Court File No. 36081

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ALBERTA COURT OF APPEAL)

B E T W E E N :

DAVID PELHAM, WARDEN OF THE BOWDEN INSTITUTION, and
THE ATTORNEY GENERAL OF CANADA and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

Appellants
(Respondents)

- and -

OMAR AHMED KHADR

Respondent
(Appellant)

- and –

THE CANADIAN CIVIL LIBERTIES ASSOCIATION and
AMNESTY INTERNATIONAL CANADA

Interveners

FACTUM OF THE INTERVENER, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

(Pursuant to s. 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26 as am. 1990, c. 8 and Rule 42 of the *Rules of the Supreme Court of Canada*)

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TABLE OF CONTENTS

Page No.

PART I - OVERVIEW

A. Overview

1. Mr. Khadr was sentenced in the United States to a single, unitary sentence for five crimes committed when he was 15 years old. When he was transferred to Canada under the provisions of the *International Transfer of Offenders Act* ("*ITOA*"), Canada had to decide how to interpret his sentence for purposes of implementing it domestically. To make this decision, it relied on the rote application of a single paragraph in a half-page administrative policy about data entry in a Correctional Services Canada ("CSC") software program.

2. The decision about how to interpret the sentence had the potential to impact Mr. Khadr's right to residual liberty, protected under s. 7 of the *Charter.* The decision-maker should have undertaken a proportionality analysis, to balance the statutory goals of the *ITOA* and the *Charter* right at issue. It also had to consider fundamental Canadian values when making its decision. It did not undertake this analysis, rendering its decision unreasonable both as to process and outcome. It also failed to discharge the duty of procedural fairness it owed to Mr. Khadr.

3. Although the CCLA was granted leave to intervene on the question of statutory interpretation, in view of the detailed submissions of the intervener Amnesty International on the point, the CCLA will confine its submissions to the issues described above in paragraph 2.

B. The Facts

4. The CCLA accepts the facts as summarized by the parties, and notes the following facts which are relevant to its argument.

5. When deciding how to interpret Mr. Khadr's foreign sentence for the purposes of implementing it (the "decision"), the appellants (other than Alberta) admit, and the Court

of Appeal found, that the decision-maker[1] relied on "its application of an internal administrative "policy" of the CSC"[2], of which one paragraph is relevant:

> Warrant Aggregate will be entered as the sentence sub type in the offence screen in OMS if an offender is sentenced for multiple offences on the same day in the same court by the same judge, but the judge fails to impose individual sentences for each offence. If the judge imposes a global sentence, then the global sentence will be entered for each of those offences with the sentence sub type as Warrant Aggregate.

6. This resulted in a determination that Mr. Khadr should serve an adult sentence and would thus be placed in a federal penitentiary. There is no evidence that the decision-maker gave any consideration to Mr. Khadr's circumstances, his *Charter* rights, or fundamental Canadian values. There is no evidence that Mr. Khadr was told of the policy or its intended application, or given any opportunity to address his placement.

PART II – CCLA'S POSITION ON THE ISSUE

7. In deciding how to interpret a foreign sentence for purposes of administering it under the *ITOA*, the decision-maker must balance the statutory objectives of the *ITOA* with the offender's *Charter* rights, must consider fundamental Canadian values, and must accord procedural fairness to the offender.

PART III – ARGUMENT

A. Standard of Review

8. For purposes of the following analysis, the CCLA assumes that the decision about how to interpret Mr. Khadr's foreign sentence was a discretionary one.[3] The CCLA also assumes that the decision-maker was authorized to make the decision.[4]

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[1] CCLA will use the term "decision-maker" to refer to the person or entity that did, or should have, made the decision about how to interpret Mr. Khadr's sentence. The CCLA takes no position on the identity of the appropriate decision-maker or whether there was a valid delegation of authority to make the decision in this case.

[2] Record of the Appellants, Vol. I, Tab 5, p. 31, Court of Queens' Bench of Alberta Reasons for Decision, ¶ 21. See also the factum of the appellants Kelly Hartle and the Attorney General of Canada, ¶ 24

[3] Even if the decision largely involved statutory interpretation, this Court has noted that: "there is no easy distinction to be made between interpretation and the exercise of discretion; interpreting legal rules

9. In reliance on *Dunsmuir,* the appellants (other than Alberta) argue that the decision is reviewable on a standard of reasonableness. For the purposes of this argument, and with one exception developed below[5], the CCLA assumes they are correct. In that context, it is worth remembering what "reasonableness" requires.

10. In *Dunsmuir,* this Court held that reasonableness refers "both to the process of articulating the reasons and to outcomes". Thus, reasonableness has a procedural and a substantive aspect. It is concerned with the existence of "justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes."[6]

11. The *Dunsmuir* standard applies to all administrative decision-makers, not just tribunals.[7]

12. The reasonableness standard of review is almost perfectly consistent with the assessment of the lawfulness of an offender's detention on an application for a writ of *habeas corpus*[8] (such a writ having been sought by Mr. Khadr in this case). In *Mission Institution v. Khela,* this Court held that a detention will be unlawful if it is unreasonable - for example, if the decision to detain lacks justification, transparency or intelligibility.[9]

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involves considerable discretion to clarify, fill in legislative gaps, and make choices among various options". see *Baker v. Minister of Citizenship and Immigration* [1999] 2 SCR 817 at p. 854

[4] As noted, CCLA takes no position on whether the Minister validly delegated this decision to the CSC. However, whether a decision on the interpretation of a sentence is made through a valid delegation of authority or by the Minister him or herself, the analysis described in this argument is required by the decision-maker.

[5] On an application for a writ of *habeas corpus*, for the detention to be lawful, the detainee must also be accorded procedural fairness, which is reviewed on a standard of correctness. See *Mission Institution v. Khela,* [2014] 1 SCR 502 at ¶ 79. More will be said about the duty of procedural fairness, *infra.*

[6] *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190 at ¶ 47

[7] *Canadian National Railway Co. v. Canada (Attorney General)*, [2014] 1 SCR 135 at ¶¶ 51-54

[8] Procedural fairness is an element of the lawfulness of detention. It is reviewable on a correctness standard. See *Mission Institution, v. Khela*, [2014] 1 SCR 502 at ¶ 79

[9] *Mission Institution v. Khela*, [2014] 1 SCR 502 at ¶ 73

B. The decision-maker had to consider the *Charter* and fundamental Canadian values.

13. In *Doré v. Barreau du Québec*, this Court articulated a framework for considering *Charter* issues in the context of administrative decisions. In that case, Mr. Doré argued that the Barreau du Québec failed to consider his *Charter* right to free expression when it disciplined him for writing a letter that was highly critical of a judge's conduct. This Court said that "administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values."[10]

14. This Court then went on to describe its preferred approach to ensuring administrative decisions comply with the *Charter* as follows:

> The alternative is for the Court to embrace a richer conception of administrative law, under which discretion is exercised "in light of constitutional guarantees and the values they reflect". ...administrative decisions are *always* required to consider fundamental values. The *Charter* simply acts as "a reminder that some values are clearly fundamental and... cannot be violated lightly". ...administrative bodies are empowered, and indeed required, to consider *Charter* values within their scope of expertise.[11] [emphasis in original] [citations omitted]

15. The decision-maker must undertake a proportionality analysis, first considering the statutory objectives, then asking how the *Charter* value at issue would be best protected in view of those objectives. Decision-makers and reviewing courts alike must remain "conscious of the fundamental importance of *Charter* values in the analysis".[12] Only if the statutory objectives and the relevant *Charter* value have been properly balanced will the decision be reasonable.[13]

16. While *Doré's* focus is on the *Charter*, it makes clear that the decision-maker must also consider fundamental Canadian values. This same sentiment was expressed by this Court in *Baker*:

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[10] *Doré v. Barreau du Québec*, [2012] 1 SCR 395 at ¶ 24
[11] *Doré v. Barreau du Quebec*, [2012] 1 SCR 395 at ¶ 35
[12] *Doré, v. Barreau du Québec*, [2012] 1 SCR 395 at ¶ 54
[13] *Doré, v. Barreau du Québec*, [2012] 1 SCR 395 at ¶¶ 57-58

> However, though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the *Charter*.[14]

17. Similarly, in *Lake v. Canada (Minister of Justice)* this Court held that "to ensure compliance with the *Charter* in the extradition context, the Minister must balance competing considerations..." when making a decision. The Minister's decision is reviewable on a reasonableness standard.[15]

18. Though *Doré* dealt with an adjudicative administrative decision, the framework it proscribes should apply equally to non-adjudicative administrative decisions, like the one at issue here. An administrative decision-maker must always consider *Charter* rights and fundamental Canadian values. It would be an undesirable result if non-adjudicative decisions, which are generally more opaque in their process, are subject to less *Charter* scrutiny than adjudicative decisions.

19. Thus, the *Doré* framework required the decision-maker to consider the factors described below when making the decision.

(i) The Statutory Goals of the *ITOA*

20. The purpose of the *ITOA* is to "enhance public safety and contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals".[16] It is noteworthy that the *Youth Criminal Justice Act* ("*YCJA*") specifically states that the purpose of sentencing a young person includes the promotion of his or her rehabilitation and reintegration into society in order to contribute to the long-term protection of the public[17].

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[14] *Doré v. Barreau du Québec*, [2012] 1 SCR 395 at ¶ 35; *Baker v. Canada*, [1999] 2 SCR 817 at ¶ 56
[15] *Lake v. Canada (Minister of Justice)*, [2008] 1 SCR 761 at ¶ 34
[16] *International Transfer of Offenders Act*, SC 2004, c 21, s. 3
[17] *Youth Criminal Justice Act*, SC 2002, c 1, s. 38(1)

(ii) The *Charter* Interest at Stake

21. Liberty, protected by s. 7 of the *Charter*, is here engaged. Liberty includes residual liberty[18]. In *May v. Ferndale Institution*, this Court held that the "decision to transfer an inmate to a more restrictive institutional setting constitutes a deprivation of his or her residual liberty."[19] A deprivation of residual liberty can form the basis for a writ of *habeas corpus*.[20]

22. The decision to place Mr. Khadr in the most restrictive form of detention available under the *ITOA* thus engaged his residual liberty interest.

(iii) Principles of Fundamental Justice

23. A deprivation of liberty will fall afoul of the *Charter* if it fails to accord with the principles of fundamental justice. Thus, it was necessary for the decision-maker to identify the relevant principles of fundamental justice and consider them. The key principle of fundamental justice at issue here is the presumption of diminished moral blameworthiness or culpability of young people.

24. In *R v. DB*, this Court recognized that "because of their age, young people have heightened vulnerability, less maturity and a reduced capacity for moral judgment",[21] and, "the general principle that applies to youthful offenders... [is] that a lack of experience with the world warrants leniency and optimism for the future".[22]

(iv) Fundamental Canadian values

25. As developed above at paragraphs 16 to 18, the jurisprudence from this Court also requires the decision-maker to consider fundamental Canadian values when making its decision.[23] Several are worthy of mention.

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[18] *R. v. Gamble*, [1988] 2 SCR 595 at p. 645
[19] *May v. Ferndale Institution*, [2005] 2 SCR 809 at ¶ 76; See also *R. v. Miller*, [1985] 2 SCR 613 at pp. 637, 640-641
[20] *Mission Institution v. Khela*, [2014] 1 SCR 502 at ¶¶ 34, 54, 83
[21] *R. v. DB*, [2009] 2 SCR 3 at ¶ 41
[22] *R. v. DB*, [2009] 2 SCR 3 at ¶ 62
[23] *Doré v. Barreau du Québec*, [2012] 1 SCR 395 at ¶ 35; *Baker v. Canada*, [1999] 2 SCR 817 at ¶ 56

26. First, the decision-maker had to consider the principle of the best interests of the child, which this Court has called a "legal principle of paramount importance" in many family law statutes in Canada and which is "widely supported in legislation and social policy". It is a "legal principle that carries great power in many contexts".

27. The principle is also expressed throughout the *U.N. Convention on the Rights of the Child*. For example, Art. 3 provides that:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.[24]

28. Second, the desirability of rehabilitating and reintegrating young people into society is a fundamental Canadian value. It finds repeated expression in the *YCJA*, which creates a system designed to rehabilitate and reintegrate young people, which the *YCJA* acknowledges is essential to long-term public safety.[25]

29. This principle is also embodied in Canada's obligations under the *Convention* which include, at Art. 40, the obligation to recognise the right of every young person in contact with the criminal justice system to be treated in a manner that takes into account the "desirability of promoting the child's reintegration and the child assuming a constructive role in society".

30. Third, the promotion of a young person's dignity and self-worth must be considered. In *R. v. DB*, *supra*, this Court related this fundamental Canadian value to the presumption of a diminished moral culpability of young persons.[26]

31. Further, Article 40 of the *Convention* requires States Parties like Canada to recognise the right of every child to be "treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others".

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[24] *Convention on the Rights of the Child*, 28 May 1990, 1577 UNTS 3, Arts. 3 and 40
[25] *Youth Criminal Justice Act*, SC 2002, c 1, ss. 3 and 38 (1)
[26] *R. v. DB*, [2009] 2 SCR 3 at ¶ 62

(v) The Balancing Exercise

32. Collectively, the considerations described above demanded that the decision-maker interpret Mr. Khadr's sentence having regard to the rehabilitation and reintegration of Mr. Khadr into society and on the protection of his residual liberty interest, particularly in view of the diminished moral blameworthiness of young people. However, there is no evidence that the decision-maker did anything other than apply the single paragraph in the CSC's half-page policy by rote. The policy itself does not dictate consideration of any of the necessary objectives, goals or values described above.

33. A decision taken through the rote application of the policy does not meet the *Dunsmuir* criteria for reasonableness. It omits significant relevant considerations from the decision-making process, thus rendering both the process and the outcome faulty, unjustifiable and unintelligible.

C. Mr. Khadr was owed a duty of procedural fairness.

34. A duty of procedural fairness lies on every public authority tasked with making an administrative decision that affects the rights, privileges or interests of an individual.[27]

35. In *Khela*, *supra*, this Court held that the decision to deprive an individual of his or her residual liberty will not be lawful if it lacks the safeguards of procedural fairness. Accordingly, an offender is owed procedural fairness when a decision is made about how to treat a foreign sentence under the *ITOA*. The standard for determining whether the decision-maker complied with the duty of procedural fairness is correctness.[28]

36. The content of the duty of procedural fairness is flexible and variable, and depends on the context. Courts can consider, among other things, the importance of the decision to the individual affected, and the legitimate expectations of the person challenging the decision with respect to the procedures that will be followed.[29]

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[27] *Mission Institution v. Khela*, [2014] 1 SCR 502 at ¶ 82

[28] *Mission Institution v. Khela*, [2014] 1 SCR 502 at ¶¶ 67, 79

[29] *May v. Ferndale Institution*, [2005] 2 SCR 809 at ¶ 120. In *May*, there was a statutory duty of disclosure. However, the Court noted that one of the relevant considerations in determining the content

37. In a case such as Mr. Khadr's, at a bare minimum[30], procedural fairness should include (i) disclosure to the offender of the key facts relied on by the decision-maker; (ii) an opportunity to be heard in some manner; and (iii) a requirement that the decision-maker review the offender's circumstances having regard to the considerations mandated by *Doré*.

38. There is no evidence that the current process followed by the CSC met these even minimal requirements for procedural fairness.

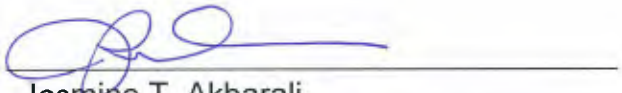
PART IV – SUBMISSIONS REGARDING COSTS

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

PART V – ORDER REQUESTED

40. The CCLA requests the Court's permission to make oral submissions of no more than 10 minutes in length at the hearing of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF APRIL, 2015.



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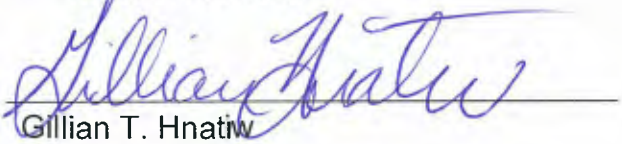

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of procedural fairness was that *Stinchcombe*-like disclosure would not be required because the innocence of the offender was not at stake. Similarly, Mr. Khadr's innocence was not at stake when the decision to interpret his sentence was made. The disclosure obligation would thus be more limited, but the rationale behind disclosure of the facts underlying the decision in Mr. Khadr's case (or one like it) is the same as that in *May* - that is, to ensure the fairness of the decisions concerning prison inmates, particularly where residual liberty is at issue.

[30] The CCLA does not preclude the possibility that more might be required to discharge the obligation of procedural fairness, but at least this much is necessary.

PART VI – TABLE OF AUTHORITIES

Para(s).

PART VII – STATUTES AND REGULATIONS

International Transfer of Offenders Act **S.C. 2004, c. 21**

Purpose

3. The purpose of this Act is to enhance public safety and to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

2004, c. 21, s. 3; 2012, c. 1, s. 135.

Loi sur le transfèrement international des délinquants **L.C. 2004, ch. 21**

Objet

3. La présente loi a pour objet de renforcer la sécurité publique et de faciliter l'administration de la justice et la réadaptation et la réinsertion sociale des délinquants en permettant à ceux-ci de purger leur peine dans le pays dont ils sont citoyens ou nationaux.

2004, ch. 21, art. 3; 2012, ch. 1, art. 135.

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

***Youth Criminal Justice Act* S.C. 2002, c. 1**

Purpose

38. (1) The purpose of sentencing under section 42 (youth sentences) is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

Marginal note:Sentencing principles

(2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

(a) the sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult who has been convicted of the same offence committed in similar circumstances;

(b) the sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances;

(c) the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence;

(d) all available sanctions other than custody that are reasonable in the circumstances should be considered for all young persons, with particular attention to the circumstances of aboriginal young persons;

(e) subject to paragraph (c), the sentence must

(i) be the least restrictive sentence that is capable of achieving the purpose set out in subsection (1),

(ii) be the one that is most likely to rehabilitate the young person and reintegrate him or her into society, and

(iii) promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community; and

(f) subject to paragraph (c), the sentence may have the following objectives:

(i) to denounce unlawful conduct, and

(ii) to deter the young person from committing offences.

Marginal note:Factors to be considered

(3) In determining a youth sentence, the youth justice court shall take into account

(a) the degree of participation by the young person in the commission of the offence;

(b) the harm done to victims and whether it was intentional or reasonably foreseeable;

(c) any reparation made by the young person to the victim or the community;

(d) the time spent in detention by the young person as a result of the offence;

(e) the previous findings of guilt of the young person; and

(f) any other aggravating and mitigating circumstances related to the young person or the offence that are relevant to the purpose and principles set out in this section.

2002, c. 1, s. 38; 2012, c. 1, s. 172.

Loi sur le système de justice pénale pour les adolescents **L.C. 2002, ch. 1**

Objectif

38. (1) L'assujettissement de l'adolescent aux peines visées à l'article 42 (peines spécifiques) a pour objectif de faire répondre celui-ci de l'infraction qu'il a commise par l'imposition de sanctions justes assorties de perspectives positives favorisant sa réadaptation et sa réinsertion sociale, en vue de favoriser la protection durable du public.

Note marginale :Principes de détermination de la peine

(2) Le tribunal pour adolescents détermine la peine spécifique à imposer conformément aux principes énoncés à l'article 3 et aux principes suivants:

(a) la peine ne doit en aucun cas aboutir à une peine plus grave que celle qui serait indiquée dans le cas d'un adulte coupable de la même infraction commise dans des circonstances semblables;

(b) la peine doit être semblable à celle qui serait imposée dans la région à d'autres adolescents se trouvant dans une situation semblable pour la même infraction commise dans des circonstances semblables;

(c) la peine doit être proportionnelle à la gravité de l'infraction et au degré de responsabilité de l'adolescent à l'égard de l'infraction;

(d) toutes les sanctions applicables, à l'exception du placement sous garde, qui sont justifiées dans les circonstances doivent faire l'objet d'un examen, plus particulièrement en ce qui concerne les adolescents autochtones;

(e) sous réserve de l'alinéa c), la peine doit:

(i) être la moins contraignante possible pour atteindre l'objectif mentionné au paragraphe (1),

(ii) lui offrir les meilleures chances de réadaptation et de réinsertion sociale,

(iii) susciter le sens et la conscience de ses responsabilités, notamment par la reconnaissance des dommages causés à la victime et à la collectivité;

(f) sous réserve de l'alinéa c), la peine peut viser:

(i) à dénoncer un comportement illicite,

(ii) à dissuader l'adolescent de récidiver.

Note marginale :Facteurs à prendre en compte lors de la détermination de la peine

(3) Le tribunal détermine la peine spécifique à imposer en tenant également compte:

(a) du degré de participation de l'adolescent à l'infraction;

(b) des dommages causés à la victime et du fait qu'ils ont été causés intentionnellement ou étaient raisonnablement prévisibles;

(c) de la réparation par l'adolescent des dommages causés à la victime ou à la collectivité;

(d) du temps passé en détention par suite de l'infraction;

(e) des déclarations de culpabilité antérieures de l'adolescent;

(f) des autres circonstances aggravantes ou atténuantes liées à la perpétration de l'infraction ou à la situation de l'adolescent et pertinentes au titre des principes et objectif énoncés au présent article.

2002, ch. 1, art. 38; 2012, ch. 1, art. 172.

S.C.C. No.: 36081

THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ALBERTA COURT OF APPEAL)

B E T W E E N:

KELLY HARTLE, WARDEN OF THE EDMONTON INSTITUTION, and THE ATTORNEY GENERAL OF CANADA and HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

Appellants
(Respondents)

- and -

OMAR AHMED KHADR

Respondent
(Appellant)

- and –

THE CANADIAN CIVIL LIBERTIES ASSOCIATION and AMNESTY INTERNATIONAL CANADA

Interveners

FACTUM OF THE INTERVENER, THE CANADIAN CIVIL LIBERTIES ASSOCIATION

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