SCC 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 –

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, WOMEN'S LEGAL EDUCATION AND ACTION FUND INC. and ABORIGINAL LEGAL SERVICES OF TORONTO INC.,

Interveners

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PART I – OVERVIEW

1. Aboriginal Legal Services of Toronto (ALST) submits that the starting point for understanding the underrepresentation at the heart of this appeal is that Ontario chose to adopt a system for choosing jurors that required a different process to identify First Nation jurors who live on reserve. The fact that Ontario, alone among all other provinces and territories, has chosen a system that requires a distinct process to select these individuals requires that this that process to be subject to higher scrutiny when underrepresentation occurs.

2. The underrepresentation at issue occurs because of the ongoing failure of the province to comply with the provisions of s. 6(8) of the *Juries Act*.[1] In 2001, Aboriginal Affairs and Northern Development Canada (AANDC) formerly known Indian and Northern Affairs Canada (INAC) stopped providing band lists to Ontario.[2] Since that time, judicial districts have been using outdated lists and various other lists provided by First Nation Bands in order to meet the sheriff's statutory obligations under the *Juries Act.* The requirements of s. 6(8) cannot be met by simply collecting a number of undifferentiated lists from First Nations that do not allow for the identification of on-reserve residents in the judicial district.

PART II – STATEMENT OF POSITION

3. As the majority of the Ontario Court of Appeal found, the persistent and increasing levels of underrepresentation of First Nations residents in the Kenora judicial district jury roll constitutes a violation of the s. 11 *Charter* rights of the Appellant.[3]

4. ALST adopts the facts as stated by the Respondent in his factum.

5. ALST supports the positions of LEAF and the DAC as it relates to their s. 15 *Charter* arguments.

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[1] *Juries Act,* RSO 1990, c J-3, s 6(8).
[2] *R v Kokopenace*, [2013] ONCA 389 at para 63, 64 [*Kokopenace*].
[3] *Canadian Charter of Rights and Freedoms*, s 11, Part I of the *Constitution Act*, *1982*, being *Schedule B* to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

PART III – STATEMENT OF ARGUMENT

a) The Gladue Principles, Estrangement of Aboriginal People from the Justice System and the Underrepresentation on Juries

6. Aboriginal people face systemic discrimination in the Canadian criminal justice system.[4] The estrangement of Aboriginal people and the Canadian criminal justice system is apparent by the unrelenting and excessive imprisonment of Aboriginal people; but this estrangement goes deeper than their overrepresentation in prison.[5]

7. The exclusion of on-reserve First Nation people from the jury roll in Kenora and elsewhere in Ontario, is as, Justice LaForme found in this case, a prime example of this estrangement.[6]

8. Historically, First Nation people were legislatively barred from sitting as jurors because jurors were selected from voter lists which often contained requirements of property ownership.[7] In Ontario, on-reserve First Nation residents only were allowed to serve on juries after 1972.[8]

9. Over the past 40 years, the exclusion of on-reserve First Nation people from juries in Ontario has moved from a *de jure* exclusion to a *de facto* exclusion. We submit that however it is conceptualized, the exclusion is real.

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[4] *R v Ipeelee*, [2012] 1 SCR 433 at para 57, 58, 59, 74, 77. See also: Report of the Royal Commission on Aboriginal Peoples: *Bridging the Cultural Divide*: *A Report on Aboriginal People and Criminal Justice in Canada,* (Ottawa: Supply and Services Canada, 1996) at p 28, 29, 309 [*RCAP]*; See also: Manitoba, Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba*, *the Justice System and Aboriginal People*. (Winnipeg: Queen's Printer, 1991), vol 1at p 109 [*AJI*].
[5] *R v Gladue*, [1999] 1 SCR 688 at para 61[*Gladue*]: "Not surprisingly, the excessive imprisonment of aboriginal people is only the tip of the iceberg insofar as the estrangement of the aboriginal peoples from the Canadian criminal justice system is concerned."
[6] *Kokopenace*, *supra* note 2 at para 135.
[7] Mark Israel, "The Underrepresentation of Indigenous Peoples on Canadian Jury Panels" (2003) 25: 1 Law & Policy at 39: See also: *AJI, supra* note 4 at p 378-379, specifically: "The legacy of past exclusions must be kept in mind as efforts are undertaken to make the jury system more truly representative. These efforts will only succeed by taking steps which bring local communities into close contact with the court and which involve more Aboriginal people in the jury system."[emphasis added]
[8] *Appellant's Record* [*AR*], v.42 (XLII), p. 62*: First Nations Representation on Ontario Juries: Report of the Independent Review, Conducted by the Honourable Frank Iacobucci* (Toronto: February 2013) at para 107 [Iacobucci Report].

10. The estrangement of Aboriginal people from the Canadian criminal justice system is a Gladue principle. The Gladue analysis in this case cannot be limited to simply what one low ranking government official undertook in an office in Kenora but must encompass the history of government action. Legislation, policy and the practices of the Court Services Division (CSD) of the Ministry of the Attorney General contributes to the systemic discrimination that Aboriginal people face within the justice system.

11. The Iacobucci Report importantly identifies a number of reasons why Aboriginal people appear to not wish to participate on juries. The Appellant points to these reasons as a way of excusing Ontario's lack of meaningful action to address the participation problem and its role in creating the problem in the first place.[9] There are two problems with this argument.

12. First, while there are many reasons that might explain the persistent underrepresentation of First Nation residents on juries, these factors alone do not explain the underrepresentation. The representation of First Nation people living on-reserve on the Kenora jury roll has worsened over time. The decision of Justice Stach in *R v AF*, in 1994, showed that the return rate for completed questionnaires for on-reserve residents in the Kenora judicial district was 33% as compared to between 60% and 70% for non-First Nation communities.[10]

13. *AF* drew attention to the fact that there was a significant issue with regard to the representativeness of the jury roll and should have put the province on notice that without proper attention, the problem could result in a finding that a jury roll was unrepresentative.

14. Eight years after *AF,* in 2002, the return rate for completed questionnaires from on-reserve residents declined to 13% and in 2008, the year that is being examined in this appeal, the number declined further to 5.7%.[11] There is no reason to believe that this drop in eligible on-reserve jurors was occasioned by any change in attitudes among First Nation people living on-reserve. The only substantive change that occurred over that period was that the province ceased to have access to up-to-date Band lists.[12]

[9] Appellant's factum, at para 15, 78
[10] *R v AF*, [1994] OJ No 1392, at para 53 [*AF*].
[11] Respondent's factum, at para. 32; Loohuizen Cross, *AR*, v 18, p 167-176 .
[12] Respondent's factum, at para 26 citing *Kokopenace*, *supra* note 2 para 104 [LaForme JA].

15. It is premature to assume that the reasons for the lack of participation in the jury process are solely those enunciated by the Iacobucci Report given Ontario's inability to get jury questionnaires in the hands of on-reserve residents and by relying on lists that did not bear any resemblance to the current make-up of the First Nations.

16. Second, it is true that the factors identified in the Iacobucci Report are significant and must be addressed, sooner rather, than later. Justice Rouleau, in dissent, refers to the Iacobucci Report and says that low return rates "are symptoms of a much broader problem".[13] Justice Rouleau's reasoning fails to recognize that it was the state itself that caused the dysfunctional relationship that the Iacobucci Report repeatedly references.[14]

17. The Appellant's argument is that the province should not be held responsible to fix the severe problem of the lack of on-reserve jury representation, because the problem cannot be solved by just getting the right names to put on a list.[15] They fail to acknowledge that even if they are correct on this point, the reason that the problem cannot be solved this easily is because the state has so thoroughly caused Aboriginal people to distrust the justice system.[16]

18. The causes of dysfunction that the Iacobucci Report identifies are linked to the Gladue principles, drawn from the decisions of this Court and by provincial and territorial appellate courts.[17] ALST submits that Justice LaForme correctly applied the Gladue principles to the case at bar when he found that:

> Any assessment of the state's efforts must, therefore, have regard to this reality as well as the broader problem of Aboriginal estrangement from the criminal justice system, and look to whether the state was aware of

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[13] *AR,* v 42, p 40: *Iacobucci Report* at para 37; cited in *Kokopenace*, *supra* note 2 at para 329.

> An examination of that problem [the underrepresentation of individuals living on reserves on Ontario's jury roll] leads inexorably to a set of broader and systemic issues that are at the heart of the current dysfunctional relationship between Ontario's justice system and Aboriginal peoples in this province. It is these broad problems that must be tackled if we are to make any significant progress in dealing with the underrepresentation of First Nations individuals on juries

[14] *AR,* v 42, p 36: *Iacobucci Report* at para 15.

[15] Appellant's factum, at para. 59.

[16] *AR*, v 42, p 88, 99, 100, 107, 110,118: Iacobucci Report, at para 214, 272-273, 278, 286, 311, 317, 358. See also: *AJI, supra* note 4 at p 110, 113; *RCAP*, *supra* note 4 at p 27, 28.

[17] *United States of America v Leonard*, 2012 ONCA 622, [2012] OJ No 4366 at para 49, leave to appeal dismissed, [2012] SCCA No 490.

> the need to achieve real equity in respect of Aboriginal participation on juries, and the further and different efforts that this might require.[18]

19. The Appellant's argument fails to consider Ontario's role in the estrangement of on-reserve First Nation people. The Ontario Court of Appeal recognized the role of the state in the estrangement of First Nation people and determined:

> There is no evidence that the state took into account the critical estrangement of Aboriginal persons from the criminal justice system and the administration of justice in the post-*Gladue* context in its approach to the jury representation problem.[19]
>
> And;
>
> The need to address this estrangement simply enhances the importance of the state's efforts to provide Aboriginal on-reserve residents with the opportunity to be included in the annual jury roll.[20]

b) State Action Perpetuates the Underrepresentation of First Nation residents

20. It is submitted that the evidence in this case is clear that state action perpetuates the underrepresentation of First Nation residents on juries and therefore such action must also be considered when determining whether the state fulfilled its obligations in compiling the jury roll in Kenora in 2008.

21. The record before this Honourable Court demonstrates that Ontario has had four responses to the underrepresentation of on-reserve First Nation people on the jury roll:

i. First, they act as though there is no problem at all with the jury roll;[21]

ii. Second, when people become aware of the problem they frustrate attempts to determine the dimensions of that problem;[22]

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[18] *Kokopenace*, *supra* note 2 at para 151.
[19] *Kokopenace*, *supra* note 2 at para 210 [LaForme J].
[20] *Kokopenace, supra* note 2 at para 241 [Gouge JA].
[21] Note: The only reason that there is any awareness of the problem of jury representativeness is that on September 8th, 2008 Coroner's counsel produced what is now referred to as the Peacock affidavit. See Affidavit of Rolanda Peacock Affidavit. SEE *AR*, v 10, p 205-206. The release of the Peacock affidavit was the first time anyone outside of the government of Ontario became aware of the problems in the Kenora Judicial District. See Affidavit of D Gibson. SEE *AR*, v 10, p 192, 193.
[22] *Pierre v McRae*, [2011] ONCA 187 at para 72 [*Pierre v McRae*]. Note: While trying to determine the representativeness of the Thunder Bay jury roll, the response two families received in the context of death inquests from the Ministry of the Attorney General was described by the Ontario Court of Appeal in *Pierre v McRae* as "a run-around".

iii. Third, they change practices and procedures only as a result or concern about litigation;[23] and

iv. Fourth, when all else fails, they attempt to off-load their responsibility to the First Nations.

22. Inexplicably, Ontario never assessed the impact of the Supreme Court of Canada's decision in *Corbiere v Canada* (*Minister of Indian and Northern Affairs*),[24] on the Band lists that the local CSD offices would be relying on. The CSD only became aware of the significance of the *Corbiere* decision when it was raised in the cross-examination of the CSD staff, 12 years after the decision was released. Overlooking a change in law this substantial demonstrates a significant lack of concern to ensure on-reserve First Nation representation on juries.

23. Incredibly, the Appellant continues to advance a 'blame the victim' argument in this case by contending that the Respondent's trial counsel should have, on his own motion and with no evidence before him, challenged the composition of the jury roll at the start of the trial.[25] They characterize this as a failure of due diligence.[26] If the concept of due diligence has any application in this case, it is to the actions or lack thereof by Ontario in understanding the relevance of decisions by the Supreme Court of Canada. Ontario should take responsibility for the failure of its many lawyers with expertise in criminal, constitutional and Aboriginal law, to inform itself about the relevance of the *Corbiere* decision. We agree with Justice LaForme:

> Everyone is presumed to know the law and to act accordingly: *Beauregard v. Canada*. Certainly, of all entities, the Ministry of the Attorney General can be presumed to know the law, including changes to it and the implications of those changes. Yet, the evidence shows that CSD staff in

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[23]Bristo Cross, *AR,* v 39, p 50, 54, 57. All efforts of the CSD to implement s 6(8) of the *Juries Act* have been focused on obtaining lists from First Nations. Minor changes to policy and manuals are directed at securing lists. The procedure to request lists occur annually, even when the First Nations have made it clear in previous years that they would not be providing any lists out of privacy concerns; During the same time period the province has never approached AANDC to again request Band lists. Bristo Cross, *AR*, v 39, p 8-11. See also: McCalmont Transcript, *AR*, v 29, p 130-134; Loohuizen Cross, *AR*, v 17, p 62, 89, 112-114, 122-124 Note: The CSD also failed to set policy or provide training to local staff in relation to First Nations issues, governance structures, and relevant portions of the *Indian Act* or AANDC policies affecting the ability of First Nations to provide or respond to individual requests for Band lists.

[24] *Corbiere v Canada* (*Minister of Indian and Northern Affairs*), [1999] 2 SCR 203.

[25] Appellant's factum, at para 87, 88.

[26] *Ibid*, at para 90.

> Kenora, at any rate, only became aware of the significance of *Corbiere* to the utility of band electoral lists when the issue was raised in cross-examination in connection with these appeals – 12 years after the decision was released. The issue was addressed for the first time in CSD policy documents and practices in training materials prepared in August 2011. Overlooking a legal change of this nature demonstrates a considerable lack of attention and a high degree of indifference to the problem.[27]

24. Despite the assertions made in its factum, Ontario has never made any serious or sincere efforts to truly engage with this problem and attempt to remedy it.[28] Rather what they have done is to hide the problem from view. When the problem became apparent, their next move was to try to hide the dimensions of the problem from First Nation people seeking to understand it by instructing staff to not provide information when requested.

25. This case is about the continued failure of Ontario to address a systemic problem of its own creation. This case is not, as the Appellant suggests, about ensuring that a specific jury in a specific case is proportionally representative of the community of the accused, however that community is defined.[29]

c) The Honour of the Crown is Engaged

26. The reliance by the majority of the Court of Appeal on the concept of the honour of the crown is a helpful and important conceptual lens through which to view the issues in this case.[30] The concept of the honour of the crown does not create an independent constitutional requirement but rather helps inform the decision on whether the Respondent's s. 11 rights were violated.

27. In *Mikisew Cree First Nation v Canada,* this Court made it clear that the honour of the crown arises out of the need for reconciliation between Aboriginal and non-Aboriginal people in a number of different contexts.[31]

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[27] *Kokopenace*, *supra* note 2 at para 183.
[28] Appellant's factum, at para 75-78.
[29] Appellant's factum, at para 3, 19.
[30] *Kokopenace*, *supra* note 2 at para 123 -134, 241.
[31] *Mikisew Cree First Nation v Canada* (*Minister of Canadian Heritage*), [2005] 3 SCR 388 at para 1. See David Arnot, "The Honour of the Crown" (1996) 60 Sask LR 339. See especially *Haida Nation v British Columbia* (*Minister of Forests*), [2004] 3 SCR 511 at para 16.

28. As the majority of the Ontario Court of Appeal points out, the honour of the crown is engaged in this case because Ontario chose to set up a two tier system for the selection of jurors; one system for all Ontarians who do not live on-reserve and another system for First Nation people living on-reserve.[32] There is no evidence at all that in implementing this system Ontario was concerned with ensuring representativeness of on-reserve First Nation residents.

29. While it is true that equality sometimes requires that people be treated differently, in this case, the evidence is overwhelming that the system for selecting on-reserve First Nation residents has become a second class system that only gets the attention of Ontario when litigation looms, and even then, the response is cosmetic rather than substantive.

30. The honour of the crown cannot be manifested by the actions of a single employee in the Kenora Judicial District. The evidence presented to the Court of Appeal in this case is clear that the control of the jury process is extremely centralized and resides with the CSD at the Ministry of the Attorney General's main office in Toronto. It is the CSD that tells staff what to do and how to do it with respect to obtaining on-reserve participation on the jury roll.

31. Justice LaForme clearly explained how the concept of the honour of the crown manifests itself in this case:

> Given the need to engage the Aboriginal people living on reserves in the Kenora District in addressing the representation problem on Kenora jury rolls – a need Ontario recognizes – it can hardly be denied that the Crown ought to have engaged in meaningful consultation in good faith in the problem's resolution. An effective resolution would require the good faith participation of the Aboriginal people in return.[33]

d) Underrepresentation and Coroner's Inquest

32. Any determination that this Honourable Court makes in relation to jury representativeness will impact current and future Coroner's inquests. Inquest proceedings in Ontario rely on juries. It is submitted that the consequences of an unrepresentative jury will increase estrangement between Aboriginal people and the justice system.

[32] *Kokopenace*, *supra* note 2 at para 127, 128, 241.
[33] *Kokopenace*, *supra* note 2 at para 133.

33. We submit that the number of Aboriginal people in the penal system is unrelenting, thereby increasing the probability of deaths that will occur in custody.[34] In Ontario coroner's inquests are mandatory when a death occurs in custody.[35] An unrepresentative jury roll will impact juries of inquest proceedings.

> The importance of coroner's inquests was emphasized by the families involved in coroner's inquests and by leaders and other people I met. Many First Nations people are dying while in state care, and a fear was expressed that the number of deaths will rise, simply by the excessive number of First Nations people in penal institutions and the child welfare system. It was explained to me that First Nations people understand, better than non-First Nations people, the systemic and historic issues that are engrained in the justice system, which often come into play in these tragedies. Therefore, ensuring the representation of First Nations peoples on coroner's juries is viewed to be integral to the proper resolution and prevention of future tragedies that involve First Nations peoples.[36]

34. Unrepresentative juries in Coroner's inquest produce recommendations that are not as meaningful to the community. This increases the estrangement of Aboriginal people from the justice system.

e) Remedy

35. It is submitted that the only just remedy in this case is the one ordered by the majority – a new trial. Contrary to the Appellant, [37] we submit that the appearance of unfairness created by the breach of the Respondent's constitutional rights is such that public confidence in the integrity of the justice system will be undermined.

36. The state has an obligation to ensure justice is done and is seen to be done. In *Pierre v McRae*, the Ontario Court of Appeal explained that it is in the public interest that justice must be seen to be done:

> … an unrepresentative jury is not an "irregularity of form" it is a matter of "substance". An unrepresentative jury roll casts into doubt the public's confidence in the impartiality of the jury and the fairness of the inquest. It compromises the very appearance of justice.[38]

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[34] *AR*, v 42, p 111: Iacobucci Report at para 326.
[35] *Coroners Act,* RSO 1990, c 33, s 10. (4.5).
[36] *AR*, v 42, p 94 , 98: Iacobucci Report at para 245, 269.
[37] Appellant's factum, para.81.
[38] *Pierre v McRae*, *supra* note 22 at para 54.

37. It is submitted that even a cursory reading of the Iacobucci Report indicates the degree to which First Nation residents in Ontario are estranged from the justice system. As the majority of the Court of Appeal and the Report found, the underrepresentation of First Nation residents from juries is yet another example of this estrangement. There can be no question that the revelations of the depths of this problem have caused Aboriginal people further estrangement. It is clear that only ordering a new trial would work to restore public confidence in the system.

PART IV – POSITION ON COSTS

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

PART V – INTERVENER'S POSITION

39. It is respectfully submitted that the order of the Court of Appeal be affirmed and a new trial be ordered.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28 day of July 2014.

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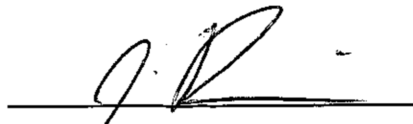

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PART VI - TABLE OF AUTHORITIES

JURISPRUDENCE		PARAGRAPH IN FACTUM
1.	*Corbiere v Canada* (*Minister of Indian and Northern Affairs*), [1999] 2 SCR 203.	22, 23,
2.	*R v AF*, [1994] OJ No 1392.	12, 13, 14
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5.	*R v Kokopenace*, [2013] ONCA 389.	2, 7, 14, 16, 18, 19, 23, 26, 28, 31
6.	*R v Ipeelee*, [2012] 1 SCR 433.	6
7.	*Mikisew Cree First Nation v Canada* (*Minister of Canadian Heritage*), [2005] 3 SCR 388.	27
8.	*Pierre v McRae*, [2011] ONCA 187.	21, 36
9.	*United States of America v Leonard,* 2012 ONCA 622.	18
LEGISLATION		
1.	*Juries Act*, RSO 1990, c J 3, s 6(8).	2, 21
2.	*Coroners Act*, RSO 1990, C c-37, s 10.(4.5).	33
3.	*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being *Schedule B* to the *Canada Act 1982* (UK), 1982, c 11, s 11.	3, 26
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1.	David Arnot, "The Honour of the Crown" (1996) 60 Sask LR 339.	27
2.	*First Nations Representation on Ontario Juries: Report of the Independent Review, Conducted by the Honourable Frank Iacobucci* (Toronto: February 2013).	8, 11, 15, 16, 17, 18, 33, 35, 37
3.	Mark Israel, "The Underrepresentation of Indigenous Peoples on Canadian Jury Panels" (2003) 25: 1 Law & Policy.	8
4.	Report of the Royal Commission on Aboriginal Peoples: *Bridging the Cultural Divide*: *A Report on Aboriginal People and Criminal Justice in Canada,* (Ottawa: Supply and Services Canada, 1996).	6, 17
5.	Manitoba, Public Inquiry into the Administration of Justice and Aboriginal People, *Report of the Aboriginal Justice Inquiry of Manitoba*, vol 1, *the Justice System and Aboriginal People*. (Winnipeg: Queen's Printer, 1991).	6, 8, 17

PART VII – STATUTES AND REGULATIONS

Coroners Act, **RSO 1990, C c-37, s 10.(4.5).**	***Loi sur les coroners*, LRO 1990, C c-37, s 10.(4.5)**
Death in custody off premises of correctional institution *(4.5) Where a person dies while committed to a correctional institution, while off the premises of the institution and while in the actual custody of a person employed at the institution, the officer in charge of the institution shall immediately give notice of the death to a coroner and the coroner shall investigate the circumstances of the death and shall hold an inquest upon the body if as a result of the investigation he or she is of the opinion that the person may not have died of natural causes. 2009, c. 15, s. 6 (4).*	***Décès sous garde hors d'un établissement correctionnel*** *(4.5) Si une personne décède pendant qu'elle est incarcérée dans un établissement correctionnel, lorsqu'elle n'est pas sur les lieux de l'établissement mais qu'elle est sous la garde effective d'une personne employée par l'établissement, l'agent responsable de l'établissement donne immédiatement avis du décès à un coroner. Ce dernier fait une investigation sur les circonstances du décès et tient une enquête sur la cause du décès si, par suite de cette investigation, il est d'avis que la personne n'est peut-être pas morte de causes naturelles. 2009, chap. 15, par. 6 (4).*

Juries Act, **RSO 1990, c J-3, s 6(8).**	*Loi sur les jurys*, **LRO 1990, c J-3, s 6(8)**
Indian reserves (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).	**Réserve indienne** (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, s 11, Part I of the *Constitution Act, 1982*, being *Schedule B* to the *Canada Act 1982* (UK), 1982, c 11, s 11.	*Charte canadienne des droits et libertes*, art 11, 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, s 11.
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	**Affaires criminelles et pénales 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

just cause;	cautionnement raisonnable;
(*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;	*(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*) 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;	*(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*) 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	*(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.

HER MAJESTY THE QUEEN

Appellant

CLIFFORD KOKOPENACE

Respondent

Court File No. 35475

Supreme Court of Canada on Appeal from the Court of Appeal for Ontario

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