

IN THE SUPREME COURT OF CANADA
(On Appeal from the Court of Appeal of Alberta)

B E T W E E N:

HER MAJESTY THE QUEEN

Appellant
(Respondent on Cross-Appeal)

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- and -

LYLE MARCELLUS NASOGALUAK

Respondent
(Appellant on Cross-Appeal)

FACTUM
OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

PART I – OVERVIEW

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1. This appeal concerns the question of whether and when a sentence reduction should be available as a s. 24(1) remedy for a *Charter* violation. The Canadian Civil Liberties Association (“CCLA”) submits that sentence reductions under s. 24(1) should be available as an “appropriate and just” remedy where the circumstances warrant, because:

- (a) There is no realistic civil remedy for the majority of *Charter* violations;
- (b) Sentence reductions can be tailored as appropriate in circumstances where typically the only other remedial options are to stay the charges completely or to leave the *Charter* violation unaddressed; and
- (c) Sentence reductions enhance confidence in the administration of justice, by ensuring that the judicial system disassociates itself from unlawful state conduct.

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2. The CCLA submits that sentence reductions should be available on a case-by-case basis as a remedy for the breach of *Charter* rights. Moreover, this remedy may be particularly appropriate in circumstances where the *Charter* breach mitigated the gravity of the offence; the *Charter* breach constituted undue punishment or hardship; or no other sanction is likely to be forthcoming for the breach, and the sentence reduction could serve as a meaningful way for the justice system to express its disapproval of the impugned state conduct.

3. The CCLA submits that sentencing judges should be permitted to grant a sentence reduction under s.24(1) of the *Charter* where circumstances warrant, despite the existence of a mandatory minimum sentence. A sentence reduction does not render a mandatory minimum sentence provision inoperative. Rather, the provision remains in effect, establishing the minimum threshold for an otherwise fit sentence, to which a sentence reduction may be applied under s.24(1). Similar logic has already been applied by this Court to permit pre-sentence custody to be taken into account to reduce a sentence below a mandatory minimum.

PART II – POSITION ON THE QUESTIONS IN ISSUE

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4. The CCLA takes the following positions on the questions in issue:

I. Did the Alberta Court of Appeal err in the application of the incorrect standard of review with respect to the alleged *Charter* breach and in the failure to consider the impact of the finding that the trial judge made fundamental errors in the fact-finding process on key facts that served as the foundation for a ruling that excessive force was used?

The CCLA takes no position on the question.

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II. Where there has been a finding of a *Charter* breach, is a sentence reduction an available remedy under s. 24(1) of the *Charter* and if so what, if any, limitations are there.

The CCLA takes the position that where a *Charter* breach has occurred, a sentence reduction is an available remedy pursuant to s. 24(1) of the *Charter*, if found to be “appropriate and just” by the sentencing judge. Circumstances in which the remedy could be granted include the following:

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- i. where the *Charter* breach mitigated the gravity of the offence;
- ii. where the *Charter* breach constituted undue punishment or hardship;
- iii. where no other sanction is likely to be forthcoming for the breach and the sentence reduction could serve as a meaningful way for the justice system to express its disapproval of the impugned state conduct.

III. [On the cross-appeal] Did the Alberta Court of Appeal err in overturning the Respondent’s conditional discharge in relation to his s.253(a) charge and substituting the mandatory minimum \$600 fine?

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The CCLA takes the position that a mandatory minimum punishment should not preclude the remedy of a sentence reduction where it is otherwise an “appropriate and just” remedy.

PART III – ARGUMENT

A. The Scope of Section 24(1) of the Charter

5. Section 24(1) of the *Charter* provides that anyone whose *Charter* rights or freedoms have been infringed may apply to a court of competent jurisdiction to obtain such remedy “as the court considers appropriate and just in the circumstances.”¹ In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, this Court emphasized the broad discretion granted to the courts to craft remedies pursuant to s. 24(1):

10 Section 24(1) of the *Charter* requires that courts issue effective, responsive remedies that guarantee full and meaningful protection of *Charter* rights and freedoms. The meaningful protection of *Charter* rights... may in some cases require the introduction of novel remedies. A superior court may craft any remedy that it considers appropriate and just in the circumstances.²

6. In *R. v. Mills*, McIntyre, J. noted that “[i]t is difficult to imagine language which could give the court a wider and less fettered discretion.”³ That discretion is limited by the requirements that the remedy “employ means that are legitimate within the framework of our constitutional democracy” and invoke “the function and powers of a court”, rather than ask the court “to leap into the kinds of decisions and functions for which its design and expertise are manifestly unsuited”.⁴ However, provided these limits are respected, and the remedy does not “impose substantial hardships that are unrelated to securing the right”, the court may fashion whatever remedy is appropriate to provide meaningfully vindication of the right.⁵

7. A sentence reduction does not go beyond the traditional function and powers of a court, nor does it take the court into decisions and functions for which its design and expertise are manifestly unsuited. To the contrary, Anglo-Canadian courts have long recognized that sentence reduction is an appropriate remedy to address a serious breach of an individual’s rights. The remedy of sentence reduction has been recognized and affirmed by appellate courts across Canada, and has received the broad support of academic commentators.⁶ Even pre-*Charter*, the

¹ *Canadian Charter of Rights and Freedoms*, s. 24(1).

² *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, at para. 87 (“*Doucet-Boudreau*”).

³ *R. v. Mills*, [1986] 1 S.C.R. 863, at p. 965; *R. v. 974649 Ontario Inc.*, [2001] 3 S.C.R. 575 (“*Dunedin Construction*”), at para. 18.

⁴ *Doucet-Boudreau*, *supra* at paras. 56-57.

⁵ *Doucet-Boudreau*, *supra* at paras. 55, 58.

⁶ *R. v. Glykis* (1995), 84 O.A.C. 140 (Ont. C.A.), at para. 32; *R. v. Collins* (1999), 172 Nfld. & P.E.I.R. 1 (C.A.), at para. 132; *R. v. Nasogaluak* (2007), 84 Alta. L.R. (4th) 15 (C.A.); *R. v. Carpenter*, 4 C.R. (6th) 115 (B.C.C.A.); *R. v.*

English and Canadian common law recognized the power to reduce sentences as a remedy for unlawful state conduct.⁷

8. Moreover, on principle this remedy should be available because:

- (a) There is no realistic civil remedy for the majority of *Charter* violations;
- (b) Sentence reductions can be appropriately tailored in circumstances where the only other remedial options typically available are to stay the charges completely or leave the *Charter* violation unaddressed; and
- (c) Sentence reductions enhance confidence in the administration of justice, by ensuring that the judicial system effectively expresses its disapproval of unlawful state conduct.

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(a) No Realistic or Meaningful Civil Remedy

9. As many courts and commentators have recognized, there is no realistic civil remedy available for breaches of the vast majority of offenders' *Charter* rights for the vast majority of offenders.⁸ The British Columbia Court of Appeal noted as follows in *R. v. Carpenter*:

Nor is there any doubt that... civil remedies may well be illusory for those persons who have 'neither the means nor the fortitude to engage in a lengthy civil suit, unfunded, against governmental authorities with unlimited funds.'⁹

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Vance (2001), 17 M.V.R. (4th) 282 (Y.T. Terr. Ct.), at para. 7; *R. v. Charles* (1987), 36 C.C.C. (3d) 286 (Sask. C.A.), at para. 9; *R. v. MacPherson* (1995), 100 C.C.C. (3d) 216 (NB. C.A.); Kent Roach, Constitutional Remedies in Canada, at 9-45; Clayton Ruby, Sentencing, 6th ed., (2006) LexisNexis Canada Inc. at pp. 267-277, Allan Manson, "Charter Violations and Mitigation of Sentence", at (1995), 41 C.R. (4th) 310 (Ont. C.A.), Oren Bick, "Remedial Sentence Reduction: A Restrictive Rule for an Effective Charter Remedy", (2006) C.L.Q. 51, pp. 199-237.

⁷ In *R. v. Steinberg*, [1967] 3 C.C.C. 48 (Ont. C.A.), the police had taken advantage of the execution of a search warrant to "plant an electronic device" on the offender's premises. The resulting tape recording convicted him, but the court held, at paragraph 5: "As to sentence, we are not satisfied that that which occurred has the appearance of justice, and we feel that the appearance of justice is an important element to be considered in criminal matters. Bearing that in mind, we will allow the appeal against sentence so as to reduce the amount of the fine on count 1 from \$10,000 to \$5,000. In all other respects, we will not interfere with the sentences." Also see: *Ormerod*, [1969] 4 C.C.C. 3 (Ont. C.A.), at para. 42, and *Browning v. J.W.H. Watson (Rochester) Ltd.* [1953] 2 All E.R. 775 at p. 6 (W.L.).

⁸ For example, in *R. v. Pigeon* (1992), 73 C.C.C. (3d) 337 (B.C.C.A.), the offender was arrested by being grabbed by his hair and thrown to the pavement. The British Columbia Court of Appeal reduced the sentence to reflect importance of public perception of justice system. The court also criticized the notion that the need for a *Charter* remedy could be met by a civil suit against the police; Clayton Ruby, Sentencing, 6th ed., (2006) LexisNexis Canada Inc. at pp. 267-277; Allan Manson, "Charter Violations and Mitigation of Sentence", at (1995), 41 C.R. (4th) 310 (Ont. C.A.).

⁹ *R. v. Carpenter*, *supra*, at para. 26.

10. There is no requirement in s.24(1) that the party seeking a remedy demonstrate that s/he has no other means of redress if the requested remedy is not granted. Indeed, such a holding would run counter to the broad nature of the discretion granted under that provision. Nevertheless, it is important to recognize that the possibility of a civil remedy will be ephemeral at best, in many if not most cases. A civil action based on alleged state misconduct may take years to get to trial, and will, in all likelihood, be uneconomical to pursue in the overwhelming majority of cases.

11. Moreover, the argument that a remedy for a *Charter* breach should be unavailable in a criminal court because it may be available in another forum is contrary to the value that this Court has placed on the effective and timely adjudication of disputes before a single decision-maker. A sentencing judge who has heard the evidence relating to the alleged state misconduct is well placed to grant a remedy, within the competence of a criminal court, without requiring fragmented and duplicative proceedings and the possibility of inconsistent findings.¹⁰

(b) Sentence Reductions Can Be Tailored to the Circumstances

12. In many cases, a sentence reduction represents a compromise between a complete stay of charges, on one hand, and the failure to provide any remedy for the *Charter* violation, on the other. Absent sentence reductions, a stay may be the only meaningful way for the court to remedy certain serious *Charter* violations. A sentence reduction, however, is a far more measured tool for remedying a *Charter* violation than a stay, as it allows the court to sanction the offender yet still provide a meaningful remedy for the *Charter* breach.

13. Indeed, some judges have expressed a preference for the remedy of sentence reduction over the more drastic remedy of stay of proceedings.¹¹ For example, in his judgment in *R. v. Mills*, LaForest J defended sentence reductions as a more appropriate remedy than a stay of proceedings for a violation of the right to be tried within a reasonable time.¹²

¹⁰ *Dunedin Construction, supra*, at paras. 82, 88.

¹¹ *R. v. Ryan* [2006] N.J. No. 238 (S.C.), at para. 73; *R. v. Charles* (1987), 36 C.C.C. (3d) 286 (Sask. C.A.), at paras. 1 and 9.

¹² *R. v. Mills, supra*, at p. 973-974.

(c) ***The Remedy Enhances Public Confidence in Administration of Justice***

14. In *R. v. Clayton and Farmer*, Doherty J.A. commented on the importance of the s. 24(2) exclusion of evidence remedy to the proper administration of justice:

Where, as in this case, constitutional violations reflect an institutional indifference to, if not disregard for, individual rights, judicial failure to disassociate itself from that conduct must have long-term negative consequences for the proper administration of justice...¹³

10 15. That reasoning applies with equal force to the availability of sentence reductions as a s. 24(1) remedy for *Charter* violations. The judicial system must “disassociate itself” from *Charter* violations. Particularly where no other remedy is realistically available, a sentence reduction is an effective means for the judicial system to carry out its supervisory and denunciatory role. Reasonable members of the public understand the importance to Canadian society of ensuring that the fundamental rights and freedoms guaranteed under the *Charter* are respected by the state. Without a mechanism that attaches consequences to serious breaches of *Charter* rights, those rights are subject to erosion. Therefore, public confidence in the administration of justice requires that the judiciary provide a meaningful remedy for *Charter* violations and denounce any unlawful conduct perpetrated by the state against its citizens.

20 16. For the foregoing reasons, the CCLA submits that sentence reductions are an available remedy that can ensure that the remedial purposes of the *Charter* are met, including the need to craft responsive and effective remedies that meaningfully vindicate *Charter* rights.

B. Circumstances in which a Sentence Reduction will be Appropriate and Just

17. It is neither possible nor appropriate to pre-determine all of the circumstances under which a sentence reduction will be suitable. When a relevant *Charter* breach has occurred, the task of the trial judge is to consider whether a particular remedy is appropriate and just in the circumstances. Nonetheless, some guidance may be offered with respect to the general categories of circumstances in which sentence reductions are most likely to be appropriate and just.

¹³ *R. v. Clayton and Farmer*, [2005] O.J. No. 1078 (C.A.), reversed on other grounds, [2007] 2 S.C.R. 725, at para. 94.

18. There is broad consensus among both courts and commentators that there are at least two general circumstances in which sentence reductions are especially likely to be appropriate and just: where the *Charter* violation mitigates the gravity of the offence or the *Charter* violation constitutes a form of added punishment or hardship.¹⁴

19. The most commonly cited example of a *Charter* violation that mitigates the gravity of the offence is police conduct that encourages the commission of a crime. Where such conduct has occurred, the court may question whether the offence would have transpired but for the state interference. Given that s. 718.1 of the Criminal Code requires that sentences be “proportionate to the gravity of offence”, state misconduct that mitigates the gravity of the offence is especially likely to create circumstances in which a sentence reduction is appropriate and just.¹⁵

20. Likewise, it is well-accepted that a sentence reduction is available where a *Charter* violation has caused or contributed to additional punishment or hardship for the individual convicted of the offence.¹⁶ Under such circumstances, an equivalent reduction in the length of the sentence does not actually involve any reduction in the totality of the punishment.

21. Some courts have also granted a sentence reduction as a remedy in a third category of cases: where no other sanction is likely to be forthcoming for the breach and the reduction would permit the court to meaningfully express its disapproval of the impugned state conduct.¹⁷

22. The CCLA acknowledges that in *R. v. Glykis*, the Ontario Court of Appeal commented that sentence reductions should not be granted for the purpose of expressing disapproval of state misconduct, in spite of acknowledging that this remedy is available where a *Charter* violation mitigated the gravity of an offence or added additional punishment or hardship.¹⁸ However, the CCLA respectfully submits that these comments, and those decisions which have followed them, represent an unwarranted departure from the earlier jurisprudence on this issue.

¹⁴ e.g. *R. v. Glykis*, *supra*, at para. 32; *R. v. Collins*, *supra*, at para. 132; *R. v. Carpenter*, *supra*.

¹⁵ *Criminal Code* R.S.C., 1985, c. C-46, s. 718.1

¹⁶ *supra*, footnote 14.

¹⁷ *R. v. Steinberg*, *supra*, at para. 9 (Q.L.); *R. v. Stannard* (1989), 79 Sask. R. 257 (C.A.), at p. 9 (Q.L.); *R. v. Pigeon* *supra*, at p. 7 (W.L.).

¹⁸ *R. v. Glykis*, *supra*, at para. 32.

23. In *Glykis*, the court opined that granting a sentence reduction under s.24(1) in circumstances where a *Charter* breach neither mitigated the gravity of the offence nor constituted a form of punishment, would not “best vindicate the values expressed in the *Charter*”. With respect, it is difficult to see why this should be so. Surely the values expressed in the *Charter* include, at a minimum, the need for agents of the state to respect for the *Charter* rights of all Canadians. It is uncontroversial that if the *Charter* is breached in the investigative process, evidence may be excluded under s.24(2); or that a very serious *Charter* breach may justify a remedy of a stay of proceedings under s.24(1). While both of these remedies may result in an offender who committed a crime, avoiding punishment, they are necessary mechanisms for promoting public respect for the administration of justice. Like the exclusion of evidence or a stay of proceedings, a sentence reduction (though potentially less drastic) has an immediacy of impact that makes it well-suited to denouncing improper conduct by agents of the state.

24. This is not to say that the remedy is appropriate in every case. If denunciation has already occurred or appears likely to occur through another legal mechanism, such as a police complaints process, there may be less need for this objective to be considered in sentencing. Generally, however, public confidence in the administration of justice is hurt, not enhanced, if the judicial system leaves *Charter* violations unaddressed. Therefore, where there is no other appropriate remedy, a sentence reduction should be available to the court as a means of reflecting society’s disapproval of the *Charter* violation.

C. Sentence Reductions and Mandatory Minimum Sentences

25. The CCLA submits that sentencing judges should be permitted to reduce sentences to a point below a mandatory minimum where a relevant *Charter* breach has occurred. Indeed, sentence reductions are already available where pre-sentence detention is involved, even on the basis of crediting pre-sentence detention at a rate greater than actual time in custody.¹⁹ It would be incongruous to prohibit courts from making similar sentence reductions where a relevant *Charter* breach has occurred.

¹⁹ *R. v. Wust*, [2000] 1 S.C.R. 481, at paras. 43-46.

26. This Court's reasoning in *R. v. Wust*, regarding sentence reductions for pre-sentence detention, applies by analogy to sentence reductions for *Charter* violations.²⁰ A *Charter* violation may well amount to a form of punishment or hardship that the individual has suffered at the hands of the state. Moreover, a *Charter* violation, unlike pre-sentence detention, involves an unlawful act of the state perpetrated against an individual. It is, therefore, all the more important that a meaningful remedy exist.

27. This Court's decision in *R. v. Ferguson* is distinguishable from the present appeal, as a sentence reduction below a mandatory minimum does not require a constitutional exemption. In *R. v. Ferguson*, this Court determined that the constitutionality of mandatory minimum sentencing provisions cannot be assessed on a case by case basis because the proper remedy for an unconstitutional law is to declare it to be of no force or effect pursuant to s. 52(1) of the *Constitution Act, 1982*. By contrast, a sentence reduction is a s. 24(1) remedy for an independent *Charter* violation resulting from unconstitutional government action. It is unrelated to the question of whether a particular law is constitutional or not. Granting such a remedy would not in any way affect the relevant mandatory minimum sentencing regime.

28. This is apparent from a review of how sentence reductions should be applied:

- (a) First, the sentencing judge must determine what the appropriate sentence would be but for the *Charter* violation;
- (b) Second, the sentencing judge must determine whether, in the circumstances, a sentence reduction is an appropriate and just remedy for the *Charter* violation;
- (c) Third, if a sentence reduction is appropriate and just, the sentencing judge must determine what would be the appropriate magnitude of the sentence reduction.

²⁰ In *R. v. Wust*, the court determined that while pre-trial detention was not intended as punishment when it was imposed, it was, in effect, deemed part of the punishment following the offender's conviction, by operation of section 719(3). Sentencing judges were entitled to give credit for time served in pre-sentencing custody, even if that credit resulted in a sentence below the mandatory minimum. Indeed, unjust sentences would result if the section 719(3) discretion were not applicable to the mandatory section 344(a) sentence. Discrepancies in sentencing between least and worst offenders would increase, because the worst offender, whose sentence exceeded the minimum, would benefit from pre-sentencing credit, while the first-time offender, whose sentence would be set at the minimum, would not receive credit for pre-sentencing detention.

Therefore, a mandatory minimum applies throughout the process, since it sets the minimum sentence available at the first stage. Even where a sentence reduction ultimately reduces a sentence below a mandatory minimum, the mandatory minimum provision remains in effect, limiting the sentencing judge's discretion.

29. *R. v. Ferguson* is further distinguishable because sentence reductions do not create uncertainty or unpredictability.²¹ Unlike in the circumstances considered in *R. v. Ferguson*, there is a “bright line” with respect to when the remedy is available; namely, where a *Charter* violation has occurred for which there has been no remedy.

10 30. The CCLA submits that on principle, a constitutional remedy that is otherwise “appropriate and just” is not precluded by legislation purporting to limit the court's remedial jurisdiction. The remedial authority for a sentence reduction is s.24(1) of the *Charter* itself. This Court has already held that s.24 authorizes an injunction against the Crown, despite a legislative prohibition on such relief.²² Likewise, an “appropriate and just” sentence reduction is not barred by a generally applicable mandatory minimum sentence provision.

PART IV – NATURE OF ORDER SOUGHT CONCERNING COSTS

31. The CCLA does not seek costs, and asks that no costs be awarded against it.

PART V – NATURE OF ORDER SOUGHT

20 32. The CCLA asks that the appeal be disposed of consistent with the analysis set out above. The CCLA does not take a position on the facts or disposition of the appeal. The CCLA requests leave to present oral argument to supplement the above submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: April 30, 2009

Andrew K. Lokan

²¹ *R. v. Ferguson* [2008] 1 S.C.R. 96, at para. 72, McLachlin C.J.C. commented on the “unpredictability and uncertainty” that would result if mandatory minimum sentence laws could be rendered inoperative on a case-by-case basis.

²² *Doucet-Boudreau*, *supra* at paras. 70, 75; cf. *Proceedings Against the Crown Act*, R.S.N.S. 1989, c.360, s.16(2).

PART VI - TABLE OF AUTHORITIES

Case Law	Paragraph(s)
1. <i>Doucet-Boudreau v. Nova Scotia (Minister of Education)</i> , [2003] 3 S.C.R. 3	5 and 6
2. <i>R. v. Mills</i> , [1986] 1 S.C.R. 863 (S.C.C.)	6 and 13
3. <i>R. v. 974649 Ontario Inc.</i> , [2001] 3 S.C.R. 575	6
4. <i>R. v. Glykis</i> (1995), 84 O.A.C. 140 (Ont. C.A.)	7, 18, 20, 22 and 23
5. <i>R. v. Collins</i> (1999), 172 Nfld. & P.E.I.R. 1 (C.A.)	7, 18 and 20
6. <i>R. v. Nasogaluak</i> (2007), 84 Alta. L.R. (4 th) 15 (C.A.)	7
7. <i>R. v. Carpenter</i> , 4 C.R. (6 th) 115 (B.C.C.A.)	7, 9, 18 and 20
8. <i>R. v. Vance</i> (2001), 17 M.V.R. (4 th) 282 (Y.T. Terr. Ct.)	7
9. <i>R. v. Charles</i> (1987), 36 C.C.C. (3d) 286 (Sask. C.A.)	7 and 13
10. <i>R. v. MacPherson</i> (1995), 100 C.C.C. (3d) 216 (NB. C.A.)	7
11. <i>R. v. Steinberg</i> , [1967] 3 C.C.C. 48 (Ont. C.A.)	7 and 21
12. <i>R. v. Ormerod</i> , [1969] 4 C.C.C. 3 (Ont. C.A.)	7
13. <i>Browning v. J.W.H. Watson (Rochester) Ltd.</i> [1953] 2 All E.R. 775	7
14. <i>R. v. Pigeon</i> (1992), 73 C.C.C. (3d) 337 (B.C.C.A.)	9 and 21
15. <i>R. v. Ryan</i> [2006] N.J. No. 238 (S.C.)	13
16. <i>R. v. Clayton and Farmer</i> , [2005] O.J. No. 1078 (C.A.)	14
17. <i>R. v. Stannard</i> (1989), 79 Sask. R. 257 (C.A.)	21
18. <i>R. v. Wust</i> , [2000] 1 S.C.R. 481	25 and 26
19. <i>R. v. Ferguson</i> [2008] 1 S.C.R. 96	27 and 29
Secondary References	
20. Kent Roach, <i>Constitutional Remedies in Canada</i> , looseleaf (Aurora: Canada Law Book, 1994)	7

21. Clayton Ruby, <u>Sentencing</u> , 6 th ed., (2006) LexisNexis Canada Inc	7 and 9
22. Allan Manson, “Charter Violations and Mitigation of Sentence”, at (1995), 41 C.R. (4 th) 310 (Ont. C.A.)	7 and 9
23. Oren Bick, “Remedial Sentence Reduction: A Restrictive Rule for an Effective Charter Remedy”, (2006) C.L.Q. 51	7

PART VII - TABLE OF STATUTORY AUTHORITIES***Criminal Code, R.S.C. 1985, c. C-46, s.178.1***

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.1 La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du délinquant.

Canadian Charter of Rights and Freedoms, s. 24(1)

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.

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.

Proceedings Against the Crown Act, R.S.N.S. 1989, c.360, s.16(2)

16 (2) Where, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may, in lieu thereof, make an order declaratory of the rights of the parties.