



Case in Brief: ***R. v. Boudreault***

Judgment of December 14, 2018 | On appeal from the Courts of Appeal of Quebec and Ontario

Neutral citation: 2018 SCC 58

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***The mandatory victim surcharge that everyone convicted of a crime has to pay is unconstitutional, the Supreme Court has ruled. The majority said it was cruel and unusual punishment, and struck it down.***

The *Criminal Code* says that anyone found guilty of a crime has to pay a “victim surcharge.” The amount depends on the type of crime. It is 30% of any fine charged. If there is no fine, it is \$100 for every summary conviction count and \$200 for every indictable (pronounced “in-DYE-ta-bull”) count. (These are different types of charges, with indictable counts being more serious.) The surcharge has to be paid even if the judge gives the person a “discharge,” meaning there is no other punishment. The money is meant to help victims.

A lot of people who commit crimes are poor. Many live with addictions or mental health issues. Sometimes they simply can't pay. Before 2013, a judge could choose not to make someone pay the surcharge if it would cause too much hardship. Parliament changed the law in 2013 to say that judges had to impose it no matter what. They could increase it, but couldn't lower it. In hardship cases, the most judges could do was give the person more time to pay.

This case involved seven people appealing four different decisions in two provinces. In each case, the offenders said they couldn't afford the surcharge. One person was ordered to pay \$1,400. He was homeless, addicted, and unemployed, with a yearly income of only \$4,800. Another was ordered to pay \$700. He had addiction and mental health issues and had only \$136 each month after food and housing were paid for. Other people had different physical and mental health issues, and some struggled with addictions. All lived in poverty. But they were still ordered to pay hundreds or thousands of dollars. Even judges making the orders said the offenders couldn't afford to pay, but their hands were tied.

The offenders argued this violated section 12 of the *Canadian Charter of Rights and Freedoms*, which is part of Canada's constitution. Section 12 says that “everyone has the right not to be subjected to any cruel and unusual treatment or punishment.” The lower courts and all judges at the Supreme Court accepted that the surcharge was “punishment”; the question was whether it was “cruel and unusual.” “Cruel and unusual” means more than just harsh. It means punishment so unacceptable and extreme that society shouldn't allow it.

The Quebec and Ontario Courts of Appeal said the surcharge wasn't cruel and unusual punishment and was constitutional. They said all the offenders had to pay it, while conceding they probably wouldn't be able to.

The majority at the Supreme Court disagreed. It said the mandatory victim surcharge was, in fact, cruel and unusual punishment. The surcharge created a crushing financial burden on very poor people (for them, a few hundred dollars is more like \$23,000 for an average Canadian). People who couldn't pay were constantly under threat of being arrested and jailed, even if only briefly, for not paying. They might also be harassed by collections agencies. They could end up in court over and over again to explain why they hadn't paid, which amounts to public shaming. And the surcharge was basically an unending punishment, because all of this would continue until it was paid. Offenders couldn't apply for a pardon that might allow them to get work and move forward. The majority said this also burdened the justice system, which spent more trying to get poor people to pay the surcharge than it would ever get back.

The majority noted that a sentence works best if it is made for the individual. The mandatory victim surcharge didn't allow judges to look at a person's circumstances, or the best way to rehabilitate them. It also didn't make sense sometimes—for example, five counts of vandalism would have a higher surcharge than a count of murder.

This decision means that judges can't order victim surcharges anymore. It doesn't mean all victim surcharges ordered in the past are canceled. When a law is struck down in court, it is struck down retroactively only for the people who fought the case. But the majority noted that cruel and unusual punishment happens both when it is imposed and when it is enforced. A convicted person who was ordered to pay a surcharge before the law was struck down, but hasn't, could challenge it when brought to court to explain the non-payment.

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**Breakdown of the Decision:** *Majority:* Justice Sheilah [Martin](#) allowed the appeals (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#), and [Brown](#) agreed) | *Dissenting:* Justice Suzanne [Côté](#) said the surcharge wasn't cruel and unusual punishment, and also didn't violate section 7 rights to liberty and security of person, so would have dismissed the appeals (Justice [Rowe](#) agreed)

**More information:** [Decision](#) | Case information: [37427](#), [37774](#), [37782](#), and [37783](#) | [Webcast of hearing](#)

**Lower court rulings:** **37427 (Quebec):** [sentencing decision](#) (Court of Quebec, in French only), [appeal](#) (Court of Appeal) | **37774 (Ontario):** [Charter application](#) (Court of Justice), [summary conviction appeal](#) (Superior Court), [appeal](#) (Court of Appeal) | **37782 (Ontario):** sentencing decision (Court of Justice, not available online), [appeal](#) (Court of Appeal) | **37783 (Ontario):** [Charter application](#) (Court of Justice, in French only), [summary conviction appeal](#) (Superior Court), [appeal](#) (Court of Appeal)

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