KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 212**

Date: **2025 12 17**
File No.: KBG-RG-00063-2023
Judicial Centre: Regina

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BETWEEN:

THE ATTORNEY GENERAL FOR SASKATCHEWAN

APPELLANT

- and -

AUSTIN GUY OUELLETTE

RESPONDENT

Counsel:

Katherine Roy for the Crown
Andrew M. Mason for the respondent

JUDGMENT TOCHOR A.C.J.
December 17, 2025

I. INTRODUCTION

[1] Austin Guy Ouellette was a truck driver attempting to deliver a load of fertilizer to a farm site near the City of Regina. He took a wrong turn and ended up on a road he did not plan to be on. His semi-truck and trailer unit weighed more than the allowable limit for the road, and he was therefore charged with violating the weight restrictions contrary to s. 38 of *The Highways and Transportation Act, 1997,* SS 1997, c H-3.01 [*HTA*]. At trial, he was convicted.

[2] At the sentencing hearing, Mr. Ouellette did not object to the fine imposed under the *HTA*. He acknowledges the *HTA* specifies the amount of the fine the Court must impose.

[3] However, he argues the surcharge imposed under s. 10 of *The Victims of Crime Act*, *1995*, SS 1995, c V-6.011 [*VCA*] amounts to cruel and unusual punishment under s. 12 of the *Canadian Charter of Rights and Freedoms,* Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. In response, the Crown argues the surcharge provisions of the *VCA* do not amount to a punishment as defined in *R v Boudreault*, 2018 SCC 58, [2018] 3 SCR 599 [*Boudreault*].

[4] The Justice of the Peace imposed the mandatory fine of $15,985. However, she accepted Mr. Ouellette's argument and refused to impose the mandatory surcharge of $6,394. She ruled the operation of the surcharge provisions in s. 10 of the *VCA* is inconsistent with s. 12 of the *Charter.* She also held the operation of the surcharge provisions is contrary to the principles set out in *Boudreault.* The Justice of the Peace therefore held s. 10 of the *VCA* is unconstitutional and of no force and effect.

[5] The Crown appeals this ruling. The crux of this appeal is whether the Justice of the Peace was correct when she ruled the operation of the surcharge provisions in s. 10 of the *VCA* violates s. 12 of the *Charter*.

[6] For the following reasons, and because of the previous decisions of the Saskatchewan Court of King's Bench by which I am bound, I conclude s. 12 of the *Charter* is not engaged in these circumstances. It therefore follows the learned Justice of the Peace erred in concluding the operation of the surcharge provisions in s. 10 of the *VCA* is unconstitutional and of no force and effect.

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[7] In the end analysis, I must overturn the decision of the Justice of the Peace and allow the Crown appeal.

II. THE LEGISLATION IN ISSUE

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[8] Section 10 of the *VCA* provides mandatory direction on how the amount of surcharge is **determined** and how a payment of the surcharge must be **applied**:

> **Surcharge**
>
> **10** (1) Where a person is convicted of an offence pursuant to an enactment and the offence has not been excluded from the application of this section by the regulations:
>
> (a) a surcharge is conclusively deemed to have been imposed against the person; and
>
> (b) the person shall pay the surcharge.
>
> (2) The minister may cause the surcharge to be collected in the same manner as a fine.
>
> (3) Where a fine and surcharge are imposed on a person convicted of an offence described in subsection (1):
>
> (a) the surcharge is to be collected with the fine; and
>
> (b) any payment made by or on behalf of the person convicted of the offence is to be applied first to payment in full of the surcharge and then to payment of the fine.
>
> (4) The amount of the surcharge is the amount or the proportion of the fine prescribed in the regulations.
>
> [Emphasis added]

[9] The calculation of the surcharge is mandated in s. 3 of *The Victims of Crime Regulations, 1997,* RRS c V-6.011 Reg 1 [*Regulations*]:

> ***Amount of surcharge***
>
> **3** For the purposes of section 10 of the Act, the amount of a surcharge is:

> …
>
> (e) 40% of the fine imposed rounded off to the nearest dollar if the fine imposed is greater than $500;
> [Emphasis added]

[10] For the purposes of this appeal, there are two important features to these provisions.

[11] First, s. 10(4) of the *VCA* dictates how a surcharge must be calculated. The section requires the sentencing court to automatically impose a surcharge as calculated in the *Regulations*. Here, a surcharge of 40% of the fine is required by s. 3(e) of the *Regulations*.

[12] A court has no jurisdiction to consider whether a person has the means to pay the mandatory surcharge and no jurisdiction to either forego or reduce the amount of the surcharge. This leads Mr. Ouellette to argue this section of the *Regulations* is inconsistent with the ruling in *Boudreault*.

[13] Second, s. 10(3)(b) of the *VCA* requires that a payment made by a convicted person shall be first applied to payment in full of the mandatory surcharge, and only then to payment of the fine. Mr. Ouellette argues this section of the *VCA* creates a risk of jail if someone cannot pay both the fine **and the surcharge**, and this result therefore constitutes a punishment under s. 12 of the *Charter*.

III. STANDARD OF REVIEW

[14] Both Mr. Ouellette and the Crown agree the core issue in this appeal is a question of law and the standard of review is correctness. In the oft-cited case of *R v Helm*, 2011 SKQB 32 at para 20, [2011] 6 WWR 641, it was held:

> [**20**] On a question of law, the standard is correctness, and the appellate court should intervene if the decision is not correct in law unless, in the case of defence appeals, there has been no substantial wrong or miscarriage of justice that has

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> occurred. See *R. v. Shepherd*, 2007 SKCA 29, [2007] 4 W.W.R. 659; and *R. v. Henry (B.)*, 2006 SKQB 469, 286 Sask. R. 154.

[15] See, to the same effect: *R v Sideen*, 2024 SKKB 79 at para 12, and *R v Pacquette*, 2025 SKKB 145 at para 20.

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IV. WAS THE RULING CORRECT?

[16] The Justice of the Peace ruled s. 12 of the *Charter* is engaged in these circumstances because the surcharge has a significant impact on the liberty, security, quality and dignity of those subject to its application. She then concluded the surcharge renders the sentences – for a reasonable hypothetical offender – grossly disproportionate to a fit sentence. She further concluded that the operation of the surcharge provision creates the prospect of default jail time for Mr. Ouellette. Finally, she concluded s. 12 of the *Charter* was violated because of a lack of judicial discretion to vary the surcharge in appropriate cases. The Justice of the Peace therefore ruled s. 10 of the *VCA* offends s. 12 of the *Charter* and she declined to impose the surcharge.

[17] A lynchpin in the reasoning of the Justice of the Peace is that s. 12 of the *Charter* is engaged in these proceedings. However, previous rulings from this Court come to the opposite conclusion.

[18] In *Envirogun Ltd. v R*, 2019 SKQB 89, [2019] 9WWR 303 [*Envirogun*], Kalmakoff J. (as he then was) ruled that *Boudreault* does not apply to surcharges imposed on fines for provincial offences. He therefore saw no issue with the imposition of the mandatory surcharges for provincial offences. He stated, at para. 109:

> [**109**] … With respect, I do not see the decision in *Boudreault* as being applicable in the circumstances. Nothing in *Boudreault*, as I read it, purported to strike down legislative provisions imposing mandatory surcharges imposed in addition to fines for provincial, non-*Criminal Code* offences.

[19] In *R v Grover*, 2019 SKQB 190, MacMillan-Brown J. concluded the surcharge applies to provincial offences. In doing so, she expressly adopted the reasoning in *Envirogun* at para 40. Leave to appeal the decision in *Envirogun* was subsequently denied at 2020 SKCA 40 (without reference to s. 12 of the *Charter* or *Boudreault*).

[20] In *R v Grover Holdings Ltd*., 2020 SKQB 103, 100 MPLR (5th) 93, Dovell J. expressly adopted the reasoning in *Envirogun* at para 26. She, too, concluded the reasoning in *Boudreault* does not apply to surcharges that accompany fines for provincial offences.

[21] In *R v Grover Holdings Ltd*., 2020 SKQB 104, 100 MPLR (5th) 101, Dovell J. neatly summarized the case law and re-iterated *Boudreault* is not applicable to surcharges on fines for provincial offences, holding at paras. 21-23:

> [**21**] With regard to the Justice of the Peace adding to each fine a surcharge, Grover Holdings Ltd. argued that the Supreme Court of Canada's reasoning in *R v Boudreault*, 2018 SCC 58, [2018] 3 SCR 599 [*Boudreault*], striking the victim surcharge provisions as being cruel and unusual punishment was applicable to these offences despite the previous case of this Court in *R v Grover*, 2019 SKQB 190 [*Grover 2019*], deciding otherwise following a previous decision of this Court in *R v Envirogun Ltd.*, 2019 SKQB 89 [*Envirogun*]. I disagree with Grover Holdings Ltd.'s argument in that regard.
>
> [**22**] Although Grover Holdings Ltd. has appealed our Court's decision in *Grover 2019* on the primary basis, I understand, of *Boudreault* being applicable to mandatory surcharges being imposed for a provincial offence, no decision has yet been rendered by the Court of Appeal that I know of.
>
> [**23**] Accordingly, the law as it presently stands regarding mandatory surcharges on provincial non-*Criminal Code* offences is as was set out by our Court in *Envirogun* and followed in *Grover 2019*. Those cases confirm that *Boudreault* is not applicable to legislative

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> provisions imposing mandatory surcharges imposed in addition to fines for provincial non-*Criminal Code* offences.
>
> [Emphasis added]

[22] The reasoning in the above cases is also supported in other jurisdictions. For example, in *R v Fisher,* 2022 ABPC 232, the Court stated:

> [**9**] …The jurisprudence from across Canada has consistently held that provincial victim surcharge regimes are unique in purpose and effect, and that these legislative enactments are not presumptively unconstitutional post-*Boudreault*: *New Glasgow (Town) v Jardine*, 2018 NSPC 53 at paras 6-12; *R v MacKinnon*, 2019 ONCJ 301 at para 17; *Toronto (City) v Alharirie*, 2019 ONCJ 461 at para 15; *R v Grover Holdings Ltd.*, 2020 SKQB 104 at paras 21-23; *R v Grover*, 2020 SKCA 40.
>
> [Emphasis added]

[23] Having reviewed these authorities, I nonetheless recognize that logical and compelling arguments may be made in favour of concluding the mandatory imposition of a 40% surcharge could result in a disproportionate sentence for a provincial offence. I acknowledge a reasoning pathway that might allow one to conclude the surcharge provisions are unconstitutional.

[24] However, because of the Court of Queen's Bench cases on point, I am not permitted to revisit this issue afresh and come to a different conclusion. Instead, the principle of comity requires me to follow suit with my judicial colleagues. It is not for me to sit on appeal of the rulings made by my colleagues; that is the duty of the Court of Appeal.

[25] As explained by Wimmer J. in *R v Wolverine and Bernard*, [1987] 3 WWR 475 (WL) (Sask QB) [*Wolverine*], judges are bound by the principle of comity to follow decisions of the colleagues of their Court, save for exceptional circumstances:

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> [**5**] It is true that the doctrine of stare decisis does not absolutely bind a judge of first instance to follow a prior decision of another judge of the same court, but a failure to do so is a disservice to litigants, lawyers, and inferior courts who are entitled to see the law as reasonably settled and certain. <u>It is for courts of appeal, not individual judges of equal jurisdiction, to correct judicial errors</u>.
>
> [Emphasis added]

[26] In *Wolverine*, the Court relies upon a number of previous authorities such as *Hansard Spruce Mills Limited (Re)* (1954), 13 WWR (NS) 285 (BCSC) at 286; *Canada Steamship Lines Ltd. v Minister of National Revenue*, [1966] CTC 255 (Ex Ct Can) at 259; and *R v Northern Electric Co. Ltd.*, [1955] 3 DLR 449 (Ont SC) at 449.

[27] Further, *Wolverine* is followed in all levels of court: see, for example, *R v Kortmeyer*, 2021 SKPC 10 at para 28, 483 CRR (2d) 40*; Bishay Estate v Maple Leaf Foods Inc.*, 2009 SKQB 326 at paras 22 and 28, 339 Sask R 284; *R v Moya*, 2020 SKQB 260 at para 38; *Honesty Property Co. Ltd. v Lemaigre*, 2004 SKCA 28 at para 4, 241 Sask R 313; and *Crook v Duxbury*, 2020 SKCA 43 at para 46, 447 DLR (4th) 154.

[28] In these circumstances, the principle of comity requires me to follow the line of authority epitomized by the ruling in *Envirogun*.

[29] Because of these rulings, I am required to conclude the reasoning in *Boudreault* does not apply to surcharges imposed on fines for provincial offences, and that s. 12 of the *Charter* is not therefore engaged. It then necessarily follows that the Crown appeal from the declaration of the Justice of the Peace must be allowed.

[30] In these circumstances, and because of the mandatory surcharge provisions, little is accomplished by remitting the matter back to the Justice of the Peace for disposition. Instead, it is preferable for me to impose the surcharge warranted by law.

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V. SUMMARY OF ORDERS

[31] In summary, I must allow the Crown appeal.

[32] I also impose upon Mr. Ouellette the mandatory surcharge of $6,394 in accordance with the provisions of s. 10 of *The Victims of Crime Act*, *1995* and s. 3(e) of *The Victims of Crime Regulations, 1997*. I give him time to pay of 12 months from the date of this ruling.

A.C.J.
M. D. TOCHOR

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