

TOP FIVE 2025

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases that are of significance in the educational setting. The 2025 cases were selected and discussed by Mr. Justice Lorne Sossin of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

John Howard Society of Saskatchewan v. Saskatchewan (Attorney General), 2025 SCC 6

Date released: March 14, 2025

<https://www.canlii.org/en/ca/scc/doc/2025/2025scc6/2025scc6.html>

Saskatchewan's Correction Services Regulations

Section 68 of Saskatchewan's *Correctional Services Regulations, 2013*, says that people in prison who are charged with disciplinary offences must meet before a panel to answer for their charges. These panels work on a balance of probabilities, which means inmates must be more likely than not to be found guilty of committing an offence. For major offences, the sanctions could include disciplinary segregation of up to 10 days or even a loss of earned remission of up to 15 days, essentially extending a person's sentence.¹

Details of the case

The John Howard Society challenged the Correctional Services Regulations and the sanctions within them. It argued that the

standard of proof used in these disciplinary cases should attempt to prove guilt beyond a reasonable doubt, which is the standard in criminal cases, instead of on a balance of probabilities. It is more difficult to prove that somebody did something on the criminal standard. The JHS also claimed that the regulations directly violated the right to life, liberty, and security of the person - s. 7 of the Canadian Charter of Rights and Freedoms. In the lower courts, the organization was unable to rely on section 11(d) of the *Charter*, which provides that anyone charged with an offence is presumed innocent until proven guilty, because of *R. v. Shubley* (1990), a previous Supreme Court Case. This case set a precedent for understanding what constitutes a penal consequence and found that inmate disciplinary segregation and loss of remission do not apply under s. 11 (h), which prohibits

¹Earned remission is a "good time" credit system that allows offenders serving sentences in provincial or territorial institutions (less than 2 years) to reduce their time in custody.

penalizing someone twice for the same conduct (also known as double jeopardy). The ruling laid out in the case was that these disciplinary measures occur within the prison itself to maintain order and do not attempt to enforce societal rules in the same way a penal consequence would.

The John Howard Society challenged the Correctional Services Regulations in the lower courts, and later the Court of Appeal, both of which determined that the regulations did not violate Section 7 of the *Charter*. The John Howard Society appealed to the Supreme Court of Canada (SCC).

The SCC ruled that section 68 of the *Regulations* was a violation of sections 7, 11(d) and 11(h) of the *Charter*, as the sanctions under the law would allow for another imposition of imprisonment on inmates when there is a reasonable doubt about whether the accused might be guilty of misconduct.

The Charter Violations

The John Howard Society brought forth three sections of the Canadian Charter of Rights and Freedoms to demonstrate how the Correctional Services Regulations violate the *Charter*. They posit that the regulations violate Section 7 of the *Charter* that stipulates: *“Everyone has the right to **life, liberty and security of the person** and the right not to be deprived thereof except in*

accordance with the principles of fundamental justice.”

Section 7 Analysis goes as follows:

(1.) Arbitrariness

- a. Whether there is a direct connection between the purpose of the law, and the impugned effect on the individual, in the sense that the effect on the individual bears some relation to the law’s purpose?
- b. There must be a rational connection between the object of the measure that causes the s. 7 deprivation, and the limits it imposes on the life, liberty or security of the person.

(2.) Overbreadth

- a. A law that is so broad in scope that it includes some conduct that bears no relation to its purpose.
- b. There is some rational connection between the purpose of the law and some, but not all, of its impacts.

(3.) Gross Disproportionately

- a. The law’s effects on the life, liberty or security of the person are so grossly disproportionate to its purposes that they cannot rationally be supported.
- b. Where the seriousness of the deprivation is totally out of sync with the objective of the measure.

- c. Balance the negative effect on the individual against the purpose of the law, not against the societal benefit that might flow from the law.

Additionally, they argued that Section 11(d) and 11(h) were violated under the regulations which outline that any person charged with an offence has the right:

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

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

In this case, the John Howard Society argued that the sanctions associated with the *Regulations*, such as a loss of earned remission, are essentially a second punishment for the accused, who is also disadvantaged by a balance of probabilities that do not treat their guilt as something needing to be proven beyond a reasonable doubt, but rather something that is “most likely”. Additionally, this second punishment is a deprivation of liberty and violates s. 7.

Conclusion and Takeaway

The case ended with the court overruling itself and its previous decision in *R. v. Shubley*, creating a new evolution in how we understand penal consequences in

provincial and territorial correctional institutions. The outcome of this case does mean that *R. v. Shubley* was bad law or that its precedent for later cases was invalid. It demonstrated the law’s ability to adapt as modern legal contexts change our understandings of legal definitions, such as what it means for something to be a penal consequence.

Discussion

1. What was the John Howard Society arguing?
2. What was the main problem created by Shubley case?
3. What were the main constitutional concerns that the John Howard Society had with s. 68 of Saskatchewan's Correction Services Regulations?
4. Why weren't disciplinary proceedings in correctional institutions were considered penal consequences under Shubley?
5. How could the loss of remission be considered a deprivation of liberty?

TOP FIVE 2025

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases that are of significance in the educational setting. The 2025 cases were selected and discussed by Mr. Justice Lorne Sossin of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

Ontario (Attorney General) v. Restoule, 2024 SCC 27

Date released: July 26, 2024

<https://www.canlii.org/en/ca/scc/doc/2024/2024scc27/2024scc27.html>

Facts

In 1850, the Robinson Treaties were agreed upon by the Crown and the Anishinaabe of Lake Huron and Lake Superior. The Anishinaabe in these treaties were to share their territories with the Crown in return for an annual annuity (payment) delivered by the Crown. The annuity clauses of the agreement outlined that the Crown was required to pay these perpetual annual payments to these Indigenous communities. Payments were provided to individuals: \$1.70 a year for the Huron members, and \$1.60 for Superior members. In the case that the land generated significant wealth, for instance from natural resources, an "augmentation clause" outlined that the amount paid to every individual would increase to a maximum of \$400. This maximum was applied in 1875 and had not increased since then.

In 2001, the Anishinaabe of Lake Huron filed for compensation in the Ontario Superior Court, claiming that Canada and Ontario had breached the Robinson treaties by failing to increase annuities beyond \$4.00. In 2014, the Anishinaabe of Lake Superior followed suit and filed their own similar claim. The court heard both cases together and determined that the treaties planned to allow for an increase in annuities as Indigenous economies grew. According to the "Honour of the Crown" principles, the government was obligated to consider an increase beyond \$4.00. After another appeal to the Ontario Court of Appeal, the ruling was upheld, however, the courts disagreed that the Crown had a fiduciary obligation² to Anishinaabe communities.

Before being brought to the Supreme Court of Canada, the Robinson-Huron

² a strict legal duty to act solely in the best interest of another party, meaning that the fiduciary must put the beneficiary's interests above their own and strictly avoid conflicts of interest, self-dealing, or unauthorized profit.

community reached a settlement with Canada and Ontario, while the Robinson-Superior continued their legal battle in the SCC. With the final appeal to the SCC, it was ruled that the Crown had violated their obligations to the treaties by failing to consider an increase in annuities following 1875.

Honour of the Crown

An unwritten constitutional principle important to Aboriginal Law that requires the Crown to act honourably, diligently, liberally and in good faith with Indigenous communities and when interpreting their treaties.

Key Takeaways

While the Court conceded that the Crown has discretion in determining the extent of the increase, that discretion is not unchecked and is expected to be executed honourably and diligently. The Court finalized the trial with a remedy calling for the Crown to organize negotiations with the Robinson-Superior plaintiffs and reach an agreement on their own, instead of having an immediate court-imposed settlement.

With reconciliation and the Crown's obligations when interacting with Indigenous communities becoming

prominent issues, this case demonstrates one way in which the courts should incorporate principles of reconciliation and Crown obligations in modern treaty interpretation. Ontario (Attorney General) v. Restoule shows that treaties still play an essential role in Canadian law and that the Crown cannot avoid accountability for misinterpreting treaties with Indigenous communities.

Discussion

1. What is the “augmentation clause”?
2. What does it mean for the Crown to practice *Honour of the Crown* proactively?
3. Why did the SCC determine that the Crown was required to negotiate with the Robinson-Superior for compensation?
4. To what extent do you believe the Crown should be held responsible for how they act with Indigenous communities and interpreting their treaties?

TOP FIVE 2025

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases that are of significance in the educational setting. The 2025 cases were selected and discussed by Mr. Justice Lorne Sossin of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

Sanis Health Inc. v. British Columbia, 2024 SCC 40

Date released: November 29, 2024

<https://www.canlii.org/en/ca/scc/doc/2024/2024scc40/2024scc40.html>

Background

In 2018, the province of British Columbia filed a class action against pharmaceutical companies that manufacture and distribute opioid products in the country. The province argued that the costs of opioid addiction were tormenting all provinces and territories in Canada, and that pharmaceutical companies were to blame for this epidemic due to their marketing strategies that showcase their drugs as less addictive. British Columbia took the case to the Supreme Court of British Columbia, seeking the opportunity to file it as a class proceeding and to act as a plaintiff on behalf of all provinces and territories bearing the costs of the opioid epidemic.

The defendants, Sanis Health Incorporated, appealed to the court, claiming that s. 11 of the Opioid Damages and Health Care Costs Recovery Act (ORA), which allows British Columbia to launch a class action on behalf of other governments that can either opt in

or out, was unconstitutional. They claimed that section 11 did not respect the independence of other provinces, violated the limits of British Columbia's territorial power and was outside the legislature's authority under the Constitution Act of 1867. Their applications to the court were dismissed on the basis that the province's class action was permitted under British Columbia's constitutional authority and that the Act did not violate the sovereignty of other provinces, as it affected only those governments that chose to engage in the proceedings.

The defendants took their case to the Court of Appeal following this ruling, which also dismissed the appeal and agreed with the Supreme Court of British Columbia's findings. The case was finally appealed to the Supreme Court of Canada, which likewise ruled in favour of British Columbia, dismissed the appeal, and found section 11



to be constitutional under section 92(14) of the Constitution Act.

Section 11 of the Opioid Damages and Health Care Costs Recovery Act (ORA)

Section 11(b)(i) of the Opioid Damages and Health Care Recovery Act outlines that British Columbia could bring an opioid-wrong related action to court on behalf of a class, including “one or more of the governments of Canada and the government of a jurisdiction within Canada”. This provision allowed the province to launch a class action on behalf of all provinces and territories within Canada. This encouraged Sanis Health Incorporated to appeal to the court and argue that Section 11(b)(i) of ORA directly challenged Canadian federalism and, thus, the sovereignty of individual provinces.

Section 92(14) of the Constitution Act of 1867 and Federalism

In this case, the most relevant aspects of the Constitution Act of 1867 are its provisions outlining the division of powers and governmental authority between the federal and provincial governments. This division of powers, called federalism, defines responsibilities between the federal and provincial governments. It also requires that the federal government cannot intervene in

areas constitutionally reserved to the provinces, or the other way around.

Section 92(14) of the Constitution Act of 1867 outlines these divisions of power and specifically states that each provincial legislature can enact laws that pertain to:

"the Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts."

The Supreme Court of Canada ruled in its proceedings that section 11 of ORA, as executed by British Columbia, was perfectly in line with the administration of justice in their class action and that the case did not undermine the division of powers and independence of provinces, as participation in the class action was entirely voluntary.

SCC Explanation + Conclusion

The Supreme Court ruled that section 11 of the Opioid Damages and Health Care Costs Recovery Act was constitutional, and Justice Karakatsanis dismissed the defendants' appeal that ORA was outside British Columbia's constitutional authority. Furthermore, the SCC found that the Act did not address substantive rights, was meaningfully connected to the province,



and created a procedural tool for British Columbia to file a lawsuit on behalf of other provinces, who could decide for themselves whether to join the class action.

The voluntary nature of the class action was deemed to respect the independence of other provincial governments. British Columbia's administration of justice and court procedures in this case directly fell under the provincial power outlined in section 92(14) of the Constitution Act, 1867.

Takeaways

Ultimately, this case presents the enduring impact of the 1867 Constitution Act and the value of federalism in Canadian law. *Sanis Health Inc. v. British Columbia* demonstrates how these legal concepts can interact in class action suits initiated by one province, while remaining constitutional and in line with the individual sovereignty of all provinces.

Discussion

1. What is federalism, as outlined in the Constitution?
2. Why did the Supreme Court rule that Section 11 of ORA was unconstitutional?
3. How does the SCC ruling shape how we understand the distinct obligations and roles of provinces?
4. Why did the Supreme Court of Canada decide to uphold British Columbia's class action and dismiss Sanis Health Incorporated's appeal? Do you agree with the court's reasoning?

TOP FIVE 2025

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases that are of significance in the educational setting. The 2025 cases were selected and discussed by Mr. Justice Lorne Sossin of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

R. v. Campbell, 2024 SCC 42

Date released: December 6, 2024

<https://www.canlii.org/en/ca/scc/doc/2024/2024scc42/2024scc42.html>

Background

On June 14, 2017, the Guelph Police Service Drug Unit arrested Mr. Gammie, a known drug dealer, and lawfully seized his phone. A few minutes after the arrest, Gammie's phone received four messages, visible to the officers, from a sender with the contact's name "Dew." The Police Squad quickly identified the texts as being part of a drug transaction, with the language used in the texts implying the probable trafficking of heroin laced with fentanyl. For the next two hours and fifteen minutes, the police replied to the incoming texts, purposefully impersonating Gammie and convincing the sender to transport the drugs to Mr. Gammie's residence. They did not have a warrant. When the sender, Mr. Campbell, arrived, he was arrested and in possession of heroin laced with fentanyl, subsequently

charged for drug trafficking and possession offences.

In response to his arrest and charges, Campbell applied to the Ontario Superior Court of Justice, seeking an order excluding his texts from evidence, arguing that his s. 8 *Charter* rights had been infringed when the police searched his phone without a warrant. The court concluded that Campbell had no reasonable expectation of privacy, that the warrantless search was justified under the "exigent circumstances" of s. 11(7) of the Controlled Drugs and Substances Act ("CDSA"),³ and that his texts would be included in evidence. Campbell was convicted of the charges against him.

The accused then appealed his convictions to the Court of Appeal of Ontario, which

³ emergency situations that allow law enforcement to bypass warrant requirements.



concluded that, contrary to the lower courts' decision, Campbell actually did have a reasonable expectation of privacy. However, the court stated that under s. 11(7) of the CDSA, the police search was justified as an exigent circumstance, and the appeals were dismissed.

The case was finally appealed to the Supreme Court, which also dismissed Mr. Campbell's appeal, finding that the warrantless search was justified under the exigent circumstances of the CDSA and that it was impracticable to obtain a warrant when the threat of the drugs being dispersed was imminent and worrisome for the health and safety of the public.

Section 8 of the *Charter*

Section 8 of the Canadian Charter of Rights and Freedoms states that everyone is entitled to the “*right to be secure against unreasonable search or seizure.*”

In Mr. Campbell's case, he claimed his section 8 *Charter* rights were violated, as the police search without a warrant constituted an unjustified intrusion of his privacy. While the Supreme Court of Canada conceded that Campbell had a reasonable expectation of privacy, it argued that the police actions were justified under exigent circumstances and by the impracticability of obtaining a warrant, as laid out in the Controlled Drugs and Substances Act.

The Controlled Drugs and Substances Act

The Controlled Drugs and Substances Act aims to protect public safety and health and mitigate the harm that occurs due to the possession and consumption of controlled substances. The Act prohibits people from possessing, disseminating and producing unauthorized controlled substances to curb the effects of drug addiction and the illegal drug trade. Section 11(7) of the Act outlines the circumstances in which a police officer may exercise certain powers that would normally require a warrant, such as conducting a search. The provision is as follows:

A peace officer may exercise any of the powers described in subsection (1), (5) or (6) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain one.

So, to justifiably conduct a search without a warrant, two requirements must be met. The officer has to show that there were “exigent circumstances” that don’t just relate to convenience. It must be an urgent situation, arising from circumstances calling for immediate police action to preserve evidence, officer safety or public safety.



They also must show that the conditions for obtaining a warrant existed, but that *exigent circumstances* “render[ed] it ‘impracticable’ to obtain a warrant”, meaning that it was “impossible in practice or unmanageable to obtain a warrant”.

Conclusion

R. v. Campbell examined the protection of privacy under the *Charter*. It is still justifiable for a law to violate a *Charter* right if the threat to the public good is too urgent to respect those rights. Campbell touches on a common conflict in constitutional litigation about weighing the rights of the individual against the betterment of society as a whole.

Discussion

1. What are “exigent” circumstances and how do they play out in *R. v. Campbell*?
2. In your view, was it justified that Mr. Campbell’s reasonable expectation of privacy was violated by the police? Run an Oakes test to validate your answer.

3. What do you think?
Are “exigent circumstances” and “impracticability” reasonable thresholds to meet for breaching a *Charter* right?

TOP FIVE 2025

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases that are of significance in the educational setting. The 2025 cases were selected and discussed by Mr. Justice Lorne Sossin of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

Canada (Attorney General) v. Power, 2024 SCC 26

Date released: July 19, 2024

<https://www.canlii.org/en/ca/scc/doc/2024/2024scc26/2024scc26.html>

Background

In 2013, Mr. Joseph Power applied for a record suspension, which allows those who have been convicted of a criminal offence, completed their sentence and shown themselves to be law-abiding citizens, to keep their criminal record separate from other criminal records. This separation is particularly helpful for those seeking employment following their sentence. However, Power's application for a record suspension was denied and he claimed that his record limited him from returning to work and maintaining his employment. His application was denied under a piece of legislation enacted in 2010 and 2012, and which made him ineligible for a record suspension. The legislation had been deemed unconstitutional by the SCC.

In light of this denial, Power argued that he was owed damages under s. 24(1) of the Canadian Charter of Rights and Freedoms,

claiming the unconstitutional legislation violated his rights. The Attorney General of Canada, in response to Power's arguments, inquired the Court of Queen's Bench of New Brunswick to find out whether it was required of the state to pay the damages for drafting a bill that would later be unconstitutional and whether it needed to pay for a bill enacted in Parliament. In both inquiries, the court said yes and determined that the state was not entitled to absolute immunity from damages arising from unconstitutional laws that clearly violate *Charter* rights. Normally, such immunity would shield the government from liability even in the most outrageous cases. Instead, they argued that the state was entitled to limited immunity, meaning it is protected from paying damages unless the plaintiff can clearly show the law was enacted in bad faith or enacted unconstitutionality.



Following this decision, the Attorney General appealed to the New Brunswick Court of Appeal. The court agreed with the previous decision and dismissed the appeal. Finally, the case was taken to the Supreme Court of Canada, where the Attorney General's appeal was dismissed once more and found that the state was not entitled to absolute immunity.

Section 24(1)

Section 24(1) of the Canadian Charter of Rights and Freedoms contains an accountability mechanism that people can use to get compensation when their rights and freedoms have been violated.

The provision stipulates that:

"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."

SCC Decision + Explanation

The Supreme Court dismissed the Attorney General's appeals, stating that the state would be required to pay damages for the creation of unconstitutional legislation and that absolute immunity does not align with constitutional principles that require the government to be held accountable for

Charter infringements. Thus, the state was entitled only to limited immunity, ensuring it could still be held liable for drafting an unconstitutional bill, while also respecting the distinct roles and duties of courts and Parliament.

Takeaways

Overall, this case showcases the significance of government accountability in the Canadian Charter of Rights and Freedoms, and demonstrates how even the state can be held liable for enacting legislation that is deemed unconstitutional and harms individuals. Joseph Powers' application to the lower courts, and the final ruling at the Supreme Court, show how the state is not immune to critique, or to giving people what they are due following a error in their decision-making.

Discussion

1. What is a record suspension?

2. What does Section 24(1) of the *Charter* allow an individual to achieve?

3. What is the difference between absolute and limited immunity?

4. How does Section 24(1) of the *Charter* allow us to understand the concept and value of accountability in the Canadian constitution?