

IMPLEMENTING THE TREATY ORDER

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Typically, the Canadian criminal justice discussion concerns two orders. The *Constitution [British North America] Act, 1867* created a dual distribution of authority in Canada.¹ The federal power has the authority to enact a national criminal code,² while provincial authorities administer justice by enforcing the national code.³ Under these constitutional provisions, neither the federal government nor the provinces had exclusive responsibilities for criminal justice. It was a shared order. This division of national and local authority is fairly well agreed upon, although its meaning at the periphery has always inspired debate.

In the new Canadian order, however, the nature of the discussion has been expanded. The reaffirmation of Aboriginal and treaty rights into the constitutional order in sections 35 and 52 of the *Constitution Act, 1982*⁴ has changed the nature of the discussion. Section 35(1) restores Aboriginal and treaty rights as part of the supreme law of Canada.⁵ Section 52(1) provides that any law that is inconsistent with the existing Aboriginal and treaty rights of Aboriginal Peoples in Canada is of no force or effect.⁶ Often these treaties are referred to as the third order of justice.

The discussion of the third order in Saskatchewan is especially relevant. Since the purpose of this Conference is to explore how these three orders of government—federal, provincial and treaty—can work together, the treaty order must be understood. Attempting to work out the problems of the existing three orders is a major theme and purpose of the Conference, and this topic ought to inspire intense debate.

TREATY ORDER

Out of the reserved Indian Country of the *Royal Proclamation of 1763*,⁷ in 1870, the federal government created the North-West Territories as a federal territory.⁸ Beginning in 1871, the First Nations treaties with the imperial Crown created the western provinces of Canada. The conclusion and ratification of treaties are exclusively a matter for the Crown, as part of the Royal Prerogative.⁹ They are part of the foreign affairs of the British Kingdom, not domestic affairs. The significance of these treaties lies in the fact that in the absence of agreements there are no compulsory binding rules

between the Crown and the First Nations in either international or domestic law. The prerogative treaties were consensual arrangements between nations for the sharing of a territory and creating a new order.¹⁰

In the treaties, the Crown agreed that the First Nations were full partners in the administration of justice. In the land of the fast-flowing rivers, now called Saskatchewan, six treaties define the First Nations' duties in the administration of justice. They are labelled Treaty 2 (1871), 4 (1874), 5a (1875), 6 (1876, 1889), 8 (1899) and 10 (1906). These are typical of the Victorian treaties. The English versions of these nation-to-nation agreements purport that the First Nations ceded Aboriginal land to the imperial Crown. The broad, conceptual obligations of the Crown agreed to in these founding treaties defined the legal order of the North-West Territories. They created the unique constitutional duties of the First Nations in the shared territory.

The central and common article of the Victorian treaties concerning legal jurisdiction provides that:

the undersigned Chiefs and Headmen, on their own behalf and on behalf of all other Indians inhabiting the tract within ceded, do hereby solemnly promise and engage to strictly observe this treaty, and also to conduct and behave themselves as good and loyal subjects of Her Majesty the Queen. They promise and engage that they will, in all respects, obey and abide by the law, that they will maintain peace and good order between each other, and between themselves and other tribes of Indians and between themselves and others of Her Majesty's subjects, whether Indians, Half-breeds, or whites, now inhabiting or hereafter to inhabit any part of the said ceded tract; and that they will not molest the person or property of any inhabitant of such ceded tract; or the property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tract, or any part thereof, and that they will assist the officers of Her Majesty in bringing to justice or punishment any Indian offending against the stipulations of this treaty, or infringing the law in force in the country so ceded.¹¹

In these treaties, the Cree, Beaver, Chipewyan, Chippewa and Saulteaux Nations' chiefs and headmen promised the Crown to "strictly observe" the treaties. The treaties are part of their customary constitution, just as they are a part of the constitution of the United Kingdom. The spirit and wording of the article requiring the strict interpretation of the treaties establish them as binding law. This inviolate law of the treaties has a special meaning to the First Nations. Law was the consensual agreement that established the rules that instructed the people about the right way to live.¹²

The chiefs and headmen promised to conduct and behave themselves

as good and loyal subjects of Her Majesty the Queen. The terms of these treaties recognized their nations as protected states in the British Kingdom. Under British law, these terms do not transfer the states' inherent sovereignty to the Crown, only their allegiance as autonomous political orders.

The chiefs and headmen also promised and engaged that they would maintain peace and good order.¹³ They promised the Crown that they would retain their residual authority, often called Aboriginal or inherent rights, in the shared territory. Taken together with the chiefs' agreement to strictly observe the treaty, this residual article establishes that if a treaty does not expressly and clearly delegate Aboriginal authority to the Crown, such authority remains under Aboriginal control. This article fills any gaps in the treaty order. It is similar to the delegation of "peace, order and good government" clause to the federal government in the *Constitution Act, 1867*.¹⁴ Because the chiefs' authority to represent the people was inherent, the Crown could not delegate "good government" to them.

The chiefs' promise to maintain peace and good order is comprehensive. The promise was not confined to the customary law that regulated their people. It extended to all peoples who came into the shared territory, "whether Indians, half-breeds or whites." They promised to maintain peace and good order between First Nations, between their people and "other Her Majesty's subjects" who now inhabit or will in the future inhabit "any part of the ceded land." This is a prerogative article affirming the First Nations' continuing territorial jurisdiction in the ceded lands.

The chiefs and headmen also promised that they would obey and abide by the law. Which law they would obey is vague. Presumably the First Nations' obedience is limited to international law, their treaties and their customary laws.¹⁵ In the language of the treaties, there is no broad delegation of civil or criminal authority or law over Aboriginal Peoples to Her Majesty or to any legislative body. In the absence of consensual delegations in the treaties, no independent, compulsory binding rules or law exist. Lacking clear and specific delegations to the Crown from the First Nations, the Crown could not grant parliamentary supremacy to the federal government over Aboriginal Peoples.

In the United Kingdom, the role of law is to guarantee and protect the treaty obligations and order. According to constitutional obligations, public laws placed limits on the pursuit of private ends for scarce resources and reinforced the need for collaborative orders. As will be discussed later, federal and provincial authority are derived from the prerogative treaties, and their enacted laws could not be inconsistent with them.

The treaty delegations of law-making authority to the federal or provincial governments are narrow and certain. The chiefs and headmen delegated limited authority to the proper legislative authority¹⁶ or federal gov-

ernment over alcohol and to the "Government of the ceded country" in harvesting of natural resources in the shared or ceded land. On the reserves and in the North-West Territories, the chiefs and headmen in Treaties 2, 4 and 6b specifically agreed not to allow intoxicating liquor. They also agreed that all laws regarding intoxicating liquor enacted by the government of the Dominion of Canada to be valid within their customary legal system. Further, most of the chiefs and headmen agreed to allow partial regulation "by the Government of the country," acting under the authority of Her Majesty, of their prerogative rights of hunting, trapping and fishing in the ceded territory.¹⁷ This section shows that the First Nations knew how to delegate authority to other governments. Lacking such affirmative language, no implied authority exists in the Crown. As the treaties illustrate, the imperial Crown authority over First Nations and the shared territory is derivative, not inherent.

In addition, the chiefs and headmen agreed to specific new obligations to illustrate how the First Nations were to be partners in the administration of justice. They explicitly agreed not to molest the person or property of any inhabitant of the ceded territory, or any property of Her Majesty the Queen, or interfere with or trouble any person passing or travelling through the said tract. To enforce these treaty obligations and the partnership, the chiefs and headmen affirmatively resolved to assist the officers of Her Majesty to bring any Indian to justice and punishment who offends the stipulation of the treaty, or infringes the law in force in the ceded country. These articles provided concurrent jurisdiction over limited offences to the First Nations and the Crown. Beyond these specific delegations, the First Nations' authority over Indians was exclusive and personal.

These treaty stipulations could be made only with First Nations who were capable of governing themselves and others. The treaty order is an existing Aboriginal government. It continues the traditional order. The treaties did not terminate the governmental or legal authority of the Aboriginal Peoples. These treaty obligations made them full partners in establishing a legal order in western Canada under the imperial Crown. This inherent order was restored in the new Canadian order.

THE CANADIAN ORDER

No parliamentary sanction is required to bring a treaty into legal existence.¹⁸ Sovereignty or prerogative treaties are considered to be directly incorporated into domestic law.¹⁹ Included in this category are peace treaties, treaties establishing boundaries of land and treaties ceding territory or concerning the acquisition of territory.²⁰ Often parliamentary action is required to implement other treaties into federal law.²¹ All the treaties involving First Nations qualify as sovereignty or prerogative treaties. The Crown

negotiated, signed and ratified all treaties. They were valid and operational imperial acts that were then submitted to the colonial governors for implementation in their colonies.²²

Few constitutional provisions inform the performance of the treaty obligations as Canadian law. Under section 132 of the *Constitution [British North America] Act, 1867*, the imperial Parliament had already delegated the necessary and proper authority to carry into effect treaty obligations of the imperial government in Canada.²³ Further, section 91(24) had granted exclusive federal authority over "Indian and Lands reserved for Indians." Finally, in the *Letters Patent 1947*, the imperial Crown delegated its prerogative powers to the governor general of Canada.²⁴

These constitutional provisions are sufficient to create certain administrative powers and fiduciary obligations in the federal government to implement these prerogative treaties with First Nations. Indeed, under section 91(24) of the *Constitution [B.N.A.] Act, 1867*, the federal Parliament implemented these treaty obligations into domestic law under the *Indian Act*. Each substantive provision of the *Indian Act* fulfilled an obligation previously assumed by the imperial Crown in treaties with the First Nations. The implementation acts were faulty. Over time, the implementation processes created grievous problems. The federal Parliament forgot its legislation authority was an attribute of performance of treaty obligations. Parliament assumed an independent and broad legislative competence over Indians and lands reserved for them, ignoring the fact that the chiefs and headmen had reserved that power to themselves in the treaties. Section 35 of the 1982 Act restored these restrictions on the federal Parliament and provincial legislatures.

In 1892 the federal Parliament enacted the national *Criminal Code* and other acts. This general federal act has been interpreted as applying to Indians and to lands reserved to Indians.²⁵ Such interpretation ignores the treaty order and the specific federal act implementing the treaties, that is to say, the *Indian Act*. Yet, except for the prohibition of alcohol, the treaties make no delegation to federal authority. Federal law beyond alcohol regulation may have encroached on and been inconsistent with the imperial Crown's promises and agreements in the treaties. Further, the treaties never agreed to comprehensive law-making authority of the immigrants' assemblies over Indians or their lands, which were separate prerogative delegations.

Since neither Indians nor their treaty order have been represented in the federal Parliament, the extension of the *Criminal Code* to Indians is questionable. The *Criminal Code* is not a constitutional act. It is only one of many federal acts enacted by the immigrant representatives. Neither the chiefs, nor the headmen, nor their members have ever consented in a treaty

to such legislative authority in the Crown nor in the federal or provincial governments. In addition to lack of treaty authority, there are valid democratic concerns over the validity of the extension of the law to members of First Nations. The core of political legitimacy in any democracy is that government must not fall permanently hostage to a faction, however broadly the term may be defined. The federal Parliament has fallen permanently hostage to the immigrants. Federal criminal laws enacted by the immigrants for the immigrants, but assumed to apply to treaty Indians, raise the question of legitimacy of the law. Moreover, in the post-colonial order, no federal law or policy can extinguish constitutional rights, especially those involved in the treaty order.

In 1905, after most of the prerogative treaties²⁶ had been ratified, the province of Saskatchewan was created out of the North-West Territories by federal statute.²⁷ This statute affirms the distribution of authority over the administration of criminal matters in the *Constitution Act, 1867*. It unilaterally divided the treaty order. The terms of the treaties, however, continued restrictions on the province's authority. As previously described, they gave equal authority to the First Nations. These distinct sources for the administration of justice should have been reconciled in 1905. However, such a reconciliation was ignored. Now that we are faced with the failure of the justice system to Aboriginal Peoples, those distinct sources of administration must be reconciled.

In the reconciliation, an additional factor must be acknowledged. Independent of the treaties, Saskatchewan law has always been limited by Aboriginal law. Since the First Nations ceded land to the Crown, this restriction was part of the reception of English law in the province of Saskatchewan. The actual date of the reception of English statutory, as well as common, law is fixed by federal statute as 1870.²⁸ Where English laws were received by a colony by cession to the Crown, British common law provided that the law of the Aboriginal Peoples continued in force in the territory, except in matters involving the relations between First Nations and the new British sovereign.²⁹ The Aboriginal system of private law, including criminal law, continued in force.³⁰ Only imperial statutes could alter these Aboriginal laws. Thus, the reception of English laws in Saskatchewan was limited by both the Aboriginal and treaty rights of the First Nations. Section 35 of the 1982 Act has constitutionalized these restrictions on the provincial legislature and has implications in the administration of justice.

DILEMMAS

In law, it is commonplace for historical agreements to impose a burden upon those that come after them. As a result, the successors face many

dilemmas. In the past, the Canadian order has pretended that the treaty order belongs to some obscure prehistory. These treaty obligations have been ignored or misunderstood by the federal and provincial governments. The imposition of British concepts of coercive order and the criminal system created, and continues to create, fundamental conflicts with the treaty order. Colonial and racial domination were neither innocent nor decorous processes. Often, these processes were sanctified as law. Yet most of the inquiries and commissions into the administration of justice among Aboriginal Peoples have isolated systemic racism as a predominant and continuing source of problems in the legal system. This has created the current crisis in the administration of justice that this Conference seeks to explore.

In British thought, the origin of and justification for a court of law and legislation has rarely been understood to be the need for law itself. The constitutional vision of Canada has always been of government-shared authority. The colonial experience of Canada can be understood to be the need to choose between orders, or to suppress a multiplicity of laws with unitary law, or to impose upon the orders or laws a hierarchy. To the immigrants and their political representatives, the central problem of Canada has been one of too many laws, not the absence of law. There were the treaty order, Aboriginal customs, French civil law, British common law, federal law, and provincial and municipal law. The immigrants' response was to create unified laws, legal hierarchy and interpretive monopolies.

Outside of the comprehensive treaty provision for peace and good order, Canada, in its political and legal life, began and continues as a nation of immigrants, a collection of different peoples and strangers. Under the constitutional acts, the federal government imposed an artificial uniformity over the potentially endless diversities of the provinces and the immigrants. This uniformity was required by the theory of formal equality before the law. Order and freedom in Canada were to be established by impersonal and neutral public rules. Valid though they may have been among the immigrants, these federal laws were neither impersonal nor neutral when applied to First Nations and their members.

Impersonal and neutral laws embody more than the values of a particular group. The federal *Criminal Code* and provincial administration of the Code represented the cultural interests of the British immigrants and rejected the treaty order. Even if considered constitutionally valid, which is still unresolved, such domination of Aboriginal Peoples by the values of a particular group is neither impersonal nor neutral. By calling such domination "law," the governments tarnished the notion of law in the treaty order. The federal and provincial actions left the notion of law among First Nations without any justification or support—for the oppressed seldom love the laws that limit their freedom.

In creating the legal hierarchy of Canada, the colonial federal and provincial law-makers did not seek to protect the treaty order, instead they sought to replace the protected space and structure of Indigenous federations with immigrants' popular desires and judicial interpretative methods. Modern apologists of the resulting legal hierarchy and its interpretive monopoly often justify the violation of the treaty order by complaining of too much law or of unclear laws. Both positions acknowledge that the federal government, each province or each First Nation has a normative order and can generate distinctive responses to any normative problem of substantial complexity. In fact, the apologists see this as a problem. The problem of too much law, unclear law or differences of opinion about the legitimacy of any positive law presupposes that one understanding must be superior to those employed by others. Alternatively, this view presupposes that only certain entities or people are entitled to create a normative order. This view is contrary to the justification of order and freedom in the constitutional order of Canada, as well as to its quest for a democratic order.

In a multicultural Canada and in a global intellectual world of "subjective values," this unitary sentiment of a privileged understanding is oppressive and itself destructive of freedoms. Confronting the luxuriant growth of hundreds of Indigenous and immigrant legal inheritances in Canada, any legal order that asserts that one tradition is law and destroys, or tries to destroy, the rest is juripathic.

Any unitary view of judicial interpretation of the treaty order and criminal justice orders confuses the status of interpretation with the status of political domination. It legitimates the use of force to maintain a certain privileged position. In the history of Canada, the immigrant democracies have held the Indigenous Peoples hostage. Although asserting a regulative function that permits a life of law rather than of violence, the courts have ignored the terms of the Aboriginal and treaty rights and Indigenous legal orders, wrapping themselves in the mantle of distant British political traditions and laws.

After the enactment of the *Constitution Act, 1982*, the Supreme Court of Canada has held that it is no longer acceptable to be bound by the judicial biases and prejudice of another era, and that "treaties and statutes relating to Indians should be liberally construed and doubtful expressions resolved in favour of the Indians."³¹ It also held that section 35 of the 1982 Act did not constitutionalize the existing bureaucratic law of Canada or the provinces affecting Indians.³² Despite the clear wording of the treaties in creating the First Nations as full partners in the administration of justice and despite the over-representation of Aboriginal people in correctional institutions, traditional hostile biases and prejudices continue. Both the

federal and provincial governments continue to view the treaties and their obligations as relics of the past that can be ignored with impunity. They continue to assume that federal statutes can override the treaties. In the search for solutions to the criminal justice problem, they continue to ignore the treaty order.

The federal and provincial governments' lack of clear initiatives for full compliance with their constitutional obligations under the treaties continues to create frustration, anger and conflict. The challenge for this Conference and the challenge for the Canadian legal order is for the federal, provincial and treaty orders to work together as partners. The constitutional restoration of the treaty order mandates a harmonization between the three orders. The dual-order synthesis of the administration of justice seems to be both incoherent and fatally incomplete. It was conceived and used as an expression of immigrant values. The harmonization will create many quandaries, particularly as structural issues of the legitimacy of the *Criminal Code* over Aboriginal people protected by treaties and the First Nations' role in the administration of justice are confronted.

There are many other issues to be resolved in the Conference, but none may be as important as recognition that the treaties have already created the mechanism to resolve the issues. The "peace and good government" clauses are involved in any discussion of self-government, law enforcement, the administration of justice, validating new justice models, and healing and sentencing circles. The treaty articles will not resolve the issues of systemic racism and prejudice, but they will create the constitutional space and involvement of the First Nations in correcting these false beliefs.

NOTES

- 1 The Act is a statute of the United Kingdom and part of the Constitution of Canada (*Constitution Act, 1982*), s. 53(2). It established the rules of federalism in the British North American colony. Peter Hogg, *Constitutional Law of Canada*, (Toronto: Carswell, 1985), 2.
- 2 Section 91(27) confers on the federal Parliament the power to make laws in relation to "[T]he Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters."
- 3 Section 92(14) confers on provincial legislatures the power to make laws in relation to "[T]he 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."
- 4 This is an imperial statute of the parliament of the United Kingdom that terminated that parliament's authority over Canada. It does not purport to be a codification or even a consolidation of Canada's constitutional law. It does not attempt to integrate its two statutes into earlier constitutional instruments. Hogg, *Constitutional Law of Canada*, 5.

- 5 Section 35(1) states: "The existing aboriginal and treaty rights of the
aboriginal peoples of Canada are hereby recognized and affirmed." Section
35(2) provides that "aboriginal peoples of Canada" includes the Indian,
Inuit and Métis peoples of Canada. Section 35(4) provides that "Notwithstanding
any other provision of this Act, aboriginal and treaty rights referred to in
subsection (1) are guaranteed equally to male and female persons."
- 6 Section 52(1) of the *Constitution Act, 1982* provides that "[T]he Constitution
of Canada is the supreme law of Canada, and any law that is inconsistent
with the provisions of the Constitution is, to the extent of the inconsistency,
of no force or effect." This is often called the supremacy clause.
- 7 Since King George III's *Royal Proclamation of 1763* reserved unceded
Aboriginal land in the West as Indian Country, the Indian Nations were
protected by the imperial Crown. The *Royal Proclamation of 1763* is one of
the founding constitutional documents of Canada.
- 8 Under section 146 of the *Constitution [B.N.A.] Act, 1867*, the federal
government admitted these reserved lands as a territory of Canada (*Rupert's
Land and North-Western Territory Order, 1870* (U.K.).
- 9 Hogg, *Constitutional Law of Canada* (1977), 242.
- 10 The treaty process followed the requirements of the *Royal Proclamation of
1763*.
- 11 Morris, *The Treaties of Canada with the Indians of Manitoba and North-West
Territories, including the Negotiations On Which They Are Based* (Toronto:
Belfords, Clarke & Co., 1880), 355.
- 12 A. C. Hamilton and C. M. Sinclair, *Report of the Aboriginal Justice Inquiry of
Manitoba*, vol. I: *The Justice System and Aboriginal People* (Winnipeg: Government
of Manitoba, 1991), 17-46.
- 13 In Treaties 8 and 10 the chiefs promised they would maintain peace. No
mention was made about good order.
- 14 The opening words of section 91 confer on the federal Parliament the power
"to make Laws for the Peace, Order and good Government of Canada, in
relation to all Matters not coming within the Classes of Subjects by this Act
assigned exclusively to the Legislatures of the Provinces."
- 15 This raises some interesting issues on the application of the United Nations
Human Rights Covenants that are part of the federal law, but that have not
been ratified by the provincial legislatures.
- 16 This phrase is Treaty 2 terminology.
- 17 Treaty 2 does not have any mention of hunting, trapping and fishing rights.
Special exemptions were made for certain tracts designated for settlements,
mining, lumbering, trading and other purposes.
- 18 Hogg, *Constitutional Law of Canada*, 244.
- 19 A. Jacomy-Millette, *Treaty Law in Canada* (Ottawa: University of Ottawa
Press, 1975), 207-08.
- 20 Ibid., 208-16.
- 21 Hogg, *Constitutional Law of Canada*, 245.
- 22 Ibid., 249. Mostly commercial treaties fall into this class.

- 23 It provides "[t]he Parliament and government of Canada shall have all powers necessary or proper for performing the obligation of Canada or of any province thereof, as part of the British Empire, toward foreign countries, arising under treaties between the Empire and such foreign countries."
- 24 R.S.C. 1985, App. II, No. 31. Clause 2 provides the governor-general is authorized "to exercise all power and authorities lawfully belonging to Us [the Crown] in respect of Canada."
- 25 The action of the federal Parliament indicates a partial and biased understanding of the treaty order before the *Criminal Code*. In the 1881 amendments to the *Indian Act*, all Indian agents were made justices of the peace. Although the treaties reserved the peace and good order to the chiefs and headmen, the federal Parliament empowered its Indian agents to conduct trials anywhere in the ceded territory or the reserve as was "conducive to the ends of justice." S.C. 1882, c. 30, s. 3; 1884, c. 27, ss. 22-23. In 1884, the Indian agents were delegated authority over offences under the Act or over "any other matter affecting Indians." 1884, c. 27, ss. 22-23. In 1886, the federal Parliament expressly limited the jurisdiction of Indian agents to violations under the *Indian Act*, thus excluding general and criminal jurisdiction. Presumably, these sections were attempts to fulfil the treaty obligations. In 1892, the *Criminal Code* was enacted. S.C. 1892, c. 29. This enactment was interpreted as repealing the existing criminal law sections in *Indian Act*, including sex crimes among Indian offenders. In 1894, the federal parliament restored these provisions in the *Indian Act*. S.C. 1894, c. 32, s. 8. In certain sections of the *Criminal Code* (sex offences, prostitution, vagrancy and aggressive political activity when conducted by three or more Indian or Métis), Indian agents were given concurrent jurisdiction over Indians with other judges.
- 26 Treaties 4, 6b, 8. Treaty 10 was signed the following year, 1906.
- 27 *Saskatchewan Act*, 1905 (Can.). Manitoba and Alberta also take the form of federal acts; other provinces were created by imperial statutes. Hogg, *Constitutional Law of Canada*, 31-36.
- 28 This is the date of the admission of the North-West Territories to Canada as a federal territory under s. 146 of the *Constitution Act, 1867*.
- 29 Hogg, *Constitutional Law of Canada*, 26-27. In settled colonies, the reception of English law is limited by the circumstances of the colony. If a rule was unsuitable for the circumstances, the law was deemed never to have been received by the colony.
- 30 Hogg, *Constitutional Law of Canada*, 26.
- 31 *R. v. Nowegijick*, [1983] 1 S.C.R. 29, [1983] 2 C.N.L.R. 89 at 94. *R. v. Simon*, [1985] 2 S.C.R. 387, [1986] 1 C.N.L.R. 153. *R. v. Sioni*, [1990] 1 S.C.R. 1025, [1990] C.N.L.R. 127.
- 32 *R. v. Sparrow*, [1990] 1 S.C.R. 1075.