling a jury array.[15]

17. Similarly, in the Court below, LaForme JA stated with respect to s. 11:

> The question posed is whether in the process of compiling the jury roll, Ontario made reasonable efforts to seek to provide a fair opportunity for the distinct perspective of Aboriginal on-reserve residents to be included, having regard to all the circumstances and keeping in mind the objective served by the representativeness requirement.[16]

This test must be informed by a substantive equality analysis.

Substantive Equality Requires a Contextual Analysis

18. The protections of s. 15 are intended to increase the substantive equality of those groups previously excluded from power and full participation in society.[17] Thus, equality is a fundamental constitutional norm that needs to be incorporated into *all* judicial analysis. As noted by Abella J in *Quebec v A.*:

> The root of s. 15 is our awareness that certain groups have been historically discriminated against, and that the perpetuation of such discrimination should be curtailed. If the state conduct widens the gap between the historically disadvantaged group and the rest of society rather than narrowing it, then it is discriminatory.[18]

19. This case requires the Court to pay careful and constant attention to the unique circumstances of Aboriginal peoples. The colonial experience has included ongoing systemic discrimination. One of the results has been disproportionate and distressingly high levels of incarceration amongst Aboriginal men and women. This Court has recognized in *Gladue* and

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[14] *Williams, ibid,* paras 42, 47 and 49.
[15] *R v Gayle* (2001), 54 OR (3d) 36 at paras 56-58 (ONCA) [leave to appeal dismissed without reasons January 24, 2002, SCC File No. 28699], at paras 56-58, citing McLachlin J (as she then was) in *R v Biddle*, [1995] 1 SCR 761 at 789.
[16] *Kokopenace, supra*, note 2 at para 50.
[17] *Andrews, supra*, note 8 at 174; *Brooks v Canada Safeway Ltd.*, [1989] 1 SCR 1219 at 1238; and *R v Turpin*, [1989] 1 SCR 1296 at 1329.
[18] *Quebec v A., supra*, note 6 at para 332.

Ipeelee the urgent need to address the situation of Aboriginal peoples in a criminal justice system that is in "crisis."[19] In the Court below, LaForme JA recognized that equality in the context of on-reserve Aboriginals' participation in the jury selection process can only be achieved by reference to the historic disadvantage of Aboriginal persons.[20]

20. The criminal justice system will never reflect the value of substantive equality until the Court considers equality as a routine part of its criminal law analysis. Accordingly, it is critical that the Court renew its "commitment to undertake a contextual analysis of equality rights claims" in order to ensure that substantive equality is achieved.[21] Incorporating an equality analysis into the substantive criminal law "is a constitutionally mandated technique for enriching both the process of legal problem-solving and the character of legal reasoning which may … increase the likelihood that disadvantage, vulnerability, and lack of power will not be further exacerbated".[22]

21. The state's failure to take reasonable steps to ensure the participation of on-reserve Aboriginal peoples in the jury pool, in a context of systemic inequality, constitutes unequal treatment.[23] The systemic exclusion of a group on the basis of an analogous ground (on-reserve residency) deprives this group of the equal benefit of the law, and prevents participation in a fundamental legal process that has a profound impact on their community and society as a whole. This differential treatment excludes the group's recognized perspective from the jury system. This failure means that rather than being a bulwark of justice and community participation, the jury system perpetuates historic disadvantage and prejudice in violation of s. 15. This situation illustrates the critical importance of interpreting criminal justice principles through an equality lens.

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[19] *R. v. Gladue*, [1999] 1 SCR 688; and *R. v. Ipeelee*, [2012] 1 SCR 433.
[20] *Kokopenace, supra,* note 2, para 145, citing *R v Ipeelee, (ibid).*
[21] Jennifer Koshan & Jonnette Watson Hamilton, "The Continual Reinvention of Section 15 of the *Charter*" (2013) 64 *UNBLJ* 19, at para 77.
[22] Rosemary Cairns Way, "Incorporating Equality into Substantive Criminal Law: Inevitable or Impossible?" (2005) 4 *J.L. & Equality* 203 at paras 3, 39. See *R. v Tran*, [2010] 3 SCR 350, 2010 SCC 58, at para. 34, per Charron J for the Court: "It follows that the ordinary person standard must be informed by contemporary norms of behaviour, including fundamental values such as the commitment to equality provided for in the *Canadian Charter of Rights and Freedoms*."
[23] Kenora has a large number of on-reserve Aboriginal people, many living in fairly isolated on-reserve communities. The numbers are stark, as noted in the Respondent's factum, para. 32: on-reserve residents constituted only 4.1% of the 2008 Kenora jury roll, yet they were between 21.5 and 31.8% of the District's adult population.

A Formal Equality Analysis Must Be Rejected

22. As in *Eldridge v British Columbia*, it is a violation of substantive equality to fail to consider and accommodate difference and to treat a historically marginalized and excluded group in an identical manner to any other person. Substantive equality can require the state to take positive actions of reasonable accommodation to assist disadvantaged groups.[24] Determining what is reasonable requires the Court to view the issue through the substantive equality lens. As this Court has stated, the question of whether discrimination exists is to be determined with regard to the broader social, political and legal context of a distinction in a substantive equality analysis.[25]

23. This Court has repeatedly confirmed that same treatment is not necessarily equal treatment.[26] LaForme JA rejected a formal equality analysis, noting that: "because of the continuing significance of this history [of colonialism], 'to achieve real equity, sometimes different people must be treated differently'".[27] He rightly acknowledged that the unique circumstances of Aboriginal peoples within Canada and the Canadian criminal justice system must inform the s. 11 analysis. Thus, the contextual approach required by s. 15 is also essential to the s. 11 analysis.

24. The Appellant properly recognizes that the reasons for inequality are complex and multifaceted, yet implies that inequality, such as unequal representation on jury rolls, can result either from state action or from external circumstances, but not both. What the Appellant ignores is the existence of a state obligation not to exacerbate existing inequalities. The cases the Appellant cites fail to recognize the interaction between prohibited grounds, such as race and gender, disenfranchisement within society, and the law.[28] Moreover, these decisions largely engage in a formal equality analysis, failing to acknowledge that a law neutral on its face may

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[24] *Eldridge v British Columbia (Attorney General),* [1997] 3 SCR 624, at paras 73, 77 [*Eldridge*].
[25] *Ermineskin Indian Band and Nation v Canada,* [2009] 1 SCR 222 at paras 193-4, citing *R v Turpin*, [1989] 1 S.C.R. 1296 at 1331; see *Withler v Canada (Attorney General),* [2011] 1 SCR 396; and *Quebec v A., supra* note 6.
[26] *Brooks v Canada Safeway, supra* note 17, at 1246; and *Eldridge, supra*, note 24, at 674; *Quebec v A., supra*, note 6, per Abella J. at para 331; *Withler, ibid*, at para 37.
[27] *Kokopenace, supra*, note 2 at para 145, citing *United States of America v Leonard,* 2012 ONCA 622, at para 52. See also *Ipeelee, supra*, note 19 at para 71, citing *R v Vermette*, 2001 MBCA 64 at para 39, 156 Man R (2d) 120.
[28] Appellant's factum, paras 59-60, citing *Symes v Canada* [1993] 4 SCR 695, *R v Nur* 2011 ONSC 4874, and *Native Council of Nova Scotia v Canada (Attorney General),* [2011] 2 CNLR 138 (FC (TD)).

have disparate effects on certain groups. This approach is not consistent with this Court's s. 15 jurisprudence.[29]

25. A criminal justice system that takes equality seriously recognizes and adapts to diversity within the community it serves, and acknowledges that inequality can result from same treatment.[30] As noted above, a fair and non-discriminatory *process* is the overriding concern for the administration of justice.[31] The failure of the government to take the steps to have a representative jury roll for the trial created a discriminatory effect on the accused and potential jurors.[32] While the *Juries Act* contains appropriate provisions to create a representative jury roll, the problem is that the government has not lived up to the obligations imposed thereunder, given the existence of systemic inequality that it must address.

26. LEAF and the Asper Centre reject the Appellant's reliance on causation.[33] While it is true that the lack of representation resulted from multiple and complex causes, many of them out of the control of the state, this does not absolve the state from its obligation to make reasonable efforts to ensure representativeness.[34] The Appellant is aware of the profound systemic discrimination inflicted upon Aboriginal peoples and we concur with the majority in the Court below that the state failed to make reasonable efforts to ensure that its criminal justice system does not exacerbate this known historic disadvantage.[35]

27. "Causation" imports formal equality values into s. 15. Section 15 is concerned with the perpetuation of existing disadvantage and the reinforcing of stereotypes, and refers to a government act or omission that "creates" – not "causes" – a discriminatory distinction. The word "create" does not impose a freestanding causation requirement, *per se*. To impose such a requirement would unduly burden the claimant. As stated by Abella J.: "Requiring claimants ... to prove that a distinction perpetuates negative attitudes about them imposes a largely irrelevant,

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[29] *Andrews, supra*, note 8, per McIntyre J at 167; and *Withler, supra*, note 25, at para 64.
[30] *Report of the Commission on Systemic Racism, supra, note 2* at 3.
[31] See *Corbiere, supra,* note 1 at paras 63-64, per L'Heureux-Dubé J, dissenting but not on this point.
[32] *Kokopenace, supra*, note 2, per LaForme JA, at para 44. See also *Report of the Commission on Systemic Racism, supra,* note 2 at 3.
[33] Appellant's factum, para 59*ff*.
[34] See *Jane Doe v Toronto (Metropolitan) Commissioners of Police* (1998) 29 OR (3d) 487, at para 183. MacFarland J accepts the plaintiff's submission that discriminatory views "need not be the only factor, nor even the primary factor, in order for discrimination to be found".
[35] *Kokopenace, supra*, note 2, at paras 211-212, per LaForme JA,; at paras 260-262, per Goudge JA.

not to mention ineffable burden."[36] Insisting on causation raises the spectre of reducing s. 15 to concerns about direct discrimination. However, as the Court has clearly stated in numerous cases, it is the *effect* of government acts or omissions that matter when assessing discrimination.[37]

28. LEAF and the Asper Centre dispute the Appellant's conclusion that there was no evidence of disadvantage before the Court below.[38] The majority acknowledged the systemic underrepresentation of on-reserve Aboriginals on the jury roll.[39] Given the history of oppression and disadvantage for Aboriginal peoples in the criminal justice system, their exclusion from participation in the adjudicative aspects of this system as jurors is itself clear evidence of disadvantage. Further, requiring that claimants meet the additional burden of proving "causation" is antithetical to "narrowing the gap" created by the state's conduct.[40] In *Williams,* the Court cited the reasons of Doherty JA in *Parks* that: "[t]he existence and extent of [matters such as] racial bias are not issues which can be established in the manner normally associated with the proof of adjudicative facts".[41] LEAF and the Asper Centre note the disposition of LaForme JA with regard to s. 15,[42] but say he could have gone further and found in favour of the s. 15 rights of on-reserve residents, as well as the Respondent.

Substantive Equality Promotes Public Confidence in the Criminal Justice System

29. Petersen correctly stated in 1992 that "the issue of representativeness on jury panels is quintessentially a question of equality and should be addressed as such."[43] The Ontario Court of Appeal has recognized that the importance of a diversity of particular perspectives underlies the s. 11(d) and (f) right to jury representativeness, with members of various groups, each sharing a "common thread or basic similarity in attitude, ideas or experience" that they uniquely bring to the jury. In *R v Church of Scientology*, Rosenberg JA explained at paragraph 158:

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[36] *Quebec v A., supra,* note 6, at paras 330, 333 per Abella J.
[37] See *Andrews, supra,* note 8, at 174, per McIntyre J; see also *R v Kapp,* [2008] 2 SCR 483, 2008 SCC 41, at para 37, per Abella J and McLachlin CJ [*Kapp*].
[38] Appellant's factum, para 83.
[39] *Kokopenace, supra,* note 2, at para 243.
[40] *Quebec v A., supra,* note 6, at para 332 per Abella J.
[41] *Williams, supra,* note 11, at para 36.
[42] *Kokopenace, supra,* note 2, at para 220.
[43] Cynthia Petersen, "Institutionalized Racism: The Need for Reform of the Criminal Jury Selection Process" (1992-1993) 38 McGill LJ 147 at 165.

> The essential quality that the representativeness requirement brings to the jury function is the possibility of different perspectives from a diverse group of persons. The representativeness requirement seeks to avoid the risk that persons with these different perspectives, and who are otherwise available, will be systematically excluded from the jury roll.[44]

30. Juror representativeness is critical to the criminal justice system's ongoing legitimacy. Aboriginal peoples must see themselves and their perspectives reflected in the adjudicative side of the criminal justice system. If they do not, and if this Court fails to insist that governments have an obligation to make reasonable efforts to ensure their representation, Aboriginal peoples will continue to mistrust the system. As identified in the *Iacobucci Report*:

> Impartial and representative juries play an important function in maintaining public confidence in the legal system. ...the wholesale exclusion of particular groups from the jury pool risks undermining public acceptance of the fairness of the criminal justice system. A jury cannot act as the conscience of the community unless it is viewed favorably by the society that it serves.[45]

31. Representativeness is intimately linked to public perceptions of fairness. Therefore, representativeness is consistent with the purpose of s. 15 to promote "a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration."[46]

PARTS IV AND V: COSTS AND ORDERS SOUGHT

32. The Asper Centre and LEAF seek no costs in the proposed intervention and request that none be awarded against them.

33. LEAF and the Asper Centre respectfully seek leave to present oral argument at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29[II] DAY OF JULY, 2014

Cheryl Milne
David Asper Centre for Constitutional Rights

Kim Stanton
Women's Legal Education and Action Fund Inc.

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[44] *R v Church of Scientology*, 116 CCC (3d) 1 (ONCA) at paras 158-159, per Rosenberg JA, [emphasis added].
[45] *Iacobucci Report, supra,* note 5 at para 116. See also *Report of the Commission on Systemic Racism, supra*, note 3 at 249.
[46] *Andrews, supra*, note 8 at 171, per McIntyre J.

PART VI: TABLE OF AUTHORITIES

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PART VII: STATUTE, REGULATIONS, RULES, ETC.

Canadian Charter of Rights and Freedoms

LEGAL RIGHTS
Proceedings in criminal and penal matters
11. Any person charged with an offence has the right
(a) to be informed without unreasonable delay of the specific offence;

(b) to be tried within a reasonable time;

(c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

(e) not to be denied reasonable bail without just cause;

(f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

(h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

GARANTIES JURIDIQUES
Affaires criminelles et pénales
11. Tout inculpé a le droit :
a) d'être informé sans délai anormal de l'infraction précise qu'on lui reproche;

b) d'être jugé dans un délai raisonnable;

c) de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche;

d) d'être présumé innocent tant qu'il n'est pas déclaré coupable, conformément à la loi, par un tribunal indépendant et impartial à l'issue d'un procès public et équitable;

e) de ne pas être privé sans juste cause d'une mise en liberté assortie d'un cautionnement raisonnable;

f) sauf s'il s'agit d'une infraction relevant de la justice militaire, de bénéficier d'un procès avec jury lorsque la peine maximale prévue pour l'infraction dont il est accusé est un emprisonnement de cinq ans ou une peine plus grave;

g) de ne pas être déclaré coupable en raison d'une action ou d'une omission qui, au moment où elle est survenue, ne constituait pas une infraction d'après le droit interne du Canada ou le droit international et n'avait pas de caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations;
h) d'une part de ne pas être jugé de nouveau pour une infraction dont il a été définitivement acquitté, d'autre part de ne pas être jugé ni puni de nouveau pour une infraction dont il a été définitivement déclaré coupable et puni;

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

i) de bénéficier de la peine la moins sévère, lorsque la peine qui sanctionne l'infraction dont il est déclaré coupable est modifiée entre le moment de la perpétration de l'infraction et celui de la sentence.

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.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (84)

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.

Programmes de promotion sociale

(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

RECOURS

Recours en cas d'atteinte aux droits et libertés

24. (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.