

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

BETWEEN:

**JESSICA ERNST**

Appellant

- and -

**ALBERTA ENERGY REGULATOR**

Respondent

---

**MOTION RECORD FOR LEAVE TO INTERVENE OF THE PROPOSED  
INTERVENER, CANADIAN CIVIL LIBERTIES ASSOCIATION**  
*Pursuant to Rules 55 and 59(2) of the Rules of the Supreme Court of Canada*

---

**CERNOS FLAHERTY SVONKIN LLP**

40 University Avenue  
Suite 710  
Toronto, ON M5J 1T1  
Fax: 647-725-5440

**Stuart Svonkin**

Tel: 416-855-0404  
Email: [ssvonkin@cfscounsel.com](mailto:ssvonkin@cfscounsel.com)

**Brendan Brammall**

Tel: 416-855-0415  
Email: [bbrammall@cfscounsel.com](mailto:bbrammall@cfscounsel.com)

**Michael Bookman**

Tel: 416-855-0414  
Email: [mbookman@cfscounsel.com](mailto:mbookman@cfscounsel.com)

Counsel for the Proposed Intervener,  
the Canadian Civil Liberties Association

**BORDEN LADNER GERVAIS LLP**

World Exchange Plaza  
100 Queen St, Suite 1300  
Ottawa, ON K1P 1J9

**Nadia Effendi**

Tel: 613.787.3562  
Email: [neffendi@blg.com](mailto:neffendi@blg.com)

Agent for the Proposed Intervener,  
the Canadian Civil Liberties Association

**ORIGINAL TO: Registrar of the Supreme Court of Canada**

**COPIES TO:**

**KLIPPENSTEINS**

160 John Street  
Suite 300  
Toronto, ON M5V 2E5  
Tel: 416-598-0288  
Fax: 416-598-9520

**Murray Klippenstein**

Email: [murray.klippenstein@klippensteins.ca](mailto:murray.klippenstein@klippensteins.ca)

**W. Cory Wanless**

Email: [cory.wanless@klippensteins.ca](mailto:cory.wanless@klippensteins.ca)

Counsel for the Appellant

**JENSEN SHAWA SOLOMON DUGUID  
HAWKES LLP**

800, 304 8<sup>TH</sup> Avenue SW  
Suite 800  
Calgary, AB T2P 1C2  
Tel: 403-571-1507  
Fax: 403-571-1528

**Glenn Solomon, Q.C.**

Email: [gsolomon@jssbarristers.ca](mailto:gsolomon@jssbarristers.ca)

**Laura Warner**

Email: [warnerl@jssbarristers.ca](mailto:warnerl@jssbarristers.ca)

Counsel for the Respondent

**NELLIGAN O'BRIEN PAYNE LLP**

1500 – 50 O'Connor Street  
Ottawa, ON K1P 6L2

**Christopher Rootham**

Tel: 613.231.8311  
Fax: 613.788.3667  
Email: [Christopher.rootham@nelligan.ca](mailto:Christopher.rootham@nelligan.ca)

Agent for the Appellant

**GOWLING LAFLEUR HENDERSON  
LLP**

160 Elgin Street  
Suite 2600  
Ottawa, ON K1P 1C3

**Jeffrey W. Beedell**

Tel: 613-786-1071  
Fax: 613-788-3587  
Email: [jeff.beedell@gowlings.com](mailto:jeff.beedell@gowlings.com)

Agent for the Respondent

## TABLE OF CONTENTS

<b>Tab</b>		<b>Page</b>
1	Notice of Motion for Leave to Intervene of the Proposed Intervener, the Canadian Civil Liberties Association (“CCLA”)	1
2	Affidavit of Sukanya Pillay, sworn September 14, 2015	7
A	Exhibit “A” – List of cases in which CCLA has been granted intervener or party status	12
3	MEMORANDUM OF ARGUMENT OF CCLA	34
	Part I – Statement of Facts	34
	Part II – Questions in Issue	35
	Part III – Statement of Argument	36
	Part IV – Costs	42
	Part V – Order Sought	42
4	Part VI – Table of Authorities	43
5	Part VII – Relevant Statutes	44
	1. Canadian Charter of Rights and Freedoms	44
	2. Energy Resources Conservation Act	46

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

BETWEEN:

**JESSICA ERNST**

Appellant

- and -

**ENERGY RESOURCES CONSERVATION BOARD**

Respondent

---

**NOTICE OF MOTION OF THE PROPOSED INTERVENER,  
THE CANADIAN CIVIL LIBERTIES ASSOCIATION  
(Motion for Leave to Intervene)**

---

**TAKE NOTICE** that the applicant, the CANADIAN CIVIL LIBERTIES ASSOCIATION (the “CCLA”), hereby applies to a judge of this Court pursuant to Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada* for an order granting the CCLA leave to intervene in the present appeal and, if leave be granted, permitting the CCLA to make both written and oral submissions through its counsel, and for such further or other order as the judge may deem appropriate.

**AND FURTHER TAKE NOTICE** that the motion shall be made on the following grounds:

**The CCLA’s Interest in the Appeal**

- a. The CCLA is a national, independent, non-partisan, non-profit, and non-governmental organization constituted in 1964 to promote respect for fundamental human rights and civil liberties.
- b. The CCLA has a long-standing, genuine, and continuing interest in the rights and civil liberties of Canadians, and a particular interest in ensuring that the *Canadian*

*Charter of Rights and Freedoms* (the “*Charter*”) is granted a broad and purposive interpretation by the government and the judiciary. The CCLA works to ensure that the government respects the rights of all Canadians, and, where the government violates individuals’ rights, that the judiciary holds the government to account. This judicial check on governmental power plays a pivotal role in the functioning of democracy.

- c. In this appeal, a constitutional question has been raised as to whether an immunity provision in a provincial statute can be interpreted to bar a claim against a provincial regulator for breaching an individual’s *Charter* rights under section 2(b) and from seeking a remedy for that breach under section 24(1). Specifically, the constitutional question is: “Is s. 43 of the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, constitutionally inapplicable or inoperable to the extent that it bars a claim against the regulator for a breach under s. 2(b) of the *Canadian Charter of Rights and Freedoms* and an application for a remedy under s. 24(1) of the *Canadian Charter of Rights and Freedoms*?” The CCLA, as an organization devoted to civil liberties, has a direct interest in assisting the Court in addressing this question.

### **The Position of the CCLA**

- a. If granted leave to intervene, the CCLA will focus on assisting this Court in addressing the stated constitutional question. As set out in more detail at paragraphs 16 to 23 of its Memorandum of Argument submitted in support of this motion, the CCLA will submit that that question must be answered “yes”. The CCLA will argue that a statutory immunity provision cannot be interpreted or applied to immunize a province from liability for a claim seeking a constitutionally permissible remedy for a breach of *Charter* rights, including a claim for damages under section 24(1). If it could be, a province would be free to insulate itself fully from any consequences for infringing the *Charter* rights of individuals within its power. In order to give effect and meaning to the guarantees contained in the *Charter*, it must be open to a court to provide an

appropriate and just remedy in each case where it finds that an individual's *Charter* rights have been breached. That remedial power cannot be extinguished or constrained *ab initio* by a blanket immunity provision, nor can it be shut down at the pleadings stage of an action before the plaintiff has an opportunity to develop her case.


### **The CCLA is Able to Make a Useful Contribution to the Resolution of this Appeal**


- a. The CCLA is dedicated to the furtherance of civil liberties in Canada and has several thousand paid supporters drawn from diverse backgrounds.
- b. The underlying purpose of the CCLA's work is the promotion and maintenance of a free and democratic society in Canada. Therefore, the CCLA pays special attention, in every issue on which it advocates, to the critical balance between, and reconciliation of, civil liberties and competing public interests.
- c. The CCLA has a history of assisting courts in cases relating to civil liberties, including in cases in which the availability of private law or *Charter* remedies has been considered. It has frequently been granted intervener status before this Court and all levels of courts and tribunals across Canada. If granted leave to intervene, the CCLA will provide this Court with a distinct perspective based on its experience, its broad membership, and its advocacy and research activities. This perspective will differ from that of the parties and any other interveners.
- d. If granted leave to intervene, the CCLA will ensure that its submissions are not duplicative of those made by the parties or any other interveners, and to ensure that it makes different and useful submissions to this Court.
- e. Granting this motion for intervention would not delay the appeal or prejudice the rights of the parties.
- f. Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*.
- g. If granted leave, the CCLA will not seek its costs and requests that no costs be awarded against it.

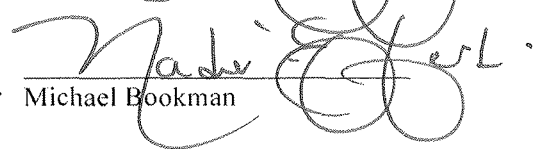
h. Such further and other grounds as counsel may advise and as may be permitted.

Dated at Toronto, Ontario this 24<sup>th</sup> day of September, 2015.

SIGNED BY

f   
 Stuart Svonkin

f   
 Brendan Brammall

f   
 Michael Bookman

**CHERNOS FLAHERTY SVONKIN LLP**  
40 University Avenue  
Suite 710  
Toronto, ON M5J 1T1  
Fax: 647-725-5440

**Stuart Svonkin**  
Tel: 416-855-0404  
Email: ssvonkin@cfscounsel.com

**Brendan Brammall**  
Tel: 416-855-0415  
Email: bbrammall@cfscounsel.com

**Michael Bookman**  
Tel: 416-855-0414  
Email: mbookman@cfscounsel.com

Counsel for the Proposed Intervener,  
the Canadian Civil Liberties Association

**BORDEN LADNER GERVAIS LLP**  
World Exchange Plaza  
100 Queen St, Suite 1300  
Ottawa, ON K1P 1J9

**Nadia Effendi**  
Tel: 613.787.3562  
Email: neffendi@blg.com

Agent for the Proposed Intervener,  
the Canadian Civil Liberties Association

**ORIGINAL TO:**

**ROGER BILODEAU, Q.C.**  
**Registrar of the Supreme Court of Canada**  
 Supreme Court of Canada  
 301 Wellington Street  
 Ottawa, ON K1A 0J1

**COPIES TO:**

**KLIPPENSTEINS**  
 160 John Street  
 Suite 300  
 Toronto, ON M5V 2E5  
 Tel: 416-598-0288  
 Fax: 416-598-9520

**Murray Klippenstein**  
 Email: murray.klippenstein@klippensteins.ca

**W. Cory Wanless**  
 Email: cory.wanless@klippensteins.ca

Counsel for the Appellant,  
 Jessica Ernst

**JENSEN SHAWA SOLOMON DUGUID  
 HAWKES LLP**  
 800, 304 8<sup>TH</sup> Avenue SW  
 Suite 800  
 Calgary, AB T2P 1C2  
 Tel: 403-571-1507  
 Fax: 403-571-1528

**Glenn Solomon, Q.C.**  
 Email: gsolomon@jssbarristers.ca

**Laura Warner**  
 Email: warnerl@jssbarristers.ca

Counsel for the Respondent,  
 Energy Resources Conservation Board

**NELLIGAN O'BRIEN PAYNE LLP**  
 50 O'Connor Street, Suite 1500  
 Ottawa, ON K1P 6L2  
 Tel: (613) 231-8311  
 Fax: (613) 788-3667

**Christopher Rootham**

Email:  
 Christopher.Rootham@nelligan.ca

Ottawa agent for the Appellant Jessica  
 Ernst

**GOWLING LAFLEUR HENDERSON  
 LLP**  
 160 Elgin Street  
 Suite 2600  
 Ottawa, ON K1P 1C3

**Jeffrey W. Beedell**  
 Tel: 613-786-1071  
 Fax: 613-788-3587  
 Email: jeff.beedell@gowlings.com

Ottawa Agent for the Respondent, Energy  
 Resources Conservation Board



NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

.

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

BETWEEN:

**JESSICA ERNST**

Applicant  
(Appellant)

- and -

**ENERGY RESOURCES CONSERVATION BOARD**

Respondent  
(Respondent)

---

**AFFIDAVIT OF SUKANYA PILLAY**  
**(Motion for Leave to Intervene)**

---

I, Sukanya Pillay, of the City of Toronto in the Province of Ontario, MAKE OATH AND SWEAR:

**Overview**

1. I am the General Counsel and Executive Director of the Canadian Civil Liberties Association (the “CCLA”). As such, I have knowledge of the matters to which I hereinafter depose, except where this knowledge is based on information from others, in which case I believe the information to be true.

2. The CCLA seeks leave to intervene in this important appeal concerning whether an immunity provision in a provincial statute can be interpreted so as to preclude an individual from seeking a remedy for a breach of her *Charter* rights under section 24(1). The CCLA has expertise, special knowledge, and a distinct perspective regarding the intersection of civil liberties and the enforcement of guaranteed rights and freedoms.

3. If granted leave to intervene, the CCLA will focus its submissions on assisting this Honourable Court in answering the constitutional question at the heart of this case. As set out in more detail at paragraphs 14 to 23 of its Memorandum of Argument submitted in support of this motion, the CCLA will argue, in summary, that a statutory immunity provision cannot be interpreted or applied to immunize a province from liability for a claim seeking a constitutionally permissible remedy for a breach of *Charter* rights, including a claim for damages under section 24(1). If it could be, a province would be free to insulate itself fully from any consequences for infringing the *Charter* rights of individuals within its power. In order to give effect and meaning to the guarantees contained in the *Charter*, it must be open to a court to provide an appropriate and just remedy in each case where it finds that an individual's *Charter* rights have been breached. That remedial power cannot be extinguished or constrained *ab initio* by a blanket immunity provision. Accordingly, the CCLA will submit that the constitutional question should be answered "yes".

#### **The CCLA**

4. The CCLA, founded in 1964, is a national, independent, non-partisan, non-profit, and non-governmental organization dedicated to the furtherance of civil liberties in Canada. The CCLA has several thousand paid supporters drawn from diverse backgrounds. A wide variety of persons, occupations, and interests are represented in the national membership.

5. The CCLA was constituted to promote respect for fundamental human rights and civil liberties and to defend and foster their recognition. In every issue on which the CCLA advocates, it directs its attention to the critical reconciliation of civil liberties and competing public interests. The underlying purpose of its work is to promote and maintain a free and democratic society in Canada.

6. Courts have recognized the CCLA's contribution to the development of the law in relation to civil liberties. For instance, in *Tadros v. Peel Regional Police Service*, 2008 ONCA 775 at para. 3, Associate Chief Justice O'Connor of the Ontario Court of Appeal commented that the CCLA:

has substantial experience in promoting and defending the civil liberties of Canadians and in examining the boundaries of acceptable police conduct.

7. Similarly, in *Prud'homme c. Rawdon (Municipalité de)*, 2009 QCCA 2046 at paras. 17-18, which involved the *Charter* guarantee of freedom of expression, the Quebec Court of Appeal stated of its decision to allow the CCLA's intervention:

À la simple lecture de la requête de CCLA, et en particulier au paragr. 5, a), b) c) d), je suis convaincu que son intervention sera vraisemblablement utile, à propos et donc opportune. Autrement dit, elle ne saurait être qualifiée d'inopportune, c'est-à-dire déplacée ou malvenue.

8. In *Batty v. City of Toronto*, 2011 ONSC 6862 at para. 22, Justice D. M. Brown commended the balanced assistance provided by the CCLA:

The Canadian Civil Liberties Association ("CCLA") moved to intervene as a friend of the Court. I heard the motion by teleconference last Thursday afternoon and granted the CCLA leave to intervene on terms. Let me say that I appreciate the assistance which counsel for the CCLA provided to me during the hearing. The CCLA acted as a true friend of the court.

9. The CCLA possesses a distinct awareness and understanding of many aspects of civil liberties, having frequently argued for and defended the rights of individuals. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Charter*. It has frequently been granted intervener status before courts and tribunals across Canada to present oral and written argument on civil liberties issues. An annotated list of many of the cases in which the CCLA has been granted intervener or party status is attached as hereto as Exhibit "A."

10. A recurring theme in the CCLA's submissions to the courts and to governmental bodies is the need to develop principled approaches to the reconciliation of interests that is almost inevitably required in cases involving civil liberties. In all of its work, the CCLA seeks to reconcile competing interests on a principled basis, and to assist courts and lawmakers in doing so as well.

### **The CCLA and Remediating Breaches of Individuals' Rights**

11. As a staunch defender of the rights of individuals to seek appropriate remedies when their rights are violated, the CCLA has made vital contributions to the jurisprudence on available remedies for breaches of *Charter* rights by intervening in cases before courts at many levels. The CCLA is a strong advocate for the ability of courts to craft both private and public law remedies that appropriately reflect the specifics of the case at issue.

12. Notably, the CCLA intervened before this Court in *Vancouver (City) v. Ward*, 2010 SCC 27, which established the framework for awarding *Charter* damages under section 24(1), and in *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, which considered and applied the *Ward* framework. In addition to those two cases, the CCLA has recently intervened in other cases in which the availability of private law or *Charter* remedies has been considered, including:

- *R. v. Harrison*, 2009 SCC 34, in which one of the issues was the appropriate application of section 24(2) of the *Charter* in cases where police have engaged in “blatant” and “flagrant” *Charter* violations;
- *R. v. Grant*, 2009 SCC 32, in which the issue was the appropriate legal test for the exclusion of evidence remedy under section 24(2) of the *Charter*; and
- *R. v. Nasogaluak*, 2010 SCC 6, in which the issue was the availability of sentence reductions as a remedy for violations of constitutional rights.

### **The CCLA's Interest and Distinct Perspective on this Appeal**

13. Given the CCLA's mandate to foster and protect fundamental rights and freedoms, the CCLA works to ensure that the law contains an effective remedial mechanism in the event of a *Charter* breach. Section 24(1) includes broad and permissive language, providing a court of competent jurisdiction the flexibility to craft an appropriate remedy.

14. I believe that, if granted leave, the CCLA's submissions will assist this Court in deciding the important issues raised in this appeal and will provide a perspective that is distinct from the anticipated submissions of the parties and any other interveners. Whereas the Appellant has particular interests at stake, and it is reasonable to expect that her submissions will be shaped by those interests and by the circumstances of her case, the CCLA's submissions will be rooted in

and informed by its commitment to ensuring and protecting the remedial integrity of the *Charter* not only in this case, but in future cases, including cases that may involve circumstances that differ considerably from the present case.

15. The CCLA's submissions will be uniquely grounded in the organization's mandate to ensure the protection and vindication of fundamental rights and freedoms, and in its extensive experience in addressing the issues that arise when those fundamental rights and freedoms have to be reconciled with or balanced against competing interests. In this case, that perspective will allow the CCLA to provide the Court with a useful and distinct perspective on how to reconcile the remedial authority granted in section 24(1) with the important policy concerns that give rise to statutory immunity provisions such as the one at issue here.

16. If granted leave, the CCLA's submissions will not be duplicative. The CCLA will ensure that its submissions will not mirror those of the parties or any other proposed interveners, and that it makes different and useful submissions to this Court.

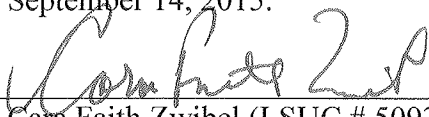
**Positions that the CCLA will Advance if Granted Leave to Intervene**

17. If granted leave, the CCLA will advance and elaborate on the positions outlined in paragraphs 14 to 23 of its Memorandum of Argument submitted in support of this motion for leave to intervene.

**Costs**

18. The CCLA will not seek costs and requests that no costs be awarded against it.

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario on  
September 14, 2015.




\_\_\_\_\_  
Cara Faith Zwibel (LSUC # 50936S)  
A Commissioner of Oaths in the Province of  
Ontario



\_\_\_\_\_  
**Sukanya Pillay**

This is Exhibit A referred to in the affidavit of Sukanya Pillay sworn before me, this 14<sup>th</sup> day of September 2015.

  
A COMMISSIONER FOR TAKING AFFIDAVITS

### Exhibit A – CCLA Interventions

Cases in which the CCLA has been granted intervener status include those listed chronologically below:

1. *R. v. Morgentaler*, [1976] 1 S.C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);
2. *Nova Scotia (Board of Censors) v. McNeil*, [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);
3. *R. v. Miller*, [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);
4. *Nova Scotia (Board of Censors) v. McNeil*, [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);
5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);
6. *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights*, including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);
7. *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);
8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);

9. *R. v. Dowson*, [1983] 2 S.C.R. 144, and *R. v. Buchbinder*, [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under section 508 of the *Criminal Code* after a private information has been received but before the Justice of the Peace has completed an inquiry (the CCLA intervened in *R. v. Dowson* before the Ontario Court of Appeal and the Supreme Court of Canada, and in *R. v. Buchbinder* before the Supreme Court of Canada);
10. *R. v. Oakes* (1983), 40 O.R. (2d) 660, in which the issue was whether the reverse onus clause in section 8 of the *Narcotic Control Act* violated an accused's right to be presumed innocent under the *Charter* (the CCLA intervened in the Court of Appeal);
11. *Re Ontario Film & Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80 (C.A.), in which the issue was whether a provincial law permitting a board to censor films violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
12. *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), in which the issue was whether a provision under the *Narcotic Control Act* permitting warrantless searches violated the *Charter's* guarantee of protection against unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
13. *Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* (1985), 16 D.L.R. (4th) 489 (Div. Ct.), in which the issue was whether the Law Society's prohibitions respecting fees advertising and communications with the media violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
14. *Canadian Newspapers Co. Ltd. v. Attorney-General of Canada* (1986), 55 O. R. (2d) 737 (H.C.), in which the issue was whether the provision in the *Criminal Code* limiting newspapers' rights to publish certain information respecting search warrants violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario High Court of Justice);
15. *R. v. J.M.G.* (1986), 56 O.R. (2d) 705 (C.A.), in which the issue was whether a school principal's seizure of drugs from a student's sock violated the *Charter's* protection from unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);
16. *Re Ontario Film & Video Appreciation Society and Ontario Film Review Board* (1986), 57 O.R. (2d) 339 (Div. Ct.), in which the issue was whether actions taken by a film censorship board violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);
17. *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated sections 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);
18. *Reference Re Bill 30, an Act to amend the Education Act (Ont.)*, [1987] 1 S.C.R. 1148, in which the issues were whether Bill 30, which provided for full funding for Roman Catholic



- separate high schools, violated the *Charter's* guarantees of freedom of conscience and religion and equality rights (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
19. *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641 (C.A.), in which the issue was whether an Ontario regulation which provided for religious exercises in public schools violated the *Charter's* guarantee of freedom of conscience and religion (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);
  20. *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, in which the issue was whether a man who impregnated a woman could obtain an injunction prohibiting the woman from having an abortion (the CCLA intervened in the Supreme Court of Canada);
  21. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, in which one of the issues was whether a provision in the *Canada Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
  22. *R. v. Keegstra*, [1990] 3 S.C.R. 697, in which the issue was whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
  23. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, in which the issues were whether the use for certain political purposes of union dues paid by nonmembers pursuant to an agency shop or Rand formula violated the *Charter* guarantees of freedom of expression and association (the CCLA intervened in the Supreme Court of Canada);
  24. *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was whether the rape shield provisions of the *Criminal Code* violated the *Charter* guarantee of a fair trial (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada of Canada);
  25. *R. v. Butler*, [1992] 1 S.C.R. 452, in which the issue was whether the obscenity provisions in section 163 of the *Criminal Code* violate the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
  26. *J.H. v. Hastings (County)*, [1992] O.J. No. 1695 (Ont. Gen. Div.), in which the issue was whether disclosure to municipal councilors of a list of social assistance recipients violated the protection of privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the CCLA intervened in the Ontario Court – General Division);
  27. *R. v. Zundel*, [1992] 2 S.C.R. 731, in which the issue was whether section 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
  28. *Ontario Human Rights Commission v. Four Star Variety* (October 22, 1993) (Ont. Bd. of Inquiry), in which the issues were whether convenience stores displaying and selling certain magazines discriminated against women on the basis of their sex contrary to the Ontario *Human Rights Code* and if the Board of Inquiry's dealing with the obscenity issue intruded on

- the *Charter* guarantee of freedom of expression (the CCLA intervened before the Board of Inquiry);
29. *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, in which the issue was whether a municipal by-law banning posters on public property violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);
  30. *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which the issues were: (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada);
  31. *Ontario (Attorney General) v. Langer* (1995), 123 D.L.R. (4th) 289 (Ont. Gen. Div.), in which the issue was the constitutionality of ss. 163.1 and 164 of the *Criminal Code* relating to child pornography (the CCLA intervened in the Ontario General Division);
  32. *Adler v. Ontario*, [1996] 3 S.C.R. 609, in which the issues were whether Ontario not funding of Jewish and certain Christian day schools violated the *Charter's* guarantees of freedom of conscience and religion and of equality without discrimination based on religion (the CCLA intervened in the Ontario General Division, the Ontario Court of Appeal, and the Supreme Court of Canada);
  33. *Al Yamani v. Canada (Solicitor General) (TD.)*, [1996] 1 F.C. 174 (T.D.), in which some of the issues were whether the provision in the *Immigration Act* regarding the deportation of permanent residents on the basis of membership in a class of organizations violated principles of fundamental justice contrary to section 7 of the *Charter* or the *Charter* guarantees of freedom of association and expression (the CCLA intervened in the Federal Court Trial Division);
  34. *R. v. Gill* (1996), 29 O.R. (3d) 250 (Ont. Gen. Div.), in which the issue was whether section 301 of the *Criminal Code*, which creates an offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario Court – General Division);
  35. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, in which some of the issues were whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada);
  36. *R. v. Stillman*, [1997] 1 S.C.R. 607, in which the issue was the explication of the circumstances, including police conduct, that would bring the administration of justice into disrepute within the meaning of subsection 24(2) of the *Charter* if unconstitutionally obtained evidence were to be admitted into a proceeding (the CCLA intervened in the Supreme Court of Canada);

37. *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925, in which the issue was whether the law should permit the state to interfere with the privacy, dignity, and liberty of a pregnant woman where her actions may expose the fetus to serious injury (the CCLA intervened in the Supreme Court of Canada);
38. *R. v. Lucas*, [1998] 1 S.C.R. 439, in which the issue was whether section 300 of the *Criminal Code*, which creates the offence of publishing a defamatory libel, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
39. *Thomson Newspapers Co. (c.o.b. Globe and Mail) v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, in which the issue was whether section 322.1 of the *Canada Elections Act*, which prohibits the publication of public opinion polls during the last 72 hours of a federal election campaign, constitutes a violation of the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);
40. *Daly v. Ontario (Attorney General)* (1999), 44 O.R. (3d) 349 (C.A.), in which the issue was the extent to which Ontario's constitutionally protected Catholic separate school boards must adhere to the restrictions on employment discrimination contained in the *Ontario Human Rights Code* (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
41. *R. v. Mills*, [1999] 3 S.C.R. 668, in which the central issue was the appropriate balance to be struck between the rights of the accused and the rights of complainants and witnesses with respect to the production of medical and therapeutic records (the CCLA intervened in the Supreme Court of Canada);
42. *Moumdjian v. Canada (Security Intelligence Review Committee)*, [1999] 4 F.C. 624, in which one of the issues was the constitutionality of *Immigration Act* provisions which impacted on the freedom of association (the CCLA intervened in the Federal Court of Appeal);
43. *United Food and Commercial Workers, Local 1518 (U.F.C.W.) v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, and *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288 P.*, [1999] 2 S.C.R. 1136, in which the issue was whether leafleting by striking employees at non-struck workplaces is constitutionally protected expression (the CCLA intervened in the Supreme Court of Canada);
44. *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), in which the issue was whether the provision in section 810.1 of the *Criminal Code*, which permits a court to impose recognizance on a person likely to commit sexual offences against a child, violates section 7 of the *Charter* (the CCLA intervened in the Ontario Court of Appeal);
45. *Martin Entrop and Imperial Oil Ltd* (2000), 50 O.R. (3d) 18 (C.A.), in which one of the issues was the legality of an employer testing employees' urine for drug use (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);
46. *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, in which one of the issues was whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border

- unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada);
47. *Toronto Police Association v. Toronto Police Services Board and David J. Boothby* (Ont. Div. Ct. Court, File No. 58/2000), in which the issue was the propriety of police fundraising and political activities, and the validity of a by-law and order issued by the Toronto Police Services Board and the Chief of Police, respectively, regarding police conduct (the matter settled prior to the hearing);
  48. *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under section 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
  49. *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe Streets Act* prohibiting certain forms of soliciting violate subsection 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal);
  50. *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated section 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
  51. *R. v. Sharpe*, [2001] 1 S.C.R. 45, in which the issue was whether the *Criminal Code* prohibition of the possession of child pornography is an unreasonable infringement on the right to freedom of expression under the *Charter* (the CCLA intervened in the Supreme Court of Canada);
  52. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S. C. R. 772, in which the CCLA supported a private university's claim to be accredited for certification of its graduates as teachers eligible to teach in the public school system, despite the fact that the university's religiously-based code of conduct likely excluded gays and lesbians (the CCLA intervened in the Supreme Court of Canada);
  53. *Ross v. New Brunswick Teachers' Association* (2001), 201 D.L.R. (4th) 75 (N.B.C.A.), in which one of the issues was the extent to which the values underlying the common law tort of defamation must give way to the *Charter* values underlying freedom of expression, especially where a claimant who asserts the former at the expense of the latter freely enters the public arena (the CCLA intervened in the New Brunswick Court of Appeal);
  54. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), in which the issue concerned the balance to be struck between freedom of religion and the right to equality (the CCLA intervened in the Ontario Superior Court of Justice);
  55. *Chamberlain v. The Board of Trustees of School District #36 (Surrey)*, [2002] 4 S.C.R. 710, which involved the balancing of freedom of religion and equality rights in the context of a public school board's approval of books for a school curriculum (the CCLA intervened in the Supreme Court of Canada);

56. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the *General Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under subsection 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal);
57. *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, in which the issue concerned the extent to which the common law regarding secondary picketing should be modified in light of *Charter values* (the CCLA intervened in the Supreme Court of Canada);
58. *Lafferty v. Parizeau* (SCC File No. 30103), [2003] S.C.C.A. No. 555 (leave granted but settled before hearing), which examined the application of *Charter* freedom of expression values to defamation and the defense of fair comment (the CCLA intervened in the Supreme Court of Canada, but the matter settled prior to hearing);
59. *R. v. Malmo-Levine, R. v. Clay, R. v. Caine*, [2003] S.C.J. No. 79, in which one of the issues was whether the criminal prohibition against the possession of marijuana violates section 7 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
60. *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, which examined the appropriate scope of both the tort of abuse of public office and the tort of negligent supervision of the police, and the appropriate legal principles to be applied when addressing the issues of costs orders against private individuals of modest means who are engaged in public interest litigation (the CCLA intervened in the Supreme Court of Canada);
61. *La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et al. v. Municipalité du village de Lafontaine, et al.*, [2004] 2 S.C.R. 650, which examined the constitutionality of a municipal zoning decision that limited the location of building places of religious worship (the CCLA intervened in the Supreme Court of Canada);
62. *R. v. Glad Day Bookshop Inc.*, [2004] O.J No. 1766 (Ont. Sup. Ct. Jus.), in which one of the issues was the constitutionality of the statutory regime requiring prior approval and allowing the prior restraint of films (the CCLA intervened in the Ontario Superior Court of Justice);
63. *In the matter of an application under § 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248, which questioned *inter alia* the constitutionality of investigative hearings and the over breadth of certain provisions of the Anti-Terrorism Act (the CCLA intervened in the Supreme Court of Canada);
64. *In the Matter of a Reference by the Government in Council Concerning the Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, [2004] 3 S.C.R. 698, which examined the equality and religious freedom aspects of proposed changes to the marriage legislation (the CCLA intervened in the Supreme Court of Canada);

65. *R v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);
66. *R v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infrared technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);
67. *Genex Communications Inc. v. Attorney General of Canada*, [2005] F.C.J. No. 1440 (F.C.A.), which examined the application of the *Charter's* guarantee of freedom of expression to a decision by the CRTC to refuse to renew a radio station license (the CCLA intervened in the Federal Court of Appeal);
68. *R. v. Hamilton*, [2005] S.C.J. No. 48, which examined the scope of the offence of counseling the commission of a crime (the CCLA intervened in the Supreme Court of Canada);
69. *R. v. Déry*, [2006] 2 S.C.R. 669, which examined whether the *Criminal Code* contains the offence of "attempted conspiracy" (the CCLA intervened in the Supreme Court of Canada);
70. *Montague v. Page* (2006), 79 O.R. (3d) 515 (Ont. S.C.J.), which concerned the application of the *Charter's* guarantee of freedom of expression to the question of whether municipalities are allowed to file defamation suits against residents (CCLA intervened in the Ontario Superior Court of Justice);
71. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, which concerned whether the *Charter's* guarantee of freedom of religion allows a student to wear a kirpan in school (the CCLA intervened in the Supreme Court of Canada);
72. *O'Neill v. Attorney General of Canada*, [2006] O.J. No. 4189 (Ont. S.C.J.), which concerned the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);
73. *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal);
74. *Charkaoui et al. v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, which examined, *inter alia*, the constitutionality of certain "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);
75. *R. v. Bryan*, [2007] 1 S.C.R. 527, which examined the constitutionality of provisions of the *Elections Act* which penalize dissemination of election results from eastern Canada before polls are closed in the West (the CCLA intervened in the Supreme Court of Canada);

76. *R. v. Clayton*, 2007 SCC 32, concerning the scope of the police power to establish a roadblock and to stop and search vehicles and passengers (the CCLA intervened in the Supreme Court of Canada);
77. *R. v. Hill*, 2007 SCC 41, concerning the issue of whether police officers can be held liable in tort for a negligently conducted investigation (the CCLA intervened in the Supreme Court of Canada);
78. *Bruker v. Marcovitz*, 2007 SCC 54, which examined the extent to which civil courts can enforce a civil obligation to perform a religious divorce (the CCLA intervened in the Supreme Court of Canada);
79. *Lund v. Boissoin AND The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);
80. *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal);
81. *R. v. Kang-Brown*, 2008 SCC 18, and *R. v. M.(A.)*, 2008 SCC 19, concerning the constitutionality of using dogs to conduct random warrantless inspections of high school students (the CCLA intervened in the Supreme Court of Canada);
82. *Michael Esty Ferguson v. Her Majesty the Queen*, 2008 SCC 6, which concerned the constitutional challenge of a law requiring mandatory minimum sentences (the CCLA intervened in the Supreme Court of Canada);
83. *Elmasry and Habib v. Roger's Publishing and MacQueen* (No. 4), 2008 BCHRT 378, concerning the extent to which a British Columbia human rights law can limit the freedom of expression of a news magazine that had published offensive material about Muslims (the CCLA intervened before the British Columbia Human Rights Tribunal);
84. *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, concerning the extraterritorial application of the *Charter*, and specifically its application to Canadian Forces in Afghanistan and the transfer of detainees under Canadian control to Afghan authorities (the CCLA intervened in the Federal Court of Appeal);
85. *WIC Radio Ltd., et al. v. Kari Simpson*, 2008 SCC 40, concerning the appropriate balance to be struck in the law of defamation when one person's expression of opinion may have harmed the reputation of another (the CCLA intervened in the Supreme Court of Canada);
86. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 regarding freedom of information and the extent to which the public's right to access electronic data requires that the institution render such data in retrievable form (the CCLA intervened in the Ontario Court of Appeal);

87. *R. v. Patrick*, 2009 SCC 17, concerning the constitutionality of police conducting warrantless searches of household garbage located on private property (the CCLA intervened in the Supreme Court of Canada);
88. *Robin Chatterjee v. Attorney General of Ontario*, 2009 SCC 19, concerning the constitutionality of the civil forfeiture powers contained in Ontario's *Civil Remedies Act, 2001* (the CCLA intervened in the Supreme Court of Canada);
89. *R. v. Suberu*, 2009 SCC 33, concerning the constitutional right to counsel in the context of investigative detentions (the CCLA intervened in the Supreme Court of Canada);
90. *R. v. Grant*, 2009 SCC 32, concerning the appropriate legal test for the exclusion of evidence under s. 24(2) of the *Charter* (the CCLA intervened in the Supreme Court of Canada);
91. *R. v. Harrison*, 2009 SCC 34, concerning the appropriate application of s. 24(2) of the *Charter* in cases where police have engaged in "blatant" and "flagrant" *Charter* violations (the CCLA intervened in the Supreme Court of Canada);
92. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, concerning whether a provincial law requiring that all driver's licenses include a photograph of the license holder violates the freedom of religion of persons seeking an exemption from being photographed for religious reasons (the CCLA intervened in the Supreme Court of Canada);
93. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces (the CCLA intervened before the British Columbia Court of Appeal);
94. *R. v. Chehil* [2009] N.S.J. No. 515, concerning the permissibility of warrantless searches of airline passenger information by police (the CCLA intervened at the Nova Scotia Court of Appeal);
95. *Matthew Miazga v. The Estate of Dennis Kvello, et al.*, 2009 SCC 51, concerning the appropriate legal test for the tort of malicious prosecution (the CCLA intervened at the Supreme Court of Canada);
96. *Johanne Desbiens, et al. v. Wal-Mart Canada Corporation*, 2009 SCC 55, and *Gaétan Plourde v. Wal-Mart Canada Corporation*, 2009 SCC 54, concerning the interpretation of the Quebec *Labour Code* and the impact of the freedom of association guarantees contained in the *Canadian Charter* and the *Quebec Charter* (the CCLA intervened in the Supreme Court of Canada);
97. *Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, which will examine the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen's Bench of Alberta);
98. *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada);



99. *Peter Grant v. Torstar Corp.*, 2009 SCC 61 concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada);
100. *Whitcombe and Wilson v. Manderson*, December 18 2009, Ontario Superior Court of Justice File No. 31/09, concerning a Rule 21 motion to dismiss a defamation lawsuit being funded by a municipality (the CCLA intervened in the Ontario Superior Court of Justice);
101. *Karas v. Canada (Minister of Justice)*, (SCC File No. 32500) concerning the appropriateness of extraditing a fugitive to face the possibility of a death penalty without assurances that the death penalty will not be applied (the CCLA was granted leave to intervene at the Supreme Court of Canada but the case was dismissed as moot prior to the hearing);
102. *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);
103. *Her Majesty the Queen in Right of the Province of Alberta v. Lyle Marcellus Nasogaluak*, 2010 SCC 6, concerning the availability of sentence reductions as a remedy for violations of constitutional rights (the CCLA intervened in the Supreme Court of Canada);
104. *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal);
105. *Leblanc et al. c. Rawdon (Municipalite de)* (Quebec Court of Appeal File No. 500-09-019915-099) concerning the ability of a municipality to sue for defamation, the proper test for an interlocutory injunction in a defamation case, and the impact of “anti-SLAPP” legislation (the CCLA intervened at the Quebec Court of Appeal);
106. *Warman v. Fournier et al.*, 2010 ONSC 2126, concerning the appropriate legal test when a litigant in a defamation action is attempting to identify previously-anonymous internet commentators (the CCLA intervened at the Ontario Superior Court of Justice);
107. *R. v. National Post*, 2010 SCC 16, concerning the relationship between journalist-source privilege, freedom of the press under s. 2b, and search warrant and assistance orders targeting the media (the CCLA intervened in the Supreme Court of Canada);
108. *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, concerning the constitutionality of mandatory publication bans regarding bail hearing proceedings when requested by the accused (the CCLA intervened in the Supreme Court of Canada);
109. *Smith v. Mahoney* (U.S. Circuit Court of Appeals for the Ninth Circuit, Court File No. 94-99003) concerning the constitutionality of carrying out a death sentence on an inmate who has spent 27 years living under strict conditions of confinement on death row (the CCLA intervened in the U.S. Circuit Court of Appeals for the Ninth Circuit);

110. *R. v. Cornell*, 2010 SCC 31, concerning whether the manner in which police conduct a search, in particular an unannounced ‘hard entry’, constitutes a violation of s. 8 (the CCLA intervened in the Supreme Court of Canada);
111. *City of Vancouver, et al v. Alan Cameron Ward, et al.*, 2010 SCC 27, concerning whether an award of damages for the breach of a *Charter* right can be made in the absence of bad faith, an abuse of power or tortious conduct (the CCLA intervened in the Supreme Court of Canada);
112. *R. v. Sinclair*, 2010 SCC 35, *R. v. McCrimmon*, 2010 SCC 36, and *R. v. Willier*, 2010 SCC 37, concerning the scope of the constitutional right to counsel in the context of a custodial interrogation (the CCLA intervened in the Supreme Court of Canada);
113. *R. v. N.S. et al.*, 2010 ONCA 670, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened at the Ontario Court of Appeal);
114. *The Toronto Coalition to Stop the War et al. v. The Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration Canada*, 2010 FC 957, concerning the freedom of association and freedom of expression implications of a preliminary assessment by the government that a British Member of Parliament who was invited to speak in Canada was inadmissible because the government claimed he had engaged in terrorism and was a member of a terrorist organization (the CCLA intervened in the Federal Court);
115. *Globe and Mail, a division of CTVglobemedia Publishing Inc. v. Attorney General of Canada, et al*, 2010 SCC 41, concerning the disclosure of confidential journalistic sources in the civil litigation context, and the constitutionality of a publication ban (the CCLA intervened in the Supreme Court of Canada);
116. *R. v. Gomboc*, 2010 SCC 55, concerning the constitutionality of police conducting warrantless searches of private dwelling houses using real-time electricity meters (the CCLA intervened in the Supreme Court of Canada);
117. *Tiberiu Gavrilă v. Minister of Justice*, 2010 SCC 57, concerning the interaction between the Immigration and Refugee Protection Act and the Extradition Act and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada);
118. *Reference re Marriage Commissioners Appointed Under the Marriage Act, 1995 S.S. 1995, c. M-4.1*, 2011 SKCA 3, concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so would conflict with commissioners’ religious beliefs (the CCLA intervened at the Court of Appeal for Saskatchewan);
119. *Canadian Broadcasting Corporation et al. v. The Attorney General of Quebec et al.*, 2011 SCC 2, and *Canadian Broadcasting Corporation v. Her Majesty the Queen and Stéphan Dufour*, 2011 SCC 3 concerning the constitutional protection of freedom of the press in courthouses and the constitutionality of certain rules and directives restricting the activities of

- the press and the broadcasting of court proceedings (the CCLA intervened in the Supreme Court of Canada);
120. *R. v. Caron*, 2011 SCC 5, concerning the availability of advance cost orders in criminal and quasi-criminal litigation that raises broad reaching public interest issues (the CCLA intervened in the Supreme Court of Canada);
  121. *R. v. Ahmad*, 2011 SCC 6, concerning the constitutionality of ss. 38 to 38.16 of the Canada Evidence Act, R.S.C. 1985 (the CCLA intervened in the Supreme Court of Canada);
  122. *Farès Bou Malhab v. Diffusion Métromédia CMR inc., et al.*, 2011 SCC 9, concerning statements made by a radio host, and examining the scope and nature of defamation under Quebec civil law in the context of the freedom of expression guarantees found in the Quebec and Canadian Charters (the CCLA intervened in the Supreme Court of Canada);
  123. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, concerning the exclusion of agricultural workers from Ontario's *Labour Relations Act* and whether the labour scheme put in place for these workers violated freedom of association under the *Canadian Charter* (the CCLA intervened in the Supreme Court of Canada);
  124. *R. v. K.M.* 2011 ONCA 252, concerning the constitutionality of taking DNA samples from young offenders on a mandatory or reverse onus basis (the CCLA intervened in the Ontario Court of Appeal);
  125. *Issassi v. Rosenzweig*, 2011 ONCA 302, concerning a 13 year old girl from Mexico who had been granted refugee status in Canada because of allegations that her mother had sexually abused her, and the subsequent return of that youth to her mother in Mexico, by a judge who did not conduct a risk assessment (the CCLA intervened at the Ontario Court of Appeal);
  126. *Attorney General of Canada et al. v. Mavi et al.*, 2011 SCC 30, considering whether there is a need for procedural fairness in the federal immigration sponsorship regime (the CCLA intervened in the Supreme Court of Canada);
  127. *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25, cases concerning whether Minister's offices, including the Prime Minister's Office, are considered "government institutions" for the purposes of the federal *Access to Information Act* (the CCLA intervened in the Supreme Court of Canada);
  128. *Toussaint v. Attorney General of Canada*, 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare (the CCLA intervened in the Federal Court of Appeal);
  129. *Phyllis Morris v. Richard Johnson, et al.*, 2011 ONSC 3996, concerning a motion for production and disclosure brought by a public official and plaintiff in a defamation action in order to get identifying information about anonymous bloggers (the CCLA intervened on the motion at the Ontario Superior Court of Justice);
  130. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada);

131. *Crookes v. Newton*, 2011 SCC 47, concerning whether a hyperlink constitutes “publication” for the purposes of the law of defamation (the CCLA intervened in the Supreme Court of Canada);
132. *R. v. Katigbak*, 2011 SCC 48, considering the scope of the statutory defences to possession of child pornography (the CCLA intervened in the Supreme Court of Canada);
133. *R. v. Barros*, 2011 SCC 51, considering the scope of the informer privilege and whether it extends to prohibit independent investigation by the defence which may unearth the identity of a police informer (the CCLA intervened in the Supreme Court of Canada);
134. *Batty v. City of Toronto*, 2011 ONSC 6862, concerning the constitutionality of municipal bylaws prohibiting the erection of structures and overnight presence in public parks as applied to a protest (the CCLA intervened at the Ontario Superior Court of Justice);
135. *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, concerning parents seeking to have their children exempt from participating in Quebec’s Ethics and Religious Culture curriculum on the basis of their freedom of religion concerns (the CCLA intervened before the Supreme Court of Canada);
136. *Doré v. Barreau du Québec*, 2012 SCC 12, concerning the jurisdiction of a provincial law society to discipline members for comments critical of the judiciary (the CCLA intervened before the Supreme Court of Canada);
137. *R. v. Ipeelee*, 2012 SCC 13, concerning the application of s. 718.2(e) of the *Criminal Code* and *Gladue* principles when sentencing an Aboriginal offender of a breach of long-term supervision orders (the CCLA intervened before the Supreme Court of Canada);
138. *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal);
139. *R. v. Tse, et al*, 2012 SCC 16, concerning the constitutionality of the Criminal Code’s “warrantless wiretap” provisions (the CCLA intervened before the Supreme Court of Canada);
140. *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, concerning the appropriate test for jurisdiction and *forum non conveniens* in a multi-jurisdictional defamation lawsuit and the implications of these jurisdictional issues on freedom of expression (the CCLA intervened before the Supreme Court of Canada);
141. *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292, concerning the jurisdiction of Ontario’s Special Investigations Unit to investigate potentially criminal conduct committed by a police officer who has retired since the time of the incident (the CCLA intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal);
142. *Pridgen v. University of Calgary*, 2012 ABCA 139, which considers whether a university can discipline students for online speech and whether the *Canadian Charter of Rights and Freedoms* applies to disciplinary proceedings at a university (the CCLA intervened before the Alberta Court of Appeal);

143. *J.N. v. Durham Regional Police Service*, 2012 ONCA 428, concerning the retention of non-conviction disposition records by police services (the CCLA intervened in the Ontario Court of Appeal; CCLA also intervened before the Ontario Superior Court of Justice, *J.N. v. Durham Regional Police Service*, 2011 ONSC 2892);
144. *Opitz v. Wrzesnewskyj*, 2012 SCC 55, concerning the proper interpretation of the *Canada Elections Act* in the context of elections contested based on “irregularities,” and in light of section 3 of the Charter (CCLA intervened before the Supreme Court of Canada);
145. *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162, concerning the constitutionality of the hate speech prohibitions in the *Canadian Human Rights Act* (the CCLA intervened in the Federal Court of Canada);
146. *R. v. Cuttell*, 2012 ONCA 661 and *R. v. Ward*, 2012 ONCA 660, concerning the permissibility of warrantless searches of internet users’ identifying customer information (the CCLA intervened at the Ontario Court of Appeal);
147. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, concerning the issue of the appropriate test for granting standing in a public interest case (CCLA intervened before the Supreme Court of Canada);
148. *R. v. Cole*, 2012 SCC 53, examining an employee’s reasonable expectation of privacy in employer-issued computers and the application of s. 8 to police investigations at an individual’s workplace (CCLA intervened before the Supreme Court of Canada);
149. *R. v. Prokofiew*, 2012 SCC 49, concerning the inferences that could be made from accused person’s decision not to testify (CCLA intervened before the Supreme Court of Canada);
150. *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, concerning the proper balance between the transparency of court proceedings and the privacy of complainants (CCLA intervened before the Supreme Court of Canada);
151. *Lund v. Boissain*, 2012 ABCA 300, which considers the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Court of Appeal);
152. *R. v. Khawaja*, 2012 SCC 69 and *Sriskandarajah v. United States of America*, 2012 SCC 70 which together considered whether the definition of “terrorist activity” introduced by the Anti-Terrorism Act 2001, amending the Criminal Code, infringe the Charter (CCLA intervened before the Supreme Court of Canada);
153. *R. v. N.S. et al.* (SCC File No: 33989) concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened before the Supreme Court of Canada);
154. *R. v. Davey*, 2012 SCC 75, *R. v. Emms*, 2012 SCC 74 and *R. v. Yumnu*, 2012 SCC 73, concerning the Crown’s vetting of prospective jurors prior to jury selection and the failure to provide disclose information to defence counsel (CCLA intervened before the Supreme Court of Canada);

155. *R. v. Manning*, 2013 SCC 1, concerning the proper interpretation of a criminal forfeiture provision, and whether courts may consider the impact of such forfeiture on offenders, their dependents, and affected others (CCLA intervened before the Supreme Court of Canada);
156. *Saskatchewan Human Rights Commission v. William Whatcott*, 2013 SCC 11, concerning the constitutionality and interpretation of the hate speech provisions of the Saskatchewan Human Rights Code and the extent to which that law can limit the expression of a man distributing anti-homosexual flyers;
157. *R. v. Mernagh*, 2013 ONCA 67, concerning the constitutionality of medical marijuana regulations;
158. *Tigchelaar Berry Farms v. Espinoza*, 2013 ONSC 1506, concerning temporary migrant workers who, following their termination, were immediately removed from Canada by their employers pursuant to a government-mandated employment contract;
159. *Telus v. Her Majesty the Queen*, 2013 SCC 16, concerning the interpretation of the interception provisions of the *Criminal Code* and whether the authorizations in a General Warrant and Assistance Order are sufficient to require a cell phone company to forward copies of all incoming and outgoing text messages to the police;
160. *R. v. Pham*, 2013 SCC 15, concerning whether the demands of proportionality in sentencing require that the individual accused's circumstances be taken into account to include a collateral consequence, such as deportation;
161. *Canadian Human Rights Commission v. Canada (Attorney General)*, 2013 FCA 75, in which the court considered whether an allegation that the Government of Canada has engaged in prohibited discrimination by under-funding child welfare services for on-reserve First Nations children, in order to succeed, requires a comparison to a similarly situated group;
162. *Penner v. Niagara (Regional Police Service Board)*, 2013 SCC 19, concerning the use of issue estoppel in the context of civil claims against the police;
163. *R. v. Saskatchewan Federation of Labour*, 2013 SKCA 43, concerning essential services legislation and the freedom to strike;
164. *R. v. Welsh*, 2013 ONCA 190, concerning the constitutionality of an undercover police officer posing as a religious or spiritual figure in order to elicit information from a suspect;
165. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, concerning employee privacy and the reasonableness of randomized alcohol testing in the workplace;
166. *R.C. v. District School Board of Niagara*, 2013 HRTO 1382, concerning the policy and practice of distribution of non-instructional religious material within the school board system and whether it is discriminatory on the basis of creed;
167. *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, concerning the government's refusal to permit Canadians detained abroad to serve the remainder of their

- sentence in Canada and the application of s. 6 of the Charter (the CCLA intervened in the Federal Court of Appeal, 2011 FCA 39, and the Supreme Court of Canada);
168. *R. v. Chehil*, 2013 SCC 49, and *R. v. Mackenzie*, 2013 SCC 50, concerning the “reasonable suspicion” standard and the right to be free from unreasonable search and seizure;
  169. *Ezokola v. Minister of Immigration and Citizenship*, 2013 SCC 40, concerning application of the exclusion clause 1(F)(a) of the 1951 UN Refugee Convention, as incorporated in the IRPA, and the proper test for complicity in war crimes and crimes against humanity. The case considers an individual who has been denied refugee status because he was employed by the government of the Democratic Republic of Congo at a time that international crimes were committed by the State;
  170. *Reva Landau v. Ontario (Attorney General)*, 2013 ONSC 6152, concerning the constitutionality of the current funding of Ontario’s Catholic schools;
  171. *R. v. Vu*, 2013 SCC 60, concerning the scope of police authority to search computers and other personal electronic devices found within a place for which a warrant to search has been issued;
  172. *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, concerning the constitutionality of Alberta’s *Personal Information Protection Act* in light of its impact on a union’s freedom of expression in respect of activities on a picket line;
  173. *Faysal v. General Dynamics Land Systems Canada* (Ontario Human Rights Tribunal File No. 2009-03006-I), concerning the application by a Canadian employer of the US *International Traffic in Arms Regulations*, and whether such application constitutes discrimination, contrary to the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and Canadian legal obligations pursuant to international human rights law (matter settled before a hearing);
  174. *Wood v. Schaeffer*, 2013 SCC 71, concerning the scope of public interest standing and the interpretation of certain Regulations governing investigations conducted by Ontario’s Special Investigations Unit (the CCLA also intervened at the Ontario Court of Appeal, 2011 ONCA 716);
  175. *Bernard v. Canada (Attorney General)*, 2014 SCC 13, concerning an employer sharing the contact information of a Rand employee with a union and whether this violates rights to privacy and the freedom not to associate;
  176. *John Doe v. Ontario (Finance)*, 2014 SCC 36, concerning an exception in Ontario’s *Freedom of Information and Protection of Privacy Act* for advice and recommendations to a Minister;
  177. *Mission Institution v. Khela*, 2014 SCC 24, concerning the scope of habeas corpus, the disclosure obligations on a correctional institution when they conduct an involuntary transfer, and the remedies that are available pursuant to a habeas application;

178. *R. v. Summers*, 2014 SCC 26, concerning the presumption of innocence and the interpretation of “circumstance[s]” that may justify granting enhanced credit for pre-trial custody under s. 719(3.1) of the *Criminal Code*;
179. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, concerning the constitutionality of Canada’s “security certificate” regime, particularly the restrictions on communications between a Named Person and the Special Advocate;
180. *France v. Diab*, 2014 ONCA 374, regarding whether an extradition judge must engage in a limited weighing of evidence to assess the sufficiency of evidence for committal to extradition and whether a failure to do so would violate s. 7 of the *Charter*;
181. *R. v. Spencer*, 2014 SCC 43, concerning the permissibility of warrantless searches of internet users’ identifying customer information;
182. *R. v. Taylor*, 2014 SCC 50, concerning the scope of right to counsel and whether intentional police reliance on medical procedures to gather evidence without implementing the right to counsel violates s. 8 of the *Charter*;
183. *R. v. Hart*, 2014 SCC 52, concerning the constitutionality and admissibility of a confession obtained through a “Mr. Big” police operation;
184. *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, concerning whether a court must consider an individual’s rehabilitation when seeking to exclude a refugee from Canada for “serious prior criminality”;
185. *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, concerning the application of the *Charter* to the *State Immunity Act* and whether it denies state immunity for acts committed by foreign governments when such acts result in violations of international law prohibitions against torture (the CCLA also intervened at the Quebec Court of Appeal, 2012 QCCA 1449);
186. *Wakeling v. United States of America*, 2014 SCC 72, regarding the constitutionality of sections of the *Criminal Code* and the *Privacy Act* that allow for the substance of wiretaps to be disclosed to foreign law enforcement actors;
187. *R. v. Fearon*, 2014 SCC 77, concerning the scope of the police power to search incident to arrest and whether it extends to a warrantless search of personal electronic devices (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 106);
188. *PS v. Ontario*, 2014 ONCA 900, concerning detention under mental health law and the scope of *Charter* protection afforded to a person with a hearing impairment and linguistic needs, in a situation of compound rights violations;
189. *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, concerning the constitutionality of the labour relations regime for members of the Royal Canadian Mounted Police;



190. *Nadeau-Dubois c. Morasse*, 2015 QCCA 78, concerning an appeal of a contempt conviction in respect of an individual who made public statements about the legitimacy of certain protest activities;
191. *Groia v. Law Society of Upper Canada*, 2015 ONSC 686, concerning a finding of professional misconduct made against a lawyer on the basis of incivility and the question of when such a finding impacts freedom of expression (the CCLA also intervened before the Law Society Appeal Panel, 2013 ONSLAP 41);
192. *Carter v. Canada (Attorney General)*, 2015 SCC 5, concerning the constitutionality of the *Criminal Code* prohibition on assisted suicide in light of the rights protected under ss. 7 and 15 of the *Charter*;
193. *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, concerning the impact of provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and associated regulations, on solicitor-client privilege and whether these provisions unjustifiably violate s. 7 of the *Charter*;
194. *Baglow v. Smith*, 2015 ONSC 1175, concerning the fair comment defence and the approach to defamation cases where the allegedly defamatory publication takes place within the “blogosphere”;
195. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, concerning whether a private religious high school should be exempted from the requirement to teach Quebec’s Ethics and Religious Culture curriculum and whether the failure to grant an exemption violates the institution’s freedom of religion;
196. *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, regarding whether a roving police “stop and search” checkpoint targeting apparent protesters during the G20 Summit violated ss. 2 and 7 of the *Charter*;
197. *R. v. Nur*, 2015 SCC 15, concerning the constitutionality of various provisions of the *Criminal Code* which impose mandatory minimum sentences for the possession of a prohibited firearm (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 677, and at the Ontario Superior Court of Justice, 2011 ONSC 4874);
198. *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, concerning whether the rights to equality or to freedom of religion as protected under the Quebec *Charter of human rights and freedoms* are violated when a prayer is recited at the outset of a municipal council meeting;
199. *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, regarding the availability of *Charter* remedies for non-disclosure of evidence at trial and whether claimants should be required to prove prosecutorial malice in the *Charter* claim;
200. *Bowden Institution v. Khadr*, 2015 SCC 26, regarding the proper interpretation of the *International Transfer of Offenders Act* as applied to the sentence received by a Canadian citizen sentenced in the United States and whether the sentence should be served in a provincial correctional facility;

201. *R. v. St-Cloud*, 2015 SCC 27, regarding the interpretation of the power to deny bail because detention is necessary to maintain confidence in the administration of justice;
202. *R. v. Barabash*, 2015 SCC 29, considering the scope of the private use exception to making and possessing child pornography;
203. *R. v. Smith*, 2015 SCC 34, concerning the constitutionality of the *Marijuana Medical Access Regulations* and whether the limitation in the *Regulations* restricting legal possession to only dried marijuana unreasonably infringes s. 7 *Charter* rights;
204. *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide;
205. *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495, concerning the role of the *Charter of Rights and Freedoms* in the interpretation of the Ontario *Human Rights Code* by the Human Rights Tribunal of Ontario (the CCLA also intervened before the Ontario Superior Court of Justice, 2014 ONSC 2169);
206. *Frank v. Canada (Attorney General)*, 2015 ONCA 536, concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;
207. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, concerning the application of the Quebec *Charter* to a Canadian company's refusal to train a Pakistan-born Canadian pilot because he was refused clearance under a US program requiring security checks for foreigners; and
208. *Disciplinary Hearings of Superintendent David Mark Fenton*, Toronto Police Service Disciplinary Tribunal decision dated 25 August 2015, regarding whether the mass arrest of hundreds of individuals at two locations during the G20 Summit constituted a violation of ss. 2 and 9 of the *Charter* and whether the officer's conduct amounted to misconduct under the *Police Services Act*.

#### **CCLA Interventions – Hearing or Decision Pending**

209. *Mitchell v. Jackman* (Newfoundland and Labrador Supreme Court File No. 2011 01G 7277), concerning the constitutionality of provisions of the Newfoundland *Elections Act* which allow for special ballot voting prior to an election writ being dropped;
210. *Villeneuve v. City of Montreal* (Quebec Superior Court File No. 500-17-072311-122), concerning the constitutionality of a City of Montreal by-law that prohibits the holding of gatherings and marches without informing the police of the itinerary and location and prohibiting individuals participating in such gatherings from covering their faces without valid justification;

211. *Appulonappa, et al. v. Her Majesty the Queen, et al.* (SCC File No. 35958), *Hernandez v. Minister of Public Safety and Emergency Preparedness* (SCC File No. 35677), *B306 v. Minister of Public Safety and Emergency Preparedness* (SCC File No. 35685) and *JP et al. v. Minister of Public Safety and Emergency Preparedness* (SCC File No. 35688), concerning the constitutionality of criminal and immigration sanctions imposed on those who provide assistance to refugee claimants as “human smugglers” (CCLA also intervened before the BC Court of Appeal, 2014 BCCA 163); and
212. *Schmidt v. Attorney General of Canada* (Federal Court File Number: T-2225-12), concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation.

**The CCLA has also litigated significant civil liberties issues as a party in the following cases and inquests:**

213. *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA), reversing (1988), 64 OR (2d) 577 (Div Ct), concerning whether a program of mandatory religious education in public schools violated the *Charter*’s guarantee of freedom of religion;
214. *Canada (Canadian Human Rights Commission) v. Toronto-Dominion Bank (re Canadian Civil Liberties Association)*, [1996] 112 FTR 127, affirmed [1998] 4 FC 205 (CA), concerning whether an employer’s policy requiring employees to submit to a urine drug test was discriminatory under the *Canadian Human Rights Act*;
215. *Corporation of the Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)* (2002), 61 OR (3d) 649 (CA), concerning the proper evidentiary standard to be applied under the *Ontario Police Services Act* when the Civilian Commission on Police Services considers the issue of hearings into civilian complaints of police misconduct;
216. *Canadian Civil Liberties Association v. Toronto Police Service*, 2010 ONSC 3525 and 2010 ONSC 3698, concerning whether the use of Long Range Acoustic Devices (LRADs) by the Toronto Police Service and the Ontario Provincial Police during the G20 Summit in June 2010 violated Regulation 926 of the *Police Services Act* and ss. 2 and 7 of the *Charter*;
217. *Inquest into the Death of Ashley Smith* (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers;
218. *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File: CV-14-504139), an application regarding the proper interpretation of certain provisions of the federal *Personal Information Protection and Electronic Documents Act* which have been used to facilitate warrantless access to internet subscriber information (application ongoing);
219. *Corporations of the Canadian Civil Liberties Association and the Canadian Association of Elizabeth Fry Societies v. Attorney General (Canada)* (Ontario Superior Court File: CV-15-

520661), an application regarding the constitutionality of provisions of the *Corrections and Conditional Release Act* which authorize “administrative segregation” in Canadian correctional institutions (application ongoing); and

220. *Corporation of the Canadian Civil Liberties Association, et al. v. Attorney General (Canada)* (Ontario Superior Court File: CV-15-532810), an application concerning the constitutionality of provisions of various pieces of legislation as a result of the *Anti-Terrorism Act, 2015* (application ongoing).

## PART I - STATEMENT OF FACTS

1. The Canadian Civil Liberties Association (the “CCLA”) seeks leave to intervene in this appeal. The CCLA is a national, independent, non-partisan, non-profit, and non-governmental organization constituted in 1964 to promote respect for fundamental human rights and civil liberties. Its work includes research, public education, and advocacy aimed at defending and ensuring the protection and full exercise of human rights and civil liberties.

2. The CCLA has intervened in numerous cases involving civil liberties and democratic rights, many of which involved the interpretation of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) <sup>1</sup>. These cases include *Vancouver (City) v. Ward* (“*Ward*”), <sup>2</sup> which established the framework for awarding *Charter* damages under section 24(1), and *Henry v. British Columbia (Attorney General)* (“*Henry*”), <sup>3</sup> in which this Court considered and applied the *Ward* framework.

3. This appeal raises the issue of whether an immunity provision in a provincial statute can be interpreted and applied to bar a claim against a provincial regulator for breaching an individual’s *Charter* rights under s. 2(b), for which the plaintiff seeks an appropriate and just remedy under section 24(1). The constitutional question is: “Is s. 43 of the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, constitutionally inapplicable or inoperable to the extent that it bars a claim against the regulator for a breach under s. 2(b) of the *Canadian Charter of Rights and Freedoms* and an application for a remedy under s. 24(1) of the *Canadian Charter of Rights and Freedoms*?”

---

<sup>1</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

<sup>2</sup> *Vancouver (City) v. Ward*, 2010 SCC 27.

<sup>3</sup> *Henry v. British Columbia (Attorney General)*, 2015 SCC 24.

4. If granted leave to intervene, the CCLA will submit that the correct answer to that question is “yes”. The CCLA will argue that the statutory immunity provision in question must be interpreted or read down so as not to apply to a claim for a breach of the *Charter*, including a claim seeking an appropriate and just remedy under section 24(1). In order to give effect and meaning to the guarantees contained in the *Charter*, it must be open to a trial court to provide an appropriate and just remedy in the event that it finds that an individual’s *Charter* rights have been infringed. This remedial power cannot be extinguished or constrained *ab initio* by a blanket immunity provision, nor can it be shut down at the pleadings stage of an action, before the plaintiff has an opportunity to develop her case fully.

5. The CCLA’s intervention will not delay the hearing of this appeal or prejudice the interests of the main parties.

## **PART II - QUESTIONS IN ISSUE**

6. As established by this Court,<sup>4</sup> the test on this motion for leave to intervene is as follows:

- (a) does the CCLA have a real interest in the subject-matter of the appeal; and
- (b) will the CCLA’s submissions be useful to the Court and different from those of other parties?

7. The CCLA submits that both of these questions should be answered in the affirmative for the reasons set out below.

---

<sup>4</sup> *Reference re Workers’ Compensation Act (1983) (Nfld.)*, [1989] 2 S.C.R. 335 at 339.

### PART III - STATEMENT OF ARGUMENT

#### A. The CCLA Has a Real Interest in this Appeal

8. In keeping with its mandate to foster and protect fundamental rights and liberties, the CCLA seeks to ensure that, when protected rights and freedoms are breached, the law allows for an effective and fair remedy.<sup>5</sup> As the CCLA advocated and as this Court accepted in *Ward*, section 24(1) contains broad and permissive language, providing a court of competent jurisdiction the flexibility to craft an appropriate remedy in the circumstances of a particular case. Ensuring that breaches of civil liberties and fundamental freedoms can be meaningfully remedied is a critical part of the CCLA's mandate, as the freedoms protected under the *Charter* are only as strong as the means for ensuring that breaches are redressed.

#### B. The CCLA will Assist the Court

9. The CCLA has a history of assisting this Court and other Canadian courts in matters relating to civil liberties, democratic rights, and freedom of expression. As an organization devoted to studying the actions of government, protecting civil liberties, and advocating for the protection of rights and liberties, the CCLA has a special perspective and unique expertise on these issues. The CCLA's contribution to the development of civil liberties law has been recognized many times over the years.

10. The CCLA possesses a distinct awareness and understanding of many aspects of civil liberties, having frequently argued for and defended the rights of individuals. The CCLA has

---

<sup>5</sup> Affidavit of Sukanya Pillay (sworn September 14, 2015) at paras. 3, 11-13 [Pillay Affidavit].

been granted intervener status many times before this Court and all levels of courts and tribunals in cases raising civil liberties issues both prior to and under the *Charter*.<sup>6</sup>

11. The CCLA has specific experience in dealing with remedial issues under the *Charter*. For example, it has recently intervened before this Court in several cases concerning the availability of private law or *Charter* remedies, including, in addition to *Ward* and *Henry*:

- *R. v. Harrison*,<sup>7</sup> in which one of the issues was the appropriate application of section 24(2) of the *Charter* in cases where police have engaged in “blatant” and “flagrant” *Charter* violations;
- *R. v. Grant*,<sup>8</sup> in which the issue was the appropriate legal test for the exclusion of evidence remedy under section 24(2) of the *Charter*; and
- *R. v. Nasogaluak*,<sup>9</sup> in which the issue was the availability of sentence reductions as a remedy for violations of constitutional rights.<sup>10</sup>

12. In light of the CCLA’s extensive experience and involvement in these issues, the CCLA’s submissions will be of assistance to this Court.

### **C. The CCLA will Bring a Different Perspective**

13. This Court has stated that “an intervention is welcomed if the intervener will provide the Court with fresh information or a fresh perspective on an important constitutional or public issue.”<sup>11</sup> When it comes to assisting this Court in answering the constitutional question at the heart of this appeal, the CCLA will provide a “fresh perspective” arising from its national mandate to promote and protect civil liberties. Its submissions will draw on its expertise with

---

<sup>6</sup> Pillay Affidavit at para. 9 and Exhibit “A”.

<sup>7</sup> *R. v. Harrison*, 2009 SCC 34.

<sup>8</sup> *R. v. Grant*, 2009 SCC 32.

<sup>9</sup> *R. v. Nasogaluak*, 2010 SCC 6.

<sup>10</sup> Pillay Affidavit at para. 12.

<sup>11</sup> *Reference re Workers’ Compensation Act (1983) (Nfld.)*, [1989] 2 S.C.R. 335 at 340.



respect to civil liberties and will not duplicate the submissions of the parties or any other interveners.<sup>12</sup>

14. The CCLA will bring to this appeal a principled and balanced approach that, respectfully, will assist this Court in answering the stated constitutional question and in providing guidance to lower courts with regard to the proper interpretation of statutory immunity provisions in the *Charter* context. Whereas the Appellant has particular interests at stake and can be expected to make submissions that are shaped by those interests and by the circumstances of her case, the CCLA's submissions will be rooted in and informed by its commitment to ensuring and protecting the remedial integrity of the *Charter* not only in this case but in future cases, including cases that involve different circumstances.

15. In addition, given its extensive experience in addressing issues that arise when fundamental rights and freedoms have to be reconciled with competing interests, the CCLA is well suited to provide the Court with a useful and distinct perspective on how to reconcile the remedial authority granted in section 24(1) with the important policy concerns that give rise to statutory immunity provisions such as the one at issue here.<sup>13</sup>

16. If granted leave to intervene, the CCLA will argue that such a provision cannot be interpreted or applied to immunize a province from liability for a claim seeking a constitutionally permissible remedy for a breach of an individual's *Charter* rights. If it could be, a province would be free to insulate itself fully from any consequences for infringing the *Charter* rights of individuals within its power. This is a constitutionally impermissible result. It would

---

<sup>12</sup> Pillay Affidavit at paras. 13-16.

<sup>13</sup> Pillay Affidavit at para. 10.

fundamentally undermine the core purpose of the *Charter*, which is to protect the rights and liberties of individuals – including vulnerable individuals expressing unpopular views – from infringement by government action.<sup>14</sup> Section 43 of the *Alberta Energy Resources Conservation Act*<sup>15</sup> must accordingly be interpreted or read down so as not to apply to a claim for a breach of the *Charter*, including a claim seeking an appropriate and just remedy under section 24(1) of the *Charter*.

17. From the early days of the *Charter*, this Court has recognised that section 24(1) is framed in very broad terms. In *Mills v. The Queen*, McIntyre J. first underscored the range of remedies at a court's disposal under section 24(1):

What remedies are available when an application under s. 24(1) of the Charter succeeds? Section 24(1) again is silent on the question. It merely provides that the appellant may obtain such remedy as the court considers “appropriate and just in the circumstances”. It is difficult to imagine language which could give the court a wider and less fettered discretion. It is impossible to reduce this wide discretion to some sort of binding formula for general application in all cases, and it is not for appellate courts to pre-empt or cut down this wide discretion.<sup>16</sup>

18. Sections 24(1), 32(1)(b), and 52(1) of the *Charter*—as interpreted in prior decisions of this Court—establish that it is not open to a provincial legislature to grant itself absolute immunity from a claim for a breach of an individual's *Charter* rights, including a claim under section 24(1) for damages for such a breach. In *Nelles v. Ontario*, for example, Lamer J. (as he

---

<sup>14</sup> *Hunter v. Southam*, [1984] 2 S.C.R. 145, at 155-156.

<sup>15</sup> R.S.A. 2000, c E-10.

<sup>16</sup> *Mills v. The Queen*, [1986] 1 S.C.R. 863 at 965.

then was) wrote that an absolute Crown immunity “is not justified in the interests of public policy”<sup>17</sup> in part because:

Granting an absolute immunity ... is akin to granting a license to subvert individual rights. Not only does absolute immunity negate a private right of action, but in addition, it seems to me, it may be that it would effectively bar the seeking of a remedy pursuant to s. 24(1) of the *Charter*. ... Such an individual would normally have the right under s. 24(1) of the *Charter* to apply to a court of competent jurisdiction to obtain a remedy that the court considers appropriate and just if he can establish that one of his *Charter* rights has been infringed.<sup>18</sup>

19. Lamer J.’s reasons were subsequently summarized by Carthy J.A. of the Ontario Court of Appeal as standing for the proposition that:

... a statutory enactment cannot stand in the way of a constitutional entitlement. Section 32(1)(b) of the *Charter* provides that the *Charter* applies to the legislature and government of each province. The remedy section of the *Charter* would be emasculated if the provincial government, as one of the very powers the *Charter* seeks to control, could declare itself immune.<sup>19</sup>

20. Likewise, in *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, this Court held that section 24(1) affords wide judicial discretion to fashion remedies for *Charter* breaches that are “appropriate and just” in the circumstances, free from any restrictions of statute or common law:

The power of the superior courts under s. 24(1) to make appropriate and just orders to remedy infringements or denials of *Charter* rights is part of the supreme law of Canada. It follows that this remedial power cannot be strictly limited by statutes or rules of the common law. We note, however, that statutes and common law rules may be helpful to a court choosing a remedy under s. 24(1) insofar as the statutory provisions or common law rules express

---

<sup>17</sup> *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 199.

<sup>18</sup> *Ibid.* at 195-96.

<sup>19</sup> *Prete v. Ontario*, 16 O.R. (3d) 161 (C.A.) at para. 8.

principles that are relevant to determining what is “appropriate and just in the circumstances”.<sup>20</sup> [Emphasis added.]

21. In *Ward*, this Court reiterated that “the language of the grant [in section 24(1)] is broad,” and that “it is improper for courts to reduce this discretion by casting it in a strait-jacket of judicially prescribed conditions.”<sup>21</sup>

22. Accordingly, in order to give effect and meaning to the guarantees contained in the *Charter*, and to vindicate *Charter* rights when they have been breached, it must be open to a court to provide an appropriate and just remedy in each case where it finds that a breach has occurred. This remedial power cannot be extinguished or constrained *ab initio* by a blanket immunity provision.

23. Although this Court has held that a statute of limitation applies to personal claims for constitutional relief,<sup>22</sup> that holding is not determinative of the present appeal. If granted leave to intervene in this appeal, the CCLA will submit that the analogy drawn by the court below between a statute of limitation and a statutory immunity provision is faulty. A statute of limitation serves a different purpose, and has a different effect, than an immunity provision. The former does not prevent an individual from asserting a claim. Instead, it simply requires that the claim be brought within a specified period. The latter, by contrast, precludes the claim from being brought at any time. Application of a statutory immunity provision such as section 43 to an individual’s claim that his or her *Charter* rights have been breached would completely extinguish the rights in question. If granted leave to intervene, it will be the CCLA’s position that this is not a permissible result under the *Charter*.

---

<sup>20</sup> *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 at para. 51.

<sup>21</sup> *Vancouver (City) v. Ward*, 2010 SCC 27 at paras. 17-18.

<sup>22</sup> *Ravndahl v. Saskatchewan*, 2009 SCC 7; *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1.

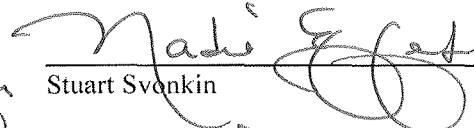
**PART IV - COSTS**


24. The CCLA undertakes not to seek any costs and asks that no costs be awarded against it.


**PART V - ORDER SOUGHT**

25. The CCLA seeks leave to intervene in this appeal, to file a factum not to exceed ten pages, and to present oral submissions not to exceed ten minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this <sup>24<sup>th</sup></sup> day of September, 2015.

  
for Stuart Svonkin

  
for Brendan Brammall

  
for Michael Bookman

**Chernos Flaherty Svonkin LLP**

Counsel for the Proposed Intervener,  
the Canadian Civil Liberties Association

## PART VI - TABLE OF AUTHORITIES

<u>No.</u>	<u>Authority</u>	<u>Paragraph(s)</u>
1.	<i>Doucet-Boudreau v. Nova Scotia (Minister of Education)</i> , 2003 SCC 62	20
2.	<i>Henry v. British Columbia (Attorney General)</i> , 2015 SCC 24	2, 11
3.	<i>Hunter v. Southam</i> , [1984] 2 S.C.R. 145	16 (FN 14)
4.	<i>Kingstreet Investments Ltd. v. New Brunswick (Finance)</i> , 2007 SCC 1	23 (FN 22)
5.	<i>Mills v. The Queen</i> , [1986] 1 S.C.R. 863	17
6.	<i>Nelles v. Ontario</i> , [1989] 2 S.C.R. 170	18
7.	<i>Prete v. Ontario</i> , 16 O.R. (3d) 161 (C.A.)	19 (FN 19)
8.	<i>R. v. Grant</i> , 2009 SCC 32	11
9.	<i>R. v. Harrison</i> , 2009 SCC 34	11
10.	<i>R. v. Nasogaluak</i> , 2010 SCC 6	11
11.	<i>Ravndahl v. Saskatchewan</i> , 2009 SCC 7	23 (FN 22)
12.	<i>Reference re Workers' Compensation Act (1983) (Nfld.)</i> , [1989] 2 S.C.R. 335	6 (FN4), 13 (FN11)
13.	<i>Vancouver (City) v. Ward</i> , 2010 SCC 27	2, 11

## PART VII - RELEVANT STATUTES

### CANADIAN CHARTER OF RIGHTS AND FREEDOMS

*The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982.*

#### GUARANTEE OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada

**1.** The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

#### FUNDAMENTAL FREEDOMS

Fundamental freedoms

**2.** Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

...

#### ENFORCEMENT

Enforcement of guaranteed rights and freedoms

**24.** (1) Anyone whose rights or

### CHARTE CANADIENNE DES DROITS ET LIBERTÉS

*Loi constitutionnelle de 1982(R-U), constituant l'annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11.*

#### GARANTIE DES DROITS ET LIBERTES

Droits et libertés au Canada

**1.** La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

#### LIBERTES FONDAMENTALES

Libertés fondamentales

**2.** Chacun a les libertés fondamentales suivantes :

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

...

#### RECOURS

Recours en cas d'atteinte aux droits et libertés

**24.** (1) Toute personne, victime de

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.

...

#### APPLICATION OF CHARTER

##### Application of Charter

#### **32. (1) This Charter applies**

- (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

...

#### GENERAL

##### Primacy of Constitution of Canada

**52. (1) The 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.**

violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

...

#### APPLICATION DE LA CHARTE

##### Application de la charte

#### **32. (1) La présente charte s'applique :**

- a) au Parlement et au gouvernement du Canada, pour tous les domaines relevant du Parlement, y compris ceux qui concernent le territoire du Yukon et les territoires du Nord-Ouest;
- b) à la législature et au gouvernement de chaque province, pour tous les domaines relevant de cette législature.

...

#### DISPOSITIONS GÉNÉRALES

##### Primauté de la Constitution du Canada

**52. (1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.**



***ENERGY RESOURCES CONSERVATION ACT, RSA 2000, C E-10.*****Protection from action**

**43.** No action or proceeding may be brought against the Board or a member of the Board or a person referred to in section 10 or 17(1) in respect of any act or thing done purportedly in pursuance of this Act, or any Act that the Board administers, the regulations under any of those Acts or a decision, order or direction of the Board.